

## UNITED STATES OF AMERICA

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## FEDERAL COMMUNICATIONS COMMISSION

## CONSUMER ADVISORY COMMITTEE

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## MEETING

+ + + + +

Friday, July 11, 2003

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The Committee came to order at 9:00 a.m. in Room TW-C305 of 445 12th Street, S.W., Washington, D.C., Shirley L. Rooker, Chair, presiding.

## MEMBERS PRESENT:

JEFFREY KRAMER	AARP
BRENDA KELLY-FREY	National Association of State Relay Administration
LARRY GOLDBERG	Media Access Group, WGBH
SHIRLEY ROOKER	Call for Action
SCOTT MARSHALL	FDIC, CAC-Designated Federal Officer
RICHARD ELLIS	Verizon Communications
JOY RAGSDALE	National Association of State Utility Consumer Advocates
VERNON R. JAMES	San Carlos Apache Telecommunications Utility, Inc.
SUSAN GRANT	National Consumers League
DAVID HOROWITZ	Fight Back Foundation for Consumer Education
DIXIE ZIEGLER	Hamilton Telephone Company, d/b/a Hamilton Relay Service

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## Association

## PRESENT:

MICHAEL COPPS	Commissioner, FCC
KEVIN MARTIN	Commissioner, FCC
KATHLEEN ABERNATHY	Commissioner, FCC
K. DANE SNOWDEN	Chief, Consumer & Governmental Affairs Bureau
RICHARD SMITH	Acting Chief, Policy Division, CGB
GREG GUICE, ESQ.	Attorney Advisor, Policy Division, CGB
THOMAS CHANDLER	Chief, Disability Rights Office, CGB
KRIS MONTEITH	Deputy Bureau Chief, CGB
PAUL SCHROEDER	Vice President for Governmental Relations, American Foundation for the Blind
DAVID SOLOMON	Chief, Enforcement Bureau
NICHOLAS MILLER	Miller & Van Eaton, P.L.L.C.
SCOTT RANDOLPH	Director, Federal Regulatory Advocacy, Verizon
DAN BRENNER	Senior Vice President, Law and Regulatory Policy, National Cable Telecommunications Association
JOHN WINDHAUSEN	President, Association of Local Telecommunications Services
COMM. DAVID SVANDA	Michigan Public Service Commission and President, National Association of Regulatory Utility Commissioners
JARED CARLSON	Acting Chief, Policy Division, WTB

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## AGENDA

WELCOME AND CALL TO ORDER  
Shirley L. Rooker, Chair,  
Consumer Advisory Committee (CAC)

MEETING LOGISTICS  
Scott Marshall, CAC Designated Federal Officer,  
Consumer & Governmental Affairs Bureau (CGB)

INTRODUCTION OF THE CHAIRMAN AND COMMISSIONERS  
K. Dane Snowden, Chief,  
Consumer & Governmental Affairs Bureau

UPDATE ON THE CONSUMER & GOVERNMENTAL  
AFFAIRS BUREAU  
K. Dane Snowden, Chief, CGB

UPDATE ON THE TELEPHONE CONSUMER PROTECTION ACT  
Richard Smith, Acting Chief,  
Policy Division, CGB

ISSUES RELATING TO E-911 SERVICE  
Greg Guice, Attorney Advisor, Policy Division,  
Wireless Telecommunications Bureau (WTB)

SUMMARY OF ORDER REGARDING HEARING AID  
COMPATIBILITY  
Greg Guice, WTB

UPDATE ON TRS ORDER AND FURTHER NOTICE OF  
PROPOSED RULEMAKING  
Thomas Chandler, Chief,  
Disability Rights Office, CGB

OUTREACH TO INDIAN COUNTRY  
Kris Monteith, Deputy Bureau Chief, CGB

HOMELAND SECURITY AND PEOPLE WITH DISABILITIES  
Kris Monteith, Deputy Bureau Chief, CGB

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LUNCH PRESENTATION: ACCESSIBLE WIRELESS  
PHONES FOR THE BLIND

Paul W. Schroeder, Vice President for Governmental  
Relations, American Foundation for the Blind

CONSUMER PROTECTION: THE ROLE OF THE  
ENFORCEMENT BUREAU

David Solomon, Chief, Enforcement Bureau

PANEL: STATE OF BROADBAND REGULATION

Moderator: Larry Goldberg, Chair, CAC Broadband  
Working Group

Scott Randolph, Director - Federal Regulatory  
Advocacy Verizon (representing ILECs)

Daniel L. Brenner, Senior Vice President, Law and  
Regulatory Policy, National Cable Telecommunications  
Association (representing cable companies)

John Windhausen, President, Association of Local  
Telecommunications Services (representing CLECs)

Nicholas Miller, Esq., Miller & Van Eaton, PLLC  
(representing local governments)

Commissioner David Svanda, Michigan Public Service  
Commission and President, National Association of  
Regulatory Utility Commission (representing state  
governments)

UPDATE ON WIRELESS LOCAL NUMBER PORTABILITY

Jared Carlson, Acting Chief, Policy Division, WTB

COMMENTS FROM THE PUBLIC; WRAP-UP;  
FUTURE MEETINGS

ADJOURNMENT

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1 P-R-O-C-E-E-D-I-N-G-S

2 (9:03 a.m.)

3 CHAIR ROOKER: Could everyone take their  
4 seats, please. Scott, my little stool is wonderful.  
5 Okay, everyone. The time to be nice is over. Take  
6 your chairs, please. I have some announcements I need  
7 to make. Number one, Cindy Cox who is with BellSouth,  
8 unfortunately could not get out of Atlanta last night  
9 because of the thunderstorms, so consequently, she's  
10 being replaced today by Mary Henze, who's with the  
11 Washington Office of BellSouth. Mary, thank you very  
12 much for being here to pinch hit for Cindy.

13 Also, we have a new member, who is Diane  
14 Burstein, who was an alternate last time, and now  
15 she's a member. She's with the National Cable  
16 Telecommunications Association. And, Diane, welcome.  
17 We're pleased to have you here.

18 I think the first order of business, why  
19 don't we just go around the table and briefly just  
20 state your name and your organization. I want this to  
21 be very fast, but I think it would be useful for us to  
22 put faces with names. So let's just start down here

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1 at the end with Jeff.

2 MR. KRAMER: Thank you, Shirley. I'm Jeff  
3 Kramer with AARP.

4 MR. GOLDBERG: Larry Goldberg, WGBH Media  
5 Access Group.

6 CHAIR ROOKER: And I forgot to tell you  
7 that I'm Shirley Rooker with Call for Action.

8 MR. MARSHALL: I'm Scott Marshall with the  
9 FCC.

10 MR. ELLIS: Rich Ellis from Verizon.

11 MR. JAMES: Good morning. Vernon James  
12 with the San Carlos Apache Telecommunications Utility,  
13 Incorporated. We call it SCATCOM for short, and I'd  
14 like to introduce my alternate that has come with me,  
15 Yolanda Jo Lazo. She's here this morning.

16 CHAIR ROOKER: Thank you.

17 MS. GRANT: Hi. I'm Susan Grant from the  
18 National Consumers League. I'm sorry I missed the  
19 first meeting, but it was a choice between being here  
20 or being in Australia, and Australia won out.

21 MR. HOROWITZ: I'm David Horowitz with the  
22 Fight Back Foundation for Consumer Education.

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1 MS. ZIEGLER: I'm Dixie Ziegler with  
2 Hamilton Relay Services. We're at TRS provider.

3 MR. SNOOP: I'm Don Snoop, Hometown On  
4 Line.

5 MS. WEST: I'm Linda West with Native  
6 American and rural America issues.

7 MR. DelCASINO: Mike DelCasino, AT&T.

8 MR. DUKE: Mike Duke, International  
9 Association of Audio Information Services, and also  
10 licensed radio amateurs.

11 MS. KIRSCH: Good morning. I'm Karen  
12 Kirsch from the National Association of Broadcasters.

13 MR. MALLARD: Good morning. I'm Ron  
14 Mallard with the National Association of Consumer  
15 Agency Administrators.

16 MR. GORDON: Good morning. I'm Joe Gordon  
17 with the League for Hard of Hearing.

18 MR. BENNETT: Hi. I'm Matt Bennett with  
19 the Alliance for Public Technology.

20 MS. JOHNSON: Good morning. I'm Cheryl  
21 Johnson, Affiliated Tribes of Northwest Indians.

22 MS. BURSTEIN: Good morning. I'm Diane

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1 Burstein with the National Cable Telecommunications  
2 Association.

3 MR. CONRAN: I'm Jim Conran, Consumers  
4 First.

5 MS. MAZRUI: I'm Susan Mazrui, Cingular  
6 Wireless.

7 MR. BRUGGER: David Brugger, Brugger  
8 Consulting.

9 MS. LADEW: Rebecca Ladew. I'm here to  
10 represent the speech relay users on the committee, and  
11 I have a comment. Bob Siegelman has prepared a  
12 suggested procedure for recruiting people with speech  
13 disabilities as members of State Relay Advisory  
14 Committees. If anyone wants a copy, please write Bob  
15 at Bob@DOR.CA.gov. Also, Bob would like to  
16 congratulate the Texas PUC for starting an extensive  
17 speech-to-speech outreach program. Bob applauds Sprint  
18 for establishing a call center in Hawaii, and using  
19 speech-to-speech CAs who speak Hawaiian dialect;  
20 whereas before, all speech-to-speech calls in Hawaii  
21 were being transferred to Virginia, and there was a  
22 communications barrier between some speech-to-speech

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1 Cas in Virginia, who sometimes spoke with a southern  
2 accent, that the Hawaiian speech-to-speech caller  
3 could not sometimes understand. Likewise, the  
4 Virginia speech-to-speech Cas could not understand the  
5 Hawaiian dialect of the speech-to-speech caller.  
6 Thank you.

7 MR. ST. CLAIR: I'm Byron St. Clair from  
8 the National Translator Association. I guess I should  
9 just explain it's not anything to do with languages.  
10 Translators repeat TV and FM stations into rural areas  
11 that don't get direct reception.

12 MS. BERLYN: Good morning. I'm Debra  
13 Berlyn with Consumer Policy Consulting.

14 MR. PRANGER: Good morning. I'm Mark  
15 Pranger from Rogers State University in Oklahoma.

16 MS. CLECKNER: Annette Cleckner with MCI  
17 Consumer Affairs.

18 MR. ALLIBONE: Tom Allibone with LTC  
19 Consulting.

20 MS. HENZE: Mary Henze with BellSouth,  
21 sitting in for Cindy Cox.

22 MR. SEAGRIFF: I'm Eugene Seagriff of

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1 Panasonic, representing the Telecommunications  
2 Industry Association.

3 CHAIR ROOKER: Okay. Well, thank you. We  
4 have some other people who joined the panel.

5 MR. BARNES: Ron Barnes, CTIA.

6 CHAIR ROOKER: Thank you, Ron. Joy.

7 MS. RAGSDALE: Joy Ragsdale with NASUCA.

8 MS. FREY: Susan Kelly Frey representing  
9 the National Association of State Relay  
10 Administration.

11 CHAIR ROOKER: Did we get everyone? Okay.  
12 Well, thank you very much for being here.

13 I think the next order of business --  
14 Scott's going to give us the logistics. Those are the  
15 really important things that you need to know.

16 MR. MARSHALL: Good morning. Just a word.  
17 The rest rooms are right out the doors that you came  
18 in down the short corridor and to your left, and  
19 telephones are out in that corridor, as well. And  
20 this afternoon, I'll be talking about transportation  
21 to the airport and such that for those people who need  
22 that this afternoon during our break. Thanks for

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1 coming. Great attendance today.

2 CHAIR ROOKER: Yes, it is. It's very  
3 impressive. I also would like to thank Verizon for  
4 our breakfast and lunch. Also, MCI and Verizon have  
5 generously made possible teleconferencing services for  
6 some of our working groups, and I'd like to thank  
7 them.

8 Also, the group chairs and the team  
9 leaders have been working hard, and they've given us a  
10 great deal of input on today's agenda, and we  
11 appreciate that, especially since their last meeting  
12 was only in April, which is not the three months we  
13 usually have, but it was only two.

14 I also like to give particular thanks to  
15 Betty Thompson for making so many of the logistical  
16 arrangements. And, of course, the person who does all  
17 the work, the real work is Scott Marshall. And he  
18 just said to me, "Don't say that, Shirley". Well,  
19 it's the truth. Exactly.

20 MR. MARSHALL: Thank you very much.

21 CHAIR ROOKER: I tell him he does all the  
22 work so I can look good, because believe me, he puts a

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1 lot of time in this.

2 Our next order of business, I'm very happy  
3 to welcome Dane Snowden, who's the Chief of Consumer &  
4 Governmental Affairs Bureau. He really doesn't need  
5 an introduction since he's spoken to us, I think at  
6 every meeting of CAC. And I would just like to  
7 personally also thank him for the wonderful support  
8 that he's given our group. Things like this group  
9 couldn't happen without the support of Dane, so thank  
10 you, Dane. Welcome.

11 MR. SNOWDEN: Well, good morning and  
12 welcome back to the FCC. I must also thank someone  
13 who makes me look good all the time, and that's my  
14 legal advisor, Amelia Brown, who's over here in the  
15 green, who supports CAC, as well. So thank you very  
16 much, Amy, and thank you, Shirley, and all of you for  
17 coming back.

18 I'm not sure how many were here actually  
19 last night. I assume most of you were, and you were  
20 awakened like I was, and I had a hard time getting  
21 back to sleep with the storm that went through  
22 Washington, D.C., so I would like to say that I'm glad

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1 you're here. I got a little worried when I woke up  
2 this morning, I guess around 1:00, and didn't really  
3 fall back to sleep, or I guess have a sound sleep.  
4 And I thought is anybody going to show up for the  
5 meeting today, because I thought I was going to  
6 oversleep, let alone the rest of you. So we braved  
7 the storm. I know there's another one coming which,  
8 of course, ruins my golf day, but I will survive.

9 Well, welcome back. It is a pleasure to  
10 have you all back here this fine summer day. At least  
11 the heat is not as bad as it usually is here in  
12 Washington since we're on a swamp.

13 I want to say a few things to you all this  
14 morning. And particularly, I want to say I'm happy to  
15 see that the working groups have really gotten a great  
16 start. We've seen a lot of advisory groups here at  
17 the Commission, and one of the things in particular  
18 that we always look to see is how quickly they  
19 actually mobilize and start working. And this  
20 particular advisory committee wasted no time to get  
21 things started.

22 We will have some of the commissioners

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1 coming down to speak with you, as well. Because of  
2 the storm last night, some folks are stuck in traffic.  
3 Washington, D.C. in a disaster area right now with  
4 trees everywhere, but when commissioners come in, I  
5 will pause from my remarks, as I just see one coming  
6 in now, and I will turn it over to that particular  
7 commissioner.

8 But before I do that, I would like to  
9 embarrass Shirley for a second, and that's something I  
10 tend to do. But last month, Shirley was given the  
11 Betty Furness Media Service Award presented to Call  
12 for Action by the Consumer Federation of America at,  
13 what I understand, a fabulous gala event held here in  
14 Washington, so congratulations to you, Shirley, and  
15 Call for Action for your good work for helping out  
16 consumers.

17 I see that Commissioner Copps has arrived,  
18 so I'm going to pause, and ask Commissioner Copps to  
19 please join me at the podium here and make some  
20 remarks.

21 COMMISSIONER COPPS: Good morning.  
22 Welcome to the FCC on this nice Friday morning. We're

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1 delighted to see you here. I see a lot of old friends  
2 around the table, and hope we can make some new ones  
3 today too. I'll just a minute or two of your time,  
4 because I know you have a very, very busy agenda  
5 today, but I just wanted to primarily thank you all  
6 for the commitment you make in serving on this  
7 committee.

8           When I was over at the Commerce Department  
9 with the previous Administration, I was responsible  
10 for administering all of our industry sector advisory  
11 committees at Commerce, and we had I guess 16 or 17  
12 sector-specific ones, and then some functional  
13 committees too. And I was always impressed by the  
14 level of commitment that people serving on those  
15 committees made. And I know it's harder and harder to  
16 do that, and we're in an era when a lot of offices and  
17 organizations are downsized, and it's more and more  
18 difficult to get done what you need to get done just  
19 to survive on a day-to-day basis, and finding time to  
20 serve on a committee like this I know is not easy, but  
21 it's merely essential really. We couldn't get along  
22 without the kind of input that you give us.

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1           When I was at Commerce -- well, before  
2 that when I was out in the private sector, I served on  
3 an industry advisory committee on International Trade,  
4 and I almost thought when we were negotiating the  
5 North American Free Trade Agreement, I wondered what  
6 that agreement would look like without the input of  
7 outside sources, and just let it to the government to  
8 do it by itself would not have been a pretty affair.

9           So I want to thank you for your  
10 commitment, thank you for your help, and the help you  
11 give us makes the work we do a lot more productive and  
12 a lot better, I think, than it otherwise would be.  
13 This is the first time I've had a chance to meet, I  
14 think, with the reconstituted committee. I looked at  
15 your agenda today. It's an impressive agenda. I know  
16 we no longer have the word "disabilities" in the  
17 committee's name, but I trust that that signals no  
18 less a priority. And from talking to the people here  
19 at the Commission, I believe it does not, so I'm  
20 delighted to see us working on that.

21           We had just yesterday at this table right  
22 up here on one of the disability issues on hearing aid

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1 compatibility and cell telephones, and I was glad to  
2 see us move ahead unanimously on that. And I think we  
3 had very productive discussions with a lot of input  
4 over the last week especially from outside, and I  
5 think that that helped to enhance the quality of the  
6 product that we came up with.

7 As I told some of you before, the first  
8 speech I made when I came to the FCC was to the deaf  
9 and the hard of hearing out in South Dakota, and I  
10 really appreciated the feel that they gave me for both  
11 the challenges that are faced by the disabilities  
12 communities, and the opportunities that we have  
13 through all of these new technologies to afford  
14 opportunity for folks to really become productive  
15 members of society. There was so much human talent,  
16 and still is, that's going unused, and we've just got  
17 to find a way to correct that situation.

18 And one of the secrets, well, obviously,  
19 you have to have good policy, but we always have to  
20 have that outreach. And I think of that in terms of  
21 the disabilities communities, I think of it in terms  
22 of our Native American citizens. So much of what we

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1 do here affects all of these groups. It's not just  
2 the issues that are entitled, you know, something  
3 Native Americans, or something for the hard of  
4 hearing. What we do on broadband, what we do on all  
5 of these things affects everybody. And resources are  
6 stretched thin in these communities. It's hard to  
7 cover, so the duty for outreach that we have at the  
8 Commission, and that you have as members of this  
9 committee to go back and make sure that everybody in  
10 these communities knows what's before us is really a  
11 pressing one.

12 I don't think there's anything much more  
13 important now than this broadband that you're going to  
14 be talking about today. And I think you have to  
15 really step back and look. I'm a little bit troubled,  
16 as some of you know, about where we may be going on  
17 broadband, on the reclassification of broadband  
18 transmission and what it can mean to the disabilities  
19 community, what it can mean to rural America. We've  
20 really got to take a good close look at this. We have  
21 all of these wonderful liberating, dynamic, open  
22 technologies, broadband, the Internet and all that.

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1 If we're heading in the direction of closing that off,  
2 then we're messing with something very fundamental to  
3 the future of America, and we've got to be awfully  
4 darned careful of how we do that, so we need your  
5 input on that. I'm glad you have a section on  
6 broadband coming up today. Spend a lot of time  
7 looking at that.

8 I could go on, but I'd rather just sit  
9 here and listen a little bit as you get started this  
10 morning. But again, thank you all for your  
11 willingness to serve. Thank you for coming, and my  
12 office door is always open. I look forward to seeing  
13 all of you when you're in town, those from out of  
14 town, and seeing those who live here even on a more  
15 regular basis. So thank you very much for coming.

16 CHAIR ROOKER: Thank you.

17 MR. SNOWDEN: It's always hard to follow  
18 Commissioner Copps. He's such a great speaker.

19 Touching on some of the things that  
20 Commissioner Copps said, I would like to give you all  
21 an update on some things that have happened since your  
22 last meeting here in April, particularly as it relates

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1 to outreach.

2 One of the things that we're planning to  
3 do actually next week is host a summer consumer forum  
4 in Reno, Nevada on July 16th, touching on issues such  
5 as telemarketing, telephone scams, understanding your  
6 phone bills, cell phone service, and the role of the  
7 FCC. And this is an example of something we're trying  
8 to do, as Commissioner Copps mentioned. It's  
9 important that we get out more so that consumers are  
10 aware of what we all do here at the FCC, and that we  
11 are a resource here at the FCC. And it's not by  
12 mistake that we're on the other coast.

13 One of my personal frustrations is that I  
14 have several friends and family over on the west  
15 coast, and they always say we pay out taxes, Dane.  
16 How come the federal government is not open when we  
17 need it to be open, so what we're doing is trying to  
18 bring the federal government to them as much as we  
19 can.

20 In addition and in conjunction with that  
21 summer consumer forum, we will also be hosting an FCC  
22 Indian Telecommunications Initiative in Reno with the

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1 Washo Tribe. It's a regional workshop so that we can  
2 bring more services and work on our  
3 government-to-government relationship, and the  
4 responsibility that we have with our Native American  
5 colleagues and friends across the country. My Deputy  
6 Bureau Chief, Kris Monteith, will be here later today  
7 to talk about that and other issues, so you'll hear  
8 more about that as the day goes on.

9 I want to point out that it is our goal  
10 with all of these forums, particularly with the  
11 Indian-related forums that we're going to have,  
12 designed to make sure that essential telecom issues  
13 are covered in the Indian community.

14 In addition, we are going to have a very  
15 busy next couple of months looking at our calendar.  
16 We have the National Conference of State Legislators.

17 Of course, also the National Association of  
18 Regulatory Utility Commissioners. Their meetings are  
19 coming up, and again, what we're doing is working with  
20 our state counterparts, our local counterparts, and  
21 our consumer counterparts across the country.

22 We will also be making a trip up to the

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1 northwest to meet with the Affiliate Tribes of  
2 Northwest Indians, and we're planning to make a trip  
3 to Alaska. That's one of the things that we have  
4 noticed that, particularly on the tribal area, that  
5 our Alaska natives are more short shrift than our west  
6 coast consumers. And because it's not often that the  
7 federal governments gets out there, so we're going to  
8 do that, and make that effort some time later this  
9 summer.

10 Our goal, as you can imagine, is to cast  
11 as wide a net as possible as we go forward so that we  
12 can reach out to consumers, and they can have access  
13 to the Commission.

14 This has also been a very busy regulatory  
15 season for the Commission, as I'm sure you've read and  
16 heard, and seen debated. One of the items that we're  
17 very proud of - actually, we're proud of all of our  
18 items I should say - but one in particular that I'm  
19 personally proud of is our recent action on the  
20 Telephone Consumer Protection Act or telemarketing  
21 rules. This is, by all estimates, the most  
22 comprehensive consumer protection item the Commission

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1 has ever done.

2 In a short sense, what we have done is we  
3 have given the power of managing your telephone calls  
4 to you, to the consumer, not to the telemarketer.  
5 This is a major change in our country. And as you  
6 might imagine, with the Do Not Call Registry going  
7 into effect as of October 1st - of course, you can  
8 register now. This has gotten a lot of attention.  
9 I'm not sure if any paper did not cover this  
10 particular issue. Richard Smith, my Acting Chief of  
11 the Policy Division in my Bureau will be here to  
12 discuss that with you.

13 On the disabilities front, as many of you,  
14 I'm sure, are aware, we have taken some steps for  
15 telecommunications relay services order and further  
16 notice, and our goal is quite simple. We amended and  
17 added new rules that will improve the overall  
18 effectiveness of TRS to ensure that persons with  
19 hearing and speech disabilities have access to the  
20 telecom network, that it's consistent with the goal of  
21 functional equivalency, so we are moving forward. And  
22 Tom Chandler from my bureau will be here later today

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1 to talk about that and many other things, as well.

2 And, of course, as Commissioner Copps  
3 said, just yesterday we took a major step forward, we  
4 like to think, positive, proactive step forward to  
5 ensure that more consumers have access to the network  
6 by lifting the exemption on our hearing aid  
7 compatibility rules. So we are moving forward and  
8 making sure more consumers have access to this very,  
9 very important network.

10 Another issue that, of course, was debated  
11 between your last meeting and now was our media  
12 ownership or broadcast ownership rules. And I do not  
13 plan to go into details about that. It was very hotly  
14 debated on both sides. It was probably the most --  
15 the one issue that we got the most comments on  
16 anything we've ever gotten at the Commission. At one  
17 point, I think we received over 1 million postcards, 1  
18 million plus postcards from consumers alone on this  
19 particular issue, so this is something that was very  
20 much debated throughout the country, throughout  
21 Washington, D.C., and definitely throughout this  
22 Commission.

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1           As Commissioner Copps mentioned, outreach  
2 is very important. Of course, our regulatory policy  
3 is very important, but one of the things I also wanted  
4 to mention is important is that we have information  
5 for consumers. That is very important. And one of  
6 the pieces that we are focusing on is our website, and  
7 we're making it, of course, compliant, and we're also  
8 making sure it's chock full of information for  
9 consumers.

10           We launched, in connection with  
11 Commissioner Abernathy, who I saw has just arrived, we  
12 launched our Parents Place page, which we  
13 intentionally did it for the summer months because, of  
14 course, that's when students or kids are usually home.

15           They have more idle time. I think we all remember  
16 being a child when we didn't have these fancy-dancy  
17 computers like the kids have today, but we wanted to  
18 make sure that parents had a resource that they could  
19 go. They would know exactly what's available out for  
20 them, for example, when students are making phone  
21 calls, or going on the web. How they can do that in a  
22 safe and productive manner, and I was happy that

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1 Commissioner Abernathy led that charge for the  
2 Commission. And we've gotten a lot of good feedback  
3 from consumers as we go forward.

4 In addition, we launched a National  
5 Environmental Policy Act, or Historic Preservation  
6 page on our website. And this is important because it  
7 contains information about the Commission's  
8 responsibility to manage the expansion of  
9 communications infrastructure in a way that preserve  
10 the country's environmental and historic resources.  
11 And this is important not just when we see these  
12 beautiful sites across the country, but it's  
13 particularly important on our tribal lands as we go  
14 forward.

15 We, of course, added lots of publications  
16 to all of our work, meaning that every time we do a  
17 major item, such as the hearing aid compatibility  
18 revision that we just did yesterday, or the Telephone  
19 Consumer Protection Act, we're creating consumer  
20 alerts. We're also creating information for consumers  
21 and fact sheets so they can read and understand  
22 exactly how the new rules apply to them, and the

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1 positive steps that the Commission is taking.

2 We are close to finalizing a broadband  
3 booklet, or a fact sheet on that particular subject.  
4 And this is very important for us. I know you have it  
5 on your agenda today. The reason I say this is very  
6 important is because this is the new technology. This  
7 is the new cool thing, as the kids say today, that  
8 many of you, I'm sure, have already, but not enough  
9 Americans have taken advantage of this exciting  
10 opportunity. And we want to make sure that we do our  
11 part, not only in our regulatory world, but also in  
12 the outreach world, that they can understand,  
13 consumers can understand what's important, and why  
14 this is so critical.

15 And, of course, we've been busy in our  
16 enforcement area, and we're creating more information  
17 so consumers understand how our enforcement bureau  
18 works, and how the Commission -- how we treat  
19 enforcement issues.

20 I know you have a full agenda, and I see  
21 Commissioner Abernathy is here. And I would like to  
22 ask Commissioner Abernathy to please join me up here.

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1 And while she's coming, I'd like to extend apologies  
2 from Commissioner Adelstein and Chairman Powell, who  
3 both had conflicts with today's meeting, but they do  
4 send their best wishes to each of you. It's my  
5 pleasure now to introduce Commissioner Kathleen  
6 Abernathy.

7 COMMISSIONER ABERNATHY: Thank you, Dave.

8 It's good to see everybody here again. It's been a  
9 while since I've had a chance to come down and say hi,  
10 and I don't want to take up too much of your time,  
11 because I was looking over your agenda, and you have  
12 real work to do. But I did want to tell you once  
13 again how important and how much we value the work  
14 that you do, how we're very, very pleased that you're  
15 willing to take the time and the effort on a Friday in  
16 July to come here and help us with so many of these  
17 issues that are very, very important.

18 I think as Dane mentioned, and I believe  
19 Commissioner Copps also mentioned, just the other day  
20 we did our order on hearing aid compatibility and what  
21 we do with wireless phones, and trying to ensure that  
22 there are more wireless phones out there that work

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1 with all of the different kinds of hearing aids, so  
2 that all of the population gets to tap into the vast  
3 benefits of wireless phones. Which because very clear  
4 to me yesterday, when I had to attend my daughter's  
5 parent's day at camp, dressed in a full FCC meeting  
6 agenda day outfit, and I'm outside watching tennis,  
7 and I get three urgent calls. But the point is, I had  
8 to be in touch. I knew that I had to be in touch that  
9 day. We're working on some important items, but it  
10 also was very important to me personally that I be  
11 able to attend her summer camp. And if I hadn't been  
12 able to use a wireless phone, that would have been a  
13 huge problem for me, and so that's just a small  
14 illustration of one day, of why it is so very  
15 important that everyone have access to wireless  
16 technology.

17 I'm pleased that the technology now allows  
18 us to push out more phones to more people. I'm  
19 anxious to see how that works out. I'm glad we're  
20 bringing in a report. I think it's in about three  
21 years when we're going to get an update and see do we  
22 have the right balance here. Are we getting enough

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1 phones out in the market? Is there enough  
2 information?

3 It's a joint effort, and I want to make  
4 that clear too, that this wasn't done in isolation.  
5 We worked closely with the industry, with both the  
6 wireless industry, and the manufacturing industry, as  
7 well as the consumer groups. Because, again, this was  
8 in an area where we certainly -- we didn't have the  
9 expertise here in-house about what decisions to make,  
10 and so we relied very heavily on input from so many  
11 different parties to figure out how we could move that  
12 process forward. So I'm very, very pleased about that  
13 proceeding.

14 As you know, we've been working on a  
15 number of other issues, all in many way, shape or  
16 forms related to how do we make consumer lives a  
17 little better. The National Do Not Call List, I think  
18 we knew there was a lot of consumer frustration out  
19 there. I don't think we at all anticipated the level  
20 of consumer frustration, which became evident as  
21 people were signing up for the Do Not Call List. And,  
22 frankly, I've been badgered about this for over a year

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1 by my husband, so it is -- again, it goes to the  
2 benefits of technology, and then there are some  
3 downsides associated with technology. And I think it  
4 really was a reaction to all of the numerous calls,  
5 the hang-up calls, and the frustrations with not being  
6 able to control in our own home what we listen to. So  
7 I think those are just a couple of examples of the  
8 items that we've been working on.

9 We're rolling out E-911, another very,  
10 very critical safety and security feature that will  
11 make a difference for many, many people including -- I  
12 mean, once there's location, I seriously start  
13 thinking about how do I use it for the rest of my  
14 family? You know, it's not that I think that my  
15 daughter needs to talk on the phone because, frankly,  
16 she doesn't. But I do think that there are times when  
17 I will want to be able to locate her, so to the extent  
18 that devices come on the market that allow her -- one  
19 of the devices they're talking about are these  
20 emergency phones where basically I can call her. She  
21 can make three outgoing calls I've pre-programmed to,  
22 you know, like me, her dad and somebody else, and then

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1 I can locate her any time.

2           Once those devices are on the market,  
3 yeah, it's important to me. I think it will be  
4 important to a lot of other people at certain price  
5 points, so these are all ways in which we can tap into  
6 the new technology. At the same time that we're  
7 tapping into it, and accessing it in a way to better  
8 our lives we, as an agency, have to rely on you to  
9 tell us when is it not working right. When are  
10 consumers being abused? When are you getting too many  
11 unwanted calls? When are you being slammed or crammed  
12 on your phone bill? When is it so complex out there  
13 as far as figuring out appropriate programming for  
14 your children that you throw up your hands in defeat,  
15 and we need to do something like the Parents Place on  
16 our website.

17           So again, thank you for coming today. I'm  
18 very, very happy that you were able to take the time,  
19 and willing to take the time. I want to sit around  
20 for a few minutes and listen, but at the end of the  
21 day, it's really going to be up to you and Dane to  
22 bring to the Commissioners action items that you think

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1 we need to pursue. So thank you again.

2 MR. SNOWDEN: And I am just at my end. I  
3 did want to make a few comments about your agenda. I  
4 think this is a very comprehensive agenda, and I  
5 applaud those who put it together. Particularly, as I  
6 know you're going to be talking about the  
7 Telemarketing Rules, the TRS item, the E-911, and of  
8 course, your broadband panel.

9 I did want to highlight David Solomon's  
10 presentation, who is the Chief of our Enforcement  
11 Bureau. And as you might imagine, in this  
12 environment, the Enforcement Bureau plays a very, very  
13 vital role to what we do here at the Commission.  
14 Without the Commission's strong commitment and his  
15 good work to enforcement, the rules that we create are  
16 meaningless. So I encourage you to enjoy what David  
17 Solomon has to say when he comes down here later this  
18 afternoon.

19 I should also say that the fact sheets and  
20 other things that I was mentioning a moment ago, we  
21 have a disk, and some of the fact sheets are in your  
22 packet, so all that information is there. And, of

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1 course, all this information is available on our  
2 website. So with that, I want to thank Commissioners  
3 Capps and Abernathy for joining us. And, of course, I  
4 believe Commissioner Martin will be joining us at some  
5 point during the day. And again, extend apologies for  
6 Commissioner Adelstein and Chairman Powell.

7 I see that Richard Smith is here, who will  
8 be talking more about some of our consumer policy  
9 issues, which is telemarketing. But, Shirley, if  
10 you'd like, I could take a few questions, if there are  
11 any.

12 CHAIR ROOKER: Yes. We would like that,  
13 please.

14 MR. SNOWDEN: Sure.

15 CHAIR ROOKER: Do we have questions for  
16 Dane about any of the things that he's discussed? I  
17 can't believe this group. They're still asleep.

18 MR. SNOWDEN: I will take that as a  
19 positive thing, that you don't have any questions for  
20 me. Not that you're asleep, the positive thing to  
21 have -- yes, sir.

22 MR. CONRAN: I won't let you get away.

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1 I'm Jim Conran from California. Recently, I attended  
2 a seminar, and there was a presentation by some high  
3 tech companies on how to bypass the telephone network  
4 by using the Internet. And I was very concerned -  
5 one, I thought it was kind of interesting, but I was  
6 concerned that many of the funds that rate payers pay  
7 into, Universal Service, in my state the relay system  
8 for the deaf consumers, 911. All these are going to  
9 be bypassed if people use the Internet rather than  
10 using traditional telephone services. Is the  
11 Commission looking at this issue?

12 MR. SNOWDEN: We have - as many of you  
13 know, we have created or allowed for IP Relay to  
14 occur, and that is the first -- I guess, that's  
15 probably the first part of our toe that's going into  
16 the water to see how it works. We are looking into  
17 it. We have not made a decision one way or the other  
18 just yet on that particular issue.

19 MR. CONRAN: All right. Thank you.

20 MR. SNOWDEN: Thank you.

21 CHAIR ROOKER: Any other questions? Well,  
22 Dane, thank you so much. I need to do a couple of

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1 items of business before I introduce Richard, if  
2 that's okay, if you don't mind.

3 MR. SNOWDEN: You're the Chair.

4 CHAIR ROOKER: All right.

5 MR. SNOWDEN: I will follow your lead.

6 CHAIR ROOKER: Thank you.

7 MR. SNOWDEN: Thank you, and  
8 congratulations again on your award.

9 CHAIR ROOKER: Thank you very much, Dane.  
10 We really enjoy having you here.

11 We have -- you've been sent the minutes of  
12 the last meeting. And as the Chair, I can certify the  
13 correctness of the minutes, but before I do that, I  
14 would like to make certain that they are correct,  
15 which I think would be a smart thing to do. So does  
16 anyone have any changes or corrections that we need to  
17 make, or additions to the minutes of the last meeting?

18 Are they okay? All right. Okay. Well, thank you  
19 very much.

20 Also, I would like to mention a couple of  
21 things about developing the agenda. As I indicated,  
22 there are quite a bit of -- there was quite a bit of

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1 input from group leaders into the agenda that we have  
2 today. But what you need to know is that we really --  
3 our goal -- and today's presentation, I realize, is  
4 really jam-packed with people talking to us. And the  
5 reason we're doing that is because we want to provide  
6 you with background on the issues that we're going to  
7 be dealing with. And we feel that today's agenda will  
8 give you a lot of the knowledge to help us deal with  
9 some of these issues.

10 For the next meeting, we are going to set  
11 up time for working groups to meet, which has been one  
12 of your requests. But this means that you are going  
13 to have to do some work prior to the next meeting, and  
14 you have been very busy working. I want to thank  
15 everyone.

