STATE OF NORTH DAKOTA

PUBLIC SERVICE COMMISSION

Midcontinent Communications/ North Dakota Telephone Company Rural Exemption Investigation — Case No. PU-05-451

TRANSCRIPT OF

HEARING

Taken At
State Capitol
600 East Boulevard
Bismarck, North Dakota
January 23, 2006

BEFORE JUDGE AL WAHL
-- HEARING OFFICER --

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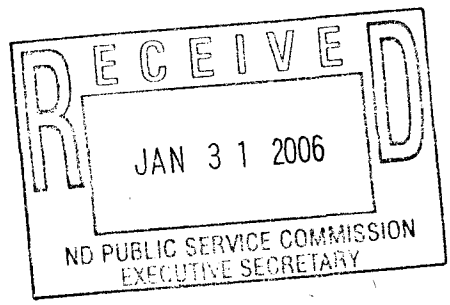

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(The proceedings herein were had and made of record, commencing at 10:05 a.m., Monday, January 23, 2006, as follows:)

JUDGE WAHL: Good morning. I'm Al Wahl, the administrative law judge designated by the Office of Administrative Hearings pursuant to the request of the North Dakota Public Service Commission to act as the procedural hearing officer for the matter of a hearing as an inquiry pursuant to 47 USC Section 251(f)(1)(a) to determine whether to terminate the exemption of North Dakota Telephone Company from providing its services for resale.

Before proceeding with the hearing, I will ask the commissioners for their comments and any directions for the hearing. Commission president Tony Clark.

COMMISSIONER CLARK: Thank you, Mr. Hearing Officer. Just welcome to everyone. This is the first one of these 251(f) hearings that the Commission has heard, so we understand that there's always some precedent that's being set when we do hear one of these cases, so just look forward to each side's presentation.

JUDGE WAHL: Commissioner Wefald.

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COMMISSIONER WEFALD: Yes. Good morning. I have participated in a rural exemption hearing in the past in regard to Western Wireless coming before the Commission and asking about the rural exemption, so some of the issues are familiar to me, although there's always new issues in a case. And I've read all the information that's been presented on the record, and it is helpful to get those back-and-forth comments from the different parties before we start the hearing because then the Commission has a pretty good idea of what the issues are that it needs to determine during this hearing. So thank you for your advance testimony that you've already provided to the Commission. It's been very helpful and I'm looking forward to getting a full record today.

JUDGE WAHL: Commissioner Cramer.

COMMISSIONER CRAMER: Thank you. And good morning to everyone, welcome, look forward to a very informative hearing this morning and thank you all for being here. It's great to see so many people. I know we know it's very important and interesting and, as Commissioner Clark said, precedent setting, but looking forward to a good day.

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JUDGE WAHL: Thank you, Commissioners. The record will show that it is a little after 10:00 a.m., January 23, 2006, the time and the date noticed for a hearing as an inquiry to determine whether to terminate North Dakota Telephone Company's exemption from providing its services for resale.

On May 12, 2005, Midcontinent Communications, sometimes referred to as Midcontinent, made a bona fide request under 47 USC Section 251(c) for a wholesale resold services for the Devils Lake, North Dakota, exchange from North Dakota Telephone Company, sometimes referred to as NDTC. By notice of bona fide request for services dated July 15, 2005, Midcontinent notified the Commission of its bona fide request.

NDTC claims that under 47 USC Section 251(f) it is exempt from the requirement that incumbent local exchange carriers must offer for resale the telecommunications services that it provides to retail subscribers.

Midcontinent requests that the Commission conduct an inquiry to determine whether to terminate NDTC's exemption from providing services for resale.

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The Public Service Commission has duly issued its notice -- issued and published its Notice of Hearing and its Notice of Rescheduled Hearing.

The issues to be considered and determined upon this hearing are, first, whether the request of Midcontinent is unduly economically burdensome; second, whether the request of Midcontinent is technically feasible; third, whether the request of Midcontinent is consistent with 47 USC Section 254 other than subsections (b)(7) and (c)(1)(D) thereof; and, fourth, the implementation schedule for compliance with the request should the exemption be terminated.

Mr. Durick, will you and co-counsel please state your appearance for the record.

MR. DURICK: Yes. I'm Pat Durick of Pearce & Durick for Midcontinent Communications.

MR. HARRINGTON: J.G. Harrington of Dow, Lohnes & Albertson for Midcontinent Communications.

JUDGE WAHL: Mr. Negaard.

MR. NEGAARD: Yes, Your Honor. My name is Don Negaard with the Pringle & Herigstad law firm in Minot, North Dakota, appearing for North Dakota Telephone Company.

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MR. MOORMAN: Thomas J. Moorman appearing on behalf of North Dakota Telephone Company, Woods & Aitken, L.L.P., Washington, D.C.

JUDGE WAHL: Mr. Binek, please.

MR. BINEK: My name is William Binek. I'm counsel for the Public Service Commission. With me is Patrick Fahn, a public utility analyst in the Public Utilities Division of the Commission. The Commission staff is appearing today as Commission advisers. Staff is not taking an advocacy position in this proceeding.

JUDGE WAHL: All right. Mr. Durick, when you're ready.

MR. DURICK: Thank you, Your Honor. Commissioner Clark, Commissioners Wefald and Cramer. To begin with, Mr. J.G. Harrington would like to just make a short opening statement what we intend to do and then we'll proceed with witnesses, Mary Lohnes, Warren Fischer and Timothy Gates.

MR. HARRINGTON: Commissioners, Judge Wahl, with Pat Durick, I represent Midcontinent Communications in this proceeding. We are just about at the ten-year anniversary of the passage of the Telecommunications Act of 1996. It was enacted into law on February 2nd, 1996.

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In that statute Congress decided that local telephone competition was in the public interest. This was not a recommendation or a presumption. It was a determination that consumers would benefit and it was implemented by specific statutory provisions.

Midcontinent is one of the companies that has taken advantage of that determination to bring competition in local telephone service to consumers in North and South Dakota, including in markets where many people thought competition would never happen. To facilitate the development of competition, the Act created a series of obligations for incumbent telephone companies. It also created a narrow exemption from those obligations for rural telephone companies, which apply to only some of the carrier's obligations. Rural telephone companies still have to provide interconnection under Section 251(a) of the Communications Act and dialing parity, number portability and reciprocal compensation under Section 251(b). The exemption covers only the obligations specific to incumbents under Section 251(c).

The exemption is not immutable, though.

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Section 251(f) provides two ways to end that. First, a competitor can show by a preponderance of the evidence that lifting the exemption will not create an undue burden on the incumbent and that it's not technically infeasible or, second, the incumbent can end the exemption by its own actions when it enters the cable television business. Once either of these tests is met, the exemption must be lifted. The statute does not require or permit any other requirements.

In this case the evidence will show that lifting the rural exemption will not pose any undue burden on North Dakota Telephone. Midcontinent's expert witnesses have demonstrated that wholesale resale will pose little or no financial burden on North Dakota Telephone and there is no technical reason why North Dakota Telephone cannot provide wholesale resale.

Further, Midcontinent's experience with other telephone companies in the Dakotas shows that resale can be implemented promptly with little difficulty. In the absence of a financial impact, there also will not be any impact on universal service.

In practical terms, North Dakota Telephone

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does not challenge these showings, does not provide its own financial analysis to contradict Midcontinent's evidence. It is not argued that Midcontinent's request cannot be implemented. Thus, if you accord any weight at all to Midcontinent's testimony, the first test under Section 251(f) has been met and the rural exemption must be lifted.

North Dakota Telephone's response is to admit that the exemption should be lifted, but for a different reason and on a much different schedule. North Dakota Telephone now says that it's planning to offer video service in early 2007, which would lift the exemption automatically. Rather than acting now, North Dakota Telephone says the Commission should simply wait.

There are two things wrong with North Dakota Telephone's theory. First, if the first test under Section 251 is met, there's no reason to wait. The statute is clear on this point. All Midcontinent needs to do is show by a preponderance of the evidence that the requirements within the exemption have been met and the exemption must be lifted.

Second, if the Commission were to adopt

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North Dakota Telephone's theory, North Dakota Telephone would be afforded a significant competitive advantage. Once the exemption was lifted by operation of law, it likely would be a year or more before Midcontinent could offer resold service in Devils Lake while North Dakota Telephone would be able to offer its customers a complete bundle of services as soon as it finished its video network. This competitive balance would be bad not just for Midcontinent, but also for consumers in Devils Lake. There is no reason to make them wait until 2008 for the competition that Congress said they could have in 1996. For these reasons we ask you to grant our petition.

JUDGE WAHL: Mr. Negaard, will you make an opening statement at this time?

MR. NEGAARD: Yes, Your Honor, I will. Good morning, Judge Wahl.

JUDGE WAHL: Good morning.

MR. NEGAARD: Good morning, Commission President Clark. Good morning, Commissioner Wefald. Good morning, Commissioner Cramer. As I indicated, Don Negaard with the Pringle & Herigstad law firm this morning. One gentleman that got overlooked is Scott Knudsvig. He's one of my

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partners in the Pringle & Herigstad law firm. He's with me this morning.

For the record, I want it noted that Mr. Moorman originally appeared and was admitted for the purpose of this proceeding with the Kraskin, Moorman & Cosson Law firm and that firm was dissolved by mutual assent on January 1st of this year. And so for the record, Mr. Moorman is now with the Washington, D.C., firm Woods & Aitken located in Washington.

Appearing with me today is David Dircks. Mr. Dircks is the general manager of North Dakota Telephone Company. He will testify on behalf of that company today. In the audience today are a number of the members of the board of directors of North Dakota Telephone Company. Another witness who appears today on behalf of North Dakota Telephone is Douglas Meredith. Mr. Meredith is the director of economics and policy at John Staurulakis, Incorporated, a long-time telephone communications consulting firm, and he will be testifying today on their behalf.

This case involves a rural exemption granted to North Dakota Telephone Company and other rural companies by Congress in the

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Telecommunications Act of 1996. This is the first time this Commission has been asked to remove a rural exemption in this context for a North Dakota company. It's a new process in the state and it's obviously the first time that North Dakota Telephone has had to face this issue. We have confidence that this Commission will take its role seriously, will study the issues and render a careful decision as it has been in the past.

Your role is to hear the evidence in this case as it relates to the Devils Lake exchange of North Dakota Telephone Company, make a decision in this matter based on the evidence, and only the evidence presented here, on the issues previously designated by this Commission for this hearing.

Midcontinent has the burden of proof in this matter. They have to prove to you that the rural exemption of North Dakota Telephone Company for providing wholesale resale of its telecommunications services should be lifted. This is solely your function. It's not my function. And your function is to determine if that burden has been met. At the end of the day there will be no facilities-based evidence on the impact of North Dakota Telephone Company in Devils Lake, and the

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evidence will only be on that particular exchange.

If you determine that Midcontinent has not met its burden of proof, then Midcontinent can compete in other ways that are available to it. If you determine that Midcontinent has met its burden of proof, then you need to establish an implementation schedule for the Devils Lake exchange that will allow the parties the opportunity to negotiate in good faith for a business arrangement, an interconnection agreement, if you will, that will contain the terms and conditions of this unique arrangement in North Dakota. That schedule would need to determine a rational schedule based on the authority that this Commission has under state and federal law.

The testimony has been prefiled. I think taking Judge Wahl's lead that we try to expedite the hearing today, and thank you for being here to hear this case and to hear the evidence and make your decision. Thank you.

JUDGE WAHL: Mr. Binek, will you make an opening statement?

MR. BINEK: No.

JUDGE WAHL: Mr. Durick, you may proceed when you're ready.

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MR. DURICK: Thank you, Your Honor. We call Mary Lohnes as the first witness for Midcontinent.

JUDGE WAHL: Miss Lohnes, you can go ahead and have a seat in the witness --

MR. DURICK: Do you want her to be sworn here?

JUDGE WAHL: I'll do that. Let her be seated. It's easier, quicker.

Miss Lohnes, your testimony is required to be under oath, as I'm sure you're well aware, and I'm required by law to advise you regarding perjury before administering the oath. Perjury is a false statement of material fact which you do not believe to be true; in other words, of course, generally speaking, a lie. In North Dakota perjury is a Class C felony, punishable by a fine up to $5,000, imprisonment for a period of up to five years, or both. Will you raise your right hand, please.

(Witness sworn.)

JUDGE WAHL: Mr. Durick.

MR. DURICK: Thank you, Your Honor.

MARY LOHNES,

being first duly sworn, was examined and testified as follows:

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DIRECT EXAMINATION
BY MR. DURICK:
Q. Mary, there has been testimony prefiled in this particular matter. Do you have a copy of your testimony before you?
A. The direct testimony?
Q. Yes, the direct testimony.
A. Yes, I do.
Q. We're going to mark the direct testimony of Miss Lohnes as Exhibit P1, and that's Docket No. 50 for the Commission. Miss Lohnes, do you also have your rebuttal testimony before you?
A. Yes, I do.
Q. Okay. And we're going to mark that for the Commission as P2, and that's Docket No. 61, just to keep the record straight. Miss Lohnes, I'm going to show you the two exhibits that we have that are attached to your rebuttal testimony, the first one being the letter from myself dated May 12th, 2005, with an attachment. Can you identify that as Exhibit A to your rebuttal testimony?
A. Yes, it is.
Q. Okay. And I've marked that as P3. And I'm marking as P4 the Exhibit B to your rebuttal testimony, and I'm just wondering if you could

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identify that for the Commission and for Judge Wahl.
A. Yes. These are various articles which we found.
Q. Okay. Now, I would like to ask you, you have reviewed your direct and your rebuttal testimony, have you?
A. Yes, I have.
Q. And under oath today, is that still your testimony before this Commission?
A. Yes, it is.
MR. DURICK: Okay. At this point we'd move for the introduction into evidence of Exhibits P3 and P4, the two exhibits to Miss Lohnes's direct and rebuttal testimony, and we would --
JUDGE WAHL: Mr. Negaard.
MR. NEGAARD: And I have the assurance of counsel those are the same exhibits that were included in the prefiled testimony?
MR. DURICK: Yes.
JUDGE WAHL: I have no objection, Your Honor.
JUDGE WAHL: Mr. Binek.
MR. BINEK: No objection.
JUDGE WAHL: Exhibits P3 and P4 are

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received. I'm assuming that counsel is stipulating to the admission of the direct and rebuttal testimony.
MR. DURICK: That's the assumption I'm making, Your Honor.
JUDGE WAHL: Yes.
MR. NEGAARD: Yes, Your Honor.
JUDGE WAHL: Mr. Binek. We're going to offer the exhibits to the testimony and address those, and the prefiled testimony will be received pursuant to counsel's stipulation. Go ahead, Mr. Durick.
MR. DURICK: Thank you. At that point we would pass the witness, Your Honor.
JUDGE WAHL: Mr. Negaard.
CROSS-EXAMINATION
BY MR. NEGAARD:
Q. Good morning, Miss Lohnes.
A. Good morning.
Q. In your testimony you mention the possibility of a company cherry-picking customers. Are you referencing video programming, cable television or telecommunications when you talk about that? I believe it's on page 4, line 6 of your testimony.

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COMMISSIONER WEFALD: Excuse me, Judge Wahl. Could I have just a moment to get my paperwork -- could he repeat again exactly which exhibits are -- what documents are the exhibits we're going to be referring to with this witness? And I have everything here, I just need to pull it together so that I have it.
MR. DURICK: Exhibit P3 would be Exhibit A to the rebuttal testimony of Miss Lohnes.
COMMISSIONER WEFALD: And that's document number?
MR. DURICK: That is document number 61.
COMMISSIONER WEFALD: 61. Okay. Thank you.
MR. DURICK: And P4 is Exhibit A to the rebuttal testimony, which is docket 61.
COMMISSIONER WEFALD: All right. And that's also in docket 61? That includes this?
MR. DURICK: Yes.
COMMISSIONER WEFALD: And then there was another item.
COMMISSIONER CRAMER: 50. That's the direct testimony.
MR. DURICK: 50 is the direct testimony, and that's Exhibit No. 1.

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COMMISSIONER WEFALD: All right. Thank you.
Q. (MR. NEGAARD CONTINUING) And I apologize, Miss Lohnes. I said page 4. Page 5, lines 6 and 7.
A. I found it. Thank you.
Q. When you talked about cherry picking, the question was, are you referencing video or telecommunications?
A. Telecommunications.
Q. Okay. Are you aware that North Dakota Telephone Company is under tariff, files their rates under tariff?
A. I am not aware.
Q. Okay. And does Midcontinent have a monopoly on cable television services in Devils Lake today?
A. I don't know that.
Q. Do you know of any other cable television provider in Devils Lake?
A. I do not.
Q. Do you know of any other companies other than North Dakota Telephone providing telecommunications services in Devils Lake?
A. I am not aware of any others.

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Q. Have you heard of Western Wireless, which has now taken on a new name in the state, that they're operating in the state, wireless carrier?
A. Yes.
Q. Okay. And you've heard of Verizon Wireless?
A. Yes.
Q. And you're aware that they're operating in the state?
A. Yes.
Q. So if they're operating in the state in the Devils Lake area, there are other competitors for telecommunications business in the area, aren't there?
A. I'm not aware that they're in Devils Lake.
Q. Okay. Is Midcontinent a member of the cooperative purchasing organization that you mention in your testimony? I refer to your rebuttal testimony, page 4, lines 20-21.
A. Yes, we are a member of that.
Q. You are a member of that cooperative --
A. Yes.
Q. -- purchasing association?
A. Yes.
Q. Are you familiar with the pricing that's

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offered through that association?
A. I am not.
Q. Without discussing the content of any discussions, how many days -- how much time have the parties, Midcontinent and North Dakota Telephone, spent negotiating the terms and conditions of an interconnection agreement?
A. Discussing an interconnection agreement, none.
MR. NEGAARD: I don't have anything further. Thank you.
JUDGE WAHL: Mr. Binek?
MR. BINEK: I have no questions of this witness.
JUDGE WAHL: Questions from the Commission. Commissioner Clark.

EXAMINATION

BY COMMISSIONER CLARK:
Q. I do have one. In your initial testimony you talk about the amount of time that it's taken in the past to handle commercial agreements for resale, and I think you stated less than three months is typical. Have you gone through interconnection agreements in other -- interconnection arbitration proceedings, 251-, 252-

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type proceedings, in other states that you've been active in?
A. Not for arbitration.
Q. Have you had other 251(f) exemptions litigated in proceedings like this in other states?
A. No, we have not.
COMMISSIONER CLARK: That's all the questions I have.
JUDGE WAHL: Commissioner Wefald.
COMMISSIONER WEFALD: I have no questions at this time.
JUDGE WAHL: Commissioner Cramer.
COMMISSIONER CRAMER: I have none. Thank you.
JUDGE WAHL: All right. Followup, Mr. Durick.
MR. DURICK: Thank you, Judge Wahl.

REDIRECT EXAMINATION

BY MR. DURICK:
Q. Miss Lohnes, does Midcontinent consider satellite television offerings to be competition to the cable television offerings?
A. Yes, we do.
Q. And are there satellites that offer services in Devils Lake, as near as you know?

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A. Not that I'm aware of, but there could be.
Q. DirecTV is a nationwide service, is it?
MR. NEGAARD: Your Honor, it's been asked and answered, I believe.
JUDGE WAHL: Sustained.
Q. (MR. DURICK CONTINUING) What are the satellite companies that offer services in the United States?
A. In the United States, DirecTV. I'm not familiar with them.
MR. DURICK: Okay. I have no further questions of the witness.
JUDGE WAHL: Mr. Negaard.
MR. NEGAARD: No, Your Honor. I have nothing further. Thank you.
JUDGE WAHL: Mr. Binek.

EXAMINATION

BY MR. BINEK:
Q. A question. In your direct testimony at the bottom of line -- page 4, lines 24 and 25, you talk about long-term agreements. What is your familiarity with these long-term agreements? What do you mean?
A. We have experienced in some communities where our competitors will go out to their customer

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base and visit with their customers and have them sign long-term agreements with their company -- exclusive agreements for telephone, cable.
Q. What is the length -- normally what is the length of these long-term agreements that you're familiar with?
A. We've seen them anywhere from one to four years.
Q. Okay. Thank you. Did I understand you correctly that you haven't -- I think the question was regarding -- and it was Commissioner Clark asking -- about proceedings in other states. Did you say that there have been no -- had there been exemption requests in other states or not?
A. Not that Midcontinent has been in.
Q. So this is the first time that Midcontinent has asked that the exemption be lifted?
A. Correct.
Q. Getting back to these long-term contracts, does Midcontinent enter into any long-term contracts?
A. For the residential services, telephone services, we do not.
Q. What about cable television?

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A. We do not for cable, either.
MR. BINEK: Thank you.
JUDGE WAHL: Any further questions from the commissioners? Followup? I'm sorry. Commissioner Clark.

FURTHER EXAMINATION

BY COMMISSIONER CLARK:
Q. I do have just one. Of the communities that Midcontinent serves telecommunications services to, how many of them are not -- ballpark now -- how many of them are not Qwest exchanges?
A. I work with telephone services.
Q. Mm-hmm.
A. In North Dakota I don't think we have any that we're in with telephone right now.
Q. Okay. Other states?
A. In South Dakota we are in two communities.
Q. Are those both -- would they both be classified as rural carriers?
A. Yes.
COMMISSIONER CLARK: Thank you.
JUDGE WAHL: Commissioner Wefald.

EXAMINATION

BY COMMISSIONER WEFALD:
Q. Yes. This goes back to the question Mr.

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Negaard had for you on the bottom of page 4 of your rebuttal testimony, and I need to have you repeat the answer because I'm not sure if I caught your answer when you responded to his question. Do you belong to this National Cable Television Cooperative --
A. Yes, we do.
Q. -- Midcontinent?
A. Yes.
COMMISSIONER WEFALD: Okay. Thank you.
JUDGE WAHL: Any further questions from the Commission? Followup, Mr. Durick?
MR. DURICK: I have nothing.
JUDGE WAHL: Mr. Negaard, anything further for this witness?
MR. NEGAARD: Just one question.

RECROSS-EXAMINATION

BY MR. NEGAARD:
Q. Are you aware of or have any evidence that North Dakota Telephone has been trying to sign their customers up to long-term commitments for telecommunications services?
A. I'm not aware of it.
MR. NEGAARD: Okay. Thank you.
JUDGE WAHL: Mr. Binek, anything further?

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MR. BINEK: No.
JUDGE WAHL: Anything further from the Commission?
COMMISSIONER CLARK: No.
JUDGE WAHL: Mr. Durick, anything further for this witness?
MR. DURICK: Nothing further, Your Honor.
JUDGE WAHL: All right. Thank you very much, Miss Lohnes.
MR. DURICK: Midcontinent will call Warren Fischer as our next witness. Mr. Fischer, would you come up and be seated and be sworn?
JUDGE WAHL: Mr. Fischer, as you heard me advise the previous witness and as I'm sure you're well aware, your testimony is required to be under oath. In North Dakota I'm advised to -- I'm required to advise you regarding perjury before administering the oath. Perjury is a false statement of material fact which you do not believe to be true; in other words, generally speaking, a lie. In North Dakota perjury is a Class C felony, punishable by a fine up to $5,000, imprisonment for a period of up to five years, or both. Will you raise your right hand, please?
(Witness sworn.)

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JUDGE WAHL: Mr. Durick.
MR. DURICK: Thank you.
WARREN R. FISCHER,
being first duly sworn, was examined and testified as follows:
DIRECT EXAMINATION
BY MR. DURICK:
Q. I'm going to mark as Exhibit P5 the direct testimony of Mr. Fischer, which is Docket No. 52, and I'm going to mark as Exhibit P6 the reply -- excuse me -- the rebuttal testimony of Mr. Fischer, which is 62 on the docket.
Mr. Fischer, I'm showing you what has been marked as Exhibit No. P7, and that has been identified as Exhibit WRF-1 to your direct testimony, and I'm going to mark as Exhibit P8 what is marked as Exhibit WRF-2 to your direct testimony, and P6 is going to be WRF-3 to your -- not P6. I'm sorry.
JUDGE WAHL: No, no. P9.
Q. (MR. DURICK CONTINUING) P9. And I'm going to mark as Exhibit P10 Exhibit WRF-4 to your direct testimony. I would ask if you would look at those exhibits and tell me whether I have correctly identified them.

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A. They are correctly identified.
Q. And you have, I take it, reviewed your direct testimony and rebuttal testimony which has been filed in this particular action.
A. I have reviewed it.
Q. And I'd like to ask you if that direct and rebuttal testimony is your testimony under oath here this morning. If those questions were asked, would your responses be the same?
A. They would be the same.
MR. DURICK: We'll pass this witness, Your Honor.
JUDGE WAHL: Are you going to offer your exhibits, Mr. Durick?
MR. DURICK: Yes, and I'd offer the exhibits.
JUDGE WAHL: P7 through 10, inclusive?
MR. DURICK: Yes.
JUDGE WAHL: All right. Mr. Negaard, do you have those exhibits or do you need to look at them?
MR. NEGAARD: If I have counsel's assurance that those are the same exhibits that were filed with prefiled testimony, we would have no objection.

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MR. DURICK: Within the realm of human error, I would represent that they are the same. They're certainly meant to be the same.
MR. NEGAARD: I have no objection, Your Honor.
JUDGE WAHL: Exhibits P7 through P10, inclusive, are each received. Anything -- no, I'm sorry. You did pass the witness, Mr. Durick. Mr. Negaard, cross-exam.
COMMISSIONER WEFALD: I have a question, please.
JUDGE WAHL: Commissioner Wefald.
COMMISSIONER WEFALD: Yes. I have the testimony. If you could go more slowly through the specific exhibits, though, that you're asking the Commission to refer to, that would be helpful, because we have a whole --
MR. DURICK: Certainly.
COMMISSIONER WEFALD: We have quite a pile of exhibits here and I need to know which ones I'm supposed to be referring to.
MR. DURICK: WRF-1 would be Exhibit P7. WRF-2 would be Exhibit P8. WRF-3 would be Exhibit 9. And WRF-4 would be Exhibit 10.
COMMISSIONER WEFALD: Thank you. And

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those WRF-1, 2 and 3 and 4, are they attached to the December 21, 2005, direct testimony?
MR. DURICK: Direct testimony, yes, Commissioner Wefald.
COMMISSIONER WEFALD: Thank you.
JUDGE WAHL: Anything further, Commissioner Wefald?
COMMISSIONER WEFALD: No. That helps me. Thank you.
JUDGE WAHL: Mr. Negaard, when you're ready.