16 If you have ideas for the agenda, we  
17 welcome them. You can contact either Scott or me  
18 about your ideas, but we really need about six weeks  
19 lead-time before the next meeting. The reason for  
20 that is so that we can see if the agenda items can be  
21 fit in. We can contact the people necessary to make  
22 presentations or whatever needs to be done for those

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1 agenda items. And in addition, the agenda has to be  
2 posted in the Federal Register 15 days before the  
3 meeting, so we have to have all this put together. So  
4 that's why we need a lead-time for new ideas. We  
5 cannot decide yesterday that we're going to do  
6 something today and add it to the agenda. That just  
7 doesn't work, because it has to be posted in the  
8 Federal Register. So unfortunately, we have to work  
9 within the rules in doing that. So if you have issues  
10 for the Committee, there are two things that could be  
11 done. You can set up a working group, or you can take  
12 the issue to an existing working group, so we want to  
13 come out of this with a lot of productive work.

14 And by the way, the prior committee in our  
15 last -- before we were reincarnated as CAC, we did  
16 recommend to the FCC that they establish a Do Not Call  
17 Registry. I hope they listened and took our comments  
18 into consideration. We're very happy at the action  
19 that the FCC has taken. And I think from that, unless  
20 any of you have comments about agenda items or  
21 anything else, we'll just move into our next  
22 presentation. Is that okay? Any questions or

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1 comments?

2 All right. I just learned that I think  
3 there's now over 20 million people signed up for the  
4 Do Not Call Registry, which I think is just  
5 astonishing since it was only put in place what, two  
6 weeks ago? So at any rate, the Do Not Call Registry  
7 has really hit a nerve with consumers.

8 Richard Smith, who is the Acting Chief of  
9 the Policy Division within the Consumer and  
10 Governmental Affairs Bureau, is going to give us a  
11 briefing, and then he will take questions about the  
12 TCPA. Richard, welcome. We're glad to have you here  
13 with us.

14 MR. SMITH: Thank you very much. I' here  
15 to discuss what I think is a very popular topic with  
16 this group, and that is the Commission's recent order  
17 on telemarketing, which Chairman Powell called the  
18 most sweeping consumer protection measure ever adopted  
19 by the Commission. And my task this morning is to try  
20 to summarize what is approximately a 200 page order  
21 for you hopefully in the next five to ten minutes, so  
22 please bear with me, and I'll try to do that. And I

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1 would like to take questions primarily this morning,  
2 rather than just going through all the rules and  
3 regulations.

4 Our goal in this proceeding all along has  
5 been to provide consumers with options for managing  
6 telemarketing calls. And, of course, the primary tool  
7 for that is the National Do Not Call Registry.  
8 Beginning October the 1st, telemarketers will be  
9 prohibited from contacting those consumers who have  
10 registered their telephone number on the National  
11 Registry by August 31st.

12 It's also important to note that there  
13 will only be one National Registry. I know there was  
14 some confusion initially because the Federal Trade  
15 Commission and the FCC had sort of dual rulemakings  
16 going on at the same time, and there was a concern  
17 that maybe there would be two National Registries, but  
18 there will only be one. And that registry will be  
19 administered by the FTC. They have acquired the  
20 funding for that, and they've hired an entity called  
21 AT&T Governmental Solutions to actually handle the  
22 administration of the list.

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1           Consumers may register on the list by two  
2 means, either over the Internet or from the telephone  
3 that they're attempting to register on the list. You  
4 have to actually call from the telephone that they  
5 want to register. The registrations are limited to  
6 residential telephone subscribes, and those do include  
7 wireless numbers.

8           As was indicated, since the registry was  
9 up and running two weeks ago, my understanding is  
10 approximately 23 million numbers have now been  
11 registered on the list. And the FTC estimates that  
12 approximately 60 million numbers will ultimately be on  
13 the list. The registrations are valid for five years,  
14 and anyone who has registered on the list may, if they  
15 so choose, revoke their registration.

16           Consumers that have registered on the list  
17 will automatically be included in any state  
18 administered list. That's a requirement of the TCPA.

19           The list cannot be used for any purpose other than  
20 federal and state enforcement of the rules, and will  
21 include only the telephone numbers of those who have  
22 registered. It will not include names, addresses, or

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1 any other types of information. I know that's a  
2 concern for many people.

3           Telemarketers will be able to purchase the  
4 list beginning in September. They can do so either by  
5 area code, or they can purchase the entire list. The  
6 FTC proposed initially, I believe, a \$29 fee per area  
7 code, and approximately \$7,200 to purchase the entire  
8 national list. And the telemarketers are required to  
9 check that list at least once every three months.

10           It's also very important to note that  
11 there are, of course, exemptions to the National Do  
12 Not Call requirements. These include calls from  
13 non-profit organizations, calls from companies that  
14 have established business relationships with a  
15 consumer who is on the list. One important new caveat  
16 on that is that there is a time limitation now on the  
17 EBR, and that is 18 months from any purchase or  
18 transaction, and 3 months from any inquiry.

19           There is also a prior expressed permission  
20 that can be acquired from the consumer who is on the  
21 list. That must be in writing and signed by the  
22 consumer, and include the telephone number to which

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1 they are providing permission.

2 One other new exemption is something  
3 called the personal relationship exemption, and that  
4 allows the telemarketer that is making the call to  
5 call family, friends and acquaintances who may  
6 otherwise be on the list. It is important to note  
7 that consumers can revoke all of these exemptions  
8 except for the non-profit exemption by requesting to  
9 be placed on the company-specific list.

10 One of the last and more important pieces  
11 of this puzzle that's still being sort of put together  
12 is the role of the federal agencies and the state  
13 governments, and how this is going to work. The FTC  
14 and the FCC are currently in the process of putting  
15 together a Memorandum of Understanding that will  
16 clarify how enforcement will work between the two  
17 federal agencies.

18 The FCC has much broader authority to  
19 regulate telemarketing than the FTC. For example, the  
20 FTC has jurisdiction over common carriers, banks,  
21 insurance companies, intrastate telemarketing, which  
22 all fall outside of the FTC's authority.

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1           The other piece of this, of course, are  
2 the numerous state lists. Nothing that we have done  
3 in our order would prohibit the states from continuing  
4 to administer their own list. We do, however,  
5 encourage them to download the numbers that are on  
6 their list into the federal list. And ultimately, the  
7 goal would be to have one national list.

8           One of the more complex and controversial  
9 pieces of this are exactly how the state regulations  
10 work in conjunction with the federal rules. And in  
11 the order - and I'll try to go through this very  
12 carefully - what we have said is that any less  
13 restrictive state requirements are preempted by the  
14 federal rules. For the most part, these include  
15 exemptions that are not recognized under the federal  
16 rules. Some of the common ones are for insurance  
17 companies, real estate agents, newspapers, those types  
18 of things, none of which are recognized under the  
19 federal rules. Those are all preempted.

20           States may continue to enforce consistent  
21 regulations in state proceedings. This is where it  
22 gets a little more complicated. The TCPA specifically

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1 allows states to adopt more restrictive requirements  
2 for intrastate and state calls, both which originate  
3 and terminate within the state, so those are still  
4 permissible.

5 In terms of more restrictive requirements  
6 being placed on interstate, we have not specifically  
7 preempted that, but what we have said is that we will  
8 look at that very carefully on a case-by-case basis as  
9 it's presented to us.

10 In addition to the National Do Not Call  
11 List, there are a couple of other measures that were  
12 taken in the order that may be of interest. The first  
13 relates to abandoned calls, and new rules will limit  
14 to 3 percent the number of abandoned calls that  
15 telemarketers may make to consumers. Within the  
16 permissible 3 percent of abandoned calls, the  
17 telemarketer will be required to provide a  
18 pre-recorded message that indicates who they, a number  
19 you can call to be placed on their Do Not Call List,  
20 and that the call is for a telemarketing purpose.  
21 They will not be allowed to provide any other  
22 information other than that.

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1           The abandoned call rules will become  
2 effective October the 1st. In addition, we have  
3 adopted rules on Caller ID that will require  
4 telemarketers to transmit Caller ID. It will also  
5 prohibit them from blocking Caller ID information that  
6 is sent.

7           The Caller ID rules are effective January  
8 29th. And last but not least, we have made some  
9 important changes to the rules on unsolicited faxes.  
10 Most importantly, it is now required to obtain the  
11 prior express permission in writing from the recipient  
12 before sending an unsolicited fax. They may no longer  
13 rely on an established business relationship in the  
14 fax context.

15           And I think that's plenty to absorb, so if  
16 you have any questions, let's start this way.

17           MR. KRAMER: Thank you, Richard. On  
18 behalf of AARP, I just want to thank the Commission  
19 for the great work you've done on this TCPA. It's  
20 clear to everyone in the room that unless the  
21 Commission acted as it did, the FTC's Do Not Call  
22 Registry wouldn't have nearly the impact that it's

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1 going to have down the road for consumers.

2 With that though, certainly our members  
3 who are calling in record numbers on this, are excited  
4 about it, have high expectations too that their calls  
5 -- excuse me, that they're not going to get calls  
6 after this goes into effect. How are you guys going  
7 to work the enforcement angle on this?

8 MR. SMITH: That is a very important  
9 concern to us. We realize that consumer expectations  
10 are high, and one of the things we'd like to do is  
11 certainly to educate them, that they will continue to  
12 receive some calls, the EBR, the non-profit  
13 organizations, et cetera. I think that's important to  
14 make them understand.

15 As I said, we are engaging with the  
16 Federal Trade Commission and coming up with a  
17 Memorandum of Understanding exactly how that will  
18 work, and David Solomon can probably talk to you a  
19 little more this afternoon about the enforcement  
20 process here and how it works.

21 I know that we have made it a priority to  
22 increase enforcement of the TCPA complaints once the

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1 National Do Not Call List becomes effective in  
2 October, and David could probably talk a little more  
3 about that.

4 CHAIR ROOKER: We'll work our way around  
5 the table.

6 MS. RAGSDALE: Good morning. Joy Ragsdale  
7 of the Office of the People's Council for D.C.,  
8 representing NASUCA. We're also very pleased, we've  
9 received a lot of calls from our constituents about  
10 the Do Not Call Registry. I wanted to ask a few  
11 questions for clarification.

12 In regards to the enforcement, we are not  
13 sure who has access to the customer's information.  
14 And we were also informed that there was an inter-  
15 agency education task force that was being created  
16 with the FTC and FCC. We wanted to know if that  
17 process was indeed taking place. And also, NASUCA has  
18 spoken with David Torok, who is the Staff Attorney at  
19 the FTC, and also Kris Monteith spoke with us at our  
20 mid-year conference in Portland, Oregon this past  
21 June, in regards to establishing a partnership with  
22 NASUCA and other consumer advocate offices to assist

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1 the FCC and the FTC in the educational process.

2 There are a number of our constituents who  
3 cannot or do not access the Internet, so relying on  
4 those fact sheets and consumer information alerts on  
5 the Internet does not reach all of our population, so  
6 we wanted to know how we can get the brochures, and to  
7 use them to help the organizations disseminate the  
8 information.

9 In terms of access to the list, it will be  
10 limited to the state and federal law enforcement  
11 agencies. In terms of the educational aspect of this,  
12 I know that efforts will be made, and I keep kicking  
13 these questions to people who are coming up later.  
14 Kris will be here, and she probably knows more about  
15 what the outreach efforts are than I do at this point.

16 MS. RAGSDALE: With regards to the  
17 inter-agency consumer education, that's happening.  
18 Are you are you aware of that? I believe it's with  
19 the Attorney General's Association.

20 MR. SMITH: Yes. We consult -- we have  
21 been consulting with the Attorney Generals. In fact,  
22 we talked to them yesterday at a conference call, and

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1 we had a conference call with them today, along with  
2 the FTC, and so that is all in the works.

3 MS. GRANT: I'm Susan Grant from the  
4 National Consumers League. The different  
5 jurisdictions of the FTC and the FCC are very  
6 confusing to consumers. Is there going to be one  
7 central place where people can complain about Do Not  
8 Call violations, where the complaints can then be  
9 parceled out to the appropriate agencies?

10 MR. SMITH: That is a very important  
11 issue, and it's something that we are working on.  
12 Currently, they can file complaints pursuant to the  
13 FCC website. And I believe the FTC website will also  
14 take complaints. And what I assume will ultimately  
15 happen is the complaints will come in, and they will  
16 be sort of doled out to the appropriate agency.

17 MR. HOROWITZ: Richard, David Horowitz. I  
18 have a real concern, and that concern is about the  
19 privacy and the security of these lists. Because  
20 we're talking about lists that will have 60 million  
21 anticipated users who are using the program, and for  
22 \$7,200 you can buy a complete list.

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1                   Now we know there are such things as  
2 reverse telephone books that people can get numbers  
3 from, take numbers and get addresses, and names, and  
4 all that other kind of information. How is this going  
5 to be secured in a way that if telemarketers buy the  
6 list, that it doesn't become no longer a telemarketing  
7 list, but a mail order list. or that other groups just  
8 pick up these lists. Are these lists going to be  
9 available to anyone who wants to pay the \$7,200?

10                   MR. SMITH: They will only be available,  
11 my understanding is, to people who are engaged in  
12 telemarketing. And it's also, as I said, it's  
13 important to note that the only information on the  
14 lists are telephone numbers. There are no names and  
15 addresses. And most of those telephone numbers are  
16 available in telephone books, which include a lot more  
17 information than the National Do Not Call List is  
18 going to contain.

19                   MR. HOROWITZ: But what I'm saying,  
20 Richard, that my concern is that yes, you will only  
21 have telephone numbers. But in my experience in  
22 working with telemarketing companies, which is a long

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1 time, working I should say against them, rather than  
2 with them, is that they have all sorts of means to be  
3 able to translate phone numbers or anything else into  
4 actual addresses and names. And it's like saying to a  
5 pregnant shark, don't have baby sharks, you know,  
6 because to have lists like this that are so complete  
7 out there with 60 million, or I'm trying to think of  
8 the figure, 60 million people on these lists, that  
9 somewhere along the line either some widow hacker or  
10 some other person who wants to do something really  
11 negative gets a hold of these lists, and just uses it  
12 basically as a rocket of some kind. And I'm just  
13 saying that there ought to be some stipulations about  
14 what kind of contracts people have to sign that take  
15 these lists, because it's like buying a registry that  
16 could be worth literally millions and millions of  
17 dollars for marketers.

18 MR. SMITH: Well, your concern is noted.  
19 Of course, the difficulty is that in creating the Do  
20 Not Call List, there has to be a way to make the  
21 telemarketers aware of which numbers that they can't  
22 call. And that's the only means that we could think

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1 of.

2 MR. HOROWITZ: I'm aware of that. I'm  
3 aware of that, but I say that's the real weakness in  
4 the program, because by making these lists available  
5 to telemarketers, you're making these lists available  
6 to anyone basically who wants to use them, no matter  
7 what they sign on paper. And I think the enforcement  
8 has to, in some legal way, nail these people for  
9 taking these lists, and also have some kind of a list  
10 for them - a contract to sign - making them aware of  
11 the fact if they ever use any of these names, or  
12 numbers, or whatever is there, that the penalties  
13 could be really too high to mess around with. Because  
14 in talking to some telemarketing groups, not to  
15 mention any names, to find out how they feel about it,  
16 most of them are just, you know, you're taking our  
17 jobs away. You're doing this. We'll find another way  
18 to get back.

19 Well, I'm not saying they will, but having  
20 this information around sure makes it tempting for  
21 somebody who maybe isn't even a telemarketer to use  
22 them maybe for finding website addresses for spamming.

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1 I mean, I'd love to have a list if I was a spammer of  
2 60 million people to turn out onto the Internet, and  
3 that's just my concern. I'm wondering if anyone has  
4 really looked at that from a legal standpoint.

5 MR. SMITH: That is certainly something  
6 that we will keep track of. And to the extent that  
7 there are abuses, we'll try to take action as  
8 necessary.

9 MR. HOROWITZ: Well, I'm saying is it  
10 going to be done, or isn't it going to be done?  
11 That's my question to you.

12 MR. SMITH: Well, one of the difficulties  
13 with this, of course, is that the Federal Trade  
14 Commission is administering the list, so I don't want  
15 to speak exactly in terms of what they're doing. But  
16 we are aware of that concern, and we certainly will  
17 raise it with them.

18 MR. HOROWITZ: One other thing, brief.  
19 And that is, that in looking at the public's reaction,  
20 because we have somewhat of a gauge on what people  
21 react to things - like on our website, we've had tens  
22 of thousands of requests for people who really want to

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1 know about the program, which is easy. We just send  
2 everyone over to .gov and to the website. But there  
3 has to be something that is distributed either state  
4 by state, or in some way personally to the person who  
5 signs up that really outlines in a simple way how it's  
6 used, what the exemptions are, and where they can get  
7 more information, you know, not instantly, but at  
8 least without -- if they don't have a computer they  
9 can't go to the website. There has to be a number  
10 available.

11 And I think it's really important to sit  
12 down and do this before the program goes into effect,  
13 so that there is everything written out in simple  
14 language, and also bilingually. I don't know how many  
15 different languages are concerned here but, you know,  
16 nowadays, it's good to have bilingual booklets and  
17 pamphlets so that people of other ethnic persuasions  
18 can use them. Is there anything going to be done to  
19 notify these people, the ones that sign up, some way  
20 where they'll be getting a booklet, or one sheet or  
21 something that will explain it to them in their  
22 language, as well as English.

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1                   MR. SMITH:       I'm not sure about the  
2 languages, but I know if you sign up on the Internet,  
3 there's a certain amount of information available to  
4 the consumer at the time that they sign up. And also,  
5 when they call in, there's a sort of a pre-recorded  
6 message that provides some information.

7                   In the short time that we've had since  
8 this has been up and running, we have made every  
9 effort to put fact sheets and material on the  
10 Internet. And Kris Monteith, who is in charge of some  
11 of the outreach will be here shortly, and perhaps you  
12 can talk to her a little bit more about some of your  
13 ideas.

14                  MR. HOROWITZ:   One final thing; and that  
15 is, that the all the phone companies we have here, I  
16 was wondering if there might be some commitment that  
17 we can get from the major phone companies to have some  
18 kind of a slip-in with their bills, or in some way to  
19 let the people who are customers, users of the phone  
20 system, to give them also hints on how to use the new  
21 system, and where they can get information and things  
22 like that, because that would really be helpful,

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1 because you have a draw of an enormous audience also.

2 I hate to be looking at you when I'm doing this,  
3 Richard, but --

4 MR. SMITH: Let me just add one thing.  
5 That is actually in the order. There's a requirement  
6 in the TCPA that, I believe it's common carriers that  
7 provide local exchange service must notify their  
8 customers of the availability of this list. And  
9 beginning January the 1st, they will be required to  
10 provide an annual notification to their customers how  
11 to get on the list.

12 CHAIR ROOKER: I have a couple of  
13 questions for you. Increasingly, telemarketing is  
14 moving off-shore. What about the companies - for  
15 example, I just received a telemarketing call recently  
16 from India. The reason I knew it was from India is  
17 because I asked for a number so I could call them  
18 back, and this seems to be occurring. How does this  
19 rule impact on companies outside the United States?

20 MR. SMITH: We consider that to be a  
21 violation of the federal rules, they're actually  
22 violating the Do Not Call rules, regardless of where

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1 the call is originating. In terms of practically how  
2 we could enforce that if they are truly an  
3 international-based company, and perhaps it would not  
4 be possible to enforce, but we do consider it to be a  
5 violation.

6 CHAIR ROOKER: So if it's a U.S. based  
7 company using off-shore telemarketers, then they will  
8 definitely have to follow the rules.

9 MR. SMITH: Yes, I don't think -- we  
10 certainly don't want to allow them to circumvent the  
11 rules by simply setting up some off-shore calling.

12 CHAIR ROOKER: Okay. And then the other  
13 question has to do with the charities. I know that  
14 the charities are allowed to continue soliciting.  
15 However, there are a lot of organizations that take  
16 most of the money, but solicit on behalf of a charity.  
17 Will they be able to continue doing that?

18 MR. SMITH: I didn't catch what you -- can  
19 you repeat it?

20 CHAIR ROOKER: There are a lot of  
21 organizations that solicit on behalf of a charity that  
22 are for-profit companies. Will these for-profit

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1 companies be allowed to continue soliciting for  
2 charities, even though they take most of the money?

3 MR. SMITH: That is addressed in the  
4 order, and it's a little bit complicated. There are a  
5 couple of different scenarios. There is a scenario  
6 where a non-profit hires a for-profit telemarketer to  
7 telemarket on their behalf. And in that case, they  
8 are exempt. If it is a for-profit commercial entity  
9 that's providing some of its revenue to a non-profit  
10 organization, that would not be an exemption.

11 CHAIR ROOKER: Wait a minute. Say that  
12 again. It would not be?

13 MR. SMITH: It would not be characterized  
14 as a non-profit organization subject to the exemption.  
15 They will be subject to the rules.

16 CHAIR ROOKER: So I mean, like some of the  
17 -- they recruit -- I mean, they solicit on behalf of  
18 the firemen, for example, and we know that most of  
19 that money goes into the pockets of the people doing  
20 the recruiting, so they would have to abide by the  
21 telemarketing rule?

22 MR. SMITH: If they are soliciting on

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1 behalf of the non-profit organization, they will fall  
2 within the exemption.

3 CHAIR ROOKER: Oh, they'll be exempt.

4 MR. SMITH: If they are selling something,  
5 for example, and giving a certain portion of that to a  
6 non-profit, they will not.

7 CHAIR ROOKER: Okay. Thank you.

8 MR. SNOOP: My name is Don Snoop, and one  
9 question I do have to follow-up on what Shirley was  
10 speaking about, was that elderly people, my parents,  
11 my in- laws have this challenge when somebody calls up  
12 from the local state police. I'm representing the  
13 local state police and I'm doing a fund raiser. How  
14 are they to know? Is there anything that we can  
15 incorporate into those rules that will allow seniors  
16 specifically, because they seem to be the most  
17 gullible, and I'm approaching that age also, so I'm  
18 not speaking out of turn. But the fact is that, how  
19 are they to know that, in fact -- is there going to be  
20 some form of credentials required or something of that  
21 nature?

22 MR. SMITH: I believe, and I'm not an

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1 expert on this, that there was recently a case in the  
2 Supreme Courts that derived - and maybe somebody here  
3 knows more about it than I do - from Illinois, from a  
4 company that was soliciting on behalf of Viet Nam Vets  
5 and keeping most of the money. And that is really  
6 more a case of fraud than it is a case of violation of  
7 the Do Not Call Rules, and it would fall within the  
8 FTC's jurisdiction.

9 MR. GOLDBERG: A lot has been made of the  
10 exemption for political candidates. Does that fall  
11 under the non-profit exemption?

12 MR. SMITH: Yes.

13 MS. BERLYN: Good morning. Debra Berlyn.  
14 I have a question about removing your name from the  
15 Do Not Call List. Could you discuss how that happens,  
16 and is there some concern that names could be removed  
17 without the consumer's permission?

18 MR. SMITH: I don't think anyone has done  
19 that yet, but the process would be exactly the same.  
20 You can do it by the website or the same telephone  
21 number you would call to register.

22 MS. BERLYN: As a follow-up, is there

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1 concern that it is easy enough so that others could  
2 remove consumers' names?

3 MR. SMITH: That is a possibility. It  
4 certainly is not fool-proof. You do have to call from  
5 the telephone number that you're either registering or  
6 revoking, so there's some safety in that.

7 CHAIR ROOKER: Susan.

8 MS. GRANT: Can I just clarify the  
9 question about charities. And this is concerning the  
10 FTC's rules. I thought I understood that if it was a  
11 for-profit concern soliciting on behalf of a charity,  
12 that the for-profit concern would have to abide by the  
13 Do Not Call Registry. Is that incorrect?

14 MR. SMITH: That is correct in part. If a  
15 for-profit is soliciting on behalf of a charity under  
16 the FTC's rules, they're not subject to the National  
17 Do Not Call List requirements, but they are subject to  
18 the company-specific requirements. In other words, if  
19 they call someone and the person asked to be placed on  
20 their Do Not Call List, they have to honor that. That  
21 is not the case under the FCC's rules.

22 MS. GRANT: Okay. Thanks.

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1 CHAIR ROOKER: Joy.

2 MS. RAGSDALE: Yes. I had a question on  
3 the consumer complaint process. It appears that the  
4 FCC requires a little bit more information for the  
5 consumer to supply in filing a complaint. Not only do  
6 they have to give name, telephone number of the  
7 company that's called them, but the names of the  
8 persons whom they've attempted to resolve their  
9 issues, and all the steps that they have gone through.

10 And it does not appear that the FTC requires the  
11 consumer to supply an extensive amount of information,  
12 like a log that identifies all the steps that they've  
13 gone through to resolve the issue. And I'm concerned  
14 about the confusion that will cause to the consumer.

15 MR. SMITH: One of the major problems in  
16 enforcing the telemarketing rules is that there's  
17 often very sketchy information about the calls, and so  
18 we are certainly encouraging people to provide as much  
19 information as possible, but we will certainly operate  
20 on what we can get from them.

21 MS. RAGSDALE: So if they don't supply all  
22 of that information, you will still proceed in trying

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1 to resolve their complaint?

2 MR. SMITH: We will certainly take every  
3 effort to investigate it, but certain critical pieces  
4 of information have to be provided to us before we can  
5 -- for example, who called you, you know, those types  
6 of information we just have to have.

7 MS. RAGSDALE: But they don't need the  
8 name of the representative that they have spoken with.

9 MR. SMITH: No, I don't believe that's  
10 necessary.

11 MS. RAGSDALE: Okay. And from what I  
12 understand, David indicated that - and I'm speaking of  
13 David Torok from the FTC - not all of the consumer  
14 complaints will be investigated. And how will the  
15 consumer know whether their complaint is one of the  
16 ones that will be resolved?

17 MR. SMITH: Well, that again is a very  
18 good question, and is of concern to us because, of  
19 course, we have only a certain number of staff who  
20 look into these, and resolve them. With the adoption  
21 of the National Do Not Call List, and this is perhaps  
22 a question for David Solomon, I think that efforts

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1 will be made to increase that staff and investigate  
2 those.

3 It certainly is unlikely that every single  
4 complaint will be investigated and acted upon. What  
5 is more likely to happen is that we will look for  
6 patterns and practices, and abuses on sort of a  
7 general level and act on those.

8 MS. RAGSDALE: Okay. And since the  
9 complaint process is handled through an IBR system, is  
10 there opportunity for the complainant to hit zero if  
11 they need to speak to an operator?

12 MR. SMITH: That I'm not sure of it, and  
13 it might be -- Dane is saying yes, so I assume the  
14 answer is yes.

15 MS. RAGSDALE: Okay. Thank you.

16 MR. SNOOP: A short question, and that is,  
17 with the registration, you know, most people have more  
18 than one phone number. I mean, it's just kind of a  
19 way of life. We have two phones or three phones, or a  
20 fax phone, or whatever numbers you have in your home.  
21 Are you asking people who register to register all  
22 the numbers, or just the numbers that are the basic

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1 numbers that they use in their household?

2 MR. SMITH: That is up to the consumer.  
3 The only sort of limitations on this are that if you  
4 are registering by phone, you have to call from the  
5 phone number that you're registering. So if you have  
6 three lines, you're going to have to call from each  
7 one of those. My understanding is if you register on  
8 the Internet, you can register as many as three  
9 numbers.

10 MR. SNOOP: Okay. At a time.

11 MR. SMITH: Yes.

12 CHAIR ROOKER: Okay. Do we have other  
13 questions for Richard? Okay. Well, thank you so  
14 much. We really appreciate, Richard, for the  
15 excellent presentation.

16 CHAIR ROOKER: Dane.

17 MR. SNOWDEN: I know you all are about to  
18 take a break, but we're trying to work on the schedule  
19 for Commissioner Martin, so he may be down in a  
20 second, but if he doesn't come down, actually he will  
21 be down a little later. But I do want to touch on a  
22 couple of things that Richard was bringing up, and I

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1 think Richard did a fantastic job with explaining, as  
2 he pointed out, this order that has over 200 pages.  
3 And it was a lot of hard work from a very small staff,  
4 Richard being one of them, that put this together.

5 First, there's a lot of debate about the  
6 non-profit issue, and the political calls and things  
7 of that nature. We are prohibited by Congress to  
8 change that. We cannot touch that, and that is not  
9 something that we can say arbitrarily we want to do,  
10 or we can't do. What Congress told us to do is to  
11 leave it exactly like it is. And for those of us who  
12 have to go to the Hill a lot, we do exactly as  
13 Congress tells us to do, and I being one of those  
14 people. So we will continue to follow that, unless  
15 Congress tells us otherwise.

16 In terms of the outreach issues that came  
17 up, we are - and again, Kris Monteith will be down  
18 here a little later, who's my Deputy for Consumer  
19 Affairs and Outreach in addition to governmental  
20 affairs, but we will continue to make sure that  
21 consumers can call the 188-CALL-FCC or 188-TEL-FCC for  
22 TTY, and get any information they need on the

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1 telemarketing rules, all the exemptions, all the  
2 facts. They can get that no matter if they have  
3 access to a computer or they have access to a  
4 telephone. Hopefully, you have access to both. If  
5 you don't, you only have access to a telephone, you  
6 can call and get that information sent directly to  
7 you. And that is true for not only our telemarketing  
8 rules, but all of -- everything we do here at the FCC.

9 So that was directly to you, Mr. Horowitz, so please  
10 tell your listeners that they can call 188-CALL-FCC if  
11 they don't have access to a telephone.

12 In terms of the complaint information, the  
13 more information, obviously - and David Solomon will  
14 be here, and I'm sure he would echo this - the more  
15 information we have in terms of a complaint the  
16 better. That's the nature of the beast. If we only  
17 have a telephone number or a time, it makes it harder  
18 for us to go out and do enforcement action. So we are  
19 encouraging, strongly encouraging consumers to provide  
20 as much information as they can when they file a  
21 complaint because it makes it a lot easier to actually  
22 go after the person that you are complaining against.

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1           And it's important to note that the FCC  
2 has the prerogative to act against a telemarketer or  
3 any other violator of our rule, no matter if it's on  
4 one complaint or a trend of complaints. So depending  
5 on how egregious the violation is, we can act, or if  
6 it's a trend that we're seeing we can act, so it's not  
7 just limited to one thing that we receive from one  
8 particular consumer.

9           But I wanted to clarify some of those  
10 things. And we are, as Richard pointed out, and I'll  
11 say, the poor guy hasn't gotten any sleep since this  
12 thing went into effect on July -- since it went out on  
13 July 26th when we made our decision here at the  
14 Commission.

15           This is brand new. We are still getting  
16 through this, and we have -- and I want to pat  
17 ourselves on the back a little bit, and I don't  
18 usually do this, but Congress gave us until September  
19 to get this done, and we are ahead of schedule. We  
20 did that intentionally so that we could work on some  
21 of the other details before October 1st, so that we  
22 could answer some of these questions, we can get the

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1 enforcement issues worked out. And we are well  
2 underway to do that, so I am very proud of Richard,  
3 and Erica, and Margaret, and all the members of my  
4 staff who have put this together to make sure that we  
5 got this done for the American consumer. And so we  
6 have a lot more work to do.

7 This will be a very busy summer for our  
8 policy folks, but I know this is an important issue  
9 for the American consumer, so I hope that everyone  
10 looks at this issue as a giant step forward for the  
11 American consumer regarding managing the telephone  
12 calls that come to their homes each and every day. So  
13 with that, I will turn it back over to you, but I  
14 wanted to just bring those few points out.

15 CHAIR ROOKER: Thank you, Dane. Thank you  
16 very, very much for an excellent presentation.

17 We're going to take a 15 minute break, be  
18 back just a little bit before 10:30 because we're a  
19 little bit early. I can't believe it. Everybody is  
20 running on great schedule here. Thank you.

21 (Whereupon, the proceedings in the  
22 above-entitled matter went off the record at 10:15

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1 a.m. and went back on the record at 10:33 a.m.)

2 CHAIR ROOKER: Back to work, folks. Oh,  
3 good, Richard. You're doing so good. You all are  
4 getting to be so obedient. By the time this term of  
5 office is over, you're going to be right in your  
6 chairs at the minute. It's wonderful.

7 Oh, yes. Scott is not back yet. He had  
8 to go pick up something for us, but you're absolutely  
9 right. That was nice of him, wasn't it. And boy, was  
10 it ever.

11 One person did join us after we made the  
12 introductions this morning, so Milton is right there.

13 Would you just introduce yourself so that we'll know  
14 who you are?

15 MR. LITTLE: Sure. Good morning,  
16 everyone. Sorry I'm late. Milton Little, Chief  
17 Operating Officer of the National Urban League.

18 CHAIR ROOKER: He actually was here right  
19 after we did the round of introductions, so you're not  
20 that late, Milton. We're glad to have you here.  
21 Thank you very, very much.

22 Now I think Greg Guice is here. There you

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1 are. Yes, that's absolutely great. Our next subject  
2 is -- actually, Greg is going to cover two subjects.  
3 He is an Attorney Advisor with the Policy Division in  
4 the Wireless Telecommunications Bureau. He's going to  
5 talk about the E-911 Service and, of course, much of  
6 the interest in this service grew out of the terrorist  
7 attacks, which pointed up some needs for change.

8 And then the second thing that he's going  
9 to address is the order that was passed yesterday  
10 regarding the hearing aid compatibility issue. And  
11 this is an issue in which the committee has been very  
12 interested. And Greg will continue with information  
13 about that after the E-911 discussion. Thank you,  
14 Greg. Welcome.

15 MR. GUICE: Thank you. Good morning,  
16 everyone. Yeah. I'm here to talk to you about the  
17 E-911 issues that we're dealing with at the  
18 Commission. As some of you may know, at the end of  
19 last year we actually began a new proceeding looking  
20 at expanding the scope of the E-911 requirements.  
21 Currently, wired line services and wireless CMRS  
22 services comply with those requirements. And there

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1 are a number of services that came about after that,  
2 or just sort of got overlooked in the process, and so  
3 we're revisiting those issues at this time.

4 Just for everybody's benefit, Enhanced 911  
5 Service allows Public Safety answering points to  
6 automatically receive caller's phone numbers and  
7 location information. Enhanced 911 provides critical  
8 information to the PSAP that they may not otherwise be  
9 able to get.

10 In the item that we adopted at the end of  
11 last year, the Commission proposed using specific  
12 criteria to determine whether a particular service or  
13 device should be required to provide consumers with  
14 Enhanced 911 capabilities. Those criteria sought to  
15 base the decision on whether the service or device  
16 offered real time two-way voice services that  
17 interconnected to the public switch network on either  
18 a stand-alone basis, or packaged with other  
19 telecommunication services, whether the consumers of  
20 those services or devices had a reasonable expectation  
21 of having access to 911 service, whether the service  
22 competed with traditional CMRS service or with the

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1 wireline local exchange services, and whether or not  
2 it was technologically or operationally feasible for  
3 those services to provide 911 service.

4           What I'll do now is just run through a  
5 list of those services and sort of what we thought we  
6 would ask about them. Mobile Satellite Services was  
7 the first issue teed up. The Commission has been  
8 considering Mobile Satellite Service and the need to  
9 comply with 911 for some time now.

10           Mobile Satellite systems, by their nature,  
11 have fewer local interconnection points than  
12 terrestrial wireless systems. This technological  
13 difference affects the ability of Mobile Satellite  
14 Service providers to both locate callers, and to route  
15 their emergency calls to the appropriate PSAP. The  
16 item, therefore, sought comment on whether or not  
17 maybe these services would be better served by using  
18 call centers that could then find the local PSAP and  
19 route the call there. The item also sought additional  
20 information on other enhancements to E-911, that maybe  
21 Mobile Satellites could benefit from in their  
22 implementation.

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1           The next issue we sought comment on was  
2 Telematic Service. Some Telematic Service providers  
3 offer their customers the ability to place a 911 call  
4 directly if they subscribe to a resold CMRS service,  
5 or they offer it through a hot button which is - for  
6 those of you who may not know, this is sort of like an  
7 On-Star or ATX is another provider of these services,  
8 and you sort of hit a button and it goes to an  
9 emergency call center.

10           If the hot button is used, the request is  
11 sent first to an advisor at the Telematics Call  
12 Center, who then forwards the call to the appropriate  
13 PSAP. The hot button approach may actually have  
14 certain benefits, as well as draw- backs, and the  
15 item, therefore, sought comment on whether we should  
16 craft our rules to take account of this option.

17           The item next looked at multi-line  
18 telephone systems which have been around for a long  
19 time. Multi-line systems include things such as PBXs.  
20 Multi-line systems present a challenge in delivering  
21 accurate call-back and location information, because  
22 the systems may not assign a unique telephone number

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1 to the outbound call, and because the system itself  
2 may not be located at the same physical location as  
3 the caller.

4 Some states have adopted rules to address  
5 these issues, so the further notice sought comment on  
6 whether -- on what the appropriate role for the  
7 Commission is in this matter in light of such state  
8 action.

9 Next the item looked at resellers, prepaid  
10 calling, and disposable phones. There we are looking  
11 at more of an explicit obligation issue. Currently,  
12 the underlying facilities-based licensee has a  
13 requirement to comply with our rules. And what we  
14 sought comment on there is whether we should put a  
15 more explicit obligation on the resellers.

16 There's also a service known as Automated  
17 Maritime Telecommunication Systems. These have  
18 traditionally been ship-to-ship and ship-to-shore  
19 systems. The Commission relaxed its rules and allows  
20 those folks to now offer voice services that connect  
21 with the public switch network, so we sought comment  
22 on whether, to the extent that they do connect to the

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1 public switch network, if they should have an E-911  
2 obligation.