CROSS-EXAMINATION

BY MR. NEGAARD:
Q. Good morning, Mr. Fischer.
A. Good morning.
Q. It's my understanding that you're not testifying today that you have computed a discount rate specific to this particular exchange or application; is that correct?
A. I'm sorry. Your question was whether or not I computed a discount rate that's specific to Devils Lake?
Q. Yes.
A. No, I have not.
Q. And you propounded some discovery in this

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matter and you received the information you had requested; is that correct?
A. Eventually we did, but not all the information we initially requested.
Q. Okay. But you did get the information that you had requested prior to filing testimony in this case; is that correct?
A. Yes, we did receive the information that we had mutually agreed upon would be acceptable to both parties.
Q. And as far as you know, at this point there's no outstanding issues with respect to anything you've asked for that you didn't receive?
A. Yes, there's no further issues.
MR. NEGAARD: Thank you. I have nothing further.
JUDGE WAHL: Mr. Binek.
MR. BINEK: No questions at this time.
JUDGE WAHL: Questions from the Commission, please. Commissioner Clark.

EXAMINATION

BY COMMISSIONER CLARK:
Q. I do have one. If the Commission were to terminate the 251(f) exemption in this proceeding, then in any subsequent interconnection discussions

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between the two companies, is that the point at which you would anticipate discussions about pricing of those elements that are to be resold? Is that where that would happen?
A. I think it should occur no later than that discussion and that there should be no delay in implementing a certain pricing in terms of the conclusion of some sort of negotiation period. I think the Commission can set an interim rate subject to true-up after that period of time has elapsed.
Q. In setting a pricing, though, it's not an insignificant-type proceeding, is it? I haven't sat through a lot of them, but I have the most recent Qwest UNE case where you're trying to calculate TELRIC-type rates, and I know before that some of the initial interconnection disputes that this Commission heard, which was prior to my time, they weren't small proceedings, either. How much precedent do you believe the Commission has to build on to be able to do something, the two parties negotiating to get something rather quickly resolved as opposed to a more protracted-type proceeding from your experiences? Because we are dealing with a company we haven't dealt with before

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and certainly have a totally different cost structure than, say, Qwest.
A. I think because this is limited to resale, a lot of the pricing issues are much more limited. You're not dealing with unbundled element networks and all of the other issues that surround -- really determining what correct rates for each one of those elements. When dealing with total service resale, I think you can adopt an existing rate, let's say, for Qwest that's currently in effect subject to true-up or you can pick something lower, and what you'll find is, at least from financial impact that we've calculated, even if you were to pick a rate that's half of that, the financial impact on the company is going to be significantly less obviously because the discount is that much less and, therefore, its revenue stream will not be as impacted as it might be with a higher discount rate.
Q. But you don't anticipate getting into individual network element pricing?
A. From my understanding, this proceeding is strictly limited to resale, and that's what Midcontinent has requested.
COMMISSIONER CLARK: Thank you. That's

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all I have.
JUDGE WAHL: Commissioner Wefald.
EXAMINATION
BY COMMISSIONER WEFALD:
Q. I have a question on page 17, table 5.
A. Excuse me. Of my direct testimony?
Q. Yes. I've gone through your tables up to this point in the testimony and I understand them and what the figures represent, and then I come to table 5 and there is a new number. It talks about the potential of what it cost. And I understand the figures that you're using in the first column, 2004 revenue per line, and I understand the figures in 2004 revenue per line subject to resale, and I understand the figures in the line potential revenue loss via resale, but what I don't understand is why the first number, 45.72, under potential avoided cost in that column is different than the potential revenue loss via resale in the previous column, and then you have a number net loss via resale in the last column, which I believe is the potential avoided cost subtracted from the potential revenue loss. It's the only number that is different in those two -- in those last three columns, so if you can explain to me why it is

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different.
A. Sure. If you give me just a moment here.
Q. Okay.
A. If I can turn you back to the detail within Exhibit WRF-2 or P8, that might help explain where that number comes from.
Q. Okay.
A. Specifically it would be page 3 of 8.
Q. Page 3. It will take me a minute now to find this. Page 3 of 8. I have that.
A. At the very top, the very first line of that particular spreadsheet, it deals with local network access revenue, which is primarily the local exchange revenue as well as other features that are associated with the provision of local service. In the column to the far right that's labeled "note," what I've assumed in this analysis is that with an avoided cost discount percentage, the actual cost savings may not be applicable to services that are considered features, call waiting, caller ID, three-way calling. So we have factored back into the analysis that there would be some true revenue loss from providing those services under total service resale as opposed to local exchange or some of the other services where

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the avoided costs should mitigate any revenue loss.
Q. All right. So the difference between 49.86 and 45.72 is the fact that there is no cost savings on features?
A. Because -- and that's primarily due to the fact that the costs for providing features is typically very small and that the companies typically have a very large markup on them because they're not considered regulated services.
COMMISSIONER WEFALD: Thank you. All right. That explains that. I have no other questions at this time.
JUDGE WAHL: Commissioner Cramer.
COMMISSIONER CRAMER: None. Thank you.
JUDGE WAHL: Follow up, Mr. Durick.
MR. DURICK: Thank you, Your Honor. I have a few questions.
REDIRECT EXAMINATION
BY MR. DURICK:
Q. Mr. Fischer, in your analysis you made some assumptions that I understand were made when you didn't have exact figures from North Dakota Telephone Company; is that correct?
A. That is correct.
Q. Okay. And were those assumptions based on

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reasonable estimates from the industry?
A. Yes, they were.
Q. Let me ask you, if you had the exact figures from North Dakota Telephone Company, would that change your opinion that the --
MR. NEGAARD: Your Honor, this is outside the scope of any cross-examination of this witness.
JUDGE WAHL: The objection is overruled. Let me just quickly state for counsel that this is not a trial. I understand the Rules of Evidence apply, no question about that, but that being said, as an administrative hearing, our purpose here is to gather the information, to collect as much information as will conceivably benefit the Commission and its staff. So, accordingly, you will find me rather, shall we say, flexible about the Rules of Evidence. The objection is overruled and, Mr. Durick, you may proceed.
MR. DURICK: Okay.
Q. (MR. DURICK CONTINUING) Let me start over. If you had the exact figures for North Dakota Telephone Company for some of the assumptions that you made in your analysis, in your opinion, would that change your ultimate conclusion that the effect of a resale agreement here would be

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de minimis as far as its financial impact on North Dakota Telephone Company?
A. No, it would not, and for the simple reason that the absolute dollars that are at risk here are very small to begin with. The Devils Lake exchange is only a small portion of the total company's operations, and the assumptions that we've modeled here, the various penetration rates or assumed discount rates, all point back to the same thing, that the total dollars that are at risk here are very small. So whether you -- the ultimate discount rate that is appropriate for North Dakota Telecom is significantly higher or lower than what we've assumed in our analysis, the absolute financial impact is going to be de minimis.
MR. DURICK: I have no further questions of the witness.
JUDGE WAHL: Mr. Negaard.

RECROSS-EXAMINATION

BY MR. NEGAARD:
Q. Following up on that, you did not try to calculate any companywide discount for North Dakota Telephone that would be appropriate for resale wholesale services, did you?

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A. I'm sorry. Could you clarify your question, please?
Q. And I'm sorry if I didn't state it well. You did not calculate any companywide discount rate that would be appropriate for North Dakota Telephone for resale wholesale services, did you?
A. We did not calculate a rate specific to North Dakota Telephone.
MR. NEGAARD: I don't have anything further.
JUDGE WAHL: Mr. Binek.

EXAMINATION

BY MR. BINEK:
Q. One clarifying question getting back to Mr. Negaard's question. The calculations that you made were specific to the Devils Lake exchange; is that correct?
A. Yes, the financial calculations we made were specific to the Devils Lake exchange.
MR. BINEK: That's all I have.
JUDGE WAHL: Any further questions from the Commission? If not, Mr. Durick, any followup?
MR. DURICK: No followup, Your Honor.
JUDGE WAHL: All right. Thank you very much, Mr. Fischer.

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MR. DURICK: Midcontinent would call Mr. Timothy Gates.
JUDGE WAHL: Mr. Gates, as I'm sure you're well aware, your testimony is required to be under oath and I'm required by law to advise you regarding perjury before administering the oath. Perjury is a false statement of material fact which you do not believe to be true; in other words, generally speaking, a lie. In North Dakota perjury is a Class C felony, punishable by a fine up to $5,000, imprisonment for a period of up to five years, or both. Will you raise your right hand, please?
(Witness sworn.)
JUDGE WAHL: Mr. Durick.
MR. DURICK: Thank you, Your Honor.

TIMOTHY GATES,

being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. DURICK:
Q. For the record, I'm going to mark as Exhibit P11 the direct testimony of Mr. Gates, which occurs at Docket No. 51, and the rebuttal testimony of Mr. Gates as P12, and that appears as

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Docket No. 60. And, Mr. Gates, I am going to mark as Exhibit No. 13 what has been identified as Exhibit TJG-1 to your direct testimony. I'd ask you just to identify that as the exhibit to your direct testimony.
A. Yes, this is a copy of the exhibit to my testimony.
Q. Very good. And, Mr. Gates, I take it you have reviewed your direct and rebuttal prefiled testimony in this matter.
A. I have.
Q. And if you were asked those questions in your direct and rebuttal testimony today under oath, your answers would be the same?
A. Yes, they would.
MR. DURICK: Thank you. We pass the witness, Your Honor.
JUDGE WAHL: Are you going to offer your exhibits, Mr. Durick?
MR. DURICK: Yes, I'm going to offer the exhibits, Your Honor.
MR. NEGAARD: I'm sorry. And what was the exhibit number for the direct testimony?
JUDGE WAHL: Direct was P11.
MR. DURICK: That's 51 of the docket, and

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the rebuttal is P12 and it's 60 in the docket.
MR. NEGAARD: Okay. Your Honor, we do have an objection based upon the lines of Mr. Gates' testimony. The basis for that, Your Honor, is the same objection that Midcontinent made to Mr. Meredith's reply testimony. Mr. Gates' testimony beginning at page 4 begins a discussion prefaced with, "I'm not a lawyer, but this is what the law says." Mr. Meredith responded to this discussion in his reply testimony and Midcontinent asked to have Mr. Meredith's testimony stricken from the record.
Your Honor, before we get to Mr. Meredith's testimony, it's important that this issue be resolved because if Mr. Meredith can't testify what the law says, Mr. Gates, likewise, should not be able to testify what the law is. And we would ask that those portions of Mr. Gates' testimony be stricken from the record because he's not an attorney. And might I point the Court to Rule 702, North Dakota Rules of Evidence, testimony by experts. The witness has said that he's not an expert, he's not an attorney, yet goes on to testify what he believes Congress meant or said when it passed certain portions of the '96

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Telecommunications Act. We'd ask it be stricken on those grounds, Your Honor. And if the Court rules that way, we can get line and page number as a cite for those particular quotes from this witness.
MR. DURICK: Your Honor, Mr. Harrington will address that issue.
JUDGE WAHL: Mr. Harrington.
MR. HARRINGTON: First, I don't think that it's appropriate to rule on the motion until we're given the exact line and page numbers because it's particularly significant to know what they are first. I don't think it's appropriate to make a motion without identifying particular portions that should be stricken. That's what we did in our motion. We identified specific page and line numbers.
That said, if I understand the line and page numbers that are being proposed to be stricken at this point, there's a significant distinction between Mr. Gates' testimony and the testimony of Mr. Meredith. Mr. Gates is quoting language from the statute and language from orders of the FCC. For instance, on page 6 from lines 117 to 135, that consists almost entirely of quotations from the FCC and those are purely descriptive of what was done,

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and that's typical of what's in Mr. Gates' testimony.
Mr. Meredith, by contrast, does not merely quote statutory provisions, but proposes a specific interpretation without quoting anything else. He specifically describes what he believes is the correct interaction between Section 251(f), a provision concerning scheduling, and Section 252 of the Communications Act, which concerns arbitrations and negotiations. That's a much different situation from what you find in Mr. Gates' testimony. That distinction is quite significant. Mr. Gates is merely reporting facts that are easily verifiable. Mr. Meredith is proposing interpretations which are outside the scope of his expertise as he describes it himself.
One other thing I think I should say, to the extent that our motion to strike is denied, we have an expectation that we'll be able to cross-examine Mr. Meredith directly on what he has said, and we've not expected there should be any objections permitted on the grounds that he's not a lawyer.
JUDGE WAHL: Your response -- do I take it, Mr. Harrington, you're addressing, also, NDTC's

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response to Midcontinent's motion?
MR. HARRINGTON: Yes. My understanding is that you had hoped to deal with both at the same time.
MR. NEGAARD: Your Honor, if they insist on line and page number, page 7, line 139 through 150, the witness talks about what Congress meant when it passed the 1996 Telecommunications Act. This particular witness was not a member of Congress at the time, he's not an attorney. For him to testify that this is what Congress meant when it passed a particular act is equally as offensive as the testimony being complained of by Midcontinent. And, again, page 8, line 170, he talks about the facts and the law on the issues.
COMMISSIONER WEFALD: Is this on the January 16th or on the --
JUDGE WAHL: December 21st, 2005.
COMMISSIONER WEFALD: 21. Thank you. It would help to distinguish between the two as you're going through.
MR. NEGAARD: I apologize. It's Mr. Gates' direct testimony filed December 21st, 2005, line -- as I indicated, page 8, line 170 and again page 10 on line 215, Mr. Gates says "Congress

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wanted and expected." Again, this witness -- the same offensive type of testimony that's being complained of by Midcontinent. This particular witness wasn't a member of Congress. He talks about the Act's goal on line 218 and 219. So there are four lines on page 10 of that direct testimony.

On page 12, line 255, this witness, "Yes. The Act and the FCC's local competition order contemplates" and then goes on and talks about that through line 257. So in response to the objection that we weren't articulate enough in page number and line number, that's our response, Your Honor.

MR. HARRINGTON: Your Honor --

JUDGE WAHL: All right. Counsel, the objection is overruled. That is, North Dakota Telephone Company's objection to the testimony of Timothy J. Gates is overruled. The motion by Midcontinent Communications to strike certain testimony of a witness who will be later called to testify on behalf of NDTC is denied.

The reasons, just briefly for the record, for my rulings is that I read both the motion and the testimony objected to, that is, the motion of Midcontinent and the testimony of Mr. Meredith

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objected to. I had from NDTC its response to that motion and the reference to the testimony of Mr. Gates which it now objects to. I've read that. I've read the Alaska case. I read parts of the code. It seems to me that the law and technology are intertwined and interconnected in these cases. I think it's hard to consider the law without the technology and without its -- I agree, I think it was NDTC pointed out -- its practical application.

So I think the testimony of the expert witnesses in terms of the law -- not for its interpretation, but for its application -- is relevant and permissible. Second, the Public Service Commission is an agency of experts in itself with expert staff. I think it's unlikely that erroneous expert testimony as to the application of the law will mislead the Commission or its staff. Finally, for the third reason for the denial of the objection -- or the overruling of the objection and the denial of the motion is, as I have said, this is an administrative hearing, and although the Rules of Evidence are certainly applicable, they should be applied flexibly with the idea of bringing in as much evidence as can be reasonably gathered and as reasonably relevant for

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the consideration of the agency and for the record for the courts on appeal.

Counsel -- Mr. Negaard, anything further for the record with regard to your objection?

MR. NEGAARD: Nothing, Your Honor.

JUDGE WAHL: Mr. Harrington, anything further for the record with regard to your motion?

MR. HARRINGTON: Not at this time, Your Honor.

JUDGE WAHL: All right. Okay. Mr. Negaard, you have not otherwise responded to Exhibits -- I'm sorry -- to Exhibit P13?

MR. NEGAARD: Your Honor, I argued the motion. I appreciate your time. Mr. Moorman is going to handle the cross-examination and the exhibits on this witness.

JUDGE WAHL: But I don't take it you were objecting to P13.

MR. NEGAARD: No, Your Honor, we're not.

JUDGE WAHL: All right. So Exhibit P13 is received. Mr. Moorman, when you're ready.

MR. MOORMAN: Thank you, Your Honor.

CROSS-EXAMINATION

BY MR. MOORMAN:

Q. Mr. Gates, my name is Tom Moorman. I'll

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be cross-examining you this morning.

A. Good morning.

Q. Good morning. How are you?

A. Good. Thank you.

Q. Mr. Gates, I just want to make sure I understand your background. Do you have a degree in economics?

A. I have a master's degree from Willamette University and it had economics courses, but it is not a master's of economics.

Q. So your response is you do not -- do you have a degree in economics?

A. I guess the answer technically would be no.

Q. To the best of your knowledge, has Midcontinent ever requested Section 251(b)(1) retail resale of NDTC?

MR. DURICK: I guess I would object, Your Honor, at this point. It's beyond the scope of the direct and I don't know that this witness would have any knowledge of that, so on foundation and outside the scope of the direct.

JUDGE WAHL: Goes to the weight of his testimony, doesn't it, Mr. Durick? Mr. Moorman?

MR. MOORMAN: Well, it goes to his

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testimony. He also talks about the various levels of interconnection obligations in his testimony. I can find that cite.

JUDGE WAHL: The objection is overruled. You may proceed.

Q. (MR. MOORMAN CONTINUING) To the best of your knowledge.

A. I don't know. I would defer that to Miss Lohnes.

Q. Were you ever a United States Representative at the time or during the passage of the 1996 revisions to the Communications Act of 1934, as amended?

A. No.

Q. Were you ever a U.S. Senator during that same time period when Congress was reviewing the 1996 and ultimately passing the 1996 revisions to the Communications Act of 1934, as amended?

A. No, I was not.

Q. To the best of your knowledge, do resellers typically brand the service they resell of another ILEC, for example, in their own name?

A. Are we talking just generally --

Q. Yes.

A. -- resellers? It could be long distance

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or any sort of resale even commodities?

Q. Let's get specific. Local resale. Does a resale -- reseller typically brand that service in their own name?

A. Sure.

Q. And assuming for sake of argument that Midcontinent resells NDTC's service, to the best of your knowledge, will Midcontinent be branding that local service in its own name?

A. I don't know what the intentions of the company are with respect to that service, but -- I guess I would have to defer that.

Q. To the best of your knowledge, would it also be true that Midcontinent would be telling customers that the local dial tone service would be provided by North Dakota Telephone Company?

A. I don't know what the company is going to say to its customers. I think that's probably something that they will decide and determine if and when they get approval from this Commission to provide service in Devils Lake, but I don't have any information about their business plans.

Q. Turning to your rebuttal testimony, if you would, for just one moment. On page 3 -- and I apologize if my line numbers are different from

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yours, it could be a function of PDF or when I printed it out.

A. Well, the good news is I've numbered all the lines sequentially, so hopefully that avoids that problem.

Q. Very good. But at lines 66 to 68, you state, and I quote, Indeed, Mr. Dircks stated at page one of his testimony that, quote, NDTC understands fully that advancing competition has been stated to be a public interest objective. Is that what you stated on those lines in your testimony?

A. Yes, it is.

Q. Mr. Gates, were you referring to Mr. Dircks' testimony at page 1, lines 21 to 22, when you were quoting?

A. I don't have his testimony with me, but if you could show me, I would be happy to look at it.

MR. MOORMAN: May I approach the witness, Your Honor?

JUDGE WAHL: You may.

Q. (MR. MOORMAN CONTINUING) Let me reask you the question, if I could. Were you referring when you stated -- on lines 66 through 68 you had a quote from Mr. Dircks' testimony that stated, "NDTC

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understands fully that advancing competition has been stated to be a public interest objective." Is that the same line that you find in the document before you, which is Mr. Dircks' prefiled testimony, on page 1, lines 21 to 22?

A. Yes, it is.

Q. And, Mr. Gates, doesn't Mr. Dircks go on to state, and I'm looking at lines 23 through -- 23, page 1, to top of page 2, line 2, that in addition to the line that you quoted, Mr. Dircks states, NDTC does not quarrel with the objective provided the competition is fair and that other public interest objectives are not made second class citizens to such competition"? Is that what he states?

A. That's what it states, but I believe the company's actions belie the statement, but that's a correct quote.

Q. On your rebuttal testimony -- I just want to make sure that I understand your testimony today -- on lines 85 to 90, which was on my page 4, your statements on page 86 through 90 are all caveated by the statement, "While I have no specific insight into NDTC's operations"; is that correct?

A. Yes. You said page, but you meant line;

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correct?
Q. Page 4. I'm sorry. If I wasn't specific, page 4 --
A. Yes.
Q. -- lines 85 through 90.
A. And the qualification that I made? I'm sorry.
Q. Your observations on 86 -- lines 86 through 90 are all subject to the general observation you made or statement, "While I have no specific insight into NDTC's operations"; is that a correct reading of your testimony?
A. Yes, it is.
Q. Mr. Gates, you were here this morning when Mr. Fischer was on the stand; correct?
A. Yes, I was.
Q. To the best of your knowledge, has the North Dakota Commission ever established a wholesale resale discount percentage for NDTC?
A. Not for NDTC, but certainly for Qwest. We went through those proceedings and we've certainly done it dozens and dozens of times all over the country, so it's not a new process.
Q. So for North Dakota you were familiar that they've established it for Qwest?

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A. Yes.
Q. Has -- to the best of your knowledge then, has the North Dakota Commission ever established a wholesale resale discount rate for the North Dakota Telephone Company's Devils Lake exchange?
A. No, I don't believe it has. It would be a simple matter, but they haven't done it yet.
MR. MOORMAN: I have nothing further at this time.
JUDGE WAHL: Mr. Binek.
MR. BINEK: I don't believe I have any questions. We have no questions.
JUDGE WAHL: Commissioner Clark.

EXAMINATION

BY COMMISSIONER CLARK:

Q. I do have one. If in setting wholesale retail rates, how would you approach doing that differently for a company like NDTC, which is now North Dakota's only fully tariffed and rate-of-return regulated company versus, say, a Qwest, who is price capped by statute or, you know, carriers that are -- I guess most carriers probably around the country are price capped today. Approaching that, how would you do it differently?
A. I don't think, Mr. Chairman, that the fact

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that they're regulated one way or another would make any difference in the rules. The FCC rules, 51.607, specifically identifies the USOA accounts that are to be considered in making that calculation, and the formula Mr. Fischer has already put in place. It would just be a simple matter of changing out some of the inputs if we find that the actual NDTC inputs are different.
Q. So those are tracked in the same accounts, whether it's a price-capped company --
A. Yes.
Q. -- or a rate-of-return company, either federally or state?
A. Yes.
COMMISSIONER CLARK: Thank you. That's all I have.
JUDGE WAHL: Commissioner Wefald.

EXAMINATION

BY COMMISSIONER WEFALD:

Q. On the bottom of page 19 is where Midcontinent addresses the public interest issue that the Commission needs to consider in this case, and this is page 19 on the December 21, 2005, testimony. First, can you tell me, is this the only place where you address the public interest

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issue in your testimony, or will I find other public interest testimony in other parts of your testimony, as well? This is the only place I spotted it, but I'm just wondering if I missed something.
A. I think it's sprinkled throughout, Commissioner, and it's in my rebuttable and I believe it may be referenced generally in the testimonies of the other witnesses because I think it's a commonly held belief that competition is good for society and good for consumers. But if I could, initially you mentioned that the Commission must consider the public interest issues. I think the Commission should, but according to the standard that we have in the statute and in your notice of hearing, public interest really is not addressed other than perhaps to reference universal service, which I think is hugely a public interest issue. But I agree with you personally and professionally that public interest is key to your decisionmaking process, and I do believe that the public interest will benefit from this competition even though it's only total service resale. But this is the focus in my testimony where I address it directly, but I think there are other references

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to that, the benefits and the efficiencies and those other kind of intangible benefits to the public interest.
Q. The main one that you identify in that section that I just referred to at the bottom of page 19 and the top of page 20 is, "The most obvious benefit of competition -- even from resale -- is the availability of alternative offerings for consumers."
A. Yes.
Q. Did you provide any other additional information, did you say, in your rebuttal about that issue?
A. Yes. If you look at page 3 of my rebuttal, there on lines, say, 55 through 59, I talk about the fact that North Dakota Tel would prefer a delay until it's ready to compete, but, of course, that isn't the standard that this Commission is reviewing. And I believe that it would be a mistake to deny customers the benefits of competition simply because the incumbent wants to prepare even more for the advent of competition. For instance, Your Honor, the RBOCs, the Regional Bell Operating Companies, didn't have ten years to prepare for competition and they seem

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to have done quite well in the industry. And I just think it's time for consumers everywhere, including Devils Lake, to have an alternative choice, even if it's just total service resale, so the service quality is the same and a lot of the features will be the same necessarily since they will be reselling the North Dakota Tel service. At least consumers have the opportunity to exercise a choice, and I think that will be beneficial for lots of reasons that I discuss in my testimony, and I talk further about the benefits of competition on this page.
Q. In terms of the -- indirectly in your testimony and in some others there has been kind of the size of the companies. Describe the size of Midcontinent in comparison to the size of North Dakota Telephone Company.
A. I could try to do that. I think I tried in my direct right in the beginning.
Q. All right. Why don't you point me to where that is.
A. Let me show you where that is. On page 3 of my direct --
Q. Mm-hmm.
A. -- which I guess is document 51, I note

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that Midcontinent is a diversified company and it serves more than 200 communities in North and South Dakota. I looked at a service territory map of the two states --
Q. Yes.
A. -- and there were little dots wherever they served, and I was quite impressed that it seemed to cover both states pretty completely. So Midcontinent is investing in North Dakota -- not only reselling, but investing and they have employees and they have a commitment to the state, which is good. And I said the company is over 60 years old.
I looked on the North Dakota Tel website, which is a great website, I enjoyed it. Today there is a picture of a little boy with a big fish, and it's very local, very good, very informative. And there is a history there and it talks about the various acquisitions and mergers, but I don't have a feeling of the relative size in terms of revenues or customers.
Q. Between the two companies?
A. No, I don't.
Q. Do you think there's any relevance for the Commission looking at that?

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A. Not really, because, after all, North Dakota Tel is the incumbent, they're established, they have their customer relationships, and this is total service resale. So in essence Midcontinent will be doing the retailing function for North Dakota Tel. So the harm is de minimis, as Mr. Fischer showed --
Q. Yes.
A. -- in materials of revenues and customer impact. The benefits are significant, but the impact on North Dakota Tel is de minimis. So the fact that Midcontinent might be bigger -- and I'm not saying it is, I just don't know -- would have no impact on your decision, I don't believe, to either grant or deny the request for termination of the exemption.
COMMISSIONER WEFALD: Thank you.
JUDGE WAHL: Commissioner Cramer.
COMMISSIONER CRAMER: I don't have any.
JUDGE WAHL: Commissioner Clark.
COMMISSIONER CLARK: I do have one.
FURTHER EXAMINATION
BY COMMISSIONER CLARK:
Q. If the termination was -- or if the exemption was terminated and Midcontinent and North

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Dakota Tel can't come to terms through their own informal discussions about total -- the total wholesale retail rate, what happens then? Is it a 252 proceeding? Is that what it goes to? Or kind of run through, as you understand it, the steps that happen if the termination is granted.

A. Okay. And, again, as we all know, I'm not a lawyer.

Q. Right. We established that.

COMMISSIONER WEFALD: We established that.