3 And then finally, sort of the catchall  
4 category, we looked at emerging services and devices.

5 Among these, you know, you can think of things such  
6 as voice-over IP. And there we sought, you know,  
7 information on -- really it's more like information on  
8 what the potential for any of these such devices or  
9 services were to provide 911 service, and also what  
10 the expectation of consumers might be in using these  
11 services. And so that's sort of where we are in the  
12 E-911 proceeding. Comments have been filed, so  
13 unfortunately we can't say too much at this point. We  
14 are reviewing it, and we hope to do something soon in  
15 those regards.

16 What I'd like to do is maybe take  
17 questions on both of these things at the end; that  
18 way, it kind of gets me out of this position that I  
19 don't like. So next, the hearing aid compatibility  
20 proceeding that we did yesterday.

21 Yesterday the Commission adopted a report  
22 and order requiring wireless manufacturers and service

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1 providers to make digital wireless phones accessible  
2 to the more than 6 million individuals with hearing  
3 disabilities that use hearing aids.

4 Approximately one in ten Americans, about  
5 28 million, have some level of hearing loss, and this  
6 proportion increases to one in three among the  
7 population over age 65. As the median age of the  
8 population continues to rise, the proportion of  
9 Americans with hearing loss will likely increase.

10 As many of you probably know, hearing aids  
11 operate in two modes, acoustic coupling which allows  
12 the microphone to receive and amplify sound, and then  
13 there's telecoil coupling, which allows the user to  
14 avoid unwanted ambient noise by turning off the  
15 microphone and receiving only magnetic fields  
16 generated by telecoil compatible phones. In the U.S.,  
17 approximately 25 to 30 percent of all hearing aids  
18 contain telecoils, which generally are used by  
19 individuals with most profound hearing loss.

20 In 1998, Congress passed the Hearing Aid  
21 Compatibility Act, and required the Commission to make  
22 all essential phones hearing aid compatible. However,

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1 the statute exempted certain categories of telephones  
2 from these requirements; one of those was wireless  
3 phones.

4 The Commission, based on a petition and  
5 the statute itself, began its review of the exemption  
6 for wireless phones, and through the record that we  
7 developed there, we found that the statutory  
8 requirements for lifting the exemption on wireless  
9 phones has been met.

10 Specifically, the Commission found that  
11 continuing the exemption would have an adverse effect  
12 on individuals with hearing disabilities, and removing  
13 the exemption is in the public interest. In addition,  
14 it found that it was both technologically feasible to  
15 require compliance, and that the compliance would not  
16 increase cost to such an extent that phones could not  
17 be successfully marketed. As a result, the order  
18 modifies the exemption to impose certain requirements  
19 on digital wireless phone manufacturers and service  
20 providers.

21 The item requires digital phone  
22 manufacturers and service providers to take steps to

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1 reduce the amount of interference emitted from the  
2 digital wireless phones, and to provide the internal  
3 capability for telecoil coupling.

4 Specifically, phones subject to the rules  
5 must comply with certain performance levels specified  
6 in a technical standard established by the American  
7 National Standards Institute, known as ANSI C-6319.  
8 Under that standard, covered phones must provide  
9 reduced radio frequency or RF emissions, sufficient to  
10 meet a U-3 rating, and telecoil coupling sufficient to  
11 meeting a U-3T rating.

12 These requirements do not go into effect  
13 immediately, recognizing that manufacturers have  
14 design cycles that they need to work through, and so  
15 what we've required is that within two years, each  
16 digital wireless phone manufacturer and service  
17 provider must make available at least two handsets  
18 that comply with the ANSI standard for interference.  
19 That's the U-3 rating, with a carve-out on the tier  
20 one or nationwide carriers, Sprint, Verizon, those  
21 folks. They will be required to provide two models or  
22 25 percent of the total number of models offered in a

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1 given market. I know this is a little bit confusing.

2 It will be clear in the order.

3 Within three years, each manufacturer and  
4 service provider must make available at least two  
5 phones for each air interface that it offers, that  
6 provides telecoil coupling at the U-3T rating under  
7 the ANSI standard.

8 To ensure consumers' continued  
9 accessibility and a range of product options, the item  
10 does three other things. First, by February 18th,  
11 2008, which is when the Analog Sunset Order takes  
12 effect, 50 percent of all digital wireless phone  
13 models offered by manufacturers or carriers must be  
14 compliant with the acoustic coupling or the u-3  
15 rating.

16 Second, the item encourages manufacturers  
17 and providers to offer at least one compliant handset  
18 that's lowered price, and one that has sort of the  
19 higher end features, that are becoming available.

20 And third, the item applies the  
21 requirement across all air interfaces offered in order  
22 to further expand the service options available to

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1 individuals with hearing disabilities.

2           The order also adopts what's called a  
3 notice requirement, which is a carve- out to try to  
4 address the concerns of smaller providers and smaller  
5 manufacturers, or those with just a smaller presence  
6 in the U.S. market. There, if you're a manufacturer  
7 or service provider offering two or fewer handsets in  
8 a given market, you will be exempt from the  
9 requirements that we have adopted. Those who offer  
10 three models, they'll have to offer at least one  
11 compliant handset. And those who offer four or more  
12 will be required to meet the requirements.

13           So the consumers will get the information  
14 that they need to make an informed decision,  
15 manufacturers will be required to label both the  
16 packages that the phones come in, as well as put an  
17 explanation in the manual, or through a product  
18 insert. And to facilitate the matching, the item  
19 encourages hearing aid manufacturers to label their  
20 products, their pre-customized products according to  
21 the ANSI standard for hearing aids.

22           Finally, the Commission will engage in a

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1 comprehensive targeted outreach campaign in  
2 coordination with the FDA to ensure that individuals  
3 with hearing disabilities are informed of the actions  
4 taken in this order, and the availability of hearing  
5 aid compatible digital wireless phones.

6 And so with that, I'll open up the floor  
7 to any questions anyone might have.

8 CHAIR ROOKER: All right. Joe. Be sure  
9 that you put your hand up again when Joe is about  
10 finished so that the people with the microphone - and  
11 identify yourself when you start to speak, if you  
12 would, please.

13 MR. GORDON: Hi. I'm Joe Gordon, the  
14 League for Hard of Hearing. And I guess I  
15 congratulate you on this big first step of many steps.

16 You just mentioned that dissemination of information  
17 about the accessibility of the hearing aid compatible  
18 phones will be made to medical community and to  
19 schools, and you also say to groups and associations  
20 representing individuals with hearing disabilities,  
21 and to audiologists. Can you briefly tell me how you  
22 -- do you have any -- what your plans are in informing

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1 the organizations that represent hard of hearing  
2 people that wear hearing aids and audiologists. Thank  
3 you.

4 MR. GUICE: Yes. What we've done is, our  
5 Consumer and Governmental Affairs Bureau is actually  
6 going to do a targeted mailing, where they have  
7 information that they're going to disseminate to those  
8 groups so that they can get it to their members.

9 In addition, I'd mention that CTIA has  
10 posted on its website an area where folks could go to  
11 see some of these phones that are going to be  
12 compliant with the requirement. Also, the Consumer  
13 and Governmental Affairs Bureau is doing a consumer  
14 fact sheet that should be available shortly, detailing  
15 sort of these requirements, and we'll be posting that  
16 on our website, as well.

17 The FDA, as we understand, has a list of  
18 audiologists, and so we'll be working with them to get  
19 a mailing out to those folks, so that when they meet  
20 with their customers, they can explain to them that  
21 this is something new that's coming about. I'll be a  
22 couple of years. And in talking through the

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1 proceeding, and talking with the Hearing Aid Industry  
2 Association, they indicated that what they would be  
3 doing is working with the audiologists, as well, to  
4 put questions on the questionnaire so that this  
5 question comes up when you're doing your  
6 pre-screening.

7 MR. GORDON: Just one follow-up question.  
8 You mention in the order release that 25 percent of  
9 hearing aids in the United States have telecoils.  
10 And, hopefully, this order will increase that 25  
11 percent number, which is extremely low.

12 MR. GUICE: Right. I know from this  
13 proceeding that telecoils are a lot more popular in  
14 Europe as far as use, and hopefully, this item will  
15 help that. In addition, what we're also encouraged by  
16 is wireless manufacturers have indicated to us that  
17 there may be better ways of doing telecoil coupling,  
18 so the item is actually going to make an allowance for  
19 some of that, with the understanding that telecoil is  
20 sort of a standard that they need to go to.

21 MR. GORDON: Thank you.

22 CHAIR ROOKER: Eugene.

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1 MR. SEAGRIFF: Hi. Eugene Seagriff  
2 representing TIA. Greg, thanks very much for your  
3 taking the time to speak with us today, and your  
4 informative presentation. And actually, your comments  
5 cleared up my question, but my question was generated  
6 by the HAC press release.

7 MR. GUICE: Sure.

8 MR. SEAGRIFF: And in the bulleted points  
9 labeled under "Specifics of Adopted Report and Order",  
10 it says that it's required that within two years, at  
11 least two HAC compliant handsets with reduced RF  
12 emissions - okay. The concept of "HAC compliant"  
13 means, has a telecoil and has volume control based on  
14 the HAC Act. So by saying "HAC compliant" there, and  
15 then just saying with the reduced emissions, implies  
16 that you need to have a telecoil at that point, to  
17 your point, when in reality it's the three-year point.

18 MR. GUICE: Right. Yeah, actually --

19 MR. SEAGRIFF: So when you're looking at  
20 that wording --

21 MR. GUICE: I guess actually what we're  
22 using -- there we're using "HAC compliant" to mean

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1 something different than our Part-68 requirements,  
2 where we're --

3 MR. SEAGRIFF: Yeah. And that's going to  
4 confuse a lot of people.

5 MR. GUICE: Well, that's a great point.  
6 Then we should definitely clear that up.

7 What we're actually doing is -- the phrase  
8 "HAC compliant" in the wireless context is going to  
9 refer to a different set of requirements, and that  
10 will be the U-3 RF Emission Standard, and the U-3T for  
11 telecoil. And as you pointed out, the RF standard  
12 comes in in two years, telecoil in three. And I would  
13 mention that ANSI's telecoil standard is a little bit  
14 higher than the Part-68 requirement, so yeah, that  
15 will be -- thank you for bringing that up.

16 MR. SEAGRIFF: Perhaps a new term is in  
17 order than "HAC compliant".

18 MR. GUICE: Yeah. Perhaps we should say  
19 WAC or something, wireless --

20 CHAIR ROOKER: We have a question here  
21 from Susan Mazrui.

22 MS. MAZRUI: Hi. I was wondering how you

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1 came up with the figure for the telecoil, the number  
2 of telecoil compatible phones?

3 MR. GUICE: Well, in dealing with the  
4 various interests in the proceeding, the wireless  
5 manufacturers, as well as the Consumer Advocacy  
6 Groups, I think everybody understood that telecoil is  
7 a difficult issue to address. And the HAC Act  
8 specifically requires the Commission to take into  
9 account that difficulty through a cost - not  
10 necessarily a cost benefit analysis, but sort of  
11 having recognition of the fact that technologies may  
12 require us to delay or wait, or lessen a burden. And  
13 so in looking at the way that the various interests  
14 came to us and put information on the record, we felt  
15 that two was certainly a requirement that was well  
16 within reach. And so, I think a number of the  
17 manufacturers should be pleased with that. I know  
18 that -- I believe that SHHH, in particular, in an ex  
19 parte filing to the Commission, mentioned that  
20 telecoil was going to be a difficult issue. They  
21 realize that it would probably need to be on a  
22 different glide path than the RF Emission issue. And

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1 so what we tried to do in the order is recognize that,  
2 so that we can ensure choice.

3 And, you know, what may get lost -- two  
4 sounds to some like a small number, but if you're a  
5 service provider and you offer four different  
6 manufacturer's handsets, potentially you would have  
7 eight offerings that you could make to the individuals  
8 with hearing disabilities. So this is real choice,  
9 even though the number itself may seem a little low to  
10 other folks.

11 MS. MAZRUI: If I can comment back, I  
12 would say from the number of users -- I mean,  
13 certainly we want to serve our customers, including  
14 customers with hearing loss, but I would say the  
15 number would seem high when you look at the actual  
16 number of users compared to the total population.  
17 Although we certainly understand the need and the  
18 desire to provide choices.

19 MR. GUICE: And I would say to that, I  
20 think that in the wireline context, every single phone  
21 is telecoil compatible. There's nothing necessarily  
22 that the telecoil compatibility does that would affect

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1 a person who doesn't use the telecoil, or just regular  
2 hearing individuals from using that exact same phone.

3 And granted, there are some technological challenges  
4 in putting this into such a small device and one that  
5 operates in sort of an environment that's very  
6 different than a wireline environment. But what I  
7 would say is that while 25 to 30 percent of hearing  
8 aids are equipped with telecoil and a smaller number  
9 of those people actually use the telecoil, I think  
10 what we're striving at is really getting customer  
11 choice. And, you know, for hearing individuals, we  
12 have one manufacturer that offers us 45 choices, so  
13 I'm not sure that two is necessarily a bad benchmark.

14 CHAIR ROOKER: Do we have any other  
15 questions for Greg? If not, Greg, thank you so much  
16 for your time. We really appreciate your being here.

17 MR. GUICE: Thank you.

18 CHAIR ROOKER: Scott Marshall would like  
19 to make an announcement.

20 MR. MARSHALL: Very quickly, you have a  
21 lot of material in your packets, some of which was  
22 mentioned by Dane this morning. We have that material

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1 available on floppy, as well as CD disks, so we want  
2 to be sure we get that to the people that need the  
3 electronic versions.

4 In addition, the press release on the  
5 Hearing Aid Compatibility issue, as well as the  
6 Consumer Alert are in your packet, as well as an  
7 off-the-press fresh, just newly minted handout on  
8 broadband. And finally, as you probably know, we  
9 invite people from the public to submit comments to  
10 the committee on issues on our agenda. And your  
11 packet includes some material from the National  
12 Emergency Numbering Association regarding the E-911  
13 issue. And we have a version of that on disk, as  
14 well. Thanks.

15 CHAIR ROOKER: Thank you very much, Scott.

16 This next subject, the Telephone Relay  
17 Service update we're going to be talking about next,  
18 should provide excellent background for the working  
19 group on this subject. And in fact, it's important  
20 that you realize that the Commission has asked this  
21 committee for recommendations on TRS. And what we'd  
22 like to see happen is that the group, the working

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1 group, which is headed by Brenda Kelly Frey, make  
2 recommendations for action by the Full Committee at  
3 our November meeting.

4 We've been asked to provide comments  
5 regarding the outreach provisions of the order; that  
6 is publicizing the order to users of the service,  
7 making the public aware of it and, of course, how to  
8 pay for it. That's a big question.

9 Joining us this morning to discuss this  
10 important issue is Tom Chandler. He's the Chief of  
11 the Disability Rights Office with the Consumer and  
12 Governmental Affairs Bureau. Tom, welcome to CAC.

13 MR. CHANDLER: Well, good morning. It's a  
14 pleasure to be invited here again to give you an  
15 update on our recent TRS orders. I see a lot of  
16 familiar faces here, even though I've sort of run in a  
17 little late. In the almost one year that I've been  
18 working in the Disability Rights Office, it's  
19 certainly been a great pleasure to get to know many of  
20 you, and talk to many of you, and discuss all the  
21 issues that are relevant to the important work that we  
22 do.

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1 I think as you can tell, we've had a very  
2 busy several months. Hopefully, some of you don't  
3 think we've been too busy in the last month or so.  
4 And this morning, I'd like to briefly talk about two  
5 of the TRS items that we have released in the last  
6 month, and that would be the second improved TRS  
7 Report and Order, and Notice of Proposed Rulemaking  
8 that was released on June 17th, and the TRS Cost  
9 Recovery Order setting forth these permanent  
10 reimbursement rates for TRS that was released on June  
11 30th.

12 By way of a little bit of background,  
13 which may be unnecessary, but I'll say it anyway.  
14 Obviously, one of the major regulatory activities with  
15 which the Consumer and Governmental Affairs Bureau and  
16 the Disability Rights Office is involved is TRS. I  
17 know most of you -- many of you are very knowledgeable  
18 about the subject, some of you that might be new to  
19 the committee may be less so, so let me just make a  
20 few brief pointers.

21 TRS, or the Telecommunications Relay  
22 Services allows persons with hearing and speech

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1 disabilities to communicate by telephone with persons  
2 without such disabilities. This is done through a  
3 communications assistant or CA, who is in a sense a  
4 middle person, who's in the middle of the call between  
5 the two parties. And on a typical call, the CA  
6 receives text typed, for example, by a person with  
7 hearing disabilities on a TTY. The CA in the middle  
8 voices that text to the hearing person, and listens to  
9 what the hearing person says, and types that back to  
10 the person with the hearing disability. And that way,  
11 you have a two-way conversation with the CA in the  
12 middle.

13 TRS was enacted as part of Title IV of the  
14 Americans with Disabilities Act in 1990. Pursuant to  
15 the Act, the Commission issued regulations that  
16 provided for the nationwide roll-out of TRS in July of  
17 1993. And you don't have to be a math major to figure  
18 out that that means we're coming up on the 10th  
19 anniversary of TRS which is, in fact, later this month  
20 - or at least the 10th anniversary of its availability  
21 on a uniform nationwide basis under our regulations.  
22 So I think that's a milestone that we can all be proud

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1 about.

2 In enacting Title IV, Congress obviously  
3 recognized that persons with speech and hearing  
4 disabilities have long experienced various barriers to  
5 telecommunication services. And, therefore, the  
6 intent of the Act was to further the broader goal of  
7 universal service by providing to persons with hearing  
8 and speech disabilities functionally equivalent  
9 telephone service. And that's sort of the mantra  
10 throughout the Act, and the regulations.

11 And I always, at this point, digress a  
12 little bit just to emphasize, because maybe given my  
13 background as a Civil Rights attorney, broader-based,  
14 the Title IV and the whole TRS program is part of the  
15 Americans with Disabilities Act, which is really a  
16 very broad act to end discrimination based on  
17 disability generally throughout the country. So you  
18 have Title I, that covers employment situations.  
19 Title II, which covers discrimination by states and  
20 local governments in terms of access. And Title III,  
21 which covers public accommodations, which ironically  
22 are private entities, such as hotels, restaurants,

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1 movie theaters, stores and things like that. And then  
2 Title IV is the Telecommunications Relay Services, and  
3 the Telecom. So I think it's always important to step  
4 back every once in a while and realize that Section  
5 225, and what we do in TRS is really part of this much  
6 broader Act.

7 If you read the legislative history, they  
8 talk about the importance of access and barriers to  
9 telecommunications in the same breath that they talk  
10 about the barriers to employment, access to  
11 facilities, access to businesses, movie theaters, et  
12 cetera.

13 Since 1990 or 1983 - I see I have a typo  
14 in my own speech - no, 1993. I don't have a typo in  
15 my own speech. I have a typo in my brain. TRS  
16 obviously originally started out what we now call  
17 traditional TRS, which was a TTY or similar device,  
18 typing it through the phone lines, going to the other  
19 party. Now we obviously have expanded that, and we  
20 have other types of TRS, including IP Relay, Internet  
21 Protocol, and Video Relay Service. And, of course,  
22 all of the action of late has really been in these

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1 other Internet-based services, IP Relay and BRS. That  
2 has made our work both exciting and a challenge, and  
3 has raised a lot of interesting issues for a lot of  
4 reasons; in part, because you don't necessarily know  
5 the geographic location of one leg of the call when  
6 it's through the Internet, so it makes the whole  
7 intrastate/interstate paradigm on which much of the  
8 TRS program is based difficult to figure out. So  
9 that's an ongoing challenge.

10 How wide-spread has the use of TRS been?  
11 Well, my number crunchers tell me that for 2002 and  
12 2003, throughout the various forms of TRS, consumers  
13 have used almost 40 million minutes of interstate TRS  
14 alone, which equals again if you're a math major,  
15 which I obviously am not, given I can't even read my  
16 own numbers earlier, 27,550 days or over 75 years  
17 worth of communication.

18 With that background, let me turn to these  
19 orders. On June 17th, of course as you now know, we  
20 released the Second Improved TRS Order, and the NPRM  
21 that went along with it. To briefly summarize the  
22 meat of this order, we first required several new

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1 types of TRS calls, that they be provided on an  
2 intrastate and interstate basis, including things that  
3 a year ago I didn't know what they were, like two-line  
4 voice carryover, two-line hearing carryover,  
5 VCO-to-VCO, HCO-to-HCO, and various other  
6 permutations. That's all set forth in the order.  
7 Most of these things were being provided already, but  
8 there are a lot of different forms and spin-offs on  
9 sort of the traditional TRS type of call.

10 Second of all, we clarified that providers  
11 may use any preferred technology that complies or  
12 facilitates meeting our mandatory minimum standards,  
13 including SS-7 technology, which is sort of this  
14 parallel network out there that's used for  
15 transmitting call data, and billing information, and  
16 ties into providing Caller ID and other services.  
17 There was some ambiguity out of our previous orders as  
18 to the ability to use SS-7 and things like that.

19 In addition, we clarified that in the  
20 important area of Emergency TRS Calls, that they be  
21 routed to the appropriate Public Safety Answering  
22 Point, PSAP, instead of the nearest PSAP, because the

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1 appropriate one is not always geographically the  
2 nearest. And we also concluded that 711, the sort of  
3 universal three digit dialing access to get to a TRS  
4 Center would also be the access number for  
5 speech-to-speech, so we would keep having one number  
6 that everyone could remember, that could get them  
7 access to any of the types of TRS services.

8 And finally, we required a bunch of new  
9 features, again sort of like the other types of TRS.  
10 Most of these have already been provided, things like  
11 call release where you can through a CA to connect  
12 what actually ends up being a TTY-to-TTY call. But if  
13 you're trying to reach somebody and you have to go  
14 through a hotel switchboard or something like that,  
15 the CA can set up the call and then drop out of the  
16 call. Also, other features like three-way calling,  
17 and a speed dialing type of functionality.

18 Turning to the Notice of Proposed  
19 Rulemaking, which may or may not seem a little more  
20 exciting than the notice itself, first, of major  
21 importance is the proposal that TRS facilities be  
22 treated like LEC for purposes of the National Security

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1 Emergency Preparedness Priority Status under our  
2 Telecommunications Service Priority System, and all  
3 that gobbledy-gook which I can barely read here, is  
4 really making the very important point that currently  
5 LEC facilities are covered by our rules and programs  
6 to restore communication services in the event of an  
7 emergency, but TRS facilities are not. So in the  
8 post-911 world that we are unfortunately stuck with,  
9 it seems to us extremely important that those who use  
10 TRS have the same access to have their  
11 telecommunications service restored that the hearing  
12 world does in terms of the LEC facilities, so we put  
13 the TRS facilities on the same footing as the LEC  
14 facilities.

15 We also seek comment on a bunch of other  
16 matters, such as the encryption of IP Relay calls for  
17 security purposes, how 711 emergency calls should be  
18 handled over wireless devices. There's obviously a  
19 big difference between making wireline versus wireless  
20 calls. With the wireless call, there's obviously no  
21 necessary correlation between where the person is  
22 making the call, and what the phone number is on the

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1 phone that may suggest where it is. So if I take my  
2 Virginia cell phone and make a call from California,  
3 and it's a 911 call, they may think I'm in Virginia,  
4 when really I'm in California, so that presents  
5 additional challenges.

6 Also, we asked about our Call Setup Rules,  
7 and whether they should be sort of specified for the  
8 various types of non-traditional TRS calls, such as  
9 two- line, HCO, speech-to-speech. Instead of having  
10 one rule that applies to all the various types of TRS,  
11 whether they should be made more specific.

12 And finally, we asked about other  
13 important matter, which is eligibility of providers to  
14 receive payment from the Interstate TRS Fund.  
15 Currently under the rules, the rules certify state  
16 programs, but there's nothing to certify providers, so  
17 especially with the advent of VRS and new companies  
18 coming out and wanting to offer VRS, there's some  
19 confusion about how they can do that, and be eligible  
20 to be reimbursed for their cost from the Interstate  
21 TRS Fund, so we have raised an issue regarding that.

22 I think that is one of those issues,

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1 obviously, where the regs have not kept pace with the  
2 technology. And as new things like VRS has come out,  
3 I think the regulations just didn't contemplate that,  
4 and there might be non-telephone companies coming out  
5 wanting to offer the service, and they really have no  
6 place to go in terms of being "certified", because  
7 there's nothing in the regs about us doing that.

8 And finally, in the NPRM is the matter of  
9 outreach. And I know that was mentioned earlier, and  
10 as was noted earlier, outreach is a matter that we  
11 specifically are seeking your assistance on that. And  
12 we also realize it's an issue of great importance.

13 Stepping back for a minute in the report  
14 and order itself, also addresses outreach because that  
15 issue was raised in the 2000 TRS order. But we  
16 concluded in the report and order that given that the  
17 record contained conflicting views about matters  
18 relating to outreach, that we really needed to seek  
19 additional comments on that. And, therefore, we  
20 pushed the issue to the NPRM.

21 And so in the order, in the NPRM, we asked  
22 for data and other information on what types of

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1 outreach mechanisms may work, who can play what role  
2 in outreach? For example, you have the states, you  
3 have the providers, you have the Commission. And  
4 then, of course you also have the important point of  
5 who would fund the outreach, and what should the role  
6 of the federal funding be for that.

7 I should note and remind us all about  
8 outreach, that the rules do already require that the  
9 providers take outreach steps to inform and educate  
10 the public about TRS, and that some of these costs are  
11 submitted by the providers in taking into account and  
12 determining the reimbursement rates, the permanent  
13 reimbursement rates. But I think we're all aware that  
14 there's been some consensus for several years now,  
15 that whatever outreach is out there has not been  
16 enough, and there's been some interest in really  
17 beefing that up, and even having some kind of national  
18 program. So that is back on the table, and again, we  
19 note that we're specifically asking you guys, the  
20 committee, to address this issue and make  
21 recommendations to the Commission. And my  
22 understanding, of course, now that there's already a

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1 working group on this, and that's going to happen. So  
2 we're happy about that, and excited about that, and  
3 really do look forward to hearing your recommendations  
4 on this very important issue, and a difficult one in  
5 terms of legal and other matters in terms of the role  
6 of the FCC, and the Interstate TRS Fund, et cetera.

7 Let me note also with regard to this order  
8 that shortly it's going to be published in the Federal  
9 Register, and then the public will be able to file  
10 comments within 30 days, and then there'll be a reply  
11 comment period, so we're anxious to obviously have all  
12 interested parties weigh-in on all of these issues.  
13 Some of these issues, again like the emergency  
14 situation and the status of TRS centers, as well as  
15 outreach, as well as the certification process for  
16 providers seeking money from the Interstate Fund.  
17 They're really very important issues, are new issues,  
18 and we're anxious and interested to hear what people  
19 have to say about those.

20 Very briefly, let me turn to the June 30th  
21 order on the TRS Cost Recovery. And although that  
22 order, like all of our orders, really speaks for

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1       itself, what I really thought I'd mention is the  
2       process that goes into coming up with these  
3       reimbursement rates for payments out of the Interstate  
4       TRS Fund.

5               On May 1st of each year, NECA, which is  
6       the Interstate TRS Fund Administrator, they file a  
7       proposal with the Commission, which sets forth their  
8       proposed reimbursement rates for the various services.

9       These rates are based on cost and usage data that  
10      they get from the providers. They basically crunch  
11      the numbers, and come up with proposed rates.

12             Our rules require that by June 30th, which  
13      is, again if you're a math major, which I really  
14      should go back to school probably, on that is only  
15      about a 60 day window for the Commission to approve or  
16      modify these proposed rates. And the regs  
17      specifically say that the Commission is to approve or  
18      modify these rates, and our rules also make clear that  
19      the rates are intended to compensate the providers for  
20      the reasonable and fair costs of providing TRS. So  
21      accordingly, we review the submission and other data  
22      that we may obtain from providers, and also the same

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1 data used by NECA. And in this case, we found that  
2 some adjustments were in order, so we adjusted the  
3 proposed rate, at least with regard to VRS.

4 And I think with regard to these rates,  
5 it's important to remember that this is really an  
6 annual exercise, that setting these rates is a  
7 process, that the rates necessarily do and have  
8 changed from year to year. And that the end gain in  
9 this for all of us is to arrive at rates that  
10 obviously reflect the reasonable and fair cost of  
11 providing these important services.

12 So in closing, I'd like to thank you for  
13 the opportunity to bring you up-to- date on these  
14 orders, and thank you for all your good works, both  
15 past, present and future on behalf of all consumers,  
16 and particularly, on behalf of those who rely on our  
17 TRS services. So with that, thank you, and I don't  
18 know if there's time for --

19 CHAIR ROOKER: We only have a couple of  
20 minutes, but I can tell you, you will definitely be  
21 hearing from us. Do we have questions? Does anyone  
22 have questions for him? Yes, Claude.

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1 MR. STOUT: (Off mic.) Okay. I'll go back  
2 and repeat. I'll go back in reverse now. Now I'll  
3 hit the play button. Hello, Tom. We, as consumers,  
4 want to thank you for the June 17th decision. We  
5 applaud the FCC for moving the TRS functionality ahead  
6 for us.

7 We, as consumers though, do have some  
8 concerns with the June 30th decision; specifically on  
9 the VRS rates. We, as consumers, don't have all of  
10 our facts together, and we haven't made a final  
11 decision ourselves. Am I right in saying that the FCC  
12 did receive recommendations from NECA to approve the  
13 VRS reimbursement at like \$14, but the FCC decided  
14 against that and decided on \$7.75. But you made that  
15 decision based on NECA and other data. You mentioned  
16 other data, and so I'm curious what the other data is  
17 that you're referring to, other than the  
18 recommendations from NECA that you based your  
19 decisions on for reimbursement rates for the VRS  
20 system.

21 MR. CHANDLER: Right. You're correct that  
22 NECA's May 1st submission, based on their calculations

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1 had a rate of 14 some odd dollars, 14 dollars and  
2 change for VRS. The information we looked at was not  
3 really different information. We got the same  
4 underlying cost data that they did, and also, it  
5 requested some other supplemental cost data from the  
6 various providers.

7 We looked at that cost data, and made some  
8 adjustments to various parts of it because we - this  
9 is all spelled out in the order - because we thought  
10 that there were some numbers either that didn't make  
11 sense, or that might have been improper, so we  
12 excluded certain numbers. But we did the same kind of  
13 math starting with the same data. We just adjusted it  
14 because we thought various parts, it wasn't correct or  
15 wasn't clear. And as we've noted, set out an interim  
16 rate at this point because we do plan to keep  
17 revisiting the data, and look at it further.

18 Part of it was, of course, the 60-day  
19 window didn't give us a lot of time. NECA was very  
20 helpful in trying to get us the data, as were the  
21 providers. It just was a very short window. And I  
22 think as a footnote, and the order makes clear, we

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1 invited -- since the providers were understandably  
2 interested in keeping their cost data confidential, we  
3 had to address the data and the numbers in the  
4 aggregate in the order. And as the footnote says,  
5 have invited the providers to come in and talk to us  
6 individually if they want to see what adjustments  
7 we've made on an interim to their cost data. Some of  
8 them have taken us up on that, and we're in the  
9 process of having those meetings over the next week or  
10 two.

11 CHAIR ROOKER: Tom, thank you so much for  
12 giving us -- this subject is, of course, something  
13 that we're going to be discussing and working on, so  
14 thank you ever so much for being here.

15 MR. CHANDLER: Thank you.

16 CHAIR ROOKER: Our next speaker is  
17 responding to a request by the consumer and outreach  
18 working group. They wanted more information on the  
19 different kinds of outreach to under-served  
20 populations by the FCC. And, of course, what we're  
21 going to talk about today, Kris Monteith is the Deputy  
22 Bureau Chief of the CGB, and she's going to talk about

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1 outreach to Indian Country, but that's only one aspect  
2 that this committee is interested in in terms of  
3 outreach to under-served populations.

4 And then following that, while we don't  
5 have a working group on addressing Homeland Security  
6 and people with disabilities, it is a subject that was  
7 discussed with the prior committee just after 9/11,  
8 and it may be an area where we want to make  
9 recommendations. I think we'll have to see about  
10 that, so Kris will follow -- that will be her second  
11 discussion.

12 Please join me in welcoming Kris Monteith.  
13 Kris, thank you.

14 MS. MONTEITH: Good morning. It's nice to  
15 see some old friends, and to meet new ones. And I  
16 realize -- thank you very much for that introduction,  
17 Shirley. I realize that I am the last speaker between  
18 you and lunch, so I will try and be brief, but  
19 hopefully informative.

20 On the Tribal Outreach, this is an  
21 activity that the Commission has had underway for a  
22 number of years. And we are involved in a very

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1 wide-ranging, comprehensive effort aimed at fulfilling  
2 the mandate that all Americans have access to quality  
3 affordable telecommunications services, including  
4 Americans that live on reservations, American Indians  
5 and Alaska Native Communities.

6 This effort which we have called our  
7 "Indian Telecommunications Initiative", takes several  
8 different forms. First, we sponsor regional workshops  
9 to provide How-To information on telecommunications  
10 services and infrastructure development.

11 In the past, we have had several big  
12 annual conferences to deal with telecommunications  
13 issues affecting Native Americans, and what we're  
14 doing with our regional workshops is trying to hold on  
15 a more frequent basis, a workshop that's smaller,  
16 perhaps, in scope, and specifically aimed at  
17 attracting folks within a particular region of the  
18 country. But hopefully, more hands-on and  
19 interactive, so we can really get down to the  
20 nitty-gritty of how to do this stuff.

21 Our regional workshops acknowledge that  
22 tribes are at different stages of economic

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1 development, and their experience is different and  
2 varies. One workshop that we're holding in the very  
3 near future, in fact, next Thursday and Friday, will  
4 be held in Reno, Nevada, and we're working in  
5 cooperation with the Washo Tribe of Nevada and  
6 California, to make sure that we address issues that  
7 are of concern in that region of the country.

8 We have a number of folks that will be  
9 coming in and speaking, and one of them is here today,  
10 Mr. Vernon James; we're delighted to have  
11 participating in that workshop, and I hope it will be  
12 very successful.

13 The second kind of activity that we engage  
14 in is attending and participating in conferences that  
15 are sponsored by other organizations, whether it be  
16 the National Congress of American Indians, Tribal Tech  
17 Workshops that are held by universities, on occasion.

18 We have participated and look forward to  
19 participating with the Affiliated Tribes of Northwest  
20 Indians, really getting out there and going to  
21 conferences of others to try and interact, establish  
22 relationships, and get the message out.

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1           We participated also in the National  
2 Summit that was held last September in Phoenix,  
3 Arizona, which was a very large conference sponsored  
4 by the Department of Interior. And DOI had a number  
5 of federal agencies that came, and worked with folks  
6 that were in attendance at that conference to address  
7 different programs that the federal agencies had  
8 underway.

9           We also meet individually with tribes on a  
10 very, you know, one-on-one, person-to-person type of  
11 basis. Recently, we met with members of the Tribal  
12 Council of the Standing Rock Sioux Tribe, to discuss  
13 that tribe's efforts to increase the quality of  
14 service on their reservation. We also toured the San  
15 Carlos Apache Telecommunications facilities, and the  
16 Gila River Telecommunications facilities to learn more  
17 about the challenges that tribally-owned telcos face.

18          And those kinds of tours are just incredible for us  
19 to take part in. They're such a valuable learning  
20 experience for us, and we very much appreciate the  
21 hospitality that was offered to us on those tours,  
22 very much.

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1           The fourth kind of activity that we engage  
2 in is distributing educational materials to Native  
3 American tribes and organizations. For example, we've  
4 done direct mailings on our enhanced lifeline and  
5 linkup programs. We put together publications that  
6 are very specifically targeted at the Native American  
7 population. One we have called, "Expanding  
8 Telecommunications Access in Indian Country." Those  
9 kinds of direct outreach types of activities are  
10 another activity that we have ongoing.

11           So in a nutshell, that just describes some  
12 of the types of activities that we engage in as part  
13 of our outreach plans and strategy in this particular  
14 area. And I'm happy to answer any questions folks may  
15 have, or wrap it up and --

16           CHAIR ROOKER: Do you want to just go  
17 ahead and talk about Homeland Security?

18           MS. MONTEITH: Sure.

19           CHAIR ROOKER: And then we can leave the  
20 questions for the end, if that's okay with you.

21           MS. MONTEITH: That's just fine.

22           CHAIR ROOKER: Okay.

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1 MS. MONTEITH: I'll change hats and put on  
2 my Homeland Security hat. The Commission's Homeland  
3 Security Policy Council was established in November of  
4 2001 in the aftermath of the September 11th events.  
5 The Council's mission is three-fold, it's to protect,  
6 it's to restore, and to ensure effective  
7 communications during a national emergency, whether it  
8 be a national disaster type of emergency, or a  
9 terrorist attack, or other threat.

10 The Homeland Security Policy Council  
11 comprises senior staff from the Commission's bureaus  
12 and offices. The Director is the FCC Chief of Staff,  
13 Marsha McBride. Each of the bureaus has a senior  
14 staff representative, and I'm the representative from  
15 the Consumer and Governmental Affairs Bureau. The  
16 HSPC's work complements the work of the Commission's  
17 bureaus and offices, and the Federal Advisory  
18 Committees that the FCC oversees. With respect to  
19 Federal Advisory Committees that are sort of  
20 specifically targeted at homeland security-related  
21 matters, we have two that we have chartered or  
22 rechartered in recent years. Two principal Federal

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1 Advisory Committees. The first is the Network  
2 Reliability and Interoperability Council, NRIC, and  
3 the second is the Media Security and Reliability  
4 Council. And these committees work to ensure the  
5 sustainability of public telecommunications networks,  
6 and to sustain and secure broadcast and multi-channel  
7 video programming distribution facilities and services  
8 respectively. NREC is focused on Network Security,  
9 and MSREC is focused on Media Security.

10 The HSPC also works to coordinate federal  
11 policy, the FCC's Policy Initiatives. We worked on a  
12 broad range of issues, such as promoting E-911,  
13 promoting wireless priority access, promoting  
14 telecommunications service priority programs,  
15 developing sound spectrum policy, promoting public  
16 safety interoperability, and promoting the security of  
17 satellites and international telecommunication  
18 systems.

19 Yesterday, Marsha McBride announced that  
20 the Commission has undertaken a couple of new programs  
21 with respect to Homeland Security. Specifically, we  
22 announced the creation of an Office of Homeland

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1 Security within the Commission's Enforcement Bureau.  
2 The new office will provide consolidated support for  
3 the Homeland Security and Emergency Preparedness  
4 responsibilities, and coordinate again with our two  
5 federal advisory committees that are devoted to  
6 Homeland Security types of issues, and coordinate with  
7 the offices and bureaus, as well as the Homeland  
8 Security Policy Council. Jim Daley was named as the  
9 Director of that new office.

10 The second thing that Marsha did yesterday  
11 and which has been released now publicly, it's  
12 available on our web, is she released, or the  
13 Commission released a Homeland Security Action Plan.  
14 And as part of that action plan, the Commission  
15 identified a number of key objectives or priorities  
16 that together the new office and the Homeland Security  
17 Policy Council will focus on.

18 The action items were broadly classified  
19 under two main objectives. The first objective is to  
20 strengthen measures for protecting the nation's  
21 communications infrastructure, and facilitate rapid  
22 service restoration after disruption. And the second

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1 objective is to promote access to effective  
2 communication services by Public Safety, Public  
3 Health, and Emergency Personnel.

4 That second objective included an action  
5 item that specifically involves this committee, and  
6 I'd like to just briefly, if I could, read the action  
7 item to you. It states that, "The Commission shall  
8 convene a summit of stakeholders, including  
9 representatives from the Disabilities Rights  
10 organizations, telecommunications relay centers, the  
11 Commission's Consumer Advisory Committee, and local  
12 and state government advisory committee, and other  
13 governmental entities to identify specific  
14 communications issues that confront individuals with  
15 disabilities, particularly the hard of hearing and  
16 deaf individuals during national emergencies or  
17 terrorist attacks, and develop a strategy for  
18 resolving these issues where possible."

19 This is an issue that was brought to the  
20 Commission's attention, or has been brought to the  
21 Commission's attention on a number of occasions by  
22 different groups really. You know, Claude has come in

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1 and talked to us about this issue. Folks from the  
2 Maryland Relay Center and the Virginia Relay Center  
3 have come in and talked to us, and so it was something  
4 that we thought was very appropriate for inclusion in  
5 the newly released action plan.

6 We look forward to discussing with you,  
7 Shirley, and hopefully you can bring it to the  
8 committee's attention, just how we might go about  
9 working on this action item and bringing it to a  
10 successful resolution. I think it's a very important  
11 issue, and I might note that it was the first action  
12 item listed under that second objective, so I think in  
13 the eyes of the Commission it's a very important  
14 issue, as well.

15 Then I think a couple of other sort of  
16 Homeland Security related items you've already been  
17 briefed on. Tom Chandler just spoke to you about the  
18 TRS, NPRM and how that tees up the issue of TRS  
19 Centers inclusion in the TSP Program, how we might  
20 address that issue. And then yesterday, I just would  
21 note too that we adopted the wireless HAC report and  
22 order, which takes steps to make sure that there's

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1 compatibility between digital wireless phones and  
2 those wearing hearing aids, so I think that was an  
3 important step too in making sure that during times of  
4 national emergencies, we don't forget those that have  
5 disabilities.

6 So with that said, I'll make myself  
7 available for questions on these issues, or any  
8 others. I hear my name was mentioned earlier this  
9 morning.

10 CHAIR ROOKER: Yes, we have questions.  
11 Joy.

12 MS. RAGSDALE: Good morning. Joy Ragsdale  
13 representing NASUCA.

14 MS. MONTEITH: Hi, Joy.

15 MS. RAGSDALE: How are you? Just a few  
16 questions in regards to your outreach activities and  
17 your personal visits. Do you have any reports that  
18 detail the specific concerns of the various tribal  
19 members you met with that you can disseminate? We  
20 felt we could not make recommendations without knowing  
21 the efforts the FCC had already made.

22 MS. MONTEITH: We have not put together a

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1 comprehensive report per se, but we do have a number  
2 of outreach types of materials that talk about, you  
3 know, the various activities that we have undertaken.

4 I know our website, we're trying to include materials  
5 on our website too, about either past or future  
6 outreach activities. But I like the idea of trying to  
7 do something perhaps a little bit more detailed.

8 Sometimes we're talking to individual  
9 tribes on, you know, a very specific basis, and I do  
10 think that we would want to talk to them about sharing  
11 information. Not that it's, you know, a secret, but  
12 it's not -- they aren't open to the public types of  
13 meetings sometimes. But I think it's a great idea of  
14 trying to cross-pollenate and share what activities  
15 we're undertaking, what the experiences are so we can  
16 all benefit from them.

17 MS. RAGSDALE: Would it be possible for  
18 the individual members of the Consumer Outreach  
19 Organization - I believe also Susan Mazrui wanted to  
20 -- in modernizing the FCC's sub-working group that  
21 we've developed to address the Internet access that  
22 the tribal groups have in terms of public

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1 participation. Is it possible that we can meet on an  
2 individual basis?

3 MS. MONTEITH: Yeah. We'd be delighted to  
4 sit down with you and brief you. And as I said, I do  
5 think it's a good idea. We can look at going back  
6 into documents and things that we have done in the  
7 past, to the extent they're not fully documented in a  
8 public way, and make that information available to  
9 you.

10 CHAIR ROOKER: Vernon.

11 MR. JAMES: Good morning. Vernon James  
12 with the San Carlos Apache Telecommunications Utility,  
13 Incorporated. A mouthful, like I said before, we call  
14 it SCATCOM.

15 Just to comment, not specifically  
16 questions, but comments. During -- well, since the  
17 last meeting, I've thought about the working groups  
18 and some of the questions that were going back and  
19 forth, and some of the comments being made. I saw the  
20 need to address those issues and concerns specifically  
21 as it relates to the Native American communities,  
22 those entities that have special concerns, special

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1 conditions that need to be addressed.

2 The working group with broadband, for  
3 example, could not really focus in on conditions that  
4 affect Native Americans, as well as rural America,  
5 because of geographical concerns, because of  
6 geo-political jurisdictions, because of the high cost  
7 of infrastructure build-out, just a number of factors  
8 that relate to providing basic telecommunication  
9 services in those areas. And as a result, I would  
10 like to recommend to this group that a working group  
11 specifically on rural America and Native Americans be  
12 formulated to address these concerns. Or if that is  
13 impossible because there is an existing committee,  
14 that a subcommittee be formulated to address this  
15 issue.

16 CHAIR ROOKER: Excellent comment, Vernon.  
17 I'll have to check and see what we have in terms of  
18 -- we have a lot of working groups, and we'll talk  
19 about that. We'll discuss it with you. Thank you  
20 very much, very pertinent comments.

21 Do we have other questions? Yes, Joy.  
22 Joy chairs the Consumer Outreach Complaints, Education

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1 and Participation Working Group.

2 MS. RAGSDALE: Thank you. Just a question  
3 on the Homeland Security. Are there consumer fact  
4 sheets available that indicates what telephone or  
5 telecommunications services will not be available to  
6 the consumer on an emergency basis. The day of the  
7 9/11 tragedy, of course, all cell phones were  
8 inactive, and families were trying to reach -- and we  
9 only new our cell phone would not be available because  
10 of people with military experience. But on a general  
11 background, is that information known to the public?

12 MS. MONTEITH: We do have a fact sheet  
13 that's called "Communicating During Emergencies", and  
14 it does cover really very general, but very important  
15 information about how to communicate during an  
16 emergency, and what some of the reliability issues are  
17 during an emergency. So it's very tip-oriented, you  
18 know, trying to give consumers tips on what to do in  
19 an emergency, and I'm happy to make that available to  
20 you.

21 CHAIR ROOKER: Maybe we can make that  
22 available to the entire committee.

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1 MS. MONTEITH: Yes.

2 CHAIR ROOKER: We could do that if we're  
3 doing a mailing, or is it on-line? Can we transmit it  
4 electronically?

5 MS. MONTEITH: It is on-line. Yes.

6 CHAIR ROOKER: Okay.

7 MS. MONTEITH: We also put together a  
8 package of information, and it -- we just did a,  
9 unfortunately, somewhat of a limited publication for  
10 yesterday's meeting, but we have put together a  
11 package of Homeland Security related materials that we  
12 also are happy to make available to this committee.

13 CHAIR ROOKER: Do we have other questions  
14 for Kris? Yes, Brenda.

15 MS. FREY: Brenda Kelly Frey, representing  
16 the Relay. Kris, first of all, I want to thank you  
17 very much for taking your time to meet with both  
18 Clayton Vellen and myself, and Pam Stewart on this  
19 very important issue regarding Homeland Security and  
20 how it applies to TRS. I just wanted to assure you  
21 that we're there ready, willing and able to roll up  
22 our sleeves and assist in any way we possibly can, and

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1 that our working group will be addressing this issue  
2 shortly with you additionally. Okay?

3 MS. MONTEITH: That's great. Thank you so  
4 much.

5 MS. FREY: Thank you.

6 CHAIR ROOKER: Do we have any other  
7 questions? Well, Kris, thank you so much for being  
8 with us and bringing us a very informative discussion  
9 this morning. It's very important subjects for us.  
10 Thank you very, very much.

11 MS. MONTEITH: Absolutely. Thank you.

12 CHAIR ROOKER: We are very pleased that  
13 Commissioner Martin has joined us. Commissioner  
14 Martin, welcome. It's nice to see you. The  
15 Commission has been so busy that we're honored to have  
16 so many people coming in and visiting with us this  
17 morning. You all have been really working.

18 COMMISSIONER MARTIN: Yes, we have been  
19 very busy, and I just wanted to come by and thank you  
20 all for all of your work, and say I'm sorry that I  
21 missed getting the chance to come by and see you all  
22 at your first meeting, your last meeting, and wanted

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1 to make sure I had the chance to introduce myself,  
2 although most of you, or a lot of you at least I've  
3 met before. And tell you that how important I think  
4 the work is, and how I hope that we'll be able to  
5 continue to work together, and I'm anxious to get to  
6 spend a little more time with you at some time in the  
7 future at some of your other meetings. So I just  
8 wanted to make sure I had the chance to come by and  
9 say hi.

10 CHAIR ROOKER: Well, thank you so much.  
11 We appreciate that. You'll be hearing from all of us,  
12 I'm sure.

13 COMMISSIONER MARTIN: I'm sure. I'm  
14 confident. Okay. I mean, I'm happy to actually also  
15 -- if anybody has any particular questions about  
16 anything, I'm happy to try to answer, but I'm sure  
17 you'll get better answers from some of the other folks  
18 who are here with some of the other expertise. But I'  
19 happy to engage in a dialogue, and you guys were  
20 getting ready to take a break, as well, so I was going  
21 to try to interact with you, and see if you guys  
22 wanted to talk about a few issues that way, as well.

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1 CHAIR ROOKER: Okay. Well, does anyone  
2 have any questions? We have a few minutes. Anyone  
3 have questions for Commissioner Martin? They're  
4 hungry.

5 COMMISSIONER MARTIN: I don't blame them.  
6 Okay.

7 CHAIR ROOKER: Well, thank you very, very  
8 much. We really appreciate your taking the time to  
9 come in. We'll be looking forward to talk with you  
10 again. Thank you.

11 COMMISSIONER MARTIN: Thank you.

12 CHAIR ROOKER: You're welcome to join us  
13 for lunch. It promises to be delicious.

14 Just a couple of things that I have to say  
15 to you. I really would like to say that this has been  
16 a really extraordinary morning. And thank you again,  
17 Scott, for all the work in putting this together, and  
18 for all the people here who have given their time to  
19 us this morning.

20 We're going to just have until noon. I  
21 want you back at the table. You can pick up your  
22 lunch, because we're going to have a former committee

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1 member here to make a presentation on accessible  
2 wireless phones for the blind. Paul Schroeder, who's  
3 really been on the cutting edge of this technology is  
4 going to be here at 12:00. I don't think you're going  
5 to want to miss this presentation, so I encourage you  
6 very strongly be back at the table, or you'll have me  
7 yelling at you. So anyway, let's take our lunch.

8 For those of you who are members of the  
9 public and not a member of the committee, I'll have to  
10 let Scott tell you where you can go to find lunch.

11 MR. MARSHALL: Thank you, Shirley. We  
12 have food service available on the courtyard level of  
13 our building, which is one level up from this floor.  
14 Enjoy.

15 CHAIR ROOKER: Okay. Thank you. We'll  
16 see you back here at noon.

17 (Whereupon, the proceedings in the  
18 above-entitled matter went off the record at 11:44  
19 a.m. and went back on the record at 12:10 p.m.)

20 CHAIR ROOKER: Paul Schroeder is with the  
21 American Foundation for the Blind, and he was a valued  
22 member of our committee for two years, and we're so

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1 pleased to welcome him back. Paul, thank you for  
2 being here.

3 MR. SCHROEDER: Hi. Thanks so much for  
4 the invitation to come back. It's nice to be back  
5 here and have even less to do than I did when I was  
6 here before as a member of the committee. Thank you  
7 very much, nice to be able to present to you.

8 I want to talk a little bit about the  
9 issue of cell phones for people who are blind or  
10 visually impaired. I actually do have something I  
11 want to demonstrate. It's essential when you  
12 demonstrate technology that it be relatively unstable  
13 and relatively new in your hands, and so you're not  
14 really familiar with it, so it makes the demonstration  
15 kind of fun because you never know what's going to  
16 happen. It's a lot like getting married or something.

17 And this is my first time with the cell phone, and  
18 I've only been married once, so there you go.

19 I'm not sure what that says, but in short,  
20 we have from the blindness community been very  
21 frustrated at a couple of things. And I'm not going  
22 to spend a lot of time - in fact, I won't spend any

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1 time doing any finger pointing, but I do want you to  
2 understand the level of frustration among people who  
3 are blind or visually impaired with the lack of  
4 discernible. And I'm somewhat careful in saying  
5 discernible progress, because people -- you know,  
6 there are things happening below the surface and  
7 behind the scenes, but the lack of discernible  
8 progress in accessible cell phones that meet the needs  
9 of people who are blind or visually impaired.

10 I would argue that if one were to go to  
11 almost any -- well, any service provider store and any  
12 other consumer product store to buy a cell phone, and  
13 ask about something basic like can I gain access  
14 independently to the menu systems, can I gain access  
15 independently to setting up my own phone book, you  
16 would be told no if you are blind or visually  
17 impaired, because all of those things depend to one  
18 degree or another on being able to see the screen of  
19 the phone.

20 I'm going to assume that virtually  
21 everyone, if not everyone here has a cell phone. I'm  
22 going to assume that with a couple of exceptions of

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1 folks in the audience, you have never operated your  
2 cell phone without the screen working, or never just  
3 for fun covered up your screen to see what you could  
4 do with the cell phone. So tell you what, after the  
5 presentation, why don't you try that, maybe duct tape  
6 over the screen of your phone, but put something under  
7 the duct tape so you don't tear your screen off when  
8 you take the tape off.

9 I know you just talked about Homeland  
10 Security, so duct tape seems like an appropriate  
11 segue. Duct tape a business card over the screen of  
12 your phone and then trying running it and see how you  
13 do. That's the mode in which people who are blind or  
14 visually impaired are now operating.

15 What I often tell my friends and  
16 colleagues is the words that we've gotten to know the  
17 best when it comes to the cell phone world are the  
18 three words "with sighted assistance", because it  
19 almost always the case that except for the simple act  
20 of turning on and off, and maybe dialing a phone  
21 number, virtually nothing can be performed on a cell  
22 phone by a blind person, except with sighted

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1 assistance.

2 To try to figure out what's going on in  
3 this situation and why we haven't seen the progress  
4 that we thought we might since the rules came out in  
5 late '99, and became effective, I gather, as of  
6 January 2000, so we've had three and a half years. We  
7 decided to take a look at cell phones in more detail,  
8 try to look at the platforms that are used, try to  
9 discover the chip sets that are used, to look at  
10 things like battery capacity to the extent that we  
11 could understand all of these items. Now you have to  
12 be aware of the fact that we are not cell phone  
13 engineers at the American Foundation for the Blind,  
14 and we are not individuals who are particularly expert  
15 in the operating systems of cell phones, so I don't  
16 want to even pretend out the outset that this is an  
17 expertise that we have.

18 We did employ a consultant who's with us  
19 today, and if I run into trouble, it's the job of the  
20 consultants to bail me out, among other things. So  
21 Caesar Equisadi, who is with us today, has done a  
22 marvelous job of trying to help us understand better

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1 what's happening inside of a cell phone, and why we  
2 maybe haven't seen particular progress in  
3 accessibility. Or turn it around, to understand  
4 where, in fact, we might be able to help influence and  
5 drive accessibility forward by working more closely  
6 with the cell phone industry.

7 We began this effort last fall with  
8 Caesar. And again, I would say that this really came  
9 out of frustration, because what we heard a lot from  
10 cell phone manufacturers, and to one degree or  
11 another, from many cell phone service providers, is  
12 that the kinds of things that you need as blind or  
13 visually impaired people simply can't be done yet.  
14 And we didn't think that sat very well with the good  
15 old, you know, efforts of industry that usually like  
16 to solve problems rather than throw them out. So we  
17 decided maybe we ought to try to learn a little bit  
18 more ourselves so that we can have a more intelligent  
19 conversation about exactly what can be done, or why it  
20 can't be done.

21 What is it that blind folks want? I have  
22 brought copies of an article with me. I've asked if

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1 we could make a couple of additional print copies,  
2 because the committee got a little larger than I  
3 thought it was, and so we're going to have those  
4 copies available afterward.

5 This is an article that appeared in this  
6 current issue of "Access World", a magazine published  
7 by the American Foundation for the Blind. And it is a  
8 review of three cell phones. It's not critical why we  
9 picked those particular three cell phones. But what  
10 is interesting, I think, is to look through the  
11 article and get a sense of the kinds of needs that we  
12 were reviewing these cell phones for, whether they met  
13 particular needs of blind users. And also, to get a  
14 sense of where the problems seem to be. We also  
15 include in that article a bit of summary from a  
16 previous article on another cell phone from a previous  
17 edition of "Access World."

18 The kinds of things that people who are  
19 blind want, I think are not particularly unique.  
20 They're exactly what, of course, anyone would want.  
21 The ability to be able to actually use the phone.  
22 Well, that seems somewhat elemental, but that is, in

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1 fact, what we want. Well, how do we spec out what  
2 that actually means?

3 First of all, of course, that means we  
4 have to be able to discern principally by touch, but  
5 also for those of us with some useable vision, it's  
6 helpful to have visual cues. We have to discern what  
7 key is which, is which key is what. In other words,  
8 we have to be able to find the keys on the phone. We  
9 have to be able to distinguish them from each other,  
10 and have some idea of their function.

11 And as you all know, if you reviewed at  
12 all the rules that implement Section 255, and the  
13 Accessibility Requirements that were incorporated in  
14 those rules from the Access Board, there is a  
15 requirement that keys be tactfully identifiable.

16 Unfortunately, we have found that the  
17 state-of-the-art is mixed in that regard. And to some  
18 degree, the state-of-the-art has actually gotten worse  
19 in terms of keys being identifiable. So along with  
20 duct taping a card over your screen, the other thing  
21 I'd suggest is that you hold your phone behind your  
22 back and try to find which key is which, and see if

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1 you can distinguish them. I suspect that -- now for  
2 the blind folks you might actually do this because  
3 you've already probably optimized your choices of cell  
4 phones. But I'm guessing you sighted folks are going  
5 to be kind of lost with many of your phones because  
6 the keys have gotten to be very close together.  
7 They've gotten to be very flat. Somebody described  
8 them almost like terra cotta tiles or something. I  
9 imagine they look good, but the functionality has  
10 declined some.

11 The second principal thing, of course, is  
12 we need to be able to get the information off of the  
13 screen. Cell phones are obviously very screen  
14 dependent, very visual display dependent in terms of  
15 their functions, and so it's important for people who  
16 are blind to be able to know what's on the screen.

17 Obviously, there are two things that are  
18 important to do. The first and principal one is to  
19 make sure that that visual information is available in  
20 another mode, the most obvious and really the only  
21 workable one for the moment is an auditory mode. In  
22 other words, the information on the screen has to be

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1 able to be spoken by the phone, as well, so that a  
2 blind person can navigate it.

3 The other access point to cover, of  
4 course, with the screen is that the visual display be  
5 as customizable as possible for somebody with some  
6 usable vision so that, in fact they can rearrange  
7 information on the screen, make certain words and  
8 icons larger so that they can, in fact, have the most  
9 opportunity to see that screen with its limited space.

10 And we recognize that cell phone screens are very  
11 limited. Those would be the principal items.

12 Now those sound simple enough, but they  
13 have proven to be extraordinarily difficult. I've  
14 already gone on a little bit about the key design, and  
15 it seems to me that we're -- what we thought was  
16 relatively straightforward apparently is not as  
17 straightforward as we thought, or we have not been  
18 able to have the right kind of dialogue with industry  
19 on key design. So hopefully, that's something that  
20 can happen.

21 One of the elements, as you know, is to  
22 have a nib on the center of the five key. It's a nice

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1 orientation device to the key middle of your phone  
2 dial, if you will. And even that has proven to be  
3 somewhat challenging as we find phones. I bet if you  
4 look at your phone, many of you will have nibs around  
5 the key. Some of you will have a nib on the key but  
6 it's on the corner of the key, so it might even be  
7 hard to tell which key it actually is associated with.

8 And then in a couple of instances, we're actually  
9 familiar with companies that have painted nibs on  
10 their key, which I have to at least give an award for  
11 creativity, if not for functionality. So hopefully,  
12 we'll start to see some improvement in those areas, as  
13 well.

14 And it is interesting, because as I start  
15 to talk to sighted people about this, many times  
16 sighted folks have the same gripes, but they don't  
17 recognize that they have any opportunity to really do  
18 anything about it. They don't like their key design  
19 that much either, because they find it very difficult  
20 to dial their phone when they can't look at it, even  
21 though they are in instances where they're not  
22 supposed to be looking at their phone.

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1           Okay. As for the screen information, how  
2 to get that out in audio form has proven to be a bit  
3 of a challenge, as well. We've had some discussions  
4 with folks in the industry about the right approach to  
5 do that, and for us, from our standpoint, the only way  
6 to really do that for the foreseeable future is  
7 through synthetic text to speech. Now this is a type  
8 of access that's been operating in the computer that  
9 blind people have been using to access computers for a  
10 long time. And I think for a while, the cell phone  
11 industry argued - it may be right, it may be wrong, I  
12 don't know - that, in fact, the phones -- the phones,  
13 of course, are not computers. That's true, but they  
14 do function in many ways, and in fact are beginning to  
15 look increasingly inside like computers in the way the  
16 chipsets are structured, and the way there's operating  
17 systems on the phone. So for a while, the industry  
18 argued that text speech simply couldn't be  
19 accommodated, both for battery strength reasons and  
20 for memory capacity reasons, and for reasons having to  
21 do with the way the phone interface is actually  
22 designed.

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1                   That may or may not be true, but certainly  
2 over the last year what we have discovered is that's  
3 become less true, as we've begun to examine phones and  
4 realize a couple of -- three things really that are  
5 key. One is that the memory has expanded greatly, so  
6 there's a lot more capacity on even the lower end cell  
7 phones. The second thing is, phones are incorporating  
8 operating systems, so there's much more management  
9 capability within the phone for the software that  
10 needs to run. And, obviously, one of the reasons for  
11 this is that there's a strong interest in having  
12 downloadable applications on phones. The third thing  
13 is that the text-to-speech engines that we would need  
14 in order to provide access through synthetic speech to  
15 the text on a screen have gotten to be smaller in  
16 terms of their footprint and their demands on memory.

17                   And so all of those things combined have led us to  
18 the conclusion that certainly we now should be able to  
19 have a much better dialogue with industry about how to  
20 bring accessibility into the marketplace.

21                   In the process of doing some of this  
22 research, we discovered a couple of things. One is,

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1 we discovered that there is a phone in Japan that  
2 actually has text-to-speech, interestingly enough  
3 available, but the Japanese do not have a law that  
4 requires accessibility, so we thought this was kind of  
5 an interesting thing to discover.

6 We then found shortly thereafter, that  
7 there was a couple of things happening in Europe with  
8 respect to text-to-speech. One is in the high end PDA  
9 and cell phone area where software has now been  
10 successfully loaded, and is now being sold and  
11 distributed, in fact, here in the U.S., as well as in  
12 Europe on a high end PDA-type cell phone with software  
13 that makes the phone talk.

14 We also discovered though that there was a  
15 company in Europe making software available on lower  
16 capacity phones, or phones that are not PDA and cell  
17 phones together. And that, in fact, they were taking  
18 advantage of exactly the things I talked about, the  
19 increased memory on the phone, the operating systems  
20 of the phone, and loading this relatively small  
21 footprint from text-to-speech software.

22 That's the phone that we actually have

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1 here. This is a Nokia 3650 phone. I'm not commending  
2 this phone, certainly not for blind folks. It has a  
3 really funky dial. The buttons are in a circle rather  
4 than in the old three by four grid that we've all  
5 gotten kind of used to. It's sort of harkening -- I  
6 guess it's sort of techno retro in that it's going  
7 back to the old dial phones, I guess, but it is cute,  
8 and it certainly does get attention when you pull this  
9 phone out and show it to people. This phone has a  
10 talking feature built in. I will acknowledge to you  
11 early-on that this is a demo that I have in my hand,  
12 and it's one that I managed to screw up last week, and  
13 have spent most of the last ten days trying to figure  
14 out how to get it reinvoked.

15 We apparently were able to get this back  
16 to working this morning, and so -- and it was in  
17 somebody else's hand who actually knows, you know,  
18 what they're doing as opposed to me, so now I've  
19 managed to blow it up again, so while we're talking  
20 I'm going to switch it off and bring it back up again.

21 I think it went into rest mode while we were  
22 chatting.

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1           The point of this phone is not to say that  
2 this is the answer. I'm assuming it's off now. The  
3 point of this phone is to suggest that, in fact,  
4 simply this; that we have found what we thought to be  
5 true is in fact true, that phones can now accommodate  
6 text-to-speech. They can, in fact, give access to a  
7 fairly robust range of functions with that  
8 text-to-speech.

9           Not everything is available on this phone  
10 in text-to-speech, but the majority of functions are.

11          The main menu is available, setting up contacts is  
12 available. Even Caller ID is available through  
13 text-to-speech on this phone.

14          The other point that I want to make is  
15 that this company, actually it's a combination of  
16 three entities in Europe that did this work, Code  
17 Factory, S- Vox and was funded in large part by the  
18 Spanish Organization of the Blind which owns the  
19 lottery in Spain so they're really rich. Yeah, it's a  
20 cool thing. I don't know how we missed out on that in  
21 this country. We kind of screwed up.

22          They funded Code Factory and S-Vox to sort

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1 of do this work, and it is relatively limited in the  
2 sense that there are only a few phones that it  
3 currently works on. This particular phone, for  
4 example, runs on the Symbion Platform. And it's, as I  
5 said, a Nokia phone. They do make this available on a  
6 Siemen's phone, and on I believe a Sony Erickson  
7 phone, as well.

8 The other point that I wanted to make  
9 though, was that this may have had -- this  
10 implementation may or may not have had cooperation  
11 from Nokia, for example. Obviously, they're aware of  
12 it, and it's not really important for today's  
13 discussion to talk about how much cooperation. The  
14 point really is to talk about the fact that there  
15 hasn't been enough cooperation in making sure that  
16 even if we go this third party route for  
17 accessibility, even if the right answer is to have  
18 third-party downloads for accessibility, that  
19 essentially reshape the phone - I'm going to hand this  
20 over to Jason to see if he can figure out why we're  
21 not coming up. Even if we hand that over to a third  
22 party there's got to be much more involvement from

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1 industry in ensuring that the software is stable, and  
2 ensuring that there is a sufficient level of quality  
3 for the interaction of the phone and the network.

4 It's, of course, in the industry's  
5 interest, service provider and manufacturers alike to  
6 make sure that that's the case, because obviously you  
7 don't want a phone, and industry doesn't want a phone  
8 in a customer's hands that is working only part of the  
9 time, or that is suspect to this level of instability  
10 that we found on this phone.

11 I will admit, or at least take  
12 responsibility for a lot of it. I tend to blow up any  
13 piece of technology that gets in my hands for very  
14 long so, you know, likely as not, I'm at least 90  
15 percent of the problem. But it is, in fact, true that  
16 we have found some instability within this software.  
17 It is also a fairly early piece of software.

18 I'm going to stop here, I think, and take  
19 some questions, and if there are any technical  
20 questions, I can certainly refer those over to Caesar.

21 I should also say that we are not aware yet of the  
22 full breadth of capabilities for other platforms and

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1 operating systems in the cell phone industry for  
2 adding text-to-speech. And then I want to reserve  
3 just a couple of minutes for closing comment.

4 CHAIR ROOKER: We have one question here.

5 MR. DUKE: Okay. This is Mike Duke. I  
6 saw your presentation on Wednesday in Pittsburgh, and  
7 for the rest of you, he said pretty much the same  
8 thing there he's saying here. And we are, indeed,  
9 very frustrated as folks who do not have access to the  
10 screen. And I'd like to point out that that  
11 encompasses more than just blindness, so you're  
12 looking at - for those of you in the industry - you're  
13 looking at additional markets beyond blindness when  
14 you make these things work.

15 Paul, has anything been done - given voice  
16 feedback is the best, and also the most complex, and  
17 most desirable option - but has anything been done  
18 with trying to have the menus emit beeps, different  
19 tones, different pitches from circuitry that's already  
20 in the phone. If I could get a menu to beep when I  
21 cross through its default mode, much as is done on  
22 some amateur radio equipment, that would greatly

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1 improve my access. It wouldn't necessarily let me  
2 know who was in memory channel 47, but it would still  
3 let me know where I am on the phone. Has anything  
4 been done in those regards?

5 MR. SCHROEDER: Thanks, Mike, for the  
6 questions, and we're trying to get the audio up on the  
7 phone so I can at least demonstrate a couple of the  
8 features, and walk it through.

9 MR. DUKE: And I have another when you  
10 deal with that.

11 MR. SCHROEDER: Okay. We have suggested  
12 that, as well; that, in fact, there could be a lot  
13 more done with creative use of auditory alerts than is  
14 currently the case. For the most part, auditory  
15 alerts now are used as a compliment to what's on the  
16 screen visually, so they're essentially a hey, look at  
17 the screen kind of an alert.

18 Now there are a couple of exceptions to  
19 that. For example, most companies have given you at  
20 least some different tones for power on and off, for  
21 example. And obviously, you can set some of those  
22 alerts to be more constructive from a blind person's

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1 standpoint, to give you some of what you're  
2 suggesting.

3 Some companies have gone the route of  
4 having the menus be stable so that, in fact, you know  
5 where you are in those menus, or give you that option  
6 to set them stable so that you can count functions.  
7 But, obviously, I would say that none of those are --  
8 those are helpful as sort of interim step. And for  
9 the last three years that might be fine, but it seems  
10 to me, if I can, you know, be a little -- express a  
11 little frustration for the moment here. Three years  
12 after passage of a rule that said, you know,  
13 information on the display should be available in  
14 another form, it seems to me we ought to have achieved  
15 something more than maybe trying to guess at what a  
16 tone might mean.

17 I'm going to hold this up to the  
18 microphone and see if I can get anything out of this  
19 phone. The audio connection isn't working to the PA.

20 (Phone demonstration.)

21 MR. SCHROEDER: Okay. I'm just kind of  
22 going through the menu system. I'm going to go into

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1 calls. Now this is the missed calls.

2 (Phone demonstration.)

3 MR. SCHROEDER: That's now starting to  
4 give you the numbers of the calls, and I haven't  
5 taught it to say my name right either. It is  
6 Schroeder and not Schroeder. I'm going to come out of  
7 the calls menu. Now it is actually possible to set up  
8 a contact. I did set up my own on here. However, as  
9 any of you know who've done this on your phone, it's  
10 extraordinarily tedious to enter, and I'm quite  
11 certain that I could not do it and talk to you at the  
12 same time, but I just want to go through. That's just  
13 a contact list.

14 Let me try a quick call on here to see if  
15 the ID - you want to get your phone up. I'm going to  
16 do a quick call to see if the ID feature is working.  
17 Actually, what was happening before is I couldn't get  
18 it to ring so, you know, that's a small problem with a  
19 phone, probably one that shouldn't be unstable. If it  
20 does ring, we should be able to get this to ID either  
21 the number or the contact information, if you set up a  
22 contact for that person.

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1           Now this gives you the choice to do what a  
2 blind person never gets to do, which is to blow off a  
3 call intentionally, knowing full well that it's not a  
4 number to have interrupt you. And again, I think all  
5 of us -- these are pretty basic kinds of functions  
6 that any cell phone user would want to be able to have  
7 access to. This is why we carry these things after  
8 all, of course, is they give us a connection to the  
9 world, and they give a world of connection to us,  
10 which is almost as good and as bad. And so, if you  
11 don't have the ability to manage your incoming calls,  
12 for example, and to be able to make some smart choices  
13 about what it's going to cost you, it's going to cost  
14 you money for one thing in terms of minutes used that  
15 you might not have wanted to. But it's also going to  
16 cost you time and frustration if you miss a call that  
17 you really needed in an important setting, or if you  
18 interrupt an important meeting for a call that you  
19 thought was coming and it's the wrong one. And so all  
20 of these things that I think folks who are sighted  
21 pretty much take for granted are things that blind  
22 people simply can't do on today's cell phones with

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1 some limited exceptions, and always with sighted  
2 assistance. Other questions?

3 CHAIR ROOKER: We have several questions  
4 over here, Paul. Susan Grant.

5 MS. GRANT: Hi. Susan Grant from the  
6 National Consumer's League. Paul, I agree with you  
7 that the kinds of things that you need and want are  
8 things that we all could use. And you're also not  
9 alone in blowing things up, because I think that a lot  
10 of us are technically challenged, and things need to  
11 be built to deal with that.

12 I guess my question is, if the rules  
13 aren't being followed, has anybody mounted a legal  
14 challenge to try to hold industry's feet to the fire  
15 here?

16 MR. SCHROEDER: There is. I won't say  
17 anything more about it other than to say there's a  
18 formal complaint pending here with the Commission on  
19 access to cell phones. And that's -- and actually,  
20 I'm glad you asked this question because I won't speak  
21 about the formal complaint, but I do want to address  
22 the fact that not only do we feel like industry has

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1 not met our needs, but in fact, we feel like the  
2 Commission has not met our needs, as well.

3 Prior to this formal complaint, several  
4 informal complaints were filed. Now I should tell you  
5 that not enough informal complaints have been filed.  
6 I don't know what it is, but blind people, or maybe  
7 all people with disabilities are just way too  
8 complacent, and we have allowed for far too long  
9 companies, and heard companies tell us well, it can't  
10 be done, and we haven't challenged it, and so --  
11 because we simply said oh, well, they're smart enough  
12 to know. They must be right. They wouldn't lie to me  
13 about that. And I'm not saying they're lying, but  
14 what I am saying is you have to challenge these things  
15 in order to find out where the truth really is. And,  
16 obviously, Section 255 gives us only access to the  
17 Commission in terms of a complaint structure. And if  
18 the Commission isn't going to vigorously follow-up on  
19 informal complaints, obviously, that leaves us in two  
20 places. One is to have to file formal complaints,  
21 which I don't think is a good idea. And is never  
22 something that we have counseled individuals to do.

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1           One individual, as I said, has filed one  
2 because she finally got fed up. The other option is,  
3 of course, for us to come to the Commission and really  
4 start making a major push to say take this more  
5 seriously. You guys have not -- this is something I  
6 think we are at a point of needing to say to the  
7 Commission, that you guys have not faced up to your  
8 responsibilities in addressing this issue.