THE WITNESS: We established that, haven't we? What I understand is, based on 251(f), if this exemption is lifted, then this Commission has the responsibility to establish a schedule, and I in my testimony suggest that you establish a schedule, whether it's 90 days as we suggest or some other amount of time, require the parties to come in and report to the Commission or its staff on a monthly basis as to the progress. The Rule 51.6-07 identifies all of the accounts that are to be considered in calculating a resale -- or wholesale resale discount, so there's not much of a dispute there. The only dispute would be whether the inputs are accurate.

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I've been involved in many of those cases. They were usually bigger, though, and included more issues than just the wholesale resale discount. So I think this could be done very efficiently. We have the template already done. Mr. Fischer has that done. Midcontinent could turn that over to North Dakota Tel, they could populate it with their own very specific company-specific information, which could be held in confidence, and we will come up with a number. And we also have a relevant FCC range between 17 and 25 percent. So if this Commission wanted to, it could order the Qwest rate of 16.1 percent on an interim basis or pick a number between 17 and 25 percent based on the FCC's orders, have those discounts in place while we calculate the actual North Dakota Telephone rate subject to refund and true-up. But I don't see this as a complex matter or even a difficult matter. I think we have the template. North Dakota Tel has it, they can review it. It's a spreadsheet. They can see all the assumptions. Just a matter of populating it and hitting enter and they come up with a number.

COMMISSIONER CLARK: That's all I have. Thanks.

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JUDGE WAHL: Commissioner Wefald.

FURTHER EXAMINATION

BY COMMISSIONER WEFALD:

Q. Is it my understanding that your interpretation of the implementation schedule is based on the fact that when you filed with the Commission this summer and asked for us to determine the rural exemption, that you see the clock starting to tick at that point as far as the interconnection agreement requirement?

A. This is so -- well, yes and no. This is so different from what we usually do in an interconnection case, because in those cases we come in and we're talking about TELRIC rates for UNEs and we identify all those unbundled network elements. We're arguing about the interconnection methods and where the point of interconnection is going to be and who is responsible for the trunks on this side of the POI and who's paying for the trunks on this side of the POI. None of that matters in this case. The only thing we're talking about is total service resale. The interconnection would be very simple -- I don't think that would be a disputed issue -- and the rate is the only thing we really need to come up with. And as far as the

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timetable?

Q. Yes. Because your timetable you asked for --

A. 90 days.

Q. "The Commission should require North Dakota Telephone Company to develop such an agreement with Midcontinent within 30 days" -- I'm on page 24 of your December 21 testimony -- "and to provide resale within 60 days later, that is within a total of 90 days after the Commission's order in this proceeding." Then we got the information back from North Dakota Telephone Company about their proposed schedule. So I'm just wondering, is yours -- your schedule within 90 days, does it have to do with the interconnection agreement proceeding and are you saying that yours would have started at the -- when you filed the request for the Commission about determining the exemption? Are you determining setting the clock from that date for both of your things? There was referral to that in the North Dakota Telephone Company --

A. Yes.

Q. -- testimony and so I just need to clarify, where did you get your dates? How are you setting up the schedule?

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A. Thank you. I think that is a point of confusion in the record, and we have completely different perspectives here. I wasn't referring to the interconnection, the 251(c) time frames.
Q. Oh, you weren't?
A. No, Your Honor, I was not. I was referring simply to the actual time required to get resale started between the two companies who agree to set up a resale agreement.
Q. You don't see that you need an interconnection agreement?
A. Only limited to the resale discount and some of the billing issues. You know, a very simple agreement. It's not the 500-, 600-page interconnection agreements that we normally consider. And as for the time frames --
Q. The time frames, yes, that are set up.
A. Mr. Meredith talks about that in his testimony and the lawyers, I'm sure, will talk about those time frames, but that's for an arbitration where the parties haven't reached agreement and go to arbitration, and that time frame, I think, is significantly different than a 251(f) proceeding. Here we're simply asking for you to consider termination of the rural exemption,

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and in that part of the statute, 251(f), it says once you've made a decision on these issues, after you've made the decision, then you set the schedule. You set the schedule for implementing resale. So once we're done with this hearing and you issue an order, in that order hopefully will be a period of time over which we will implement total service resale in Devils Lake. And when I say "we," excuse me, I mean Midcontinent. So that arbitration time frame does not apply, in my opinion.
COMMISSIONER WEFALD: All right. Thank you.
JUDGE WAHL: Anything further from the Commission?
JUDGE WAHL: Mr. Durick, followup?
MR. HARRINGTON: May we have one moment?
JUDGE WAHL: I'm sorry.
MR. DURICK: I have one question, Your Honor.

REDIRECT EXAMINATION

BY MR. DURICK:
Q. Mr. Gates, I'm referring you to page 4 of your rebuttal testimony, and I'm referring you to there in the context of the question asked by

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Commissioner Wefald on the public interest aspects of this particular proceeding. And I note there -- I don't think that's been mentioned before, but there you talk about the incentives inherent in competition. Is that something that's also addressed in the public interest?
A. Oh, absolutely. Once you have a competitor in your midst, your whole perspective on your business, of course, changes. And I talk in my testimony about the efficiencies that I believe any company facing competition would try to achieve because you want to drive your costs down and your revenues up. And from North Dakota Tel's perspective, they want to maintain their customer base, they want to keep their rates as high as they can as long as they're just and reasonable as you determine. But if you bring a competitor in, they will probably look forward to someday having a price reduction with respect to that competitor's presence in the market, so they're going to try to reduce their costs so they can maintain their margins for their shareholders or the cooperatives or the holding company, whoever that might be.
So the incentives are excellent. Not only do they reduce their costs, but they try to provide

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better customer service. And I'm not suggesting that North Dakota Tel isn't providing great service. I'm sure it probably is. But they will have good incentives to do even better because they want their customers to stay with them even in the face of perhaps a rate increase or maybe they'll have new services to offer in the future, such as video in February of 2007, in which case they hope their existing customers will take that service.
So with a competitor in their midst, yeah, the benefits are great and all of those inure to the consumer, because all those things that North Dakota Tel will do, and any other company facing competition, will ultimately benefit consumers by, you know, more efficient provision of service, better customer service, more offerings, reduced prices. All of those things will benefit consumers.
MR. DURICK: Thank you, Your Honor. I have nothing further.
JUDGE WAHL: Mr. Moorman?
MR. MOORMAN: No questions.
JUDGE WAHL: Mr. Binek, anything further?
MR. BINEK: Yes, I do have some questions.

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EXAMINATION
BY MR. BINEK:
Q. Mr. Gates, you made a comment basically to the effect that North Dakota Telephone Company would like a delay in order to prepare for competition. I think that's basically what you had said.
A. Yes. I wasn't speaking for them. That's kind of my impression of the testimony as I've read it.
Q. If the rural exemption is not lifted and assuming that North Dakota Tel does enter the cable market in February 2007, that would automatically terminate the exemption, of course. How long would you estimate that it would take Midcontinent to enter the telecommunications market under those circumstances?
A. Once the exemption is lifted?
Q. Yes.
A. The timing would be the same. There's a certain amount of time in which the companies need to talk, exchange information, set up billing and other operational situations, but easily within 90 days, assuming the companies cooperate and they both want to achieve this goal, because, again,

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we're talking about total service resale, not talking about going in there and buying UNEs or unbundled loops or anything like that. It's really just a billing issue.
Q. That leads to my next question. What happens if the companies cannot agree? How is this going to be resolved?
A. That really does require, I believe, a legal interpretation I'm not qualified to provide. I could guess.
Q. You are dealing with an interconnection agreement, aren't you?
A. In essence, yes, a limited one for purposes of just resale. But I don't believe -- I suppose you could end up in a 251(c) type interconnection hearing, but I don't think -- I just would hope that wouldn't happen over just total service resale.
Q. How have other states -- to your knowledge, how have other states handled the implementation issue?
A. The implementation issues have been very simple for total service resale, and I have been involved in many, many proceedings over the last 20 years or so that dealt with resale. Whether we're

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talking about long distance or local, a very, very simple application, we've been doing it for years, and Midcontinent has experience specifically with this type of application and are very confident they can get it done -- you know, they don't even need 90 days, but certainly within 90 days it could be done.
The problem is if the parties -- if North Dakota Tel doesn't want to do it, then I guess the companies such as Midcontinent have to exercise their legal rights to come to this Commission to kind of force the parties to cooperate, and that could be done through a 251(c) proceeding, which could take an awful long time and a lot of resources.
Q. So you don't really -- if I'm hearing you right, you don't really disagree with what North Dakota Telephone Company has stated in their filings that this matter could go into an arbitration proceeding?
A. I really do disagree with what they are saying. This proceeding can end quickly and we can have total service resale in Devils Lake very, very quickly, certainly within 90 days.
Q. I agree that it could end quickly, but if

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the parties cannot agree, don't you basically end up in an arbitration situation?
A. I guess if North Dakota Tel chooses to ignore this Commission's order and not implement total service resale, then I would think this Commission could act to enforce its order. I don't think we have to go to arbitration simply because North Dakota Tel ignores this Commission's order. I think this Commission has the authority to enforce it.
Q. Well, let's just say, for example, that North Dakota Tel does not agree with the discount that you propose -- that neither party can agree on a discount rate, how would this Commission be able to arbitrarily set a discount rate when they don't have any evidence presented?
A. Well, I don't think it would be arbitrary in any case. We've already got the model, and the companies can talk about the model if they disagree, but this is something we've been doing since 1996, doing these wholesale discount models, and based on this FCC rule it's very straightforward. So if Midcontinent and North Dakota Tel could not agree on some inputs or they couldn't agree on the final number -- I suggested

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that the parties report to the Commission monthly on the progress. If we stop making progress, then this Commission could have a one-day hearing for the limited purpose of addressing that model and the inputs and then reach a decision and say, you know, it's not 16.1, it's really 12.2 or some finding, but this Commission can ultimately make that decision. We're talking about accounting numbers and spreadsheets, and we would finish that hearing much quicker than we will finish this hearing.

Q. Are there other states that have terminated a rural exemption and had to determine and implement an implementation schedule?

A. I don't remember an implementation schedule. I know there are some states that have terminated the exemption. I think, for instance, Alaska has in the past, but I don't recall the implementation. But I guess it would be -- excuse me.

Q. I'm sorry. This whole case, does it really boil down to which company gets to be able to offer this -- I forget the term -- three play or something like that?

A. Triple play.

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Q. -- triple play service in Devils Lake? Is that what it really boils down to, is who can get there first?

A. I'm not certain if that's what this whole case revolves around. It sounds that way when you read Mr. Dircks' testimony. It sounds like he would prefer to wait until they are offering video, and from his perspective he wants to operate, you know, on a level playing field. I hate to use that phrase, we've overused it so much. But I believe that's their position, and I can understand that. But that's not the standard. That's not the standard this Commission has to review in deciding whether to terminate that exemption, but I think that's why we're seeing the push-back, why we don't have an agreement.

MR. BINEK: I have no further questions.

JUDGE WAHL: Any further questions from the Commission? Commissioner Clark.

FURTHER EXAMINATION

BY COMMISSIONER CLARK:

Q. I do have some just following up on Mr. Binek's question. If the purpose of this proceeding is really just a jockeying for timing on entry into each other's markets, doesn't North

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Dakota Tel under the Act have some ability within its own control to delay that time frame? I mean, just looking at the Act, once the termination would be granted -- the rural termination, then I assume you would have to make a -- Midcontinent would have to make a request to start negotiations and then it's not until at least what, 135 days after that that Midcontinent could even petition the Commission and that would be if North Dakota Tel just on its own decided not to enter into discussions, and then they've got a certain amount of time to respond after that, and then even then the Commission has what, nine months to decide the case.

A. I don't see that schedule. I don't think that schedule applies in this case. We have a termination of the exemption, which you decide, but then the next issue is the implementation timetable. It doesn't say now you start all over again at day one and do negotiations for 135 days and then you have hearings and a final order. It doesn't say that. It says you decide whether or not that is terminated and then you set the implementation schedule for the service.

Now, if Midcontinent was asking for

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unbundled network elements, interconnection, collocation, TELRIC pricing, you know, all of those things, it might take a long time to get through all of that, and you might need another proceeding to get through some of those difficult issues. But in this case when we're talking about simply lifting the exemption for total service resale, I think you issue your order and then you set the implementation schedule based on how long you think it will take to implement total service resale, not start the clock all over again.

Q. But isn't resale included under 251 interconnection just the same as other -- isn't it just as eligible for 252 arbitration as any other --

A. It is one of those --

Q. -- service under the Act?

A. It is one of those services, yes, so I suppose the answer would be yes, but I don't think we have to go that route.

COMMISSIONER CLARK: That's all the questions I have. Thank you.

JUDGE WAHL: Commissioner Wefald.

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FURTHER EXAMINATION
BY COMMISSIONER WEFALD:
Q. Let's just set up another scenario here. Okay. My understanding is that it's required to give -- that your company is able automatically to compete when North Dakota Telephone Company starts to offer cable services. Is that correct?
A. Yes, that's my understanding.
Q. They're able to provide telephone service at that time?
A. Yes.
Q. At that -- let's say both companies decided to wait till then. All right. At that moment when North Dakota Telephone Company offers -- makes a cable offering in its community, then would you need to go through the process of establishing a discount rate for -- is it wholesale retail? What is it called?
A. Wholesale discount.
Q. Wholesale discount?
A. Wholesale retail discount.
Q. Wholesale retail discount --
A. Yes.
Q. -- at that time, or are you not required to do that at that time?