9           Industry may well be correct in saying  
10 that none of this is achievable today, other than what  
11 I just showed you, in terms of what a third-party is  
12 able to do. I find that a little interesting, at  
13 least. I mean, so at least something is achievable  
14 today if a couple of little companies in Europe funded  
15 by a blindness organization in Spain, which may be  
16 rich, but it ain't as rich as some of the cell phone  
17 manufacturers, I don't think. If they can figure out  
18 a way to do it, it strikes me that there ought to be  
19 some answers that could be forthcoming from industry.

20          And I would hope that if we don't see some  
21 satisfaction fairly soon, that the Commission can and  
22 will take a much stronger action, at least in trying

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1 to get down to the bottom of answering is it  
2 achievable, what can be done today, and what can be  
3 put in the plans for near future to achieve  
4 accessibility? And one of the things I'd love to see  
5 this Committee come out with is an action statement to  
6 that effect, urging the Commission to take seriously  
7 this situation, and at least investigate the informal  
8 complaints that come in with some rigor and vigor to  
9 determine whether, in fact, there is more that  
10 industry can be doing to achieve accessibility.

11 CHAIR ROOKER: We have time for one brief  
12 question.

13 MR. HOROWITZ: Paul, I'm just wondering  
14 with all the things that have happened against getting  
15 this done. Let me get my microphone here. My name is  
16 David Horowitz. I'm with the Fight Back Foundation  
17 for Consumer Education.

18 I have always been of the thought, if  
19 there is a need for something, that the need can be  
20 met by the people sometimes who have that need. And  
21 have any of the groups that are supportive of you in  
22 the blind area come forward and said well, let's

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1 develop our own phone. Let's get a company and  
2 develop our own phone.

3 MR. SCHROEDER: Yeah. I mean, we did  
4 develop our own phone in Europe. We didn't do it  
5 here, but the folks in Europe developed -- I mean,  
6 this is a Nokia phone.

7 MR. HOROWITZ: I know.

8 MR. SCHROEDER: It had very little to do  
9 with Nokia.

10 MR. HOROWITZ: But why can't -- and I'm  
11 saying the --

12 MR. SCHROEDER: And those two companies  
13 developed it.

14 MR. HOROWITZ: Proceeding in the courts or  
15 proceeding with complaints can take years, and years,  
16 and years. You have there something that has started  
17 already, where some technology is existing. Maybe the  
18 institute for the blind or some other groups that are  
19 involved -- I mean, you seem to be a very well spoken  
20 person on this issue, about starting a company that  
21 develops your own phones.

22 Now how big is this market? If you were

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1 to sell cell phones to the blind community in the  
2 United States, how many people do you think would want  
3 to have a cell phone? I don't even know how large the  
4 market is.

5 CHAIR ROOKER: We've got a very brief  
6 answer here, Paul.

7 MR. SCHROEDER: I'll give you a very brief  
8 answer. I don't know how large the market is either.  
9 We estimate about 10 million people are blind or  
10 visually impaired. But let me answer the question  
11 this way and say I don't believe that it's our  
12 responsibility to meet the requirements of Section  
13 255. I believe it's industry's responsibility. I  
14 don't believe that any other consumer has to come up  
15 with their own accessible cell phone that they can  
16 use.

17 No sighted person in this room had to  
18 design their own cell phone. They were sold to them  
19 over the counter by companies. That's what Section  
20 255 is intending to do for people with disabilities,  
21 and it seems to me that that's where the  
22 responsibilities lies. It lies with industry to

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1 provide us a product that we can use.

2           Having said that, we want to help. We  
3 want to have a dialogue. We want to help. If it's  
4 this third-party process that makes the most sense,  
5 let's help work through how to make this the most  
6 stable and useful, and accessible environment it can  
7 be, and make sure that it works well for blind  
8 customers, and that it works well for industry, as  
9 well.

10           MR. HOROWITZ: Yeah, but you have 10  
11 million people. And my feeling is, I think you're  
12 right about the government's responsibility here, but  
13 while the government -- while they're trying to find  
14 out where their responsibility takes them in terms of  
15 getting this done, in the meantime, you should go on  
16 and try to find the way it can be done so you have  
17 something to present to them, and they don't come back  
18 and say well, we have to start from scratch.

19           MR. SCHROEDER: Point noted, but we do  
20 want to have dialogue, and that's the key.

21           CHAIR ROOKER: I'm sorry. Paul, thank you  
22 so much. You have given us a lot to think about.

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1           We're very honored to have David Solomon  
2 as our next speaker. He's the Chief of the  
3 Enforcement Bureau, and he's a key person in helping  
4 us understand the complaint process, the different  
5 levels of complaint, and so on. Please join me in  
6 welcoming David Solomon.

7           MR. SOLOMON: Good afternoon. Well, I can  
8 tell you that I'm really pleased to be here, because  
9 we spend a lot of effort and attention on Consumer  
10 Protection Enforcement in the Enforcement Bureau, so  
11 it's a pleasure to talk with all of you today, and  
12 hear some of your ideas, and get hopefully some  
13 helpful input.

14           Since the creation of the Enforcement  
15 Bureau almost four years ago, and particularly under  
16 the leadership of Chairman Powell, the FCC has made  
17 strong enforcement a very high priority. The statutes  
18 and rules that we have only work if we have the  
19 commitment and the will to enforce them, and through a  
20 variety of actions and in a variety of areas, we think  
21 the FCC has made clear that we do have that will and  
22 commitment to enforce the relevant statutes and rules.

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1 I like to collect quotes from the Chairman  
2 that are helpful for what I do. And one of the quotes  
3 that I like the best from Chairman Powell is, he said,  
4 "If you cheat, we will hurt you, and hurt you hard",  
5 so we use that as one of our informal approaches to  
6 things, when it's warranted. Also, I'd just note that  
7 the Chairman has suggested various statutory changes  
8 that would enhance our enforcement authority even  
9 more.

10 We've made consumer protection  
11 enforcement, as I mentioned, one of our top  
12 enforcement priorities, along with competition  
13 enforcement and public safety enforcement, which also,  
14 although they don't use the word "consumer",  
15 ultimately are still about helping consumers.

16 We have one division that's devoted  
17 entirely to telephone, telecommunications consumer  
18 protection enforcement. That's our Telecommunications  
19 Consumer's Division. It's headed by Colleen Heitkamp,  
20 who's sitting in the back with her Deputy, Kurt  
21 Schroeder.

22 Now while as I said, only one -- we have

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1 one division devoted entirely to consumer protection,  
2 you think about public safety enforcement, or  
3 competition enforcement, that also directly benefits  
4 consumers.

5 The basic idea of strong enforcement and,  
6 you know, this is not particularly subtle, but it's  
7 important to emphasize it, is that you punish people,  
8 both in some level because it's deserving, but also to  
9 deter future violations, because ultimately, what you  
10 want to do is push people into compliance with the law  
11 so that consumers will get the benefit that either the  
12 statute or the rules were designed to do.

13 So what I'm going to try to do today is  
14 give you an overview of our process, and some of the  
15 things we've done in the consumer protection area, and  
16 also talk briefly about out competition and public  
17 safety enforcement, and how that relates to consumers.

18 We have broad authority in the consumer  
19 protection area. In addition to the general statutory  
20 requirement that carriers have that practices be just  
21 and reasonable, there are a number of specific  
22 provisions in the Communications Act relating to

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1 consumer protection. And just to kind of rattle them  
2 off, to give you a sense of the breadth of what we do,  
3 there's the Americans with Disabilities Act of 1990,  
4 Telephone Operator Consumer Services Improvement Act  
5 of 1990, the Telephone Consumer Protection Act of  
6 1991, the Telephone Disclosure and Dispute Resolution  
7 Act of 1992, Cable Television Consumer Protection and  
8 Competition Act of 1992. Of course, the '96  
9 Telecommunications Act, and the recent Do Not Call  
10 Implementation Act earlier this year.

11 The basic process we use in the consumer  
12 protection area is that we track very closely the  
13 informal complaints that the Consumer and Governmental  
14 Affairs Bureau gets from consumers. We look at it  
15 from a statistical perspective. We go through their  
16 complaint data, and we analyze it in various ways,  
17 looking for new trend areas, if we seen problems  
18 areas, types of complaints from consumers that we  
19 haven't seen in the past, as well as just high volume  
20 areas, what are the areas where there are major  
21 problems with consumers. Then we start looking at  
22 some of the complaints, and basically use the

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1 information we get from CGB's informal complaint  
2 database and those complaints, as well as information  
3 we get from the FTC Sentinel database, and the  
4 National Consumer Fraud Center database. We use all  
5 of that data to sort of target our investigations and  
6 look for areas that we want to focus on, and specific  
7 companies that we want to focus on.

8           Once we've gone through that process, we  
9 then begin investigations. Typically, we begin them  
10 by issuing a letter of inquiry to the company that's  
11 the target, in which we direct them to provide to us  
12 various information and often documents to find out  
13 more about what's going on.

14           In some cases, we start investigations.  
15 Through that process, we might have tips from people  
16 inside the company, confidential informants, that sort  
17 of thing. But typically, we will first get the  
18 company's input into what we think is going on. And  
19 then if it looks like there is a problem, what we then  
20 do is, in a typical case, is start a monetary  
21 forfeiture proceeding, which is basically, we issue  
22 something called a Notice of Apparent Liability, which

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1 says it looks like you've done something wrong,  
2 violated the law in the following way, and we propose  
3 to fine you a certain amount.

4 In very egregious cases, we may move in  
5 the first instance, in the case of common carriers, to  
6 a revocation proceeding. Recently we did that in a  
7 couple of cases with long distance carriers where we  
8 have hearings before administrative law judges  
9 pending.

10 Another way that we get information to  
11 start our investigations is we work closely with the  
12 State Public Utility Commissions and State Attorney  
13 Generals to share information, to share priorities.  
14 We have monthly calls with each of those groups to  
15 share information on consumer protection.

16 As I said, we will typically start a  
17 forfeiture proceeding, which may end in a forfeiture.

18 It also, in many cases, may end in a consent decree,  
19 which basically in those cases, the company agrees to  
20 make a voluntary payment to the government,  
21 essentially in lieu of a penalty, and will agree to  
22 variance compliance measures that, from our

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1 perspective, show that they've got to demonstrate a  
2 commitment to clean up their act, and basically are  
3 going to take steps not just to comply with the law,  
4 which they're required to do anyway, but to do  
5 something more, and to ensure that they're really  
6 providing benefits that the various rules and statutes  
7 are designed to provide the consumers. So let me give  
8 you some examples of the areas we focused on, and some  
9 of the things we've done.

10 In the slamming area, since the  
11 Enforcement Bureau began in 1999, we've taken actions  
12 against 17 carriers totaling over \$17 million. The  
13 most recent one was a \$1.2 million forfeiture against  
14 a company where we had worked closely with 14  
15 different State PUCs building a case against this  
16 company.

17 In the marketing and advertising area, two  
18 years ago we had some joint guidelines that the FCC  
19 and the FTC issued in this area. Most recently, we  
20 had a revocation hearing just initiated against a  
21 carrier that seemed to be basically misleading or  
22 fraudulently misleading consumers in the context of a

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1 Win Back Campaign, so we're now trying that case  
2 before an FCC Administrative Law Judge.

3 We also fairly recently had a \$1 million  
4 consent decree with a company involving issues of  
5 misleading advertising in the long distance area. We  
6 also have had actions in the operator service provider  
7 area. This is a requirement that basically operator  
8 services provide information to consumers,  
9 particularly from locations like pay phones about who  
10 the carrier is, and make rate information available.  
11 We've had a couple of large proposed forfeitures that  
12 we did several months ago. And prior to that, we had  
13 several consent decrees with some carriers based on  
14 basically a field audit that we did, where we sent  
15 people out from our field offices and went to pay  
16 phones to see if they were getting the correct kinds  
17 of notice.

18 In the telemarketing area, we've been  
19 aggressively enforcing the Junk Fax Prohibition and  
20 other telemarketing rules. One of the major actions  
21 we took was a \$5.38 million proposed fine against  
22 basically the biggest Junk Fax company in the country.

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1 That was complicated by the fact that a district  
2 judge held that the Junk Fax Statute was  
3 unconstitutional under the First Amendment, and  
4 conjoined us from continuing with this enforcement  
5 action. That district judge's action was overturned,  
6 and the Circuit Court recently denied rehearing.  
7 We're hopeful that the technical legal steps that need  
8 to be taken to basically allow us to pursue our  
9 enforcement will occur very soon.

10 Another area that we've been involved in  
11 involves common carrier discontinuance of service.  
12 You're required to get FCC approval in most instance  
13 before you discontinue common carrier service. And in  
14 particular, we have requirements about notification to  
15 consumers. In a recent case where we also worked with  
16 two states, Vermont and Maine, we designated for  
17 hearing a carrier that basically seems to have lied in  
18 connection with its application to discontinue  
19 service, and questions about whether it did, in fact,  
20 provide the right kind of disclosure to consumers.  
21 And also, appears to have lied to us or lacked candor  
22 in connection with an investigation we were doing

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1 about slamming.

2 Another important area is the disabilities  
3 area. We've designated one carrier for again a  
4 revocation hearing, a company that seems to have  
5 defrauded the Telecommunications Relay Service Fund.  
6 In fact, we worked closely with the U.S. Attorney's  
7 Office, and they indicted that company for fraud.

8 Also, we have pending before us - I can't  
9 talk about the details because it's a pending case -  
10 but we do have pending before us the first formal  
11 disabilities complaint involving Section 255, with  
12 access to communication services and equipment for  
13 persons with disabilities.

14 To touch briefly on the broadcast area we  
15 also do consumer protection- related activity in that  
16 area, as well. We're responsible for Broadcasting  
17 Decency Enforcement, and also such requirements as  
18 there are statutory provisions about the amount of  
19 advertising that can be on children's television  
20 programming.

21 The main consume -- I want to mention a  
22 couple of consumer protection priorities that we're

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1 going to be devoting a lot of our attention to in the  
2 coming months. Obviously, one is implementation of  
3 the new National Do Not Call List. The FCC recently  
4 adopted rules that compliment the Federal Trade  
5 Commission's rules in this area, and that's really  
6 going to be a major enforcement priority for us.

7 We're going to focus -- to avoid  
8 duplication, we're going to focus certainly in the  
9 first instance on those entities that are not within  
10 the Federal Trade Commission's jurisdiction. For  
11 those of you who don't know, the FTC doesn't have  
12 jurisdiction over telemarketing practices of certain  
13 kinds of companies. Those companies include  
14 telecommunications carriers, which obviously is an  
15 area of our expertise. And also, banks, insurance  
16 companies, and airlines, also they don't cover  
17 intrastate telemarketing. And so those are the areas  
18 that we're going to focus on in the first instance.

19 Enforcement will start October 1st. One  
20 of the things that we're happy about is the way the  
21 FTC has set up their database, which our rules use  
22 their database, as well. We will hopefully avoid some

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1 of the problems of proof we've had in the past with  
2 our own company-specific Do Not Call Lists.

3 One of the things about the FTC database  
4 is that there will be evidence about the fact that  
5 somebody is registered, and when they registered, so  
6 you won't get factual issues where somebody says to us  
7 I registered on this company's list. I don't remember  
8 when it was, but I'm sure I did it, and the company  
9 has no record of it.

10 As a process matter, we'll follow  
11 basically the same kind of approach I was saying  
12 before that we use generally, that we're going to  
13 track the complaints carefully. We're going to look,  
14 particularly in these areas where we're going to focus  
15 on, we're going to look for those companies that we  
16 see a lot of complaints, or spiking complaints over  
17 time, whatever. To the extent there are common  
18 carriers involved, we can move right to a forfeiture  
19 proceeding. In those instances, our authority is we  
20 could fine them up to \$120,000 per violation. For  
21 others, it's generally up to \$11,000 per violation;  
22 although, if a broadcaster or cable operator were

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1 doing telemarketing - I don't know whether they would  
2 be, but if they were, the violation there would be  
3 higher. It would be \$27,500 would be the maximum for  
4 a single violation.

5 We're going to be looking carefully at  
6 people's use of some of the exceptions, established  
7 business relationship and the like to make sure that  
8 those exceptions aren't being abused. And we're  
9 working with the Federal Trade Commission on a  
10 Memorandum of Understanding on Enforcement, to  
11 coordinate with them to share information to avoid  
12 duplication.

13 One other major priority that's a new area  
14 we're going to be moving into later this year, the  
15 Commission's rules on wireless local number  
16 portability will take effect in late November,  
17 assuming -- there's discussion in Congress about  
18 potentially delaying them, but assuming those aren't  
19 delayed, that's another area where we're working now  
20 on setting up an enforcement plan, and being ready to  
21 move seriously into that area.

22 Another area I would mention that may be

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1 of interest is that we're working on a compliance  
2 review of the requirements for carriers to publicize  
3 the availability of life line and link-up programs in  
4 under-served areas, such as tribal lands.

5 Let me touch briefly on competition  
6 enforcement and public safety enforcement, and then  
7 open things up for questions. Basically, competition  
8 is a good thing for consumers. It helps consumers get  
9 better services at lower prices. Obviously, there are  
10 sometimes market failures, which is why we have  
11 aggressive consumer protection enforcement. But it  
12 also helps consumers that we're aggressively enforcing  
13 the competition rules so that, in fact, there is  
14 competition.

15 So we just -- in the last couple of  
16 months, for example, we had a six and a half million  
17 dollar consent decree with one of the Bell operating  
18 companies, and a consent decree of \$5.7 million with  
19 another one dealing with premature marketing of long  
20 distance service; again, violation of the competition  
21 rules, or issues of violation of competition rules  
22 that are designed to benefit consumers.

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1           The Commission also recently decided two  
2 important formal complaint cases in the local  
3 competition area, which confirmed that the Commission  
4 has authority sharing it with the states to adjudicate  
5 disputes about compliance with the local competition  
6 rules. And in one of the cases, the Commission found  
7 that the BOC involved had not been providing  
8 interconnection service in an appropriate manner. And  
9 in the other case, it found that it had failed to  
10 provide what's called shared transport service that's  
11 important to local competition, in violation of the  
12 conditions of its merger order.

13           In the public safety area, probably the  
14 area with the most direct consumer benefits, that it's  
15 gotten a lot of attention, is E-911 Enforcement.  
16 We've had several recent enforcement actions in that  
17 area. We had \$675,000 consent decree with one  
18 carrier, a \$2 million consent decree with another  
19 carrier, a \$1.2 million forfeiture for one carrier.  
20 Last year we had a \$2 million consent decree with a  
21 different carrier. And again as I mentioned before in  
22 the context of the consumer protection-type issues,

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1 consent decrees can get you a very serious compliance  
2 plan. In these cases where we have consent decrees,  
3 there are industry issues about compliance. And now  
4 we have specific carriers having agreed to automatic  
5 penalties if they don't meet certain benchmarks. And  
6 hopefully, that's doing a lot to further stimulate  
7 compliance and getting E-911 Service rolled out.

8 Some of the other areas where we've been  
9 active in public safety enforcement, again in ways  
10 that I think give direct benefits to consumers,  
11 interference resolution, pirate radio enforcement,  
12 lighting of communications towers, enforcement of the  
13 Emergency Alert System rules.

14 So to sum up, consumer protection is and  
15 is going to remain a top priority of the FCC, and of  
16 the Enforcement Bureau. And I look forward to  
17 answering your questions, and continuing to work with  
18 many of you in the future.

19 CHAIR ROOKER: I think you're going to  
20 have a lot of questions.

21 MR. SOLOMON: That's fine.

22 CHAIR ROOKER: We're so pleased to have

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1 you with us. Why don't we just start and work our way  
2 around the table. That's probably the fairest way to  
3 do it.

4 MR. SOLOMON: Okay.

5 CHAIR ROOKER: We'll start with Susan.

6 MS. GRANT: Hi. Susan Grant, National  
7 Consumers League. What percentage of the fines and  
8 other kinds of penalties that you seek do you actually  
9 collect? What are the impediments to your ability to  
10 collect? And are there any circumstances where you  
11 actually return money to consumers?

12 MR. SOLOMON: Starting with your last  
13 point, the way our statute is set up, if we take  
14 forfeiture action, we don't have authority to give the  
15 money to consumers. Through a formal complaint  
16 proceeding, consumers can get damages, so unlike the  
17 Federal Trade Commission, we're really not in a  
18 position to get money directed back to consumers,  
19 unless people file formal complaints for damages.

20 As to collectability, I don't have an  
21 exact percent. Certainly, in the consent decrees when  
22 people have agreed to pay money and take various

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1 steps, we get all of that money. It depends --  
2 whether we collect in other situations sort of depends  
3 on the area.

4 I think in the consumer protection area,  
5 one of the things that happens in a lot of cases, and  
6 I don't think this is necessarily a bad result, is  
7 that the issuance of the forfeiture forces the company  
8 out of business, so we don't, in fact, collect. But  
9 if they're out of business, and if they're not  
10 immediately restarting with sort of the same people  
11 under different names, that's a good result, even if  
12 we don't get the money. But we do work closely with  
13 U.S. Attorney's Offices, and there are some pending  
14 cases. Colleen, I think, recently testified in one of  
15 those cases, so we do actively work with DOJ to  
16 collect the amounts.

17 CHAIR ROOKER: Linda, I believe you were  
18 next.

19 MS. WEST: Linda West.

20 CHAIR ROOKER: Stick your hand up so they  
21 can find you. Oh, right here.

22 MS. WEST: I'm a member of the

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1 Confederated Salish and Kootenai Tribes in Montana.  
2 And I've been in contact with other reservations, and  
3 did I understand you to say that there are penalties,  
4 or there will be penalties in place for the companies  
5 that are not doing outreach on the lifeline link-up  
6 program to Indian reservations?

7 MR. SOLOMON: It's an area we've been  
8 working on right now with -- in fact, we've been in  
9 touch with some of the Indian groups to identify who  
10 are the telephone companies in those areas, so we're  
11 not at the stage of being able to say yes, we're  
12 imposing penalties. But it is an area where we've  
13 definitely decided to look into, and see what's going  
14 on, and we're in the process of collecting  
15 information.

16 MS. WEST: Okay. Because I can testify to  
17 the fact that these phone companies are not getting  
18 that information out to the Indian people.

19 MR. SOLOMON: Well, if when we're done you  
20 want to see Colleen or Kurt in the back and tell them  
21 the areas and the names of the companies, that would  
22 be helpful.

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1 MS. WEST: I'll be glad to. Thank you,  
2 sir.

3 MR. SOLOMON: And I'm serious. I mean, we  
4 want to know that information.

5 CHAIR ROOKER: Okay. Mike, I think you're  
6 next. Stick your hand up so they can find you for the  
7 microphone.

8 MR. DUKE: Okay. We have it. I'm Mike  
9 Duke from Jackson, Mississippi, and I have to wear my  
10 amateur radio hat on this one, just an observation to  
11 you. You didn't mention it, but I know it's there.

12 About five years ago, you or a predecessor  
13 - I'm not sure how long you've been where you are in  
14 that division - designated a gentleman named Raleigh  
15 Hollingsworth to handle amateur radio rules and  
16 regulations enforcement. And I just want to say  
17 publicly it has made a tremendous difference in the  
18 ability of those of us who tried in the first place to  
19 abide by the things we're supposed to, to enjoy the  
20 hobby. I hope it continues, and it's really been  
21 wonderful to have the enforcement working on our  
22 behalf.

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1 MR. SOLOMON: Well, good. I'm pleased to  
2 hear that. Raleigh is our special counsel for amateur  
3 enforcement, and he does a great job, so I'm glad to  
4 hear that.

5 CHAIR ROOKER: Joe.

6 MR. GORDON: Hi. Joe Gordon, League for  
7 the Hard of Hearing. Can you share some violations  
8 that you've encountered with the cable industry,  
9 whether it's captioning or other type of violation,  
10 and the penalties involved? I'd like to hear some  
11 encounters you've had with the cable industry.

12 MR. SOLMON: Sure. Most of our work in  
13 the cable area has been in the technical area. So  
14 we've had, for example, we've had forfeitures I know  
15 of over \$100,000 against cable companies for what's  
16 called cable signal leakage, which is basically cable  
17 companies send transmissions through their wires. If  
18 you don't have coating around the wires that are  
19 strong enough, the signals leak out and the bands they  
20 use are the aviation bands. So if signals leak from  
21 cable companies, you could have interference with  
22 aviation, so that's certainly a very serious issue.

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1 Cable is one area that a fair amount of  
2 the enforcement is still handled in the Media Bureau.

3 For example, a big area of cable enforcement involves  
4 the Must Carry Rules, where there are issues about  
5 broadcast stations, rights to access to cable. I  
6 don't think we've had many complaints in the closed  
7 captioning area. We have recently been doing some  
8 investigations in closed captioning. I don't remember  
9 whether it's cable or broadcast, but at this point I  
10 don't know whether that's going to lead to a finding  
11 of any violations.

12 MR. GORDON: Just a fast follow-up  
13 question. I would imagine, whether they're right or  
14 wrong, that there's been many, many complaints about  
15 the lack of closed captioning either to the FCC or to  
16 the caption companies, and I think that's an area that  
17 should be looked into. And also, the recent  
18 regulations of emergency captioning is also another  
19 area where there has been, and are many violations.

20 I was watching TV last night, and I put  
21 the volume down because I didn't want to annoy the  
22 people around me. And there was tornado warnings, and

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1 I didn't see any emergency scrolling. So whether it's  
2 closed captioning violations, or emergency violations,  
3 I think there are complaints out there.

4 MR. SOLOMON: Well, and I agree those are  
5 important areas. And we certainly, as I mentioned  
6 before, we look carefully, and disabilities is one of  
7 the areas that we've made a high priority, so I know  
8 we've been looking into some closed captioning issues.

9 And I know also some emergency captioning. Again,  
10 sometimes, you know, the complaints don't lead to  
11 findings of violations, but that is a very high  
12 priority.

13 CHAIR ROOKER: David.

14 MR. HOROWITZ: This morning when we were  
15 listening to Richard Smith, I asked him a question  
16 about the enforcement would be of these lists, which  
17 are supposed to have as much as 60 million names on it  
18 for the people who are signing up for the program.  
19 And at this juncture he said well, you know, we'll  
20 have to think about it. And my feeling is, when you  
21 have lists like that, that are going to be sold for  
22 \$7,200 a list, that there has to be some enforcement

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1 built into who gets the list, what do they use the  
2 list for, can they sell the list off to some spamster  
3 who'll go and look in the other phone books where you  
4 could go back and get a telephone number and find out  
5 a person's address and all that kind of stuff.

6 And has anything been given to how these  
7 books are going to be policed when they're sold, and  
8 how we're going to be able to know if these books are  
9 going to legitimate telemarketers, or they sell them  
10 off to others? And what kind of enforcement of that  
11 there's going to be?

12 MR. SOLOMON: Yeah. I think that's an  
13 important area. We do have rules, and the Federal  
14 Trade Commission has rules that you can't use the list  
15 in those sorts of ways. Having said that, you're  
16 absolutely right, that having a rule isn't the end of  
17 it. And it's something, you know, as we develop our  
18 enforcement plans, as we work with the FTC, it's  
19 certainly an important area. And again, I think that,  
20 you know, that's the kind of issue, as we track the  
21 complaints that will come into us and the FTC and  
22 others. If we start seeing complaints about misuse of

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1 the list in those ways, that's something where we can  
2 go after these companies under our statute, assuming  
3 they're not telecom companies, cable operators or  
4 broadcasters, not FCC regulated entities, if the first  
5 instance, we have to give them what's called a  
6 citation. And that after that, if they violate again,  
7 you can fine them. But the citations often are  
8 effective for two reasons.

9 One, we've done a lot of citations in Junk  
10 Faxes, where again we can't move directly to  
11 forfeiture. We've issued a couple of hundred  
12 citations, and in a vast majority of the cases, at  
13 least in that area, where you issue the citations,  
14 people honestly didn't know they weren't allowed to  
15 use it that way. And they get the citation and, you  
16 know, it's a formal-looking document, and they seem to  
17 get scared by the prospect that the government is  
18 doing something. And then in the smaller number of  
19 cases where the companies have continued to do it, we  
20 have followed up with forfeiture proceedings. So I  
21 think you're absolutely right, that's an area that has  
22 to be followed carefully.

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1                   MR. HOROWITZ: Will there be something in  
2 advance of issuing these lists and selling these lists  
3 that will make it absolutely clear that if these lists  
4 are used for anything other than what they're intended  
5 to, that these enforcement regulations and these  
6 penalties will go into effect, and that these  
7 companies that buy them sign-off on knowing that  
8 that's the risk they're taking by getting these lists?

9                   MR. SOLOMON: It's certainly in the rules  
10 that they can't do it, and I think that's -- you make  
11 a good point. It's something we should think about,  
12 about whether there should be some sort of additional  
13 publicity either by us or the Federal Trade Commission  
14 about people understanding that.

15                   CHAIR ROOKER: Yes. We have another  
16 question here. Brenda.

17                   MS. FREY: Brenda Kelly Frey representing  
18 the National State Relay Administration. I have a  
19 question about the filing of complaints. I realize  
20 that on the website of the FCC, you have an easy way  
21 of filing complaints. Is there going to be any easier  
22 way to file formal complaints with the FCC? It's

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1       rather cumbersome right now for my constituents, for  
2       consumers. Have you given it any thought?

3               MR. SOLOMON: I mean, it's a difficult  
4       trade-off. And, I mean, we're always thinking about,  
5       you know -- to file a formal complaint, basically you  
6       do need a lawyer. It's like a lawsuit. And what the  
7       Commission has tried to do is basically kind of  
8       maximize the different kinds of avenues that are  
9       available to people. So it's very easy to file an  
10      informal complaint, and the informal complaints are  
11      dealt with in two ways.

12              One way, and someone from CGB may have  
13      talked to you about this this morning, but an informal  
14      complaint against a carrier, it's served on the  
15      carrier and they have to respond. And often, I think  
16      in a fairly significant number of cases, that does get  
17      somebody, you know, their refund or something like  
18      that, get them some action.

19              We track that information, as I mentioned  
20      before, so even if let's say a company is over-billing  
21      something and, you know, every time somebody complains  
22      they just give them \$50 and the people go away, that

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1 doesn't mean we would be done with it. We would still  
2 say okay, the fact that you've resolved these informal  
3 complaints has nothing to do with whether we will  
4 initiate an enforcement action against you. And we  
5 will initiate an enforcement action if we see that  
6 kind of pattern.

7           The formal complaints really are designed  
8 to be like lawsuits. Under the statute, you have a  
9 choice of either filing a formal complaint in federal  
10 court, or with the FCC. And, I mean, the way it's set  
11 up is to have the kind of case that if in the end  
12 you're awarding damages, that you have a legal process  
13 that basically enables us to build a case.

14           But having said that, you know, we do  
15 realize that it's difficult. There have been consumer  
16 complaints. You know, we probably work somewhat more  
17 informally with some of the, you know, consumer  
18 advocates to help make sure that they comply with the  
19 various procedural rules than we necessarily would  
20 with a big carrier that's coming in. You know,  
21 there's a formal disabilities complaint. There was a  
22 complaint a couple of years in the Do Not Call area by

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1 a group called Consumer Net that was, you know,  
2 litigated through and they won, so it's -- I recognize  
3 it's difficult. It's not impossible, and it's a  
4 trade-off, and we do try to keep thinking about it.

5 CHAIR ROOKER: I'd like to -- do you have  
6 a follow-up question, Brenda? I'm just concerned  
7 about the, you know, Joe Smith Consumer, you know,  
8 filing a formal complaint. And they have the right to  
9 do so, but they don't have the money with which to  
10 file a formal complaint, get an attorney and so forth.

11 MR. SOLOMON: Again, I think it, in some  
12 ways -- we try to have avenues for the Joe Smith who,  
13 you know, by doing the informal complaint route, he  
14 has that route. And under some of the statutes, you  
15 know, the TCPA, the Telephone Consumer Protection Act,  
16 you know, they have the right to go to state court, as  
17 well. But, you know, part of what we have to do, and  
18 I know some of you are in government or  
19 quasi-government institutions, and part of what we  
20 have to do is use very limited resources to try to  
21 figure out the best strategy. And from our  
22 perspective, I think a lot of attention has been that

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1 we can sort of get the most bang for the buck if we  
2 take, you know, certain resources we have and say  
3 we're going to look for the trend. So if there are 20  
4 Joe Smiths, than that's more important to sort of, you  
5 know, attach staff resources. But I don't mean to at  
6 all sort of under-estimate the burden you're talking  
7 about. And it is one that, you know, in a perfect  
8 world we would figure out a way to devote more  
9 resources to that, as well, but we struggle with it.

10 CHAIR ROOKER: I have a question. It's  
11 not very important, but it's a little bit confusing to  
12 consumers. And that's when they call you, and they're  
13 told that they can only file an informal complaint.  
14 Well, many of them seem to think that that means that  
15 they're not really filing a complaint. Whereas, I  
16 know that it is, but they -- but in the consumer's  
17 mind, the fact that there's an informal and a formal  
18 complaint, they all want to file a formal complaint  
19 but they can't. So is there any consideration being  
20 given to renaming those processes? As I said, this is  
21 not of major importance, but in the consumer's mind, I  
22 run a consumer hotline, and we refer people to you all

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1 the time because we feel it's very important that they  
2 complain. But they'll come to us and say well, they  
3 wouldn't let me file a formal complaint. And we  
4 explain to them, you know, what this really means, but  
5 maybe we just need to think about making a change to  
6 what we call it.

7 MR. SOLOMON: Well, that's an interesting  
8 idea. We can certainly talk to the Consumer and  
9 Governmental Affairs Bureau that runs that website.  
10 But maybe there is a way to say, you know, you can  
11 file a complaint or you can file a formal complaint or  
12 something. I understand what you're saying.

13 CHAIR ROOKER: Yeah.

14 MR. SOLOMON: People think informal  
15 complaints mean it's not really a complaint.

16 CHAIR ROOKER: That's exactly right. And  
17 while I know that that's not the case, they feel that  
18 they've been kind of put down because this is the only  
19 thing that they can do. And, you know, they are  
20 really angry, and they want blood, and they don't feel  
21 like they're getting it, so it's just a suggestion.

22 MR. SOLOMON: Yeah. That's interesting.

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1 I've never heard that, so that's interesting.

2 CHAIR ROOKER: Well, it's been something  
3 that we've heard quite a bit, because we talk to  
4 consumers every single day. And it's kind of  
5 interesting. I mean, you know, the first time someone  
6 said that to me, I said well, wait a minute. I know  
7 you can file a complaint with them. What are you  
8 talking about? I had to find out what it was all  
9 about. So at any rate, well, I think that -- Ron.  
10 Yeah, take one more question, two more questions if  
11 they're brief, very brief.

12 MR. MALLARD: Ron Mallard, National  
13 Association of Consumer Agencies. Just curious as to  
14 whether or not you have an opinion, David, on how the  
15 FCC might ultimately resolve the issue of providing  
16 some kind of complaint resolution mechanism for cable  
17 modem services in light of the Commission's decision  
18 that cable modem services are information, is an  
19 information service and not a cable service.

20 MR. SOLOMON: Well, I mean, I think at  
21 this point, the Commission didn't impose rules on  
22 cable modem service, so there's basically -- there's

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1 nothing to enforce until there are requirements.

2 MR. MALLARD: But there is a decision that  
3 has to be made, because right now, local governments  
4 are without any authority to act upon complaints about  
5 cable modem services.

6 MR. SOLOMON: Right.

7 MR. MALLARD: So there is a void there in  
8 regulatory authority at any level to act upon  
9 legitimate complaints about cable modem services. And  
10 I was just wondering if you had an opinion as to  
11 whether or not the -- your division would support some  
12 kind of form of authority being granted to localities  
13 to enforce cable modem service complaints as they  
14 currently do with cable television-related complaints.

15 MR. SOLOMON: Yeah, that's -- I don't want  
16 to sound bureaucratic, but that's not really our  
17 issue, you know. Our job is to enforce the laws that  
18 apply to the FCC. I know what you're talking about,  
19 but I don't really have a comment on it.

20 CHAIR ROOKER: The last question.

21 MR. ALLIBONE: Tom Allibone with LTC  
22 Consulting. I've got a question on your Part 42

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1 rules. Okay. A number of years ago, Part 42 was  
2 gutted as part of the Paperwork Reduction Act. And  
3 embedded within the Part 42 rules were some very  
4 important consumer protection rules concerning  
5 preservation of customer phone billing records.

6 In the old 42 rules, it used to require  
7 the common carrier to retain these records for three  
8 years. When the rule was gutted, that rule went out  
9 the window, and was modified with a -- I guess a  
10 provision that in essence allows the industry to be in  
11 charge of chicken coop. And what it basically says is  
12 that every common carrier must maintain a master index  
13 of records. And within that master index, presumably  
14 there would be some type of a, you know, customer  
15 billing-type record. And I found that to be true.

16 My question is that within the master  
17 index of records, which is maintained by the carriers,  
18 and is not maintained by the FCC, how do you go about  
19 enforcing your Part 42 rules if you don't have access  
20 to the information?

21 I have filed a number of complaints in  
22 this area with the FCC, so it's not a question of

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1 nobody ever bringing it to your attention, because I  
2 can assure you, my paper trail is probably about two  
3 miles long if you check out my name. So I just would  
4 be curious, you know, what you can do or plan to do in  
5 that area. Because customer phone bills, to get to  
6 the bottom line, is that a lot of phone bills contain  
7 hidden billing errors. They can be on the phone bill  
8 for a number of years. And I've seen cases where they  
9 go back 20 years. Actually, even more, 30 years, so  
10 it's not an isolated incident. It's a very serious  
11 consumer protection issue.