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A. You could at that time if there's a dispute. The companies could agree. Wouldn't that be nice? The companies could agree and avoid all of the arbitration and the litigation.
Q. My question is, does that have to be done regardless of whether we start now to determine what that wholesale -- tell me the correct wording of that again.
A. Wholesale discount.
Q. -- the wholesale discount? Is it a matter of -- at some point that has to happen, whether it happens, let's say, if the -- if the rural exemption is terminated, we would need to address that issue then, or it has to be addressed at the time you would be able to go in without getting the rural exemption. It has to be addressed regardless?
A. Yes, you're absolutely correct, either now or we can wait and do it later, but it has to be addressed, and our position is consumers shouldn't have to wait.
Q. And you would like to have it done because if you have to wait until you're able to go in when they offer competition to have that done, then it could stretch out several more months -- it could

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stretch out several more months at that point to determine what the wholesale discount is?
A. It could.
Q. And it could have to come to the Commission at that point for a decision?
A. It's possible. If they can't agree, it's very possible.
COMMISSIONER WEFALD: Okay. Thank you.
JUDGE WAHL: Any other questions by the Commission?
COMMISSIONER CRAMER: I have nothing. Thanks.
JUDGE WAHL: Followup, Mr. Durick?
MR. DURICK: Nothing further, Your Honor.
JUDGE WAHL: Mr. Moorman, any followup?
MR. MOORMAN: Nothing further.
JUDGE WAHL: Mr. Binek?
MR. BINEK: Yes. I do have one -- hopefully just one more question.
JUDGE WAHL: I've never, ever heard that to be true when said by a lawyer.
FURTHER EXAMINATION
BY MR. BINEK:
Q. I realize that you're not a lawyer --
COMMISSIONER CRAMER: Or a congressman.

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Q. (MR. BINEK CONTINUING) -- but when we're talking about the termination of the exemption under 251(f)(1)(b), where the statute talks about -- it says, Upon termination of the exemption, a state commission shall establish an implement schedule for compliance with the request that is consistent in time and manner with commission regulation. What is consistent in time and manner with commission regulations? Commission in this instance referring to the FCC.
A. I don't know.
Q. Would you agree that that's a requirement of the law, that any implement schedule that this Commission would issue has to comply -- has to be consistent in time and manner with FCC regulations under the law?
A. I'm sure that's what it says, so I would agree.
MR. BINEK: Thank you. I have nothing further.
JUDGE WAHL: Anything further from the Commission? Mr. Durick?
MR. DURICK: Nothing further, Your Honor.
JUDGE WAHL: Mr. Moorman?
MR. MOORMAN: Nothing further.

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JUDGE WAHL: All right. Thank you very much, Mr. Gates.
THE WITNESS: Thank you, Your Honor.
JUDGE WAHL: Commissioner Clark, we're very close to the noon hour. Rather than have -- continue with another witness, would the Commission recess or would the Commission keep going?
COMMISSIONER CLARK: Well, I guess it would depend on where we head next. If it's another long cross-examination, then I would say probably break now. If now is convenient, great. If not, let's press on a little more.
JUDGE WAHL: Mr. Durick.
MR. DURICK: It's convenient because we don't have anything else. We just want to make sure that our offer of Exhibits 1 through 13, I believe, are accepted.
JUDGE WAHL: They were.
MR. DURICK: That's the last witness we have, Your Honor.
JUDGE WAHL: Then I suggest, Commissioner, we recess for lunch. When will the Commission reconvene?
COMMISSIONER CLARK: One o'clock.
JUDGE WAHL: One o'clock. All right.

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We'll be in recess until one o'clock.
(Noon recess taken at 11:49 a.m. to 1:05 p.m.)
JUDGE WAHL: Let's go back to work. We'll be in session. Mr. Durick, you've rested, I believe.
MR. DURICK: Yes, Your Honor.
JUDGE WAHL: Mr. Negaard, when you're ready.
MR. NEGAARD: Your Honor, we would call Mr. David Dircks to the stand, please.
JUDGE WAHL: All right. Mr. Dircks, if you would just have a seat, be as comfortable as you can. Mr. Dircks, as you have heard me advise previous witnesses, your testimony is required to be under oath and I'm required by law to advise you regarding perjury before administering the oath. Perjury is a false statement of material fact which you do not believe to be true; in other words, generally speaking, a lie. In North Dakota perjury is a Class C felony, punishable by a fine up to $5,000, imprisonment for a period of up to five years, or both. Will you raise your right hand, please.
(Witness sworn.)

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JUDGE WAHL: Mr. Negaard.
MR. NEGAARD: Thank you, Your Honor.
DAVID DIRCKS,
being first duly sworn, was examined and testified as follows:
DIRECT EXAMINATION
BY MR. NEGAARD:
Q. For the record, your name is David Dircks?
A. Yes.
Q. And your address, Mr. Dircks?
A. 2229 12th Avenue, Devils Lake, North Dakota.
Q. Devils Lake. And your occupation?
A. I'm the general manager of North Dakota Telephone Company.
Q. Okay. Previously, Mr. Dircks, on January 9th, we filed in this case, and it's in front of you marked as R1, your prefiled testimony. Is there anything in your testimony that, to your knowledge, is incorrect or any corrections you wish to make at this time?
A. No, sir.
Q. And it's true to the best of your knowledge and belief?
A. Yes.

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MR. NEGAARD: We would offer Exhibit 1.
JUDGE WAHL: R1 is received pursuant to stipulation of counsel.
Q. (MR. NEGAARD CONTINUING) Then moving on, before you, marked as R2, is a letter dated May 12th, 2005, on behalf of Midcontinent Communications to you as the manager; is that correct?
A. Yes, it is.
Q. It was part of your testimony?
A. Yes.
MR. NEGAARD: We would offer R2.
JUDGE WAHL: Mr. Durick.
MR. DURICK: No objection, Your Honor.
JUDGE WAHL: Exhibit R2 is received.
MR. NEGAARD: And R3, a letter dated June 10th from yourself to Mr. Durick, which was previously included in your testimony, we would offer R3.
MR. DURICK: No objection.
JUDGE WAHL: R3 -- Exhibit R3 is received.
Q. (MR. NEGAARD CONTINUING) R4 before you, Mr. Dircks, is actually a three-page document consisting of a copy of a help wanted ad and two

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pages of job description that was previously prefiled; is that correct -- R4?
A. Yes.
MR. NEGAARD: We would offer R4.
JUDGE WAHL: Mr. Durick -- or I'm sorry.
MR. DURICK: Mr. Harrington will handle this witness.
MR. HARRINGTON: No objection, Your Honor.
JUDGE WAHL: Excuse me. Exhibit R4 is received.
Q. (MR. NEGAARD CONTINUING) Then R5, Mr. Dircks, in front of you, is that a copy of your newsletter to customers --
A. Yes, it is.
Q. -- from last summer?
MR. NEGAARD: And for the record -- excuse me. I would offer R5.
JUDGE WAHL: Mr. Harrington.
MR. HARRINGTON: No objection.
JUDGE WAHL: Exhibit R5 is received.
MR. NEGAARD: And for the record it should be noted that Mr. Dircks' testimony was previously filed as Docket No. 56.
I have nothing further, Your Honor.
JUDGE WAHL: Mr. Harrington.

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MR. HARRINGTON: Thank you, Your Honor.
CROSS-EXAMINATION
BY MR. HARRINGTON:
Q. Mr. Dircks, I'm J.G. Harrington. How are you this afternoon?
A. Good.
Q. I would like to start by talking a little bit about North Dakota Telephone. North Dakota Telephone serves Devils Lake, and where else does it serve?
A. We have, I believe, 25 other exchanges. We serve basically in the upper -- north central part of North Dakota.
Q. And what proportion of your lines are in Devils Lake?
A. We have a total of 18,000 access lines, and I believe there's approximately 5,500 in Devils Lake, including the rural.
Q. So a little bit under a third?
A. Yes.
Q. Now, NDTC was formed as the result of an acquisition; is that right?
A. Yes, it was. It was formerly some GTE property --
Q. Right.

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A. -- that was purchased by three cooperatives that surround that territory.
Q. And then it grew again in 1996; is that correct?
A. Yes, it did. We acquired some more access lines from Qwest.
Q. So the owners of your company thought that it was a good idea to expand the number of lines they served; they were doing well with what they had?
A. Yeah, it was a good business decision I thought, yeah.
Q. Let's talk a little bit about the owners. Your owners are Polar Communications, Dakota Central Telecom and United; is that right?
A. Yes.
Q. How many lines do those companies serve, more or less? I know you won't have an exact number.
A. I don't really have any idea.
Q. Are they individually larger than North Dakota Telephone?
A. They're smaller, but together they're probably larger than North Dakota Telephone Company.

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Q. Do you have any idea of their combined revenues?
A. No, I don't.
Q. Do any of those companies offer video today?
A. I believe two of the owner companies do -- I know for sure. I'm not sure of the third.
MR. HARRINGTON: Mr. Durick is going to pass out what I think will be marked as P --
JUDGE WAHL: P14, I'm guessing.
MR. HARRINGTON: P14, that is correct. Yes. I'm sorry. I was trying to find my count and I lost track.
Q. (MR. HARRINGTON CONTINUING) This exhibit is web pages from each of the owners of North Dakota Telecom. Mr. Dircks, would you review the document that's been marked P14, please? Just let me know when you're done.
A. I'm done.
Q. Does this document refresh your recollection as to which of the companies that own NDTC offer video?
A. North Dakota Central, yes.
Q. And Polar?
A. Polar, yes.

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Q. And United?
A. United was one I was not sure of.
Q. But this document -- in reviewing this document, do you believe now that United does offer video?
A. I did not see that on there.
Q. I refer you to the page --
A. Okay. Excuse me. Pardon me. I do see it, yes.
MR. HARRINGTON: We'd like to offer this document into evidence as an exhibit.
JUDGE WAHL: Mr. Negaard.
MR. NEGAARD: Your Honor, if I could. Mr. Dircks, do you have any personal knowledge of this information in these documents?
THE WITNESS: No.
MR. NEGAARD: Your Honor, I don't know what foundation there is for introducing this document.
JUDGE WAHL: Well, Mr. Harrington, he's made a point, I think. Do you have any response?
MR. HARRINGTON: Yes. I think that first it confirms things he said as to two of the companies already and this is publicly available information. I think that it's appropriate

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foundation certainly for at least two of the companies and he's conceded that he believes based on -- on the basis of reading this, his recollection is the third company also offers video.
MR. NEGAARD: This is the type of information, Your Honor, that should have been filed with rebuttal testimony, and we're seeing it for the first time here. This witness has no personal knowledge of it and there's no foundation for it.
JUDGE WAHL: Well, except it's two things. For the record, the objection is overruled. My reasons for the ruling are as follows: First, it's almost self-evident -- almost, and I -- you know, without getting in the technicalities. Secondly, I'll receive -- the Commission will receive the exhibit for the limited purpose of considering the testimony of Mr. Dircks. That is not for the information contained in the exhibit except as acknowledged by Mr. Dircks. Is that clear, Mr. Harrington?
MR. HARRINGTON: Yes.
JUDGE WAHL: Mr. Negaard, anything further for the record?

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MR. NEGAARD: No, Your Honor.
JUDGE WAHL: All right. With that caveat, the objection is overruled. Exhibit P14 is received.
MR. HARRINGTON: Thank you, Your Honor.
Q. (MR. HARRINGTON CONTINUING) How long have you been at North Dakota Telephone, Mr. Dircks?
A. I've been there since 1993 when the company started.
Q. And before that where did you work?
A. I worked a number of years for Contel of Minnesota and Contel of North Dakota before GTE purchased the property.
Q. And how long have you been the general manager?
A. Since 1993.
Q. Since the start?
A. Since the start, yes.
Q. I'd like to talk a little bit about the financial situation of your company. Now, my understanding from your deposition is that the financials of North Dakota Telephone are consolidated with a company called TPC, which is a holding company.
A. Yes.

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Q. That's correct? TPC's only asset is North Dakota Telephone Company's stock; is that right?
A. I believe so, yes.
Q. So the financials of TPC are essentially the financials of North Dakota Telephone?
A. To the best of my knowledge, they are, yes.
Q. Okay. That's fine. Now, in your deposition you agreed that the equity in North Dakota Telephone -- and I'm going to refer to North Dakota Telephone and TPC as sort of the same thing here given what you've said -- has grown in the last four years from about 21.6 million to about 29.2 million.
A. That sounds right.
Q. Would you like to look at your deposition to confirm that? We have a copy.
A. I've got a copy up here.
Q. That would be page 21, lines -- I'm sorry, page 22, lines 7 through 11.
A. 7 through 11. Did you say page 22?
Q. Page 22 from the copy I have. We do appear to have some pagination changes from place to place in documents.
A. My page 22, those lines are talking about

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cell service.
Q. I apologize. We'll take a moment to find out why the pages don't match up. Why don't you skip ahead about four pages, the page on which the phrase "no verbal response" appears and it's right after that. Have you found that?
MR. NEGAARD: I'm sorry. Do we have a page number?
MR. DURICK: I found it on page 22 on yours, but it's not 22 on his.
MR. HARRINGTON: The copy he has apparently has different pagination.
JUDGE WAHL: Mr. Harrington, why don't you just take your copy up to the witness and show it to him, please.
THE WITNESS: I've got the section you're referring to.
MR. HARRINGTON: I'm going to have other questions relating to the deposition so I'll provide him with a copy.
JUDGE WAHL: Sure. Just take it and show it to the witness.
THE WITNESS: 22?
MR. HARRINGTON: Yes.
Q. (MR. HARRINGTON CONTINUING) We're on page

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22, lines -- starting at line 7.
A. Line 7?
Q. Right. The question I asked you, going back to this, was, is it consistent with your recollection that the equity has grown to 29.2 million approximately from 21.6 million approximately between 2000 and 2004?
A. Yes.
Q. Okay. Are you familiar with your company's annual reports to the Commission in a general way?
A. I don't understand specifically, but I know what you're referring to, yes.
Q. And over the years those reports have shown the profits that North Dakota Telephone has made; is that correct?
A. That's correct.
MR. HARRINGTON: I have here copies of the annual reports for the last five years, and I'm going to ask -- I'm sorry -- the last four years, and I'm going to ask for the purposes of this proceeding that the Commission take official notice of them. I do not intend to enter them as exhibits.
JUDGE WAHL: Official notice will be

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taken.
Q. (MR. HARRINGTON CONTINUING) Is it -- subject to check, is it fair to say that over the last five years those reports have shown profits in the range of 3.4 to 4.3 million dollars on an annual basis? Is that approximately the right range?
A. Net profit or --
Q. Net profit, the bottom line.
A. I would have to look at them. If that's what it says in there, that's what it says.
Q. So North Dakota Telephone is a profitable company?
A. Yes, we are.
Q. I'd like to talk a little bit about competition today for North Dakota Telephone. Do you have any competition from other providers of landline telephone service today?
A. Landline?
Q. Yeah. I'll ask about wireless next.
A. No.
Q. Has any other party asked North Dakota Telephone for interconnection or for resale on the landline side?
A. No, they haven't.

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Q. Let's talk a little bit about the wireless side. Who are your wireless competitors?
A. Well, whichever ones are there. I'm not sure. Verizon is one of them. Cellular One would be another. Those are the only two that I'm familiar with.
Q. Do you know of any customers that you've lost to wireless service?
A. Yeah. I know of some, yes.
Q. Number in the tens, the hundreds?
A. They would be just in a few. Ten or less that I personally know about. I wouldn't know about the rest of them.
Q. Does North Dakota Telephone sell wireless service?
A. We resell Verizon service through one of our owner companies, United Telephone.
Q. About how many customers do you have in Devils Lake for that?
A. I do not know.
Q. To your knowledge, does Midcontinent offer wireless service?
A. Midcontinent?
Q. Yes.
A. I don't know if they do.

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Q. Okay. One of the things you talk about in your testimony at some length is the notion of a level playing field. I guess I'd like to start with an understanding of what you mean by that. You use the phrase at one point "fair competition." What's your definition of "fair competition"?
A. I think I probably discussed that in my testimony, but also it was in some of your testimony about a level playing field. That's really all I'm asking for.
Q. I'd like you to summarize what you think it means.
A. Give me a minute to think about that.
Q. Sure.
A. I guess just the basic summary of that would be that -- using the example we have here today is that, you know, we currently compete with Midco for high-speed Internet services, and to me a level playing field would be that we would be able to offer video, too, at the same time that Midco would like to offer telephone service.
Q. Now, is it reasonable to say, in your view, that every competitor has advantages and disadvantages?

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A. I wouldn't say it would be reasonable, but I guess that's why we're here discussing it.
Q. You don't think it's true that every competitor in a marketplace has some advantages and some disadvantages compared to its competitors?
A. Would you say that again?
Q. Okay. In a competitive market, is it your view that each party in that market, each competitor, has some advantages and some disadvantages as compared to the other parties in the market?
A. If I understand the question right, yes.
Q. So in a fair market you don't expect every competitor to be exactly positioned the same way, do you?
A. I'm not sure I understand the question. In a fair market they can't be exactly, I'm sure, but fair is fair.
Q. So do you think it's a fair market, for instance, if you have some company like Mercedes that offers expensive, very well-made automobiles that have very good safety records whereas Chevrolet might offer models that are less expensive, not as luxurious, perhaps don't have as good safety records? Is that a fair market?

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A. I don't know the answer to that.
Q. Is there something unfair about that market, in your view?
A. I don't know anything about the automobile industry.
Q. Okay. In your testimony on page 9, you say that you expect to be in the video market sometime after February 2007. In your view of what's a fair market, would it be fair for Midcontinent to have to wait until after you've entered the video business to be able to start to provide telephone service?
A. Would it be fair for Midcontinent to wait till after we're in the video business?
Q. Mm-hmm.
A. No.
Q. Thank you. I'd like to turn to some of the sort of specific issues about what constitutes a level playing field. The first thing I would like to talk about is access to capital. Who do you get your capital from? Who do you borrow money from when you need to borrow money?
A. We borrow our money from CoBank.
Q. And what's CoBank?
A. It's a -- mostly an agricultural lending

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firm, I think. They're headquartered in Denver, Colorado.
Q. Is it a cooperative?
A. Yes.
Q. Is North Dakota Telephone a member of that cooperative?
A. Yes.
Q. Now, as a cooperative, doesn't CoBank return dividends back down to its members?
A. They do.
Q. And doesn't that have the effect of lowering your cost of capital?
A. If they pay a dividend, it would, yes.
Q. Have they paid dividends recently?
A. I did not verify that before I came down here, but they have paid dividends.
Q. They have paid dividends in the past?
A. Yes, they have.
Q. And if the business is run reasonably well, you would have an expectation they would continue to pay dividends?
A. Yes.
Q. That's, after all, one of the advantages of a cooperative to its member; right?
A. Yes.

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Q. Is North Dakota Telephone eligible for financing from the Rural Utilities Service?
A. We're eligible, yes. We would be eligible.
Q. Can you describe that program for me?
A. No, I can't. We looked at three different agencies when we were going to borrow some money for this fiber project. They were one of them, and we chose not to use them.
Q. Because CoBank was more advantageous?
A. We've dealt with them since the conception of the company and we felt it was more advantageous, yes.
Q. But you're familiar with the Rural Utilities Service obviously?
A. Yes.
Q. That's a government program?
A. Yes.
Q. And it provides financing to rural telephone companies among others?
A. Mm-hmm. Yes.
Q. Is that financing guaranteed by the government?
A. I believe it is.
Q. Do you happen to know if cable companies

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have access to Rural Utilities Service capital?
A. No, I don't.
Q. And during your deposition one of the other entities that was mentioned was the Rural Telephone Finance Cooperative. Did you investigate using that, as well, for your funding?
A. Yes, we did.
Q. And it's a coop like CoBank?
A. I'm not familiar with RTFC.
Q. But you did look at them?
A. Yes.
Q. And they were available to you?
A. They were.
Q. And so the reason you chose CoBank was the relationship or because it was financially more advantageous than the other choices, or something else?
A. Both.
Q. Both. So it was both financially advantageous and a relationship you already had?
A. Yes.
Q. I'd like to turn then to another issue about level playing field, which is universal service and the moneys you get from universal service funding. And we're going to mark Exhibit

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P15. This exhibit consists of two parts, the first part for which -- is actually the second two pages, but which I'm going to ask the Commission to take official notice, is a report generated by the universal service website that the FCC runs that shows the amounts of money that North Dakota Telephone has received over the last several years. The first page of the exhibit is an Excel spreadsheet that takes those numbers and adds them up.

JUDGE WAHL: I haven't heard it offered.

MR. HARRINGTON: I've asked for the Commission to take official notice of the second and third pages as a report from the FCC website. That report was generated by putting in the identification number for North Dakota Telephone Company into a database which then produces the amounts of money they've received.

MR. NEGAARD: Your Honor, I'm beginning to wonder who the witness is here. Again, Your Honor, this hearing was premised on filing testimony, direct testimony, reply testimony, rebuttal testimony. In the interest of fairness, Your Honor, this obviously has been planned. This was not thought up during the lunch hour. We were

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given absolutely no notice that there was going to be any of these exhibits used. Your order specifically said, Your Honor, that all exhibits had to be filed by last Monday, and today we're being inundated by more exhibits. We've been given no notice of these exhibits. There's no foundation for these exhibits. And now Mr. Harrington is testifying in an attempt to establish some kind of foundation. Your Honor, I insist that you follow the order that you issued that said there would be no late-filed exhibits.

MR. HARRINGTON: Let me --

JUDGE WAHL: Was that my order? Did I --

MR. NEGAARD: Yes, Your Honor, it was.

JUDGE WAHL: Did the prehearing order specifically say that all exhibits had to be filed? That's not my recollection, Mr. Negaard. Now, I may be wrong.

Well, Mr. Harrington, I refer you to the second page of my order, which I think was substantially taken from the proposed -- or the agreement of the parties, but that order says that all testimony and exhibits served and filed for the hearing pursuant to this order shall be served and filed electronically.

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MR. NEGAARD: Your Honor, if I might add, also at the bottom of page 1, ordered that no other or further filing of testimony or exhibits prior to the hearing shall be permitted except as the Commission may allow. Your Honor, I don't think that this is following the spirit and intent of your order that we be given notice of these exhibits prior to the hearing so we could have an orderly hearing.

JUDGE WAHL: Well, for the record and to clarify, Mr. Negaard, this is my order, but it was also, as my recollection serves me, substantially the agreement of the parties. That is, I may have changed the wording, but I thought this was essentially the stipulation of the parties. In any event, Mr. Harrington, it does say no other or further filing of testimony or exhibits.

MR. HARRINGTON: Prior to the hearing.

JUDGE WAHL: Prior to the hearing, that's true. All right. Go ahead.

MR. HARRINGTON: Your Honor, that is exactly what I was going to say, prior to the hearing. There's nothing in there that prohibits the admission of exhibits at the hearing. And in this particular case what we're asking the

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Commission to do is take official notice of FCC materials that we could have put into the record in a brief, they're official records of the FCC, and then a demonstrative cover page that adds the numbers up. If Mr. Negaard wants to object to them being admitted to this hearing, there's no reason we could not continue to put them in the brief because they're official records that they could acquire themselves just as easily as we did.

MR. NEGAARD: Your Honor, there's no foundation for this document other than the testimony.

MR. HARRINGTON: I'm going to be cross-examining Mr. Dircks on this. If you would like me to wait to ask for admission until after -- I did not actually ask for admission yet. I merely said -- noted that I wanted official notice taken.

MR. NEGAARD: The only foundation for this, Your Honor, is total hearsay. The only foundation for this is the testimony of one of the attorneys for Midcontinent. Your Honor, if we would have been given some notice on this -- I don't think it follows the spirit and the intent of your prehearing order, Your Honor.

MR. HARRINGTON: Perhaps I could ask Mr.

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Dircks some questions without at the moment reference to the exhibit and we'll see where we go from there.

JUDGE WAHL: Just a moment, please. Mr. Negaard, let me say that it was not and is not my recollection that no other exhibits could be offered at the hearing for cross-examination. That's not -- that's not my recollection of the purpose of this order and I don't -- as I re-read the prehearing order now, I don't read that to exclude the filing of -- or the offering of additional evidence -- of additional exhibits for cross-examination or for, what it really amounts to, rebuttal in the circumstances, I think. So that part of the objection is overruled.

Mr. Harrington, I have a little trouble with foundation. What I essentially have is your say-so that this information is what it is. How is the Commission to take official notice of this information? It does so on your say-so that this is a compilation or this is taken from the website.

MR. HARRINGTON: Your Honor, this is reproducible. All someone has to do is go to the universal service website and put in the

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appropriate code for North Dakota Telephone Company and this information appears. It is part of the official records of the FCC. I planned to ask Mr. Dircks some questions about the extent to which -- and I still will regardless of the admission -- about the extent to which North Dakota Telephone receives universal service funding, and I think that will establish that North Dakota Telephone receives a substantial amount of universal service funding and that these numbers are consistent with that.

JUDGE WAHL: All right. Mr. Harrington, I accept your representation that this information is reproducible and that it is what you represent it is, namely, the official records of the FCC. And on that basis Exhibit P15 is received. Mr. Negaard, anything further for the record?

MR. NEGAARD: Yes, Your Honor. Even government documents require self -- they require authentication in order to be introduced under the North Dakota rules.

JUDGE WAHL: Show me. I don't know that that's -- that's about 803, about 8, maybe?

MR. NEGAARD: 901. I'm sorry, Your Honor. 902, domestic documents produced under

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seal, document bearing a seal. In this case if it's a U.S. Government document, if it bears the official seal of the United States Government, it's admissible.

JUDGE WAHL: Yeah, but it's not a document, Mr. Negaard. It's information. It's public information that is readily available. It is available simply by using this URL, I take it.

MR. NEGAARD: Your Honor, recognizing that you are probably not going to rule in my favor since I can see that's where you're leaning, let me just say that I believe it lacks foundation and it lacks authentication and my objection can be noted. Thank you.

JUDGE WAHL: Mr. Negaard, you may be right, as a matter of fact, but that being said, I think that -- I think -- I'm going to allow the Commission to take official notice. I'm going to accept P15. I'm going to receive P15 as the exhibit. You may proceed, Mr. Harrington.

MR. HARRINGTON: Thank you, Your Honor.

Q. (MR. HARRINGTON CONTINUING) Mr. Dircks, does North Dakota Telephone Company receive universal service funding from the FCC or the FCC programs?

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A. Yes, it does.

Q. Is it correct to say that you receive interstate common line support?

A. Yes.

Q. Is it also correct to say you receive support on the local switching support program?

A. Yes.

Q. It appears you don't receive funding for high cost loops; is that correct?

A. Not on a constant basis, no, according to this report.

Q. And do you have an idea yourself of roughly how much money you get from the universal service program -- high cost program on an annual basis?