12 MR. SOLOMON: It's certainly hardly for me  
13 to answer with the level of detail you're looking for,  
14 but all I can really say is that I know when we're  
15 doing our investigations, we have a number of tools so  
16 that, you know, we are able to get information,  
17 documents we need from carriers. I don't know if  
18 there's, you know, a specific issue in your specific  
19 case where there was a problem, but as a general  
20 matter, we're certainly -- you know, we have tools and  
21 we're able to get the information we need from the  
22 carriers to investigate.

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1 CHAIR ROOKER: Well, thank you so much.  
2 As you can see, I think we can go on all afternoon.  
3 We'll have to have you back.

4 MR. SOLOMON: Thank you.

5 CHAIR ROOKER: Thank you very much. WE  
6 have some handouts for you. Betty is going to be  
7 passing them out, and we have them on disk if you need  
8 a disk copy, so we will make those provisions  
9 available to you.

10 Now our afternoon, what we're calling our  
11 marathon panel is - you may think it is too - is a  
12 result of the efforts of the broadband working group.

13 And our kudos to Larry Goldberg, who's heading up  
14 that group. And the group itself are putting together  
15 this panel on what is a very hot topic, one that's  
16 being looked at by Wall Street, the media, and a whole  
17 host of others. It should be a very lively afternoon.

18 I hope everybody has gotten here, because I know  
19 someone was stuck in traffic.

20 Just for your planning purposes, we will  
21 have a break at 2:15. So don't worry, you're not  
22 going to have to sit here until 3:30. And at that

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1 time, we will be ordering cabs for your  
2 transportation, so that you can think about if you  
3 want a cab, you'll let us know at 2:15 when we take  
4 the break. We'll poll everybody to see who wants  
5 transportation, and we'll have it outside the  
6 Commission building at 4, a little after 4:00.

7 Now Larry is about to get this all set up.  
8 Again, thanks, Larry, for your hard work on this, and  
9 go to it.

10 MR. GOLDBERG: Okay. While we set up  
11 here, let me just give a little background. I was  
12 originally called the facilitator of the Broadband  
13 Working Group, and all I was supposed to do was call  
14 together phone calls. That's envolved. But the  
15 important thing is that we are all very interested in  
16 broadband. There are so many issues that are of  
17 concern to so many of us that as the broadband working  
18 group began deliberating at what issues we could bring  
19 to the Full CAC, it was clear that we needed a lot  
20 more information about regulation.

21 The words are often used that there isn't  
22 a level playing field. We want to know what does that

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1 mean. It's a complex issue about broadband, and the  
2 different providers, and so we felt it would be great  
3 to pull together a panel of experts who could really  
4 help us understand this complex issue a lot better.  
5 Members of the working group suggested some potential  
6 panelists. We presented those to Shirley and Scott,  
7 and the FCC, and they were all quite enthusiastic  
8 about doing this, and so we're here now to learn.

9 I want to particularly thank Ron Mallard,  
10 and Debra Berlyn, and Rich Ellis and Cindy Cox for  
11 helping gather this very distinguished group, this  
12 expert group. And I certainly want to thank the  
13 panelists in advance for taking the time to come here  
14 and enlighten us.

15 We're not going to get to everything that  
16 needs to be known about broadband, but I think we're  
17 representing a lot of interesting common and divergent  
18 opinions here today. And we should get to a lot of  
19 really good information. Here's how we hope to spend  
20 the next two hours or so.

21 Each of the panelists will have from seven  
22 to ten minutes to give an opening statement, and the

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1 order of these opening presentations have been chosen  
2 at random by our Chairperson, Shirley Rooker, so you  
3 know it's an honest selection.

4 After the panelists have made their  
5 opening statements, two of which have Power Point  
6 presentations as part of it, we'll have some Q&A,  
7 first from a list of questions that the broadband  
8 working group has generated themselves, and then to  
9 the rest of the CAC. And then in the middle, or near  
10 the middle, as Shirley indicated, there will be a 15  
11 minute break.

12 So I will give longer introductions to  
13 each of the panelists as they begin to speak, but just  
14 so we know who they are. Nick Miller, who's caught in  
15 -- oh, look at that. Perfect entrance line. From the  
16 law firm of Miller & Van Eaton, representing local  
17 government, cities and counties.

18 MR. MILLER: I apologize.

19 MR. GOLDBERG: That's fine. You're just  
20 on time. Next is Scott Randolph, who's Director of  
21 Federal Regulatory Advocacy at Verizon, representing  
22 the Telcos. And Dan Brenner, Senior Vice President of

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1 Law and Regulatory Policy at the National Cable and  
2 Telecommunications Association, representing the cable  
3 companies. John Windhausen, President of the  
4 Association of Local Telecommunications Services,  
5 ALTS, representing facilities-based CLECs. And to my  
6 left, Commission David Svanda of the Michigan Public  
7 Service Commission, representing state government.

8 The order of presentations will be Scott  
9 Randolph, and then Dan Brenner, then John Windhausen,  
10 Nick Miller, and finally David Svanda, so it actually  
11 is a nice lineup in that order, as well. So we'll  
12 start off with Scott Randolph. I'll tell you a little  
13 bit more about him as -- are we ready to go? Working  
14 on it.

15 I have a few words to vamp here. Scott  
16 Randolph is Director of the Federal Regulatory  
17 Advocacy for Verizon in Washington, D.C., and he's  
18 responsible for directing Verizon's involvement in  
19 regulatory proceedings and industry activities related  
20 to the broadband and local telephone competition  
21 provisions of the '96 Telecom Act.

22 Prior to the merger of Bell Atlantic and

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1 GTE in 2001, he served as Director of Regulatory  
2 Matters in GTE's Washington, D.C. office, and before  
3 that worked for GTE in Irvine, Texas, with  
4 responsibility for tariffs, and video and cable  
5 television-related regulatory proceedings.

6 Scott began his career in  
7 telecommunications with Contel Corporation in Atlanta,  
8 Georgia in 1984, and was responsible for implementing  
9 the FCC's access charge and accounting rules, and  
10 acted as a result of a divestiture of AT&T. He  
11 received his Bachelor's Degree in Economics from  
12 Georgia State University in Atlanta, Georgia.

13 MR. RANDOLPH: Thank you very much for  
14 having this opportunity to talk today. What I'd like  
15 to start off with first is talk a little bit about  
16 what we're doing at Verizon today with respect to  
17 broadband. Today at Verizon, we provide digital  
18 subscriber line service which many of you are familiar  
19 with. It's a high speed always-on access to the  
20 Internet over your local telephone line that you can  
21 use to access the Internet at the same time that  
22 you're talking on the telephone.

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1                   Verizon On-Line, which is Verizon's  
2 affiliated Internet service provider markets DSL  
3 Service and combines it with it's Internet access  
4 service to market to consumers. You may have noticed  
5 that recently we've reduced some of our pricing,  
6 particularly in response to competition. We're now  
7 offering a new price for DSL of \$29.95.

8                   Verizon also has a very viable wholesale  
9 business in DSL. We offer DSL services to Internet  
10 service providers such as AOL, Earthlink and MSN, and  
11 they take the DSL functionality and they package it  
12 with their own Internet and provide it to consumers  
13 under their own brand name, so we have both a retail  
14 and a wholesale business at Verizon.

15                   What are we going to do in the future?  
16 Well, in March we announced a very aggressive roll-out  
17 of DSL and fiber optic facilities in our network. We  
18 hope by the end of the year to have 46 million DSL  
19 equipped lines, which means that we'll make broadband  
20 available in our serving territories to about 80  
21 percent of all of our customers, equip about 1,000  
22 additional local switching centers.

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1           We've announced aggressive plans to push  
2 fiber optic facilities deeper into neighborhoods, and  
3 eventually all the way to the home. And we recently  
4 enacted hundreds of Wi-Fi spots in New York City,  
5 which essentially allows customers to access the  
6 Internet in various downtown locations in Manhattan  
7 via their laptops. And we also have some fixed  
8 wireless trials underway in Virginia and Maryland, so  
9 we have a lot going on at Verizon.

10           Just to take a look at what is available  
11 to Verizon customers, today about 50 percent of  
12 Verizon customers have a choice between their  
13 broadband service providers. DSL and cable modem are  
14 available to about half of Verizon customers. And in  
15 about 31 percent of our serving territory, customers  
16 only have a choice of cable, and 11 percent a choice  
17 of only DSL, and even in 12 percent some limited  
18 choice, even though we have satellite and wireless  
19 applications that are out there in some markets. So  
20 we're trying to aggressively roll-out new DSL  
21 functionality in new areas, and hopefully we'll reduce  
22 some of those numbers, and increase that number where

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1 DSL and cable are both available to consumers.

2           If you step back and let's take a look for  
3 a second at the national market. Since the FCC has  
4 been collecting statistics on broadband since 1999,  
5 cable modem providers have outpaced DSL subscription  
6 by about two to one almost every year. Today cable  
7 modem service is provided to about 65 percent of the  
8 broadband market compared to DSL's 32 percent. So  
9 clearly you can see that Verizon and the local  
10 telephone companies are not the dominant players in  
11 the market. Cable is maintaining its advantage.

12           But if you kind of step back and broaden  
13 the scope a little bit of what this market looks like,  
14 and take a look at all of Internet households in the  
15 country, about 73 percent, depending upon the studies  
16 that you see, of customers today are still using  
17 dial-up to access the Internet, so what does that tell  
18 you? Well, that tells you that there's still a large  
19 market out there for companies like Verizon and  
20 companies that Dan, for example, represent, the cable  
21 companies.

22           A lot of customers may never want to go to

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1 broadband. They don't use the Internet that often.  
2 Maybe they use it just for e-mail and some limited  
3 applications. But increasingly we find that customers  
4 are getting dissatisfied with dial-up and want more  
5 out of their Internet experience, not only with faster  
6 speeds, but able to do more with it.

7 So how do we compete in this kind of  
8 market? Well, to compete in the market, customers  
9 like Verizon is going to have to continue to focus  
10 more on content, on applications, and on services, not  
11 just high speed access, although we are rolling out  
12 higher DSL access speeds. And what I mentioned a few  
13 minutes ago, the aggressive roll-out of more fiber in  
14 our network will allow us to provide Internet access  
15 at speeds that no one ever thought of in the past.

16 Delivery of those services are going to  
17 depend on a number of factors. One, it's going to  
18 depend on the ability of Verizon to continue to invest  
19 in broadband infrastructure. And second, it's going  
20 to be the ability for Verizon to have the flexibility  
21 to interact among all the players in what we call the  
22 Internet value chain. Let me give you an example of

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1 both of those.

2                   Today,           using           current           broadband  
3 technologies like DSL, cable modem, broadband brings a  
4 whole host of services into people's homes, home  
5 office applications, access to remote education  
6 material, entertainment, healthcare. But tomorrow,  
7 the future bandwidth services, the bigger fatter  
8 pipes, fiber to the home, the next generation versions  
9 of technology are going to give us much more, video  
10 conferencing, on-line interactive video games, virtual  
11 classrooms, telerobotics used for surgery, video on  
12 demand, and that's just only the beginning.

13                   We also think when we look at the Internet  
14 that there is a value chain, and this value chain  
15 serves both companies and consumers. And it involves  
16 all the different players that are involved in the  
17 Internet. We have application software providers like  
18 Netscape or Explorer, operating systems like Apple and  
19 Windows, network technology providers like LinkSys,  
20 and you have access service providers like Comcast and  
21 the cable companies, AOL and Verizon, BellSouth, SBC  
22 and Qwest. You have web services provided by Yahoo

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1 and MSN, content provided by companies like ABC News  
2 or MSNBC. And those are just only a few examples of  
3 the many players that are involved between the actual  
4 consumer and the content, and the applications that  
5 the consumer accesses on the Internet.

6 If you take a look at all of those  
7 players, only one player sticks out as a little bit  
8 different, and that is the local telephone companies.

9 They're all not regulated in this Internet space.  
10 The only regulated entity is the local telephone  
11 companies and the provision of DSL service. So what  
12 does that mean?

13 The regulations that we're subject to  
14 today are somewhat complex, and sometimes it's a  
15 little bit difficult to explain. But essentially, we  
16 are subject to regulations that were designed over a  
17 decade ago for a voice network, not a broadband  
18 network. If I can give you a couple of examples, the  
19 current rules today require that for every broadband  
20 service like Yahoo, we have to break apart a separate  
21 transmission service away from other enhanced services  
22 and offer those in piece parts.

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1           Oftentimes, that requires us to offer the  
2 piece parts under separate affiliates. It's sort of  
3 like requiring, you know, McDonald's to offer -- you  
4 know, to price the price of meat separately than a  
5 bun, regulate the price of meat, but allow them to  
6 price whatever they want to on the bun. It just  
7 doesn't make a lot of sense.

8           We also have to file public disclosures  
9 announcing plans in advance of where we decide to  
10 deploy new services and technologies, which  
11 essentially gives competitors advance notice of our  
12 plans.

13           And finally, we have to obtain approval  
14 for new broadband service offerings and prices from  
15 the FCC before we actually offer those to consumers.  
16 We're required to file tariffs with the Commission,  
17 that essentially restricts us in our ability to be  
18 able to be flexible to work with consumers. In  
19 general, it inhibits the ability to be able to  
20 introduce new services and partner with all of those  
21 entities that you just saw a few minutes ago over this  
22 Internet value chain. None of these rules apply to

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1 our competitors, which puts them at a significant  
2 competitive advantage.

3 So what should the FCC do? Well, the FCC  
4 has a number of proceedings open looking at what is  
5 the proper regulatory treatment of the telephone  
6 companies' DSL and broadband services. We think the  
7 answer is very simple. Give us the same freedoms that  
8 our competitors do, the ones that have 65 percent of  
9 the market to our 25 percent of the market. Freedom  
10 to partner with individual Internet service providers,  
11 content providers, manufacturers across that value  
12 chain on a contractual basis rather than via  
13 regulatory tariffs. Freedom to offer a wider range of  
14 service bundles and packages that consumers want  
15 without artificial regulatory constraints that we're  
16 currently subject to. And freedom to quickly  
17 introduce new services and change prices in response  
18 to our competitors without undue delay. If we do  
19 that, and if we have that freedom and that  
20 flexibility, consumers are going to benefit.

21 We'll have greater incentives to invest in  
22 the network. We'll have greater flexibility to

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1 partner with other entities across that Internet value  
2 chain, to develop new and innovative services,  
3 applications, Whizbang, capabilities that consumers  
4 want. And if we're able to be a more potent  
5 competitor, then that will translate into better value  
6 to the consumer, and better prices. And maybe even  
7 we'll see the cable companies reducing their prices  
8 for cable modem service.

9 So lastly, a word about Verizon's  
10 commitment. We're committed to open networks and  
11 providing consumers with access to the content that  
12 they want, and access to the choice of Internet  
13 service providers. A lot of folks have said that if  
14 the regulations are lifted on the Bell companies, then  
15 we'll restrict consumers' access to certain content,  
16 and we'll restrict their choice of Internet service  
17 providers. I don't think that that's so.

18 It simply doesn't make sense for Verizon  
19 as the underdog in this market to block a consumer's  
20 access to content, and to restrict their choice on the  
21 Internet. We want more content provider to our  
22 end-users, whether we provide it, or AOL does, or

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1 EarthLink or other providers.

2 We have a viable wholesale business today.

3 We provide dial-up access to about 400 Internet  
4 service providers, and a part of those Internet  
5 service providers buy our DSL service and repackage it  
6 with their own offerings, under their own brand name.

7 So it's a viable wholesale business today, and want  
8 it to be viable wholesale business tomorrow. But the  
9 day that we start restricting consumer choice is the  
10 day that they leave our networks and they go over to  
11 the cable networks, and we lose a customer. So we  
12 think a truly competitive market, not one based on  
13 regulation, will best ensure that consumers and  
14 providers have access to each other across the entire  
15 Internet. Thank you.

16 MR. GOLDBERG: Dan Brenner, Senior Vice  
17 President for Law and Regulatory Policy at the  
18 National Cable and Telecommunications Association in  
19 Washington, D.C., where he has served since 1992.  
20 Previously, he served as Director of the  
21 Communications Law Program, and a member of the  
22 faculty at UCLA Law School.

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1 Brenner was Senior Legal Advisor to  
2 Chairman Mark Fowler of the FCC. He was also Vice  
3 Chairman of the U.S. Delegation to the ITO World Radio  
4 Conference in Geneva, Switzerland in 1984. He's been  
5 a consultant to various organizations, was a senior  
6 fellow at the Annenberg Washington Program, and serves  
7 on the faculty of Georgetown School of Law. Mr.  
8 Brenner has served as a member and Vice Chairman of  
9 the Board of Directors of the Corporation for Public  
10 Broadcasting from 1986 to 1991. He is a graduate of  
11 Stanford University and Stanford Law School and the  
12 Senior Executive Program of Stanford's School of  
13 business. Thanks for coming.

14 MR. BRENNER: Thank you, Larry and the  
15 group for inviting me. I think this is a great topic  
16 for you guys to talk about, and I hope -- I'll try to  
17 keep myself to my time. And, Larry, cut me off if I  
18 go long, because I think the question and answers are  
19 likely to be the most interesting part of this  
20 marathon.

21 It might be interesting to step back for  
22 just a moment and a lot of people don't know where

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1 cable modem service came from, as if it was fore  
2 ordained as part of a great scheme as the next product  
3 for the cable industry, and that's really not what  
4 happened.

5 The way it's been explained to me, having  
6 lived through it at the NCTA is that cable companies  
7 in Boston, as it turned out, wanted to develop local  
8 area networks for some customers, just provide data  
9 transport as a commercial enterprise for an industrial  
10 park. And it was a new business for cable. We were  
11 developing some prowess with telecommunications, but  
12 we hardly were very -- the leader in it. We're still  
13 a pretty small player in telecommunication service,  
14 but the idea was that as long as we were going to  
15 build a LAN, maybe it made sense to have access to  
16 what was then called the World Wide Web, and be able  
17 to browse, as well as transmit data among offices in  
18 an industrial park. And Intel, at least, took the  
19 position that the cable modem would never work. Our  
20 network could not do this. And some very enterprising  
21 engineers working with some cable companies developed  
22 a product. And at the beginning, those of you who

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1 were really adopters, if any of you were of cable  
2 modem service, know that it was not the product that  
3 you see today.

4 It was originally to get cable model  
5 service took two engineers the better part of half a  
6 day in your home to try to install this thing.  
7 Usually have to come back the next day because it  
8 didn't work the first day. Over time it's developed  
9 so that you can go to a Circuit City, buy a cable  
10 modem, call the company, Plug N Play, and you have  
11 always-on broadband service. So it's really emerged  
12 as a very customer friendly product that's easy to  
13 install.

14 I think in fairness to Scott's comments  
15 about the cable industry, it's worth knowing that the  
16 DSL technology, and many of you know this, was around  
17 a lot longer than cable modem service. And it sort of  
18 sat on the shelf of the phone companies for many years  
19 until cable came along and said hey, there's a  
20 residential market for broadband. Because as you  
21 know, even today the phone companies offer T-1  
22 circuits and other -- and ISDN was the product that

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1 they thought would sell, but it cost a great deal  
2 more. And T-1, of course, is still a lot more than  
3 any cable modem service. And it was -- I think the  
4 cable industry's risked capital and ingenuity that led  
5 the -- really roused the phone companies from their  
6 slumber and got them into the residential phone  
7 service. So that's why you see the competition that's  
8 heating up in residential broadband service. And  
9 cable leads it in some ways because we were out ahead  
10 first.

11 Cable has spent since 1996 about \$75  
12 billion in risk capital, not rate of return capital  
13 coming from an embedded phone base, but risk capital  
14 to improve our networks. That's about \$1,000 per  
15 customer to rebuild our networks, not just for modem  
16 service, but also to provide digital cable service so  
17 that we can compete with DDS, which in the mid-90s  
18 sort of took the lead on diversity and quality in  
19 video. They had more offerings than the typical cable  
20 company did.

21 And in 2002 alone, we spent about \$215 per  
22 customer upgrading our network for that customer. The

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1 numbers as Scott indicated, show continued growth  
2 cable is in over 12 million homes today, but passes  
3 nearly 90 million homes. DSL is in front of around 60  
4 million homes, and it's adopted by -- a little over  
5 six and a half million of those homes take DSL.

6 That service is going to grow. Morgan  
7 Stanley estimates that broadband will account for 35  
8 percent of residential access, so that's down from the  
9 70 plus number that Scott indicated, so it's a growing  
10 business. And cable continues and wants to complete  
11 build-out.

12 One of the issues, I think, for  
13 policymakers is that at some point reaching certain  
14 unserved areas is difficult. We don't -- cable  
15 doesn't serve every home, and phone companies, because  
16 of at least the current technical limitations of DSL  
17 may not be able to reach rural telephone customers, so  
18 there are some, I think, policy challenges in reaching  
19 the last 10 percent, maybe the last 7 percent of  
20 American residences with broadband. Congress has  
21 looked at these in terms of different incentive  
22 programs.

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1           Let me just make a couple of policy  
2 points, and save time for questions and comments. Now  
3 cable has taken the view that while this may not be a  
4 mason service any more, it's a service that's still  
5 growing. It's hardly -- I think the first adopters  
6 have adopted it. There are lots of reasons why people  
7 don't have broadband in their homes.

8           Let me ask, how many people here in the  
9 room have residential broadband? It's a large number  
10 here but not everyone, and it may be that because you  
11 have broadband at your office, or you do mostly e-mail  
12 at home, and so that's satisfactory. So there is the  
13 challenge, I think, of finding products and services  
14 and ways of meeting customers, including price  
15 competition that Scott's indicated that phone  
16 companies have engaged in some very aggressive pricing  
17 right now for their service to try to boost  
18 subscription rates, to get people to subscribe,  
19 because there is a network effect, as some of you are  
20 familiar with that term, with broadband. The more  
21 people on the network, the more companies will produce  
22 programming for networks, broadband networks.

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1 I think that one way to think about the  
2 next era of broadband is, in fact, terms of premium  
3 programming. It's hard to believe because there's so  
4 much free available on the Internet, and early efforts  
5 at pay services on the Internet weren't all that  
6 popular. The Wall Street Journal has been struggling  
7 to convince people to pay for subscriptions, and I  
8 think the restaurant review Zagat switched from a free  
9 to a pay model, and is still trying to find its way.  
10 But if you think about what happened with cable  
11 television in the 70s, the cable industry convinced,  
12 because there was good programming, convinced people  
13 who were getting plenty of free television to start  
14 paying for their television. And today, nearly 70  
15 percent of -- more than 70 percent of Americans pay  
16 for television, even though there's a substantial  
17 amount of free television over the air, including  
18 public television, non-commercial television. So  
19 there is an ability to convince people.

20 And another comment I'd just like to point  
21 out, that people pay a lot for water. I see some blue  
22 bottles in here that suggests that people are

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1 convinced that something that's available at the tap,  
2 it's still worth paying \$1.25 for if presented in an  
3 attractive dark bottle.

4 Well, this is, after all, a consumer  
5 group, so I take it that there's some awareness of the  
6 fact that it is available just outside the door. But  
7 be that as it may, I think that may happen with  
8 broadband too, that there will be services that we  
9 can't envision today that people will pay for - and  
10 I'm not just talking about pornography or adult  
11 websites which have already demonstrated, I think,  
12 beyond anyone's -- most people's tolerance that  
13 there's a demand for pay adult websites. But other  
14 kinds of products and services that we haven't quite  
15 been able to see developed because the number of  
16 broadband subscribers isn't large enough. So my  
17 advice as a policy man would be to keep the government  
18 involvement at an absolute minimum. Keep government  
19 taxes, and fees, and franchises and franchise fees at  
20 a minimum to get this service out, to get a large  
21 number of people on the broadband network. And then  
22 see the innovative, creative programming things that

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1 can happen.

2 Today we have over 300 programming  
3 networks on cable that provide all kinds of programs,  
4 some good, some bad, some interest you and some that  
5 bore you. But the fact is, there's that fabulous  
6 choice that didn't exist in 1975 when there were no  
7 satellite delivery program networks, and I think we're  
8 all the better for it because we have more choice. So  
9 we feel that regulation is a mistake.

10 I think the Commission had it exactly  
11 right in declaring this an interstate information  
12 service, interstate in the sense that there really is  
13 not a need for extensive local regulation. Problems  
14 on the Internet, whether they're customer service or  
15 other kinds of issues can emanate from the local CMTS,  
16 the cable tied in, but it may just be as likely  
17 happening at some hop somewhere out in the cyberspace,  
18 so it's not the traditional local service problem that  
19 you have with cable television, where you can  
20 generally identify the technical problem somewhere in  
21 the local network.

22 And I think that people do view this

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1 product as something that is interstate, indeed,  
2 international. And that is, I think, why the  
3 Commission was right to declare it to be an interstate  
4 service. I look forward to talking about it with my  
5 colleagues and with all of you.

6 MR. GOLDBERG: Thanks, Dan. It's great to  
7 see you and Scott agreeing so much. And again, I'm  
8 also glad you asked about how many people here have  
9 broadband, because as you can see, quite a few of the  
10 members of this committee do. And I think like they  
11 say about people who own TIVO, you can pry it out of  
12 our cold dead fingers, because once you get broadband,  
13 you really want to keep it.

14 Again, fortuitously, our next speaker is  
15 John Windhausen. John Windhausen is President of the  
16 Association of Local Telecommunications Services with  
17 nearly 19 years of telecommunications experience in  
18 D.C., including on Capitol Hill and at the FCC. As  
19 AFCS President, Windhausen speaks on behalf of the  
20 CLECs, Competitive Local Exchange Carrier industry, on  
21 legal, regulatory and commercial issues.

22 From '96 to '99, Mr. Windhausen served as

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1 General Counsel for the Competition Policy Institute,  
2 a non-profit consumer advocacy organization in the  
3 energy and telecommunications field. From 1987 to  
4 1996, Mr. Windhausen was Senior Counsel and Counsel  
5 for the Communication Subcommittee of the U.S. Senate  
6 Commerce Committee, working with Senators Hollings,  
7 Inouye, and others, and he worked closely on the  
8 Telecom Act of `96.

9 Prior to his work in the Senate, Mr.  
10 Windhausen was a Staff Attorney in the FCC's Common  
11 Carrier Bureau from `84 to `87. Mr. Windhausen holds  
12 a JD degree from UCLA School of Law, and a Bachelor's  
13 Degree in History from Yale. Thanks for coming.

14 MR. WINDHAUSEN: Thank you, Larry. Let's  
15 see. I have a couple of apologies I'd like to start  
16 off with. First, an apology for not being able to  
17 present or prepare this Power Point presentation  
18 enough in advance to have it transcribed in the right  
19 presentation format for everybody. I am going to walk  
20 through it on the screen here, I believe, and will  
21 talk through each of the slides as they come up. And  
22 it has been e-mailed out, and I can make sure that

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1 it's presented to all of you who need it in a better  
2 format.

3 Second apology is for my lack of  
4 preparation here today. I didn't realize in advance  
5 that I might have the chance to sit in what appears to  
6 be the FCC Chairman's Chair, and it's so unusual for a  
7 CLEC representative to have the authority or power. I  
8 don't quite know what to do with this.

9 So not having that preparation, I'm just  
10 going to proceed through this presentation for you.  
11 And if you would bear with me too a little bit at the  
12 beginning, because I'm not sure how many of you are  
13 familiar with ALTS and who we are, so I'm going to try  
14 to walk you through a little bit of who ALTS  
15 represents, and what we do, and the platforms that we  
16 provide service over.

17 But first off, ALTS, as mentioned, the  
18 Association for Local Telecommunication Services. We  
19 are the leading trade association that represents the  
20 facilities-based CLECs, so that means that we are the  
21 companies that are building our own separate broadband  
22 networks in competition with the telephone companies.

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1           Some of the companies are listed here. I  
2       won't read all of them, but KMC Telecom, Allegiance,  
3       Focal, Covad, Time Warner, Telecom, Choice One,  
4       PacWest are the kinds of companies that we represent.

5       And these are all local companies competing for local  
6       service, so that means we represent companies who  
7       build their own fiber optic cables. We have DSL  
8       companies such as Covad, New Edge Networks, DSL Net.  
9       We have fixed wireless companies, and we provide the  
10      full suite of voice and broadband services to  
11      consumers.

12           That means that we do not represent the  
13      Bell companies, who are our main competitors. We also  
14      do not represent the main long distance companies, so  
15      AT&T, MCI and Sprint, for instance, are not members of  
16      ALTS. Our focus is on the local market.

17           Now a lot of you may be familiar with the  
18      fact that the CLEC industry has taken it on the chin  
19      over the last few years financially, and a lot of the  
20      stories you may have seen in the trade press reflect  
21      the fact that a lot of our companies have gone  
22      bankrupt in the last couple of years. And the overall

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1 numbers of competitors has diminished quite  
2 significantly.

3           Having said that, we are, I think, on the  
4 cusp of a revival in the CLEC industry. In the year  
5 2002, was the first year that the CLEC industry posted  
6 positive EBITDA. That means Earnings Before Interest,  
7 Taxes, Depreciation, and Amortization. It's a measure  
8 of our future profitability, and it basically means  
9 that for the first time in 2002, our companies brought  
10 in more revenue than we spent on running our network,  
11 so it's a very important milestone toward  
12 profitability, and very significant that we're able to  
13 achieve that.

14           Also, in the first six months of this  
15 year, our stock has doubled in value, at least the  
16 publicly traded CLECs. So we're very optimistic that  
17 the future is bright for our companies, the companies  
18 that have survived.

19           And lastly, of course, our market share  
20 continues to grow. And this is, I think, quite  
21 astounding that even though we probably lost about  
22 two-thirds of our companies in the number of

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1 companies, our total market share is now up to about  
2 13 percent of the local telephone marketplace when  
3 measured in terms of revenues.

4 Now I'd like to spend a couple of minutes  
5 talking about the benefits that we provide to  
6 consumers because after all, this is what you all are  
7 primarily focused on, and what policymakers should be  
8 focused on first and foremost.

9 Our companies -- our first benefit is that  
10 we offer very significant price discounts to the  
11 services that are generally offered by the telephone  
12 companies. I used to say 10 to 30 percent discount,  
13 and in doing some more research, I found quite a  
14 number of examples of our companies offering up to 50  
15 percent discounts off the prices that you would have  
16 to pay for the Bell Company to receive an equivalent  
17 service.

18 And let's face it, we don't have the name  
19 recognition that the Bell Companies do. If we're  
20 going to win market share, and compete well, we have  
21 to offer a value to the consumer. And a big part of  
22 that value are the lower prices that we can provide,

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1 and we're very proud of that. We also offer new  
2 innovative technologies, which I'll talk about more in  
3 a second. And we also do our most -- the most we can  
4 to contribute to our community.

5 Just spending one more minute on each of  
6 those three criteria, there's a lot of text here in  
7 this slide, but the basic point is that the Yankee  
8 Group has done surveys each of the last couple of  
9 years on customer satisfaction, and they found from  
10 both of those years that the CLEC industry has  
11 out-polled, out-ranked the Bell Companies with regard  
12 to their customer service. The prices are cheaper,  
13 and also the level of customer service that we provide  
14 is superior to that that you can get from the Bell  
15 Companies. And there's a big article that was written  
16 up, I recommend to you, in the Chicago Tribune last  
17 month, which detailed the consumer benefits that we  
18 provide.

19 In terms of broadband innovation, CLECs  
20 are often at the forefront of bringing new broadband  
21 technologies to the market. We were the first to  
22 innovate and provide what's called frame relay

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1 services, one of the first broadband data services.  
2 We were also the first to provide DSL to the market.

3 As Dan mentioned, DSL had been sitting on  
4 the shelf of the Bell Companies for years. It wasn't  
5 until CLEC started to deploy the technology that it  
6 really began to take-off in the market. And we're  
7 also deployed fixed wireless service.

8 A couple of examples here on this slide,  
9 PacWest, one of our members, is currently rolling out  
10 a new service to triple the speed of dial-up access,  
11 and this is going to be particular advantageous for  
12 rural areas that don't have typical broadband  
13 availability today. They're going to be able to get  
14 the equivalent speeds over their dial-up service  
15 without having to pay extra cost for it, or without  
16 having to upgrade their computers. It's an example of  
17 the kinds of innovation that we're able to provide.

18 And why are we able to provide that?  
19 Well, it's because we use the local loop that we lease  
20 from the Bell Company. This pictorial tries to  
21 demonstrate how we provide service. We connect our  
22 equipment, and the three switches there that are in

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1 color on this screen are meant to exemplify the  
2 intelligence that we put onto what we call the dumb  
3 pipe, which is the transmission capability.

4 Now I use the word "dumb" not pejoratively  
5 towards any particular company. It's just the best  
6 way to make the point that the actual transmission  
7 technology, whether it's the copper or the fiber, is  
8 fairly transparent. It just carries data back and  
9 forth. But the more intelligence you put on that  
10 pipe, the higher quality service you can provide to  
11 the consumer, and that's what our companies specialize  
12 in. We come up with the more sophisticated  
13 intelligence and data speeds using the dumb pipes  
14 provided to us by the phone companies.

15 I've provided here a few examples our  
16 humanitarian programs. In particular, I'll mention  
17 Covad's grant program to Micro Entrepreneurs  
18 specializing in helping companies owned by women and  
19 minorities, but we have all kinds of these kinds of  
20 public service programs that our companies provide.

21 Now to face the main question of this  
22 panel head-on, you've been asked to consider this

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1 notice of parody, and Scott has done a good job of  
2 framing the issue for you. In terms of parody between  
3 the Bell Companies on the one hand, and the cable  
4 companies on the other, I respectfully suggest, that  
5 should not be the main question that this group  
6 focuses on. That's a false premise on which to start  
7 this debate.

8           The real question is, what's in the best  
9 interest of the consumer, not what's in the best  
10 interest of two sets of giant companies and  
11 industries. And in that score, I think, as I've  
12 demonstrated, the participation by our companies, the  
13 CLECs, provide an awful lot of benefits to the  
14 consumer, and you should -- I would ask that you keep  
15 that in mind, the tremendous consumer benefits that we  
16 provide.

17           But if you do want to talk about parody,  
18 well, let's really talk about parody. Let's talk  
19 about all the advantages the Bell Companies have over  
20 the CLECs, over our competitors. The Bell Companies  
21 have access to every city street. They have access to  
22 every building. They have access to extremely low

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1 cost of capital. They have access to loops and  
2 transport, and they provision their customers much  
3 more quickly than they provide them to us.

4 These are all ways in which the Bell  
5 Companies have a disparate advantage over the  
6 competitive industry. So if you do want to go down  
7 that road, we're happy to go down that road, but there  
8 are an awful lot of disparities out there in the  
9 marketplace that we would ask you to take into  
10 consideration.

11 The Bell Companies will similarly make the  
12 argument that they need to be deregulated in order to  
13 promote broadband, and deploy it more widely. If you  
14 look at the evidence, however, on investment, it shows  
15 a very different story than what you might be led to  
16 believe. In fact, investment has been very, very high  
17 since 1996, in large part because of the competition  
18 that the 1996 Act set in motion. If you look at the  
19 CLECs investment, our industry alone has invested \$71  
20 billion. I think that's comparable to the \$75 billion  
21 that Dan mentioned from the cable industry. Even  
22 though we're a far smaller industry than the cable

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1 companies in terms of revenues, we're actively  
2 building these competitive networks as much as we can.

3 And when you look at the Bell Companies'  
4 investment levels and track them over a decade, rather  
5 than just looking at the last two years, you see that  
6 their levels of investment have increased  
7 significantly, almost doubled in 2000 over their  
8 historic rate of investment through the 1990s. We  
9 think this is all because of the competitive forces  
10 that were set in motion by the 1996 Act, so there's  
11 really a great success story here. The amount of  
12 investment has been very significant. The  
13 availability of broadband is higher than it's ever  
14 been before, and something to be proud of. Up to 83  
15 percent of consumers now can choose a broadband  
16 provider, if they wish.

17 So what the Bell Companies plea for  
18 deregulation comes down to is, you should feel sorry  
19 for us. And Scott signaled that there are all these  
20 players in the broadband marketplace, and they're the  
21 only ones that are regulated. But if you look at  
22 their financial statistics in the last few years,

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1 they're doing very, very well. Most folks realize  
2 that they now have more long distance customers that  
3 they've lost in the local market, and their revenues  
4 are very high. Their EBITDA margins are very high,  
5 higher than our's, so there's no reason to feel sorry  
6 for the Bell Companies.

7 So in conclusion, I would ask that you  
8 consider that consumers will benefit most from a wide  
9 variety of competitors, and including the competition  
10 that our CLECs provide in the marketplace. Ideally,  
11 consumers should want a variety of players offering  
12 various technologies, over a variety of platforms.

13 Scott mentioned that if they refuse to let  
14 us have access to their network, we could go somewhere  
15 else. Well, we can't. We might like to go to the  
16 cable companies and use their platform, but  
17 technologically, it's not available to us. It's not  
18 possible. Our only avenue of providing this  
19 competition is through leasing the local loop from the  
20 Bell Company, and that's how consumers are going to  
21 benefit the most. Thank you.

22 MR. GOLDBERG: Thank you. I'm glad we're

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1 finally getting at some of these regulatory issues.  
2 And I think maybe what we'll do once we finish all the  
3 presentations, be about time for the break, is to  
4 offer rebuttal opportunities down the panel so we  
5 could answer some of the questions each of you are  
6 bringing up.

7 Our next speaker is Nick Miller. He's the  
8 Managing Partner of Miller & Van Eaton, a law firm  
9 that is involved in telecommunications and cable TV  
10 law. He served as Communications Counsel to the U.S.  
11 Senate, and was special consultant to the White House  
12 on telephone deregulation issues. He represents local  
13 governments and real estate interest in telecom and  
14 cable television matters.

15 Mr. Miller is a frequent public advocate  
16 for the rights and interests of local governments in  
17 modern communications. Mr. Miller is also counsel to  
18 ALOAP in the cable modem proceedings at the FCC.  
19 That's the Alliance of Local Organizations Against  
20 Preemption, and it includes the National League of  
21 Cities, U.S. Conference of Mayors, National  
22 Association of Counties, International Municipal

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1 Lawyers Association and others.

2 Mr. Miller received his law degree in '73,  
3 and his undergraduate degree in Economics in 1966,  
4 both from the University of Washington. He served  
5 with commendations and awards in the U.S. Navy, and  
6 his service did include a tour of duty in Viet Nam.  
7 Mr. Miller.

8 MR. MILLER: Thank you very much. First,  
9 I want to say it's an honor to be here. I want to be  
10 clear about who I am, and what I'm representing. I am  
11 counsel to the National Municipal Local Government  
12 Associations in the proceeding at the FCC dealing with  
13 the DSL and cable modem issues. The acronym is ALOAP,  
14 as Larry indicated, but I bring you greetings from the  
15 local elected officials.

16 That hat means I am not here speaking on  
17 behalf of consumers. I'm here speaking on behalf of  
18 folks who care deeply about consumers, but who keep  
19 the consumer interest in balance and perspective with  
20 other interests that are also in the day-to-day fray  
21 that is before every city council. So one of the  
22 things I would point out to you is that there are very

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1 well expressed consumer views that have been filed on  
2 all of these matters by very substantial consumer  
3 organizations here in Washington, D.C. And I would  
4 hope that the committee would take those under  
5 advisement and read those with great care. I'm  
6 speaking specifically of the comments of the Consumers  
7 Union and Consumer Federation of America, and various  
8 other organizations, including AARP.

9           So with that said, let me explain the  
10 point of view of local governments as we look at this  
11 issue. One point I think we bring is, we are less  
12 concerned about the deployment of technology, and much  
13 more concerned about the deployment of services.

14           If you want to roll-out fiber optic to the  
15 home as quickly as possible, you create an unregulated  
16 monopoly. You generate super profits in the  
17 marketplace, and guess what? Wall Street will flow  
18 money to that result. But the price you pay, is you  
19 also give up control of the services market in that  
20 process. And so I would ask the committee to keep in  
21 mind clearly the question of what is the way that  
22 you're going to allot the most, and most competitive,

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1 and most diverse range of services to consumers? And  
2 what is the way in which you will allow consumers to  
3 avoid market failures, and to have their voice really  
4 heard as they vote with their dollars for and among  
5 those services. So it's striking me, for example, and  
6 I assume that this is only the first of many of these  
7 sessions that the committee will have, that it seems  
8 to me that the service providers are a group that  
9 ought to be heard from by this committee.

10 Local governments see the issue as  
11 two-fold. There is a problem now that's created by  
12 the fact that cable modem and DSL service is not being  
13 rolled out in a competitive market. Even Scott's  
14 figures suggest that 50 percent of the homes have only  
15 the choice of one provider. And, in fact, I believe  
16 that data - and I'll allow him to clarify - I believe  
17 that data is based upon zip code availability, not  
18 actual homes passed. So in only 50 percent of the zip  
19 codes is there two service providers offering service  
20 to one home in that zip code. So I would suggest that  
21 right now, we are still very much dealing with a  
22 monopoly service provider environment. And to step

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1 back and totally deregulate the behavior of that  
2 monopolist in that context is very threatening, and  
3 has a lot of implications for how the market will take  
4 shape.

5 Then there's a second problem. When the  
6 market becomes competitive, at this point, no one is  
7 talking about more than a duopoly, but let's assume a  
8 duopoly isn't fair, it is, in fact a competitive  
9 market. You still have the problem of market failure  
10 in adopting appropriate rules that give consumers real  
11 recourse as individuals when they experience real  
12 problems as individuals. And this is where I think  
13 the Conference of Mayors and the National League of  
14 Cities is quite disturbed at what has happened in this  
15 building in the last year.

16 On March 15th of 2002, the FCC  
17 unilaterally adopted a Declaratory Order that set  
18 aside the existing set of regulatory rules that govern  
19 all forms of consumer protection with respect to  
20 broadband services by declaring that cable modem  
21 service was not a cable service and, therefore, was  
22 out from under the whole regulatory regime for cable

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1 franchising. But, in fact, was an interstate  
2 information service. They unilaterally attempted to  
3 prevent the state regulators and the local regulators  
4 from being available to provide recourse to consumers  
5 who are having real problems.

6 Now that was March of 2002. We are now in  
7 July of 2003. We still have no rules in place that  
8 give any guidance or any state or local regulator  
9 guidance about what kind of remedies are available  
10 when a consumer experiences real harm, and real injury  
11 in the marketplace. So I would ask this committee to  
12 focus on that issue, and come to grips with it  
13 relatively quickly.

14 Local governments are particularly  
15 concerned because, in fact, we had a very elaborate,  
16 and we thought pretty efficient set of regulatory  
17 remedies out there to protect consumers in our  
18 individual markets through the cable franchise  
19 process. By declaring that this service is no longer  
20 a cable service, the Commission has taken all of those  
21 regulatory remedies out from within the grasp of  
22 consumers.

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1           Now we do have some staff letters from the  
2           FCC that suggest that that decision doesn't completely  
3           eliminate local and state consumer protection  
4           authority in this area. But what that practically  
5           means is that the 35 to 36 hundred local franchise  
6           authorities have to adopt new rules and regulations,  
7           specifically aimed at the cable modem service. And  
8           that the 52 state regulatory commissions have to adopt  
9           specific rules aimed at DSL service, trying to get  
10          through the legal landmine that the Commission has  
11          created with its decision.

12           So we are here before the Commission as  
13          the National Associations, asking the Commission to  
14          pay attention to what Commissioner Copps said in his  
15          dissent, when he said, "The Commission was adopting a  
16          decision on March 15th that was clearly far beyond the  
17          reach of the headlights of the Commission. And was  
18          creating an" -- and if I can extrapolate what I  
19          believe Commissioner Copps was saying, we have set up  
20          a situation that's going to replicate the problems  
21          that we had with long distance slamming.

22           There is not today a place that a consumer

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1 can take a complaint if they are unhappy with the  
2 service that they are getting from their cable model  
3 provider, except to the provider itself. There is no  
4 other remedy out there.

5 Now there are some jurisdictions that are  
6 moving forward with expanding their traditional  
7 consumer protection relation, and I would encourage  
8 you to go home and encourage your local elected  
9 officials to take that initiative to fill that gap.  
10 But there's a real problem out there, and this group  
11 has something to say on that. And I would encourage  
12 you, and I would be happy to provide whatever  
13 assistance local governments can provide you to  
14 understand that problem in more detail.

15 I think there's a growing awareness that  
16 you cannot have even a competitive market without  
17 rules in place that allow investors to understand what  
18 the expectations are, that allow consumers to  
19 understand what the expectations are, and that  
20 provides an unbiased place to adjudicate and resolve  
21 disputes.

22 The example I like to use is - because I'm

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1 a real soccer fan - is World Cup Soccer. You know,  
2 when the World Cup final game goes onto the playing  
3 field, you have the two best, most competitive,  
4 perfectly at parody teams competing with each other.  
5 If you did not have a set of rules and a referee on  
6 that field, you could not have a game. Thank you.

7 MR. GOLDBERG: Thank you. As I mentioned,  
8 we'll have a chance for some follow-up statements and  
9 rebuttals after the break. But finally, we'll now  
10 hear from the states.

11 David Svanda is a Commissioner with the  
12 Michigan Public Service Commission. He's been very  
13 active with the National Association of Regulatory  
14 Utility Commissioners, NARUC, as the elected  
15 President, as an Executive Committee and Board Member,  
16 and having held other leadership positions.

17 Mr. Svanda is also very familiar with the  
18 FCC and its advisory boards as a member of the  
19 Commission's Local and State Government Advisory  
20 Committee. He served as Director of Administrative  
21 Services for Governor John Engler, as Director of the  
22 Governor's Northern Michigan office.

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1           Mr. Svanda has a Bachelor of Arts Degree  
2 in Political Science and Urban Affairs from Western  
3 Illinois University, and a Master's in Public  
4 Administration Degree from Maxwell Graduate School at  
5 Syracuse University, and he's been involved with  
6 elective politics, as well, having run for Congress in  
7 1994. Welcome.

8           COMMISSIONER SVANDA: Thank you very much,  
9 Larry, and Madam Chairman and Members of the  
10 Committee. It's an honor and privilege to be here  
11 with you. And so early, as you are beginning your  
12 service to the FCC and to the communication needs and  
13 interests of this country, I understand this is just  
14 your second meeting. And so I guess it makes it even  
15 more meaningful to be here so soon as you begin your  
16 work. I appreciate that.

17           In case some of you don't know what NARUC  
18 is, just a moment of explanation about it. It is the  
19 National Association of State Utility Commissioners.  
20 We represent the interests at the national level of  
21 the state commissions of all 50 states, plus the  
22 District of Columbia, plus the U.S. territories, and

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1 so we are a constant advocate at the national level in  
2 this town, both before Congress and the Administrative  
3 Agencies, with regard to a wide range of issues. And  
4 those issues do include, as was already mentioned,  
5 trying to present a balanced position, which is what  
6 state commissions attempt to do back home, and what we  
7 work towards in our policy attempts here in  
8 Washington.

9 We do try to balance consumer interests  
10 with those of shareholder interests. We do that on a  
11 continuing basis. We attempt to balance the interests  
12 of the various consumer classes represented in many  
13 instances by some of you in this room, but  
14 acknowledging that there are vast differences between  
15 the needs of each of us as individual consumers of  
16 services, and in this instances, network services and  
17 our commercial and our industrial types of friends,  
18 who also have needs of their own and are very real as  
19 they make their contributions to how this country  
20 works. And lastly, balancing the needs of individuals  
21 as we identify them with the particular sets of needs  
22 that they bring to the table.

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1 I tended to focus my thoughts coming into  
2 this session on the issue of parody and regulatory  
3 parody in particular, thinking that that was the issue  
4 that you were tending to struggle with. States sit in  
5 a fairly unique position with regard to the question  
6 of parody because we're right in the middle of the  
7 federal mix that happens to occur around broadband,  
8 happens to occur around other telecommunication  
9 services. And what I mean by the "federal mix", is  
10 that the FCC representing our national government,  
11 certainly has interests that flow across state lines,  
12 are interstate in nature, don't recognize the  
13 differences between the states, but recognize, in  
14 fact, that networks, national and international  
15 communication systems need to be very free and  
16 flowing, so the FCC has a very broad scope.

17 The states have a very narrowed scope in  
18 relationship to what the FCC does. The states are  
19 concerned with what we tend to call principally plain  
20 old telephone service. Plain old telephone service is  
21 what most of us have grown up with over time, and  
22 recognize it as the outgrowth of what used to be just

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1 old AT&T. And yet, states have a very strong concern  
2 for new developments, new technologies, what broadband  
3 is doing for us, and what it can do for us. And those  
4 interests are because there is a direct relationship  
5 between that plain old telephone service, what the new  
6 technologies are, what we can expect by way of  
7 pricing, what will be delivered by way of service.  
8 And it is all interrelated and interconnected.

9 As we see the Internet, as we see cellular  
10 phones replacing the need for old wireline phones in  
11 many instances, we have ways that our kids and  
12 grandchildren use to communicate that we maybe never  
13 thought of, as a possibility. It all points to the  
14 need for better coordination and view.

15 And lastly in that regard, we are the  
16 entity that in many instances across the country are  
17 responsible for the creation of cities, and counties,  
18 and townships as creatures of state government. Local  
19 governments are responsive to state legislature, state  
20 executives, and in some instances, constitutional  
21 kinds of provisions. But we recognize - and I will  
22 slip to my Michigan Commissionership a little bit -

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1 recognize the need to coordinate as best we can, being  
2 in the middle, the efforts of local governments, our  
3 own efforts at the state level, and then what's  
4 occurring at the national level, so that we can get to  
5 a climate that is conducive to achieving the  
6 objectives that we all tend to set out for ourselves.

7 Like my panel colleague at the end, Nick,  
8 I wanted to talk to you about regulatory parody by  
9 talking about a sport game. Instead of soccer, Nick,  
10 I wanted to draw out an example of parody for you by  
11 talking about the national sport of baseball, and  
12 thought this late in the afternoon after you've been  
13 flooded with probably technical and legal kinds of  
14 presentations all day, thought you might be up for a  
15 little baseball.

16 But think about a baseball, two baseball  
17 teams starting the season out, say this season. Two  
18 professional baseball teams at that league and playing  
19 at that level. One of those teams has been around for  
20 100 years, and has all of the usual kinds of trappings  
21 that you would expect from a major league baseball  
22 team that's been around that long. And the other one

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1 is just starting out as a brand new upstart. That  
2 brand new upstart, and the old 100 year old team are  
3 obviously expected to play by the same rules. Three  
4 strikes, four balls, same number of innings played,  
5 same number of fielders, all of those kinds of things.

6 The umpires are expected to call them as they see  
7 them, the balls and the strikes, and the sliding outs  
8 and all of those kinds of things. And it is  
9 professional baseball, so it's hard and fast. The  
10 pitches are thrown fast, and the short stop to first  
11 can be approaching 80 or 90 miles an hour as they whip  
12 it over.

13 Now the same rules, remember. However,  
14 the new team can't quite afford to have gloves or  
15 bats, and in not being able to afford gloves and bats,  
16 they also ride around in a bus, and so getting to  
17 games is a little slower. Now imagine those two  
18 teams. When they meet on the playing field, you guys  
19 can probably pick the winner. You can probably pick  
20 where they will finish at the end of the season in  
21 terms of statistics, and where they are in the  
22 rankings. And so it's something to be considered when

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1 discussing parody; playing by the same rules, umpires  
2 calling them exactly the same way, but what are the  
3 resources that are available, and how can it be  
4 deployed in the game strategy and playing it out.

5           That is the point of, I guess, my little  
6 diversion here, is to point out that in addition to  
7 considering regulatory parody, there is a much bigger  
8 environment that has to be taken into account. There  
9 are other things that also need to be brought into  
10 parody at the same time, or relative time as parody in  
11 regulation is considered. And that can't be done  
12 overnight. It can't be done quickly. It requires  
13 transition to get there. It sometimes, in fact,  
14 requires planning in order to get there. It requires  
15 the players to be trying to achieve the same public  
16 interest, and one of the other panelists mentioned  
17 what that focus should be. And that's a focus on  
18 consumer services, and quality, and pricing that suits  
19 the needs of consumers of all types.

20           So parody at the regulatory level is  
21 dependent on, must be cognizant of the rest of the  
22 environment in which regulation is occurring. Access

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1 to capital parody might be a good thing to also be  
2 discussing. Access to the customer might be a good  
3 parody issue to be discussing. And so with that said,  
4 from the State Public Service Commission perspective,  
5 certainly getting to parody is a goal that we should  
6 all have tacked up on the wall. It's one where we  
7 should be working towards, but one that we cannot in  
8 an artificial way move too quickly because we'll have  
9 many undesired consequences that would not be  
10 productive. The goal is certainly one to endorse.  
11 Adding our efforts to achieving it is certainly one  
12 that state regulatory folks have an interest in  
13 pursuing, but to do it with care and caution.

14 In that regard, State Utility Commissions  
15 through our research, put together a 2002 survey of  
16 what states are doing with regard to broadband  
17 regulation. By and large, it is a very light-handed  
18 approach, and one that is consistent with how  
19 broadband regulatory attitudes generally seem to be;  
20 and that is to stay out of the way of a great  
21 technology, and let the innovative forces unfold as  
22 they will.

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1           There are a few states that have gone a  
2 little further than that, and I guess we're all  
3 watching for what comes out of the FCC in its final  
4 order on tri-annual review, to understand whether or  
5 not the state actions will, in fact, remain valid  
6 afterwards, or if they will be open and subject to  
7 challenge. And there are, I think, a good number of  
8 states that have taken the approach - my own State of  
9 Michigan is one of these - taken the approach that we  
10 want to do everything that we can in our state to  
11 incent broadband deployment. So it is not a matter of  
12 burdening deployment with regulatory layers, but  
13 instead, understanding what the needs are to get  
14 broadband deployed in every corner of our state just  
15 as quickly as it can be, and serving the needs of our  
16 citizens and businesses.

17           We have, in Michigan, enacted just last  
18 year what some call a model set of statutes that does  
19 exactly that, and I'd be happy to talk individually or  
20 at a future time with all of you about what's entailed  
21 in those provisions.

22           Let me close at that point, and I look

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1 forward to the rest of the conversation.

2 MR. GOLDBERG: I appreciate how well  
3 everyone here has worked towards explaining these  
4 issues, and the sports analogies, I think, are  
5 appreciated by some or most. As a Yankee fan living  
6 in Boston, I very much appreciate that.

7 We'll take a break now, maybe just 10  
8 minutes. We'll do our rebuttals right after the  
9 break, and maybe we'll enter the game of darts after  
10 that. Ten minutes.

11 (Whereupon, the proceedings in the  
12 above-entitled matter went off the record at 2:28 p.m.  
13 and went back on the record at 2:49 p.m.)

14 CHAIR ROOKER: Okay. Larry, we're going  
15 to turn it back over to you.

16 MR. GOLDBERG: Thank you, Shirley.

17 CHAIR ROOKER: Do we have anything else  
18 that we need? No, we're going to go back to business.  
19 Okay. It's your's.

20 MR. GOLDBERG: Okay. Well, I promised a  
21 couple of minutes for rebuttal or answers to the  
22 questions that were raised by the other panelists. So

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1 why don't we go down and try to take no more than two  
2 minutes, because we really do want to get to Q&A by  
3 members of the committee. So in the order that we  
4 started, Scott.

5 MR. RANDOLPH: Okay. Thank you. I'm not  
6 really sure who was the incentive to get the telephone  
7 companies to roll-out DSL, whether it was the CLECs or  
8 the cable companies, but I'll let you guys fight about  
9 that. But I would like to say one thing about that.

10 DSL is an interim technology. It's not a  
11 means to an end. It's not going to get us where we  
12 need to be in the broadband networks of the future.  
13 We're going to have to be able to make significant  
14 investment out there in the network. We're going to  
15 have to deploy more fiber to neighborhoods, and even  
16 all the way into individual customers' homes.

17 In fact, we have a trial going out in a  
18 neighborhood called Brambleton out in Loudoun County  
19 out here in Virginia, where we are wiring houses  
20 directly with fiber. So that's going to take quite an  
21 amount of investment, and we're going to have to be  
22 able to sell the services and applications and be

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1 successful in the market out there in order for us to  
2 be able to recoup that investment.

3 One point that I'll just make that Nick  
4 had brought up, regarding my chart being sort of  
5 showing that there are 50 percent of the customers in  
6 our territory that have no choice. Well, that's not  
7 where we want to be, and hopefully by the end of this  
8 year, we will reach about 80 percent of our customers  
9 with DSL. And as Dan mentioned, cable is available to  
10 about 90 percent of the households in the United  
11 States, so we're going to get there as far as  
12 deployment.

13 The question is, how do we compete in this  
14 market? And for us to compete in the market, we need  
15 to be able to sell the services and applications, and  
16 the content that the consumers want. And we can't do  
17 that under the current rules. It's impeding us.

18 I will say one more thing, just to comment  
19 to one of John's remarks regarding the competitive  
20 local exchange carriers. Even with the FCC's ruling  
21 that they came out with in February, that we're  
22 awaiting the order on regarding local competition, the

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1 FCC declined to require us to unbundle our broadband  
2 networks and sell it in piece parts to competitive  
3 local exchange carriers. But they did preserve the  
4 right of the CLECs to continue to have access to  
5 loops, so going forward in the future, even as we are  
6 putting fiber out there into neighborhoods and to our  
7 network, the competitive local exchange carriers will  
8 still have access to loops to be able to serve  
9 customers.

10 We don't think that anything that we are  
11 proposing as far as broadband is concerned in the  
12 FCC's open broadband proceedings will affect the  
13 capability of some of the CLECs to be able to access  
14 customers.

15 MR. GOLDBERG: Thanks. Dan.

16 MR. BRENNER: Yeah. There are just 27  
17 quick things.

18 (Laughter.)

19 MR. BRENNER: I'm kidding with the 27.  
20 One thought I had, you know, I was thinking about  
21 consumer protection. And I don't think, contrary to  
22 some of the views here, that consumer protection turns

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1 on how many players there are in the market. You can  
2 have 100 different car companies, car dealerships, and  
3 you still need consumer protection. And you may have  
4 one provider of clock repair, and you don't need  
5 extensive consumer protection of that.

6 I think the key is really not how many  
7 players there are in the market, but what is the  
8 utility of the regulation. Will the apparatus that  
9 you're spending taxpayer money for benefit the  
10 customer? And I think you always have to analyze  
11 that. And I think that that debate does get lost.

12 One of the points Nick made was gee, we've  
13 had no consumer regulation since March of '02 to July  
14 of '03, and it's going to go on for maybe more months.

15 I don't see that the sky is falling down. What I  
16 have seen is that more and more people are taking  
17 broadband, more and more people are finding new ways  
18 to offer applications of broadband. And that while  
19 there have been some consumer complaints, the FCC does  
20 log complaints from cable, including broadband, and  
21 it's less than 100 complaints nationwide. Ron is  
22 disagreeing with that number.

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1           Anyway, at the FCC I'm saying. There may  
2 be complaints at the local level, but -- and I'm not  
3 saying that it's a complaint-free service, but many  
4 of the issues on the Internet are not -- if there are  
5 local issues or local billing problems, that are often  
6 issues that ought to be settled out, I think, between  
7 the customer and the cable company.

8           I've said this when any people complain  
9 about video service or cable service, if you're not  
10 getting what you're paying for, don't pay for it until  
11 the cable operator gets a clean good picture into your  
12 home, don't pay for the service. And just insist that  
13 the cable company deliver a good picture, or come to  
14 some settlement as to what the picture is worth. But  
15 don't pay for something that you're not getting, and  
16 that goes for cable modem service, and it goes for DDS  
17 service, and it goes for telephone service from  
18 Verizon, and it goes for service from any CLEC  
19 company.

20           Unfortunately, we don't quite have that  
21 relationship with the government, but -- I point to  
22 you, David. You withhold tax and see what happens.

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1 The cable industry, and Nick knows this, did not  
2 oppose the definition of cable modem service. In  
3 fact, the cable industry went along with that. It was  
4 the FCC that changed it, although we didn't oppose the  
5 FCC's view of it either. At that point, we were  
6 paying a cable franchise fee, or a 5 percent fee. But  
7 it's not as if municipal governments are bereft of  
8 funds to regulate cable.

9           You may not be aware of it, but over \$2  
10 billion a year come out of your customers or out of  
11 consumer's pockets who are cable subscribers to pay  
12 for regulation at the local level. That's what the  
13 money is supposed to be used for. It's not supposed  
14 to be used to balance budgets. Maybe it is being used  
15 for balancing budgets in these times of lack of  
16 revenues from cities, but the idea was that there  
17 would be an adequate fund for regulating cable, and  
18 the administrative cost of it. That's a lot of money.

19       It's 10 times the budget of the building we're in, so  
20 if there is still an inadequate amount of consumer  
21 protection due to lack of funding, I'm suggesting that  
22 it's not a funding question.

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1                   And finally, we've heard a lot about  
2 parody. You may have noticed in my comments that I  
3 didn't really address how the telephone company should  
4 be regulated, or how CLECs should be regulated. We  
5 are not in the business, as a trade association, and I  
6 think I'm glad -- it makes my job easier, and I think  
7 I feel better about my job. I'm not in the business  
8 of telling government how to regulate other  
9 industries.

10                   If the phone companies deserve to be  
11 deregulated based on their history, based on their  
12 current offerings, based on policy judgments, then so  
13 be it. But I don't think that there's any magic to  
14 the word "parody." What you want to do is have the  
15 right regulation for the right circumstances. If  
16 regulation doesn't help and doesn't work, don't impose  
17 it because it does impose costs.

18                   MR. GOLDBERG: Thanks. John.

19                   MR. WINDHAUSEN: Thanks, Larry. Actually,  
20 I'll respond to Scott's comments. Scott, you're  
21 indicating that your view of this FCC decision on  
22 bundling rules is that it will not harm the CLECs.

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1 And I certainly hope that's true, but I have a couple  
2 of reasons for thinking otherwise.

3 First, I think your suggestion is that  
4 we'll continue to get access to the loop, so we'll  
5 continue to be able to do the -- have access to our  
6 current customers and technologies. That's kind of a  
7 best case scenario, but think about that. Even in  
8 that case, that relegates the CLEC industry to the  
9 older technology, and that will not allow us to  
10 participate in the broadband future.

11 Our companies specialize in broadband  
12 deployment. That's one of the big marketing  
13 advantages we have had. That's why we've said, we  
14 came up with DSL first before they did, frame relay  
15 and these other sophisticated broadband services. We  
16 don't want to be relegated to the old technologies.  
17 We want to participate in the future, as well, and be  
18 able to continue to provide these full benefits for  
19 the newer generations of technologies. So that's why  
20 we think we should be able to get access to all of the  
21 network, regardless of the technologies deployed, and  
22 we pay for it. We pay a rate for it that compensates

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1 the Bell Companies, and we're willing to do that.

2 Now that's the best case scenario. Even  
3 worse, however, is that our big fear is that, as you  
4 know, it's very difficult to identify, go into the  
5 telephone network and say okay, that piece of  
6 equipment is a broadband piece, and that piece of  
7 equipment is not. Because actually, the telephone  
8 network is so interconnected, and has so many pieces  
9 to it, and to get a broadband service may be  
10 transmitted over lots of different technologies, so  
11 our big fear is that as the Bell Companies say okay,  
12 our broadband technologies are exempted from  
13 unbundling, that they'll start applying that that  
14 could be a huge exemption, which they start taking  
15 away our basic rights to the existing facilities in  
16 the ground today. And that -- if that interpretation  
17 is what happens, that essentially puts us out of  
18 business. I mean, and that gets rid of the whole  
19 competitive thrust of the Telecommunications Act of  
20 1996. Our companies really do then fold up shop and  
21 have to go away, if that's how this order ends up  
22 being interpreted.

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1                   MR. MILLER: Larry, I just want to make  
2 two brief points. One is, and this is a personal  
3 view, the genius of the U.S. economic system, to me,  
4 has always been its use of the rule of law to provide  
5 remedy so that third-parties who are total strangers  
6 can do business with each other with confidence.

7                   If you look at the developing world, the  
8 single most serious problem they have is that you  
9 cannot do business outside the oligarchie because  
10 there's no remedy, if you are cheated, or if you are  
11 lied to, or if the person ignores the contract.

12                  The genius of this system is we have a  
13 rule of law that provides a remedy. If you want to  
14 create the most vibrant broadband services  
15 environment, you have to simultaneously create a set  
16 of rules that provide real remedy to the participants  
17 in that marketplace. And let me give you a specific  
18 example. I'm a Comcast cable modem subscriber. I  
19 love the service. I need the service. Every night my  
20 firewall tells me that Comcast has downloaded to my  
21 machine a piece of support software that is trying to  
22 get through the firewall back to the Comcast server

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1 and the firewall blocks it, and asks me do I want to  
2 permit or block, and I block it every day.

3 I cannot find out from Comcast what  
4 information they're trying to download from my home  
5 computer that all my personal financial information on  
6 it. And there's no place I can go with that question.

7 You know, now that means that Comcast -- if I don't  
8 find a solution to that problem, there will come a  
9 point at which the information on that computer is so  
10 sensitive, I will stop using that service in the way  
11 that I have become used to using it.

12 Now that's a burden on the economy,  
13 because there isn't a rule in place that gives me a  
14 remedy. And that's what I would ask this group to  
15 really focus on, those kinds of very real day-to-day  
16 problems. And the fact that -- and let me give you  
17 another example.

18 Dan made the comment that this is really  
19 an interstate world and, therefore, it's really not up  
20 to local officials. It's beyond the -- he didn't  
21 really say this, but let me extrapolate. The  
22 implication to me was, it's beyond the capability of

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1 local officials to deal with it.

2 You know, we refinanced -- my wife and I  
3 refinanced our house last month. The first payment  
4 went off to the mortgage company. The mortgage sells  
5 the paper to another mortgage company. I get a notice  
6 from the second mortgage company that the first  
7 payment is late, with a \$150 charge attached.

8 Now that's in interstate commerce, because  
9 when I called the second mortgage company, it was  
10 clear they were in California. But you know what, my  
11 remedy is with Maryland State Consumer Protection  
12 Office, and I'm prepared to use it if there isn't a  
13 fix to it. So the fact that we are an interstate  
14 world doesn't mean that we can't adopt rules that are  
15 appropriate to deal with a specific problem. And  
16 again, that's what I would hope you folks would focus  
17 on. Thank you.

18 MR. GOLDBERG: Jared.

19 MR. CARLSON: I don't have rebuttal for  
20 any of these guys. It probably has to do with where  
21 I'm sitting. I guess that's how I got isolated clear  
22 over here on this side of things too.

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1 (Laughter.)

2 MR. CARLSON: I have sat in chairs similar  
3 to your's, I guess, in terms of sitting on a committee  
4 that's trying to give good advice to the FCC on very  
5 critical and important issues to folks that you  
6 represent. And I guess rather than spending any time  
7 in rebuttal and, in fact, spending much time at all, I  
8 guess I just wanted to put out there by way of  
9 suggestion to you as you work your way through this  
10 issue, as you have your discussions after this panel  
11 is over. And I think that probably the reason you had  
12 us as a panel was to try and build some common  
13 understanding of the issue, so that your discussions  
14 were more coordinated and efficient.

15 And so, I guess I would just add to the  
16 mix of the comment, that you consider whatever  
17 recommendation you ultimately are able to formulate,  
18 consider it in light of assuring that that  
19 recommendation takes into account all of the  
20 complexities that you've heard from this panel.

21 This is not one of those issues that is  
22 very complex with a simple answer. If it had a simple

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1 answer, others would probably have already presented  
2 it. And so, think very carefully as a group about  
3 what recommendation you enter on the record with the  
4 FCC, assure that - and I know this is how you live  
5 your lives - assure that all of the groups have good  
6 representation in terms of the solution that you  
7 represent to the FCC, and that you are not inflicting  
8 any sort of unintended consequential harm to parties  
9 to the record.

10 MR. GOLDBERG: Good points. Our working  
11 group which, at this point, I assume that MCCA would  
12 like to join. You're on. Well, let's hear from the  
13 rest of the CAC now, and the members of the working  
14 group. WE've heard a lot about parody, whether it's  
15 possible, whether it's good, about needs for consumer  
16 protection. Does that include such things as rate  
17 regulation, must- carry, universal service, those  
18 sorts of things. I know lots of people have  
19 questions. We'll go right to Ron Mallard.

20 MR. MALLARD: Thank you, Larry. First of  
21 all, I didn't want to interrupt Dan during his  
22 comments, but I was -- and I didn't really disagree

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1 with 95 percent of what you had to say. I think my  
2 only real objection was to the implication that  
3 because the FCC had only received 100 complaints,  
4 meant that there wasn't a problem, and there wasn't a  
5 need for some kind of regulatory action at some level  
6 of government. Because we're clearly experiencing  
7 great numbers of complaints across the country with  
8 cable modem service, and there are no solutions for  
9 local governments to handle those kinds of complaints.

10 They're customer -- they're the basic kind of -- they  
11 are the very same kind of basic customer service  
12 complaints that we experience with cable television  
13 services everyday. And it comes from the same  
14 providers that provide cable television services, so I  
15 would ask the panel - and I'm not posing this question  
16 right now - what better authority is there to handle  
17 those kinds of local consumer problems than the local  
18 government regulatory agencies that have been set up  
19 at the local level to do that?

20 So anyway, again, it's not the -- as I  
21 say, I didn't disagree with most of what you said. I  
22 do take issue with the small number of complaints that

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1 the FCC is having. But let me get on to my question,  
2 if I could.

3 This is kind of a proposition, and then  
4 I'd like some responses from at least three of the  
5 panel members. I would argue that local government  
6 franchising authorities are really the only practical  
7 level of government, the only government provider of  
8 consumer complaint investigation and resolution  
9 services that can be responsive to legitimate consumer  
10 problems. And I would ask first, Mr. Brenner, and  
11 then Mr. Svanda, and then Mr. Miller to respond to  
12 that allegation, or to that argument, whether you  
13 agree with it, or if you don't agree with it, why not.

14 MR. BRENNER: Well, I should go first. I  
15 mean, I think it sort of relates to my question - I  
16 didn't interrupt your presentation, but I do think it  
17 relates to the nature of the problem. There are --  
18 I've been to a call center of a cable company that  
19 handles incoming call center problems with data. And,  
20 you know, actually in the customer care area of data  
21 services, there are Level 1, Level 2, Level 3 type  
22 call centers. And Level 1 deals with, you know, maybe

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1 some of the billing questions, stuff that has nothing  
2 to do with the network. Level 2, you know, may get  
3 more into the actual connectivity and some of the  
4 technical problems. And, you know, Level 3 may be an  
5 advanced problem somewhere on the net. I'm having a  
6 problem getting to this website. It keeps coming up.

7 I don't see that the local government  
8 regulator is good at any of those. I think it turns  
9 out that every one of those problems has to be  
10 addressed, because I think the local government  
11 regulator can put pressures. And Nick says in the  
12 end, it's a back-stop if the cable operator doesn't  
13 answer his phone, and doesn't respond to questions,  
14 and doesn't correct a billing problem. It's good to  
15 have a backup there. But the problems that are going  
16 to get solved in this, what is really an interstate  
17 service, are not going to get solved by a local  
18 regulator who will simply, you know, then have to call  
19 the cable company and say you better answer your  
20 phone.

21 I think you could put, and the FCC could  
22 be charged with setting up those kinds of rules. It's

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1 part of the inquiry that the Commission is looking at  
2 since the March order, as to what is the role of  
3 consumer protection in this service. But I just don't  
4 know if local government has any expertise on the real  
5 problems that confront consumers.

6 There's an enormous consumer education  
7 issue that needs to be performed by local government.

8 But solving the problems, now they're probably going  
9 to get solved either by the cable operator, or by  
10 somebody conking the head of the cable operator if  
11 they don't answer the phone properly to get the  
12 answers.

13 MR. MILLER: I want to go back to my home  
14 mortgage refinancing example. To me, the regulatory  
15 entity that should step up and assume responsibility  
16 is the entity that gave the license to that person to  
17 be in business. That's who the consumer has a  
18 legitimate complaint against, if that licensor is not  
19 overseeing the behavior of the licensee. And that's  
20 the local government that gave that franchise to that  
21 cable operator. I mean, that's why the cable operator  
22 enjoys that privileged position in the community. And

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1 I don't think you can look at a taxpayer, or look at a  
2 consumer as a city council member and say you have no  
3 responsibility. And it makes no sense to the consumer  
4 to say you've been preempted by the federal  
5 government, so call the FCC.

6 COMMISSIONER SVANDA: I would answer yes,  
7 in theory in the perfect world. Now there are  
8 practicalities that cause me to probably attach some  
9 caveats to that. One is, that the local franchising  
10 authority really needs to be in sync with thousands of  
11 other local franchising authorities, so that there is  
12 a common and recognized set of standards that don't  
13 impose business costs on service providers and  
14 deliverers that are just unreasonable and crazy, and  
15 counterproductive in the way that they might be  
16 implemented. So if we can solve that, if we can  
17 assure that the local franchising authorities are not  
18 playing games and, in fact, are working in the best  
19 common interest, then we're working with a good  
20 system.

21 The local franchising authority in that  
22 same vein, should not be in a position to act as a

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1 barrier to entry. My experience at the state level  
2 has shown me some examples where local franchising  
3 authorities will act as barriers to entry for one  
4 reason or another, will have selected some provider  
5 than another provider, and that doesn't add up to very  
6 good business plans for a business to do its roll-out  
7 either. And so I think with some practical overlays,  
8 yes, it doesn't necessarily answer some of the things  
9 that transcend wireless and satellite, and some of  
10 those kinds of issues. I'm not sure how quite local  
11 franchising authority applies, and with that then,  
12 would it work on the radios that we have in our  
13 vehicles and that sort of thing. Probably not.

14 But in general, of course, the closer to  
15 home you can drive things, the better off it's going  
16 to be. I think even as the FCC explores some of these  
17 issues, over time we've talked with them about well,  
18 where is the floor of people in this building, the  
19 portals building that's going to be answering the  
20 phones if they, in fact, start ringing? The local  
21 franchising authorities in a particular area may well  
22 receive in the course of a month 100,000 calls. And

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1 if all of those calls were to start coming into the  
2 FCC, who's going to answer the phone? And they aren't  
3 staffed-up. State Commissions are not staffed-up, so  
4 -- and for certain, we can't abruptly change that  
5 system. Once again, if a new -- if something new is  
6 going to work better, it's going to take some time to  
7 get there.

8 COMMISSIONER SVANDA: I think there's  
9 pretty broad agreement here, actually, on the general  
10 point. But I want to sing a refrain you often hear  
11 from the local governments, and it's called "unfunded  
12 mandates". I think local governments are truly  
13 prepared to step-up and do this, but one of the  
14 ironies in what the Commission did last March, is they  
15 said oh, by the way, not only do you lose regulatory  
16 authority, but you lose all your franchise fees  
17 associated with cable modem services. So taking Dan's  
18 point, that it would be nice to have some source of  
19 revenue that could pay for this regulatory authority,  
20 it would be nice to have the Commission be consistent  
21 about this, and recognize that if we're going to take  
22 responsibility and provide real consumer relief, we

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1 ought to be able to set the tax, rent, and fee policy  
2 with respect to cable model services, as well.

3 MR. HOROWITZ: I have a foundation which  
4 is called the Fight Back Foundation for Consumer  
5 Education. We also have a website that's called  
6 FightBack.com. I do a lot of media stuff, and as far  
7 as you're concerned, Mr. Miller, we can get those  
8 problems solved for you in probably 24 hours, without  
9 going through the measures that you want to go through  
10 with the mortgage company and all that. That's what  
11 we do.

12 And the reason I'm saying this, is I'm  
13 listening to something hear that really, really has  
14 met upset, because I'm listening to a bunch of really  
15 important people who are out on the street,  
16 supposedly, knowing what's going on. And I feel like  
17 you're twirling around like you're on a  
18 merry-go-round.

19 First of all, as far as complaints are  
20 concerned, the gentleman from Verizon. Verizon  
21 happens to be a monopoly now. It's a monopoly. They  
22 joined with a lot of companies. They joined with Bell

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1 Atlantic, and they joined up with a wonderful company  
2 that was called -- in Los Angeles that was called --  
3 oh, God. They're a wireless company. And if you go  
4 to the FCC, the state commission, these guys have been  
5 fined millions of dollars for bad customer service,  
6 and haven't paid it. All right.

7 I have a DSL connection. I started with a  
8 company that I call PacHell. And PacHell was PacBell,  
9 which became Southwest Bell which, as you know, is a  
10 monopoly. It took them seven months to try to find  
11 out what the problem was with the DSL line. And the  
12 problem was that they were running the wires to my  
13 house out of an old set of cables that were not fiber  
14 optic cables. And then they told me well, you know  
15 something. I hate to tell you this, Mr. Horowitz, but  
16 you're at the end of the line.

17 I said, "Oh, really? I'm at the end of  
18 the line. You mean we don't have fiber optic cable  
19 here, as I was told when they installed my DSL? Oh,  
20 no. You don't have fiber optic cable there."

21 Well, it's very simple. I went to my state  
22 agency and complained. These guys immediately came on

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1 and said well, we'll take care of it. They still have  
2 not taken care of it. What they've done is they've  
3 refunded every month that it doesn't work. I don't  
4 want the refund. I want the service. Okay? And  
5 someone said well, just don't pay your bill. Well,  
6 you don't pay your bill to a DSL or to one of the  
7 monopoly phone companies, you will not have any  
8 service. They'll cut your service off.

9 Now my DSL has gone from DSHell with the  
10 earlier phone company, to DSHell with Southwest Bell.

11 And finally, I got to a point that what I did is I  
12 took our internet service provider that feeds all the  
13 computers in our office, and I now have a dial-up  
14 which is a pain in the ass. But the good thing about  
15 it is I have my computer working every day, and I  
16 don't have to call DSHell or any of those DSL  
17 companies.

18 Now with these other remarks that were  
19 made, I mean, I'm just absolutely floored by it. You  
20 guys would like to have open competition in a  
21 marketplace that is a monopoly marketplace. You can't  
22 have open competition in a monopoly marketplace

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1 because you have to go to the local companies that run  
2 whatever is there, and make a deal with them to  
3 hook-up, so that you can get into the houses and the  
4 places where you want to sell your goods. And they're  
5 not going to give you a bargain price because you  
6 compete with them. They compete with you.

7 So then we get back to the -- you know, we  
8 always look to government for the reward to go in and  
9 save us. Government can't save you in a situation  
10 like that. You want the FCC to come up with a set of  
11 rules that's going to apply to how you deal with these  
12 companies intra and interstate, so that there would be  
13 a uniform rate that you could pay for whatever systems  
14 you want to put in there. That's part of what they  
15 call "free enterprise."

16 And, you know, I feel here that you're  
17 calling this parody. You want parody. That's the  
18 free enterprise system. And to compete in this  
19 marketplace, you have to be pretty tough, and you have  
20 to be pretty fast on your feet. And when you talk  
21 about going and being fast on your feet, and you're  
22 dealing with these franchise boards and the local

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1 municipalities, you're dealing with entities that have  
2 picked one provider usually, or maybe two in a market  
3 who are going to give you all the service for whatever  
4 you watch on television. Now that to me is not fair.

5 MR. GOLDBERG: Could you give the guys a  
6 chance to answer some of these things?

7 MR. HOROWITZ: No, wait. I've got to  
8 finish, and I'll be out of here, because this is  
9 really bothering me.

10 MR. GOLDBERG: We only have 15 minutes.

11 MR. HOROWITZ: Let me just say this. That  
12 is not fair. It is not fair for a local municipality  
13 to decide on what they think would be the company that  
14 provides the service in that market. And yet, most of  
15 the companies that provide the service in those  
16 markets are, guess what, monopoly companies. And what  
17 we're facing here is a war with the monopolies.

18 Now if you could find a way to defeat the  
19 monopolies and have them kick back money so that they  
20 could give you a good deal to get into those markets  
21 and be professional, that would be great. But by and  
22 large, across the United States we get so many -- I

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1 mean, I can't believe you guys don't go into areas  
2 where you could find out what the complaints are  
3 really like. Go to the State of California, go to the  
4 Public Utilities Commission there, you know, don't  
5 depend on the FCC complaints to be able to give you a  
6 true picture, because a lot of people do not know that  
7 they complain to the FCC. Nor do they have, believe  
8 it or not, a computer, nor do they want to be bothered  
9 with it.

10 We're trying to make it known that the FCC  
11 will do things for you. But to say that 100 problems,  
12 there's got to be tens of thousands of problems across  
13 the country. And I can vouch for that, because we get  
14 thousands.

15 MR. GOLDBERG: All right. Any one care to  
16 respond? Scott.

17 MR. RANDOLPH: I'll just say a couple of  
18 things, and I'm not sure what your experience was with  
19 PacBell, but I can tell you, you know, when we started  
20 first rolling out the DSL, and I think Rich can agree  
21 with this. We had some real problems, and our service  
22 was fairly lousy in a lot of places because it was a

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1 new technology. The telephone network was not  
2 necessarily designed to roll that technology out.  
3 There's a lot of old stuff out there on those copper  
4 wires that have to be pulled out. And I'm one them  
5 too. I work for Verizon, but I have Comcast cable  
6 modem because I'm, you know, at the end of a long  
7 loop. But that's exactly what we did in March with  
8 our announcement, that we were going to go out there  
9 and take the step to pull fiber out there, to get out  
10 there closer to the neighborhoods, to shorten those  
11 loops to be able to provide DSL.

12 Let me something about service quality.  
13 Our service quality has improved. In fact, it has to  
14 improve. We can't compete in this market unless it  
15 does, because the cable -- you know, consumers are  
16 going to go to cable companies who are going to  
17 blanket the country with 90 percent penetration very  
18 quickly if we're not able to really deliver on our  
19 service.

20 MR. HOROWITZ: But, Scott, I can't get  
21 Verizon to give me DSL because we don't have fiber  
22 optic cable. And it's too expensive to run it down

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1 the hill where it has to go to.

2 MR. BRENNER: Yeah. I mean, the  
3 technology of DSL is limited that way. That's why you  
4 don't have 100 percent head-to-head competition with  
5 the cable and DSL, although they're trying to improve  
6 the DSL technology so they can go. It used to be  
7 about, you know, a couple of miles from a central  
8 office, and if you lived farther than that, you  
9 couldn't get DSL. But I would submit that --

10 MR. HOROWITZ: I'm two and an eighth miles  
11 away from a central office.

12 MR. BRENNER: Well, how about an extension  
13 of your -- see, I grew up in Southern California, so  
14 I know who you are. And they're one of the --

15 MR. HOROWITZ: I don't think that has  
16 anything to do with it.

17 MR. BRENNER: No, it doesn't. But I think  
18 -- you know, I grew up watching you, you know. And I  
19 think you are somebody who helped elevate the whole  
20 idea of consumers understanding their rights. And  
21 that's why I feel, as a consumer, I just last night  
22 wrote a letter to my plumber, and I cited the Maryland

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1       Licensing Commission if they don't call me back with  
2 my half- installed boiler, you know. But I don't that  
3 Licensing Commission is going to do me any good, so  
4 I'm not -- you know, I know what you're talking about.

5               But I think that, you know, I am -- you  
6 know, having worked at the FCC for many years, and as  
7 a student of regulation, I'm not sure -- you know,  
8 bring -- having the club of regulation sometimes is  
9 helpful, but in the end, the consumer needs to be able  
10 to get answers. And, I mean, if a company doesn't  
11 give me a good answer - and that's why I said, I kind  
12 of learned a little bit watching your telecast - you  
13 know, you keep going well, let me talk to your  
14 supervisor, and you just keep going until you get an  
15 answer. Now not every consumer has the patience, or  
16 willingness or time to do that.

17               I don't think the solution, really having  
18 been a regulator, is to go and seek a regulatory  
19 solution in every instance. I don't think that's  
20 going to solve the consumer problem either. In the  
21 end, the companies have to face competition, because  
22 if they don't like the cable company, they can say

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1 goodbye. Call up and get good service from DSL, if  
2 they can provide good service, and we lose a customer.

3 We're losing customers every day to DDS because we  
4 don't provide -- we're fighting back with a better  
5 product and a digital tier, but we were losing  
6 customers to DDS because we didn't have the right  
7 product. But that is a much better solution than, I  
8 feel, going to city councils and having them tell us  
9 what programming network should be on, and having  
10 regulated that way.

11 The market has taught us that we have to  
12 improve our service. And I think when you have a  
13 monopoly, you need to have regulation if you assume  
14 that there's market failure and entry is difficult.  
15 The whole point of John Windhausen's --

16 MR. HOROWITZ: But wait a second.

17 MR. BRENNER: Let me just finish.

18 MR. HOROWITZ: Dan, this is important.

19 MR. GOLDBERG: We have some other  
20 questions.

21 MR. HOROWITZ: That's what we have the  
22 Telco Act for.

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1 MR. BRENNER: Right. And that's John's  
2 organization.

3 MR. HOROWITZ: And we still don't have  
4 open competition.

5 MR. WINDHAUSEN: I will ask, have you  
6 tried to call Covad?

7 MR. HOROWITZ: Covad?

8 MR. WINDHAUSEN: Covad.

9 MR. HOROWITZ: Covad went bankrupt, and  
10 then I stopped with Covad.

11 MR. WINDHAUSEN: No. Covad is back, and  
12 going full swing.

13 MR. HOROWITZ: They're back?

14 MR. WINDHAUSEN: Yeah. They are very  
15 active, and I would bet you that they would be able to  
16 provide you that DSL service.

17 MR. HOROWITZ: I could be surprised.

18 MR. GOLDBERG: We have lots of hands. Don  
19 had his first, then Vern, and then Joy. Don, go ahead.

20 MR. SNOOP: I just wanted to -- David took  
21 away a lot of what I was going to say, because he's so  
22 eloquent in how he presents things. But basically, I

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1 disagree with part of what he said, only because I  
2 think that the phone industry, the cable industry are  
3 getting away from being monopolies. There are  
4 competition in both industries right now. DVS has  
5 been out there for a while, wireless cell phones are  
6 coming in. There's a lot of things going on.

7 The entire broadband issue, access to the  
8 Worldwide Web, those type of things are becoming an  
9 issue that I think two years from now, we're going to  
10 look back and say, you know, we were crazy back then  
11 trying to regulate this stuff. Because if we allow it  
12 to develop, and we're right in the developmental phase  
13 right now, I think we have to allow it to develop. I  
14 think we have to allow the marketplace.

15 The more marketplaces that we have where  
16 we have DSL and cable modems both providing that  
17 service, and DDS has threatened that they're going to  
18 be providing also a satellite delivered service, once  
19 we have two or three players in a marketplace, David's  
20 point goes away, because now they're going to have  
21 more and more people.

22 I'm a good example myself. I mean, I used

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1 to work in the cable industry. I'm now working in the  
2 phone industry. I tried to get DSL. My local phone  
3 company wouldn't get it. Guess what, I have a cable  
4 modem, very happy with it. So there's a lot of things  
5 that can happen, and I think we have to allow it to  
6 develop.

7 MR. GOLDBERG: Vernon.

8 MR. JAMES: Vernon James, San Carlos  
9 Apache Telecommunications. Thank you.

10 I really just want to comment more so than  
11 ask questions. I want to make these comments to the  
12 panel here, the committee. These are some of the  
13 problems that metropolitan and urban areas face.  
14 There are greater problems in rural America.

15 These problems present itself to rural  
16 America based on the fact that you don't have the kind  
17 of infrastructure to provide the kinds of services  
18 urban and metropolitan markets enjoy. True, there is  
19 wireless technology that's coming into play, but  
20 wireless isn't the total picture. You can't provide  
21 for the hospitals, you can't provide for the schools,  
22 you can't provide for the community centers, you can't

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1 provide for the libraries. Those are services that go  
2 untended because the infrastructure to provide those  
3 services are too costly.

4 DSL has its limitations, so in a rural  
5 setting such as a reservation, the only way you're  
6 going to get services to a community that has people  
7 living spread out, is to buy the local exchange at a  
8 cost higher than what is fair. But you've got to have  
9 that local exchange to become a real local exchange  
10 carrier. When you become that local exchange carrier,  
11 LEC as we call it, you then develop the infrastructure  
12 to provide the kinds of services.

13 In my case, the tribe had to go to the  
14 federal government, borrow the kinds of money because  
15 they couldn't go to commercial sources, because of the  
16 status of the land. So went to the federal  
17 government, we borrowed millions to build the kind of  
18 infrastructure that is needed to be provide the kinds  
19 of services out in our community. With that, the  
20 tribe turned around and charged Vernon James here to  
21 make sure we pay our loan back, to make sure we make  
22 money so that we can improve the infrastructure that

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1 we just built.

2 The problem is insurmountable when it  
3 comes to trying to provide the services at a  
4 break-even cost. With regulations, services will not  
5 come out to rural America, must less reservation. And  
6 so when we talk about parodies, let's talk about  
7 parodies in rural America. Thank you.

8 MR. RANDOLPH: Let me address that comment  
9 real quick. And like I said before, Verizon, for  
10 example, has some wireless trials right now out in  
11 McLean, Virginia and some areas in Maryland, where we  
12 actually have employees that are testing the wireless  
13 applications that we hope will be effective in the  
14 rural areas, and we hope that that will happen  
15 eventually.

16 One situation we had recently that came to  
17 us, we had a small community in the northeast that  
18 knew that we were not going to get DSL deployed into  
19 that community for some time. They came to us with a  
20 proposition. They said look, we will buy the DSL  
21 equipment, the D-SLAM equipment, and either you can  
22 put it in your office, or we'll put it in City Hall,

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1 or we'll put it somewhere, but we'll let you maintain  
2 it. We'll actually incur the cost, and then in turn,  
3 you turn around and provide DSL service to the  
4 community at a reduced rate. And we actually thought  
5 well, maybe that's a good proposition. Maybe that's  
6 something we should try out.

7 But unfortunately, under the current rules  
8 that we're under at the FCC, it precludes us from  
9 being able to work out individual deals with local  
10 communities, or colleges and universities, or school  
11 districts, or internet service providers, or any  
12 customers. And we have to do a one size fits all. So  
13 I would say, I mean, loosen the regulations. Give us  
14 the opportunity to do more things like that, or at  
15 least test the market to see if things like that are  
16 viable.

17 MR. WINDHAUSEN: Could I make a general  
18 comment in response to all three of the last speakers  
19 here. The overriding general proposition that I think  
20 each of you has raised is that monopolies, in general,  
21 do not have good incentives to innovate. And they do  
22 not have good incentives to solve customer problems.

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1 And I think each of the three of you have raised that  
2 that's been your experience. But they don't have any  
3 market incentive to in usual, because they're not --  
4 because if you don't have a choice, you don't have  
5 anywhere else to go.

6 Ideally, the kind of structure you want to  
7 create is a more competitive atmosphere, where you  
8 have a lot of different companies trying to provide  
9 that service and innovate. And as shown by the  
10 research that we've seen, that the Yankee Group has  
11 seen, is that our CLECs are doing much better job with  
12 customer service. You need to make sure that we're  
13 able to stay in the marketplace. And the recent  
14 policy changes that the FCC has been considering  
15 adopting in this tri-annual review, which has not yet  
16 been issued, could really spell the death bell of this  
17 competition, and you won't get these kind of choices.

18 And in that case, the only thing you're going to have  
19 left then is to go back and to deal with these  
20 companies, at least with market power, if not  
21 monopolies. So I encourage you, if you create more  
22 competition, the consumers needs are going to be

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1 satisfied more quickly.

2 MR. BRENNER: I would just add very  
3 briefly, that I think in the case of Indian  
4 reservations, tribal spaces may be unique in the sense  
5 that because of their geographic location, they may  
6 need special government attention. And I mentioned in  
7 my opening remarks about the problem of unserved  
8 areas. It's not just Indian areas, but other areas,  
9 which for economic reasons, are not being served.

10 But I do have good news on that score.  
11 Some cable companies, small cable companies in North  
12 Dakota, and in Minnesota too, that I'm familiar with,  
13 and very small markets of five, six hundred and 1,500  
14 subscribers are rolling out advanced services like  
15 broadband. So even in very small, what appear to be  
16 tiny markets, you can get cable companies to offer  
17 that. And I think that will cause phone companies,  
18 and maybe CLECs then to come in and try to grab some  
19 of that market too. So that's the good news. I think  
20 though, in very, very rural areas, that may prove more  
21 difficult.

22 MR. JAMES: If I might just respond to

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1 that. Indian tribal lands are not the only rural  
2 areas. We're talking about close to 1,000  
3 cooperatives who are providing local exchange carrier  
4 services in mid-America all the way across the plains,  
5 into the areas in the west. And they all go and  
6 borrow money.

7 The problem that we face is that we get  
8 CLECs coming in who want to take advantage of the  
9 infrastructure that we built with out sweat, with our  
10 blood, and with our tears sometimes. And it makes it  
11 harder to repay the loan when CLECs come in.

12 CHAIR ROOKER: Down here if you don't  
13 mind. Larry, I don't think you saw that we have a  
14 question on the other end.

15 MR. GOLDBERG: Yeah. Debra was on the  
16 working group. She does get a shot, and I know Joy  
17 has been trying too. And we're almost at time, so see  
18 if you can make them quick.

19 MS. BERLYN: I'll be very brief. When I  
20 saw the agenda and I saw we had two hours, I thought  
21 how are we going to fill up two hours. And now I wish  
22 we had another hour, because I do have a couple of

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1 questions. John, thanks for your last remark, because  
2 I was going to make the point that a better option,  
3 Dan, to not paying your bill is to be able to have  
4 alternative providers that you can go to with your  
5 business.

6 My question, and if we don't have time - I  
7 don't think we do. Perhaps it's something that our  
8 working group can get the advice of these panelists  
9 on, is in light of the eminent tri-annual review  
10 order, and the impending broadband wireline  
11 proceeding, what issues should this Consumer Advisory  
12 Committee consider in terms of the implications of  
13 these decisions for consumers? So it's a big  
14 question, and it's, I think, something that we want to  
15 take to our working group, and then eventually to the  
16 CAC. But thank you all. It's been a great panel.

17 CHAIR ROOKER: Yeah. I think -- I believe  
18 we're out of time, if I see that clock correctly. Is  
19 my vision failing me? Is it 3:30? Yes. I really  
20 would again like to express my thanks also to all of  
21 you for taking the time out of your day. You spent a  
22 heck of a chunk of time with us, and we really

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1 appreciate it. And Larry, you and your group are  
2 doing a super job, as our other working groups are  
3 doing. We also have a report from Joy Ragsdale and her  
4 group that has been passed out to you, so there's lot  
5 of things going on here.

6 Thank you all very much for being here.  
7 I'll give them just a minute to get off the podium.  
8 But our next speaker is going to talk about Local  
9 Number Portability, which is the ability to take your  
10 cell phone number with you when you change carriers.  
11 And this is a big issue for a lot of people who are  
12 using their cell phones now instead of their home  
13 phones. They're using it for their business and  
14 everything else. And to give us an update on the  
15 status of portability is Jared Carlson, who is the  
16 Acting Chief of the Policy Division of the Wireless  
17 Telecommunications Bureau. Jared, welcome. We are  
18 delighted to have you here. Thank you. Let's give  
19 him a welcome.

20 You can actually just -- if you want to  
21 sit, since I think the podium has been taken, you can  
22 just make yourself comfortable there. The podium is

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1 gone, and that's not you.

2 MR. CARLSON: Is this all right? First, I  
3 wanted to thank you for letting me have an opportunity  
4 to speak on what really is one of my favorite topics,  
5 and one of the most interesting things that I've had  
6 to work on in my five years or so at the FCC, and  
7 that's local number portability. And as you know, I  
8 am in the Wireless Bureau, so the focus is on wireless  
9 number portability.

10 Let me start off with what the bottom line  
11 for the Bureau, and I think the whole Commission is,  
12 is that we want to right now work with carriers to  
13 ensure that porting process goes as smoothly and  
14 efficiently for consumers well in advance of the  
15 number portability deadline, which is November 24th of  
16 this year for wireless carriers.

17 Let me start with a little recent history  
18 on number portability, specifically, wireless number  
19 portability. Last summer in July, the Commission  
20 released an order that denied a request for permanent  
21 forbearance from our number portability rules, but we  
22 did approve a one-year delay in the implementation of

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1 number portability, primarily to avoid the  
2 simultaneous implementation of number pooling, which I  
3 can talk about if anybody is interested, and number  
4 portability.

5 And a big win for this Commission and for  
6 our consumers, I think, this order was upheld by the  
7 D.C. Circuit just last month. And I wanted to read  
8 one quote from that order, because I couldn't have  
9 said it better myself. The D.C. Circuit said:

10 "The simple truth is that having to change  
11 phone numbers presents a barrier to switching  
12 carriers, even if not a total barrier, since consumers  
13 cannot compare and choose between various service  
14 plans and options as efficiently."

15 And some more recent history, last  
16 Thursday, just last Thursday, the Wireless Bureau  
17 restated our commitment to ensure a smooth process for  
18 consumers in terms of wireless number portability by  
19 addressing some of the issues that have been brought  
20 forward to us by CTIA, primarily, and also by Verizon  
21 Wireless.

22 Let me start with a statement, and then

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1 sort of walk through it, and parse it through so that  
2 everybody here knows what is actually going to happen  
3 come November 24th, when we start to see wireless  
4 number portability.

5 I think you probably heard that on  
6 November 24th, you'll be able to take your number with  
7 you when switching wireless carriers, but what does  
8 that really mean? And let me kind of try to break it  
9 apart.

10 What it means is that wireless customers,  
11 and at the very least, certain wireline customers who  
12 live in the largest 100 metropolitan statistical  
13 areas, will be able to take their numbers with them  
14 when they switch carriers.

15 When you go from a wireless to a wireless  
16 carrier, there really is very little question that you  
17 will be able to take your number with you. They've  
18 already made the investments that they'll need to do.

19 The carriers have to support the technical  
20 requirements necessary to handle number portability,  
21 and they did so largely when they had to implement  
22 number pooling, which is something that's been going

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1 on for the last year. And I also wanted to just let  
2 everybody know that the Commission is standing firm on  
3 the November 24th date for wireless number  
4 portability.

5 When going from wireline to wireless  
6 carriers, there is something of a question there that  
7 CTIA has raised, and it's fair to say that the whole  
8 industry has raised, I think. And that is, that  
9 depending on where you live, you may be able to take  
10 your wireline number with you to a wireless phone;  
11 which is to say, it doesn't mean the Bureau would like  
12 to say, you may be able to cut the cord and keep your  
13 number with you.

14 And the reason why it's not so cut and dry  
15 when you're going from wireline to wireless is what we  
16 call the rate center problem. And this occurs because  
17 you've got wireline carriers who historically have  
18 always routed and rated calls through the use of rate  
19 centers, which are historically the areas that are  
20 served by end offices. And these rate centers are the  
21 whole entire paradigm of the wireline world. They  
22 control not only how calls are routed, but whether a

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1 call is local or toll. And while wireless carriers  
2 aren't bound to serve customers only on particular  
3 wireline rate centers, nonetheless, they do  
4 interconnect to the network, and they have to use the  
5 paradigm that's out there, the wireline rate center  
6 paradigm.

7 And they also, as a matter of fact, get  
8 telephone numbers, when they do get telephone numbers  
9 that are assigned to given wireline rate centers. Now  
10 they're able to serve vast swarms of people with those  
11 numbers, but they are still, in fact, tied to one  
12 particular rate center.

13 And in the wireline world, when you're  
14 going from an ILEC to a CLEC, or a CLEC to an ILEC and  
15 keeping your number with you, number portability is  
16 limited by the rate center. The industry standards  
17 that are out there that the Commission has blessed, do  
18 say that number portability in the wireline world is  
19 limited to rate centers.

20 And this actually does make some sense,  
21 because if you are a home user being served by two  
22 companies, and you want to switch between them, then

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1 almost by definition, they're both going to be located  
2 in the same rate center.

3 But in the wireless world, CTIA, that's  
4 the Cellular Telecommunications and Internet  
5 Association, has asked that the Commission, as they  
6 would have it, that the Commission confirm that  
7 competition demands that wireless carriers are able to  
8 port numbers outside of wireline rate centers. And  
9 according to CTIA, wireless carriers are only about  
10 one out of every eight wireline rate centers, so there  
11 really could be some fairly major limitations on  
12 porting numbers. It would only be if you wanted to go  
13 from wireline to wireless, you would only be able to  
14 do so if you happen to be one of those customers lucky  
15 enough to be in one of those one out of every eight of  
16 those rate centers where wireless carriers and  
17 wireline carriers actually overlap.

18 The other issue that I wanted to point out  
19 is that come November 24th, there will be wireless  
20 number portability in the largest 100 metropolitan  
21 statistical areas. And the way number portability  
22 works is one carrier requests number portability of

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1 another carrier switch. And for the most part,  
2 carriers had to do that for the largest 100 MSAs in  
3 February of this year. And in the Bureau, we  
4 understand that as far as wireless carriers are  
5 concerned, that's happened. Every wireless, or not  
6 every wireless carrier, but all of the wireless  
7 switches that are out there have received a request  
8 for number portability. So there's very little  
9 question that in the largest 100 metropolitan  
10 statistical areas there will be number portability  
11 come November 24th.

12 Outside of those largest 100 metropolitan  
13 statistical areas, carriers have a maximum of 6 months  
14 to comply with a request from another carrier, and  
15 those requests can start to come in on November 24th.

16 So what that means is, if there is an area where  
17 there are a couple of providers, and one wireless  
18 carrier says hey, I think I want to be able to port  
19 numbers in because I think I can get customers from  
20 this guy coming to me, you can make that request on  
21 November 24th. And at most, the other carrier has 6  
22 months to comply with that. So by May 24th of 2004,

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1 you'll probably see number portability in the vast  
2 majority of the country, if not everywhere.

3 Let me tell you some of the outstanding  
4 issues that we have right now. I'll mention some  
5 aspects of some of the issues that CTIA, the Cellular  
6 Telecommunications and Internet Association has  
7 brought up. One is, as I said before, the rate center  
8 problem. The Wireless Bureau released that letter  
9 last week that I mentioned, that stated that although  
10 we're currently grappling with the issue, and  
11 determining what the boundaries of wireline to  
12 wireless portability are going to be, there isn't any  
13 question that if you are in one of those, like CTIA  
14 says, one out of every eight rate centers where  
15 wireline carriers and wireless carriers are, you will  
16 be able to port from your wireline carrier to a  
17 wireless carrier.

18 Another issue that CTIA has raised and put  
19 kind of two different questions to us, has to do with  
20 the porting interval. And what the porting interval  
21 refers to is the amount of time it takes for a  
22 customer to go to a new carrier and say I want to take

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1 my old number to this new phone, and the amount of  
2 time that the network, the telecommunications network  
3 actually takes to recognize that that port has  
4 occurred.

5 If you go from wireless to wireless, this  
6 takes place according to industry standards in only  
7 two and a half hours. In the wireline world, and this  
8 is not only going wireline to wireline, but also  
9 wireline to wireless, that period of time is about  
10 three days. And there are a couple of issues  
11 associated with this.

12 One of them is a public safety issue,  
13 E-911. And that is, during this period of time, you  
14 will be able to call 911 and connect to the nearest  
15 Public Safety answering point. However, there might  
16 be some problems with that PSAP, Public Safety  
17 Answering Point, being able to receive your call-back  
18 information, so there would be a period of time when,  
19 if for whatever reason they needed to call you back,  
20 they may not be able to, because the number that's  
21 delivered to them is incorrect, or if they try to  
22 call-back that number, it could be the old device that

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1 actually rings, whether it's wireline or wireless.

2 But we did confirm in this letter from  
3 last week that as far as that issue is concerned, the  
4 Commission's rule already do address situations in  
5 which, for whatever reason, a valid call-back number  
6 can't be delivered to a PSAP. And what the Commission  
7 said is that in such cases, your obligation is to at  
8 least get the call to the PSAP, deliver whatever  
9 call-back or whatever identifying information you can.

10 But at the very least, get the call to the PSAP. And  
11 as I understand it, that shouldn't be a problem, even  
12 during the porting interval.

13 CTIA has also taken a look at the porting  
14 interval from a competitive point of view. They view  
15 it as somewhat of an impediment to get people to port  
16 from wireline to wireless carriers, the fact that it  
17 takes three days might discourage some people to do  
18 so. And that is an aspect that the Commission is also  
19 considering.

20 A couple of other issues I wanted to  
21 mention that weren't necessarily brought up by the  
22 industry; but nonetheless, that I'd like to talk

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1 about. One of them is, what Verizon Wireless has  
2 termed "business rules". And Verizon Wireless sent us  
3 a letter saying that they would like us to state that  
4 -- to agree with them, that a wireless carrier can't  
5 deny a request for portability from an individual  
6 consumer on the basis of an unpaid bill, or an  
7 unfulfilled contract. And in our letter from last  
8 week, we did state that carriers, and I'm quoting:  
9 "Carriers may not refuse to port while attempting to  
10 collect fees or settle an account."

11 The last point I wanted to mention is  
12 about cost recovery, and the flexibility that wireless  
13 carriers have. Verizon Wireless, for their part, has  
14 said they're not going to charge a fee for customers  
15 to port numbers. And if that turned out to be the way  
16 that the industry went, I'd be thrilled. However, as  
17 if often the case in the wireless world, there aren't  
18 that many regulations on this topic. And we do permit  
19 wireless carriers to recover their costs, however they  
20 see fit, so long as they're just and reasonable, of  
21 course. And so you could see various paradigms, I  
22 suppose you call it, for recouping their number

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1 portability costs, whether it's charges on every  
2 customer's bill, or charges to port out a number, or  
3 charges to port in a number.

4 That's really the state of play of things  
5 on wireless number portability. And if anybody has  
6 any questions, I'm certainly happy to try to answer  
7 them.

8 CHAIR ROOKER: Do we have any questions  
9 for Jared?

10 MR. ALLIBONE: Tom Allibone, LTC  
11 Consulting. I've been noticing on Verizon phone bills  
12 recently, there's been some language that's saying  
13 that due to changes, no details, but due to certain  
14 changes that the charges that used to be passed  
15 between carrier-to-carrier, between Verizon and  
16 certain, I guess, cellular carriers are now going to  
17 be billed by Verizon.

18 MR. CARLSON: They are Verizon land-line,  
19 not Verizon wireless.

20 MR. ALLIBONE: Yeah. Land-line, but on  
21 the land-line bill, it's referring to something  
22 happening in the cellular industry. And does this

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1 have anything to do with that?

2 MR. CARLSON: Yes and no. What you're  
3 talking about is arrangements that wireline and  
4 wireless carriers, that used to be fairly common, now  
5 are not quite so common, are called "reverse toll  
6 billing" type relationships. And they were  
7 established to encourage land-line callers to call  
8 wireless phones. And because of the rate center  
9 issue, you've got a wireless carrier who might serve a  
10 whole huge area, but really is getting numbers from a  
11 rate center that's out here. And there's a land-line  
12 caller that's here, wanting to call the wireless  
13 carrier. I'm sorry - somewhat further away. And  
14 there has been a toll associated with that charge,  
15 just like there would be if you were making an  
16 intralata toll call, you might see a charge on your  
17 bill.

18 It was somewhat common for wireless  
19 carriers and wireline carriers to have agreements,  
20 whereby the wireless carrier would basically pick up  
21 the tab. The charge still exists. I mean, the  
22 wireline carrier was still billing somebody for the

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1 cost of this toll call because the call had to go a  
2 fairly long distance, but the wireless carrier was  
3 picking that up.

4 It used to be easier to identify which  
5 calls were local and which calls were toll, just  
6 because you could look at the first three digits of  
7 the phone number and figure out what rate center it  
8 was in. Once you have number portability, that's not  
9 quite so clear any more. You've got the potential for  
10 numbers to essentially move from one rate center to  
11 another, and that's been cited as a reason why these  
12 relationships have been terminated throughout the  
13 country.

14 And it's interesting, in some places, like  
15 I know that California hasn't had reverse toll billing  
16 for a number of years, and I'm starting to see more  
17 and more inquiries about reverse toll billing in Texas  
18 and Tennessee. I just got a lot of inquiries about it  
19 in the last couple of months.

20 CHAIR ROOKER: All right. Jared, thank  
21 you so much. We really appreciate your taking the  
22 time to come and visit with us today. Thank you.

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1 MR. CARLSON: Thank you.

2 CHAIR ROOKER: It's time for those people  
3 who have been waiting patiently here from the public,  
4 if you would like to make any comments or ask  
5 questions of the committee. We're most interested to  
6 hear from you. Do we have anyone? This would be the  
7 first time we don't have a public comment.

8 Well, then we've got a couple of things  
9 that we need to say. There have been some very  
10 interesting topics that have come up today, in terms  
11 of things that we should be considering as a  
12 committee. And I think what we need to do is to look  
13 about whether or not they fit into existing working  
14 groups, or whether we might need to setup another  
15 working group or two. And we will be talking about  
16 that. We'll be talking to Vernon about the outreach  
17 to the Indian population, and under-served populations  
18 as to whether or not we need a working group, or  
19 whether it fits within one of the existing ones. So  
20 there's a whole lot of things that are going to be  
21 going on.

22 I also need to remind you to please take

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1 off your badges and just leave them. I guess leave  
2 them right there by your sign so that we can pick  
3 those up and recycle, since recycling is good.

4 Now does anybody have any comments or  
5 questions, or concerns that we need to address? Yes,  
6 Jeff.

7 MR. KRAMER: Just very basically. Jeff  
8 Kramer here. I like this setup much better than the  
9 table in the round.

10 CHAIR ROOKER: Oh, you do? The only thing  
11 is I can't read people's names, so I have to make sure  
12 I know everybody's name.

13 MR. KRAMER: Well, I'm just used to having  
14 my back to the podium, and having to turn around the  
15 whole time.

16 CHAIR ROOKER: Well, that's because you're  
17 young and agile.

18 MR. MARSHALL: I'd like to thank everybody  
19 for staying for the duration, as well.

20 CHAIR ROOKER: Yes, indeed.

21 MR. MARSHALL: It's been a long day.

22 CHAIR ROOKER: It's been wonderful.

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1                   MR. MARSHALL: And thank you for sticking  
2 with us.

3                   CHAIR ROOKER: Any other questions, or  
4 comments, or feedback on today? Well, I do want to  
5 thank again our working groups. Thank you. It was  
6 good. It was good, wasn't it? And, Scott, again  
7 thank you for all your hard work in putting this  
8 together. Believe me, he has done a --

9                   MR. MARSHALL: It was a joint effort, and  
10 all the working groups did the work.

11                   CHAIR ROOKER: But at any rate, thank you  
12 all so much. Remember our next meeting is in  
13 November, and it's on a Thursday. November the 20th,  
14 so put that into your planning schedules. And I hope  
15 everyone has a safe journey home, and I hope we don't  
16 have any more thunderstorms out there. But anyway, I  
17 thank you for your attention here, and being such a  
18 good group. We're adjourned.

19                   (Whereupon, the proceedings went off the  
20 record at 3:53 p.m.)

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