A. I believe in 2005 we received approximately 1.7 million dollars from these programs.

Q. Is that reasonably consistent with what you've received in other years, within a fair approximation?

A. I only looked at the last two years, but I could say that would be reasonable.

Q. You've never gotten, say, 10 million dollars?

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A. No.

Q. No such luck.

A. No.

Q. Now, you testified earlier that the company as a whole has about 18,000 lines.

A. Yes.

Q. So roughly speaking, and I understand this number is not exactly right, you're getting in federal universal service support in any given year somewhere between 95 and $105 per line? Is that a fair number?

A. Just calculating in my mind, yes.

Q. I was going to say a hundred, but I realized the numbers didn't match quite. How much do you charge for residential service in Devils Lake right now on a monthly basis?

A. I believe it's $13.12 -- will be.

Q. Will be. That reflects a rate increase that was recently approved?

A. No.

Q. It does not reflect the 27?

A. No. We rebalanced our rates, so all the rates in all of our towns will be the same. That's what it will be, is 13.12.

Q. Devils Lake prior to the rebalancing, what

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was the rate?

A. It was close to that.

Q. More or less?

A. I don't remember. I think it was a 27-cent difference, if I recall it right, less -- or more.

Q. Previously it was 27 cents less, so a slight rate increase. So 13.12 a month over a year is somewhere in the $160 annual revenue per residential line per year, is that right, give or take?

A. I don't have a calculator. It sounds good.

Q. So if you're getting somewhere between 95 and $110 per line from the federal universal service program and 160, you're getting close to two-thirds as much per line from universal service as you do from your own customers; is that right?

A. Sounds right.

Q. Okay. Now, if Midcontinent offers resale service in Devils Lake, to your knowledge, will Midcontinent be eligible for any universal service money of its own?

A. They would not be unless they started offering facility-based service.

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Q. I'd like to turn to access revenues. Now, your company receives a significant portion of its revenue from access charges; is that correct?
A. Yes.
Q. And those come from long distance carriers who are paying either to originate or terminate calls in North Dakota Telephone's territory?
A. That's the majority of it, yes.
Q. Roughly what percentage of your revenues come from access?
A. Without looking, I would say probably 60 percent.
Q. That's what I had. That would have been about 10 million out of your 16 million dollars in revenues last year?
A. I don't have a financial report with me, but it sounds close.
Q. What's your permanent access rate for intrastate traffic?
A. I'm not sure.
Q. Do you have a ballpark? I won't hold you to an exact tenth-of-a-cent amount.
A. Intrastate?
Q. Intrastate.
A. I believe it's nine cents. I don't know.

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That's just a guess.
Q. Interstate, is that higher or lower?
A. It would be lower.
Q. And you charge subscriber line charge on top of your residential service rate; right?
A. Yes.
Q. And what's that?
A. That's different for business and residence. I think residential now is six-something.
Q. Business is more?
A. Yes.
Q. About?
A. Some of these numbers escape me up here, but I think it's in the $9 range.
Q. And if Midcontinent gets to resell your services, Midcontinent will -- will Midcontinent be able to have access to any of those access revenues of yours, or will those still be North Dakota Telephone's revenues?
A. They would still be ours.
Q. Now, for the level playing field discussion I'm interested in what you think ought to be considered by the Commission in that analysis. Is it your view that the only services

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that are relevant in this proceeding are North Dakota Telephone's regulated services?
A. Yes.
Q. So you wouldn't include any other service that North Dakota Telephone offers or might offer in the future as relevant to this conversation?
A. My understanding is it's just our tariffed services.
Q. So for the purposes of your level playing field questions then, you think Midcontinent's video services are relevant?
A. I'm not sure I understand.
Q. Well, in your testimony you argued that we have a level playing field only to the extent that you're able to offer the same services Midcontinent offers. My question is, for the purposes of that particular argument, are you saying that Midcontinent's video services are relevant to the question of whether there's a level playing field?
A. I don't know how to answer that.
Q. So are you saying something different in your testimony then?
A. Point out my testimony to me, would you? I'm confused.
Q. Oh, let's find it. Let's look -- let's

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look at page 3 of your testimony, starting at line 20. Now, at that point you argue -- and continue on to page 4. At that point you say that you do not believe it would be fair for Midcontinent to be able to offer triple play a year before you're offering the same thing yourself.
A. Yes.
Q. So for the purposes of this discussion you think it's then relevant to consider video services that are not regulated by the Commission?
A. I'm just at a loss for words.
Q. That's fine.
A. I don't know if I'm not understanding your question or what.
Q. Well, let me try again one more time.
A. Okay.
Q. You've just told me that you don't think it's appropriate for the Commission to consider any services that are not regulated services. That was your cross-examination testimony.
A. Yes.
Q. However, in your direct testimony -- your reply testimony, you said that you thought that the Commission ought to consider the ability of your company to be in the video marketplace as a factor

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in determining when the rural exemption should be lifted.
A. Yes.
Q. So for the purposes of your reply testimony, you indicated that the Commission should consider when the availability of video service and a competition in video service; is that correct?
A. Yes.
Q. So would you care to revisit the answer to the question about whether the Commission should consider nonregulated services?
A. No. I'm not familiar with the law, I guess, and I'm confused on my understanding of this, but -- and I guess based on advice from our legal counsel, I'm just trying to exercise my rights of what's involved in this case by law.
Q. I see. Let's move on to one other service. On page 5 of your testimony, and this is at lines 4, 5 and 6, you indicate you do not offer long distance service at North Dakota Telephone Company; is that correct?
A. We offer it through a company that we're part-owners in, North Dakota Long Distance.
Q. Who else owns the company?
A. There's ten companies in the state

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involved in that. We're one of them.
Q. How are the revenues from that company allocated to its owners?
A. I believe it's by -- I have to verify this for sure, but based on percentage of ownership.
Q. And percentage of ownership was determined in what way; do you know?
A. Whatever -- however the board set it up. Every company invested the same amount of money, so the ownership was an equal percentage.
Q. Do each of the companies have roughly the same number of lines?
A. No. There's some that have more than others.
Q. To your knowledge, does your company fall in the low end, the middle, the high end of that group?
A. As far as ownership or --
Q. In terms of number of lines.
A. Oh, number of lines?
Q. Yeah.
A. Probably in the higher end.
MR. HARRINGTON: We're marking Exhibit P16, if I'm still counting correctly. I'm not asking to admit it yet. This exhibit is a page

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from the North Dakota Telephone website.
MR. BINEK: What exhibit is this?
MR. HARRINGTON: This is P16 if I've counted correctly. Judge Wahl seems to believe I have.
Q. (MR. HARRINGTON CONTINUING) Now, I've just represented this is a page from the North Dakota Telephone website, but I'm going to ask you, Mr. Dircks, is this a copy of the page from the North Dakota Telephone website?
A. It looks like it.
Q. I'd like you to direct your attention to what would be, if we were on the Internet, the bottom left of the page, which is probably going to show up on the second -- the bottom of the second page and going on to the top of the third page on the left-hand side on that handout. Have you found that, Mr. Dircks?
A. Yeah.
Q. This is a description of what are called the 1st Rate plans; is that correct?
A. Yes.
Q. What is included in the 1st Rate plans?
A. Would you like me to read this?
Q. You can read it or you can tell me from

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your own knowledge as the general manager. Either way.
A. Okay. Just have different rates for different amounts of long distance minutes at a certain price.
Q. So these are plans that include both local and long distance service, or are they just long distance?
A. Long distance. The first one includes voice mail, I guess.
Q. Is there anything on that page that says that it's offered -- that these plans are offered by any company other than North Dakota Telephone?
A. I don't believe it does.
MR. HARRINGTON: I'd like to offer this for admission.
JUDGE WAHL: Mr. Negaard.
MR. NEGAARD: Your Honor, I'm not going to belabor the point. If I could just have a standing objection based on your earlier order, Your Honor, that's all I want.
JUDGE WAHL: You may, but with the understanding, Mr. Negaard, you should not hesitate to make your record. Exhibit P16 is received. The objection is overruled. Exhibit P16 is received.

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Q. (MR. HARRINGTON CONTINUING) I'd like to move on to one of the other claims you make concerning the notion of a level playing field, and on page 10 of your testimony, and this is at lines 8 through 12, you discuss the requirement that NDTC provide notice of price changes.
A. I haven't found it, but I know what you're talking about.
Q. I'll give you a moment to take a look at it.
A. Page what?
Q. Page 10, lines -- the question is line 6, the response goes through line 12.
A. Okay.
Q. You're referring to the statutory requirements that your company provide -- I think it's 20 days notice on price increases; is that correct? You just understand that you're required by law to provide those notices?
A. To the Commission?
Q. To the Commission.
A. On our regulated services?
Q. Right.
A. I don't know that it's 20 days.
Q. Okay. That's fine. Now, that doesn't

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apply to your Internet service, does it?
A. No.
Q. You don't believe -- do you believe it will apply to your video service?
A. No.
Q. Does it apply to your wireless resale service?
A. No.
JUDGE WAHL: Mr. Harrington, the question and the answer was really not clear for the record. You don't believe that it will apply to your video service and the answer was no?
MR. HARRINGTON: No. That's right.
Q. (MR. HARRINGTON CONTINUING) You don't believe that the requirement you provide notice will apply to your video services?
A. It's not regulated.
Q. And the same thing is true of your wireless services that you offered by resale and your Internet service?
A. Yes.
Q. So you can change the prices on any of those services without notice to anyone except, of course, your customer?
A. That's the way we understand the tariff,

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yes.
Q. And can you bundle those unregulated services with your regulated services?
A. We could.
Q. And one more question in this area. Are you aware that Midcontinent also is subject to the requirement to provide notice of its price changes?
A. To?
Q. Notice of its price changes for regulated services.
A. No.
Q. I'd like to turn to North Dakota Telephone Company's plans to enter the video market. When did you start considering entering the video market?
A. I think my testimony states that we started looking at replacing our facilities in Devils Lake because they were old and depreciated out, and I think in 2004 we started looking at a way to either do that by copper or video since we were going to do it anyway.
Q. That was about when in 2004? The first part of the year, spring, summer, fall?
A. I would say fall, probably. I just don't recall.

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Q. Back to your copper plant. It's depreciated. It's still functional, though; right? Telephone service still works in Devils Lake?
A. Yes.
Q. And you're providing DSL over that plant now, aren't you?
A. Mm-hmm. Yes, we are.
Q. So you don't actually need to upgrade to continue to provide reliable phone service or high-speed Internet to your customers?
A. Well, we wouldn't have had to, but, as I said, the plant is aging, probably would cause some future problems, and we just made a decision that fiber would be the way to go because it has more capacity and it's less maintenance for the future.
Q. But today everything works fine?
A. Today it does.
Q. Now, your testimony says on page 9, and this is line 4, that you finalized your video upgrade -- I'm sorry -- your fiber upgrade plans in early 2005.
A. Which page again? Excuse me.
Q. Page 9, line 4.
A. Yes.

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Q. Can you be a little more precise?
A. Line 4?
Q. Yes.
A. I think we studied the difference between fiber and copper and then plans were finalized in early 2005. It was probably the February or March time frame that the board approved to go ahead with the fiber project.
Q. Okay. Now, during your deposition you mentioned a study that was done on the question of whether NDTC should provide video programming. And before I go any further, let me say, so Mr. Negaard is aware of this, I do not intend to ask any questions at all about the particular data in the study. I know that was objected to during the deposition and we're not going to go there. But I want to talk to you a little bit about that study.
A. Where is --
Q. You talk about it starting -- actually it's discussed starting on page 11, going to page 12 of your deposition.
A. 11 and 12.
Q. Mr. Negaard indicates during the deposition that such a study was prepared and indicates it's not going to be made available, and

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we're not asking for it now, but I have a couple questions about it.
A. Okay. I haven't found it yet.
Q. Okay. It's -- the discussion starts on page 11, line 21 of your deposition and continues on to page 12, line 13 is the part that's actually relevant. There's further discussion of why it won't be made available, but that's not what I'm asking about.
A. Other than we felt it was highly proprietary, is that what you mean?
Q. We're not going to ask you about the numbers in the study.
A. Okay.
Q. But I'd like to know when it was started. When did you commission the study?
A. Well, I think I previously stated that it was done sometime in the fall, so I suppose in the -- I don't know exactly sure when.
Q. Okay.
A. Sometime earlier that year.
Q. And when was that study completed? Was it completed prior to the decision in February or March of 2005 to do the upgrade?
A. Well, we did the study in order to take it

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to the board to get it approved, so, yes, I guess.
Q. And did that study conclude that it was desirable for NDTC to enter the video market?
A. No.
Q. It concluded it was not desirable?
A. It didn't conclude that. It just concluded that we decided to go with the fiber rather than the copper cable.
Q. Now, the study is described in the deposition as concerning whether or not you should be involved in the video market in competition with Midcontinent. You're saying that the description in the deposition is incorrect?
A. We're talking again about that same page?
Q. Yes. Let me read to you. I think it would be helpful.
A. Why don't you point it out to me.
Q. This is page 11, line 21, question by Mr. Durick, "The fifth item is a copy of any studies done by North Dakota Telephone Company or consultants on the subject of NDTC providing video programming in competition with Midcontinent." Then I'm going to skip to line 6 on page 12 because the rest of it's not that relevant. Mr. Negaard: "There is -- there is such a study." So my

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question is, are you telling me that that study that's referred to there concluded it was not desirable to enter video or that it was desirable to enter video?
A. Well, I'm confused. There must be two different studies. I think the study we're talking about there is what the effect on the company would be if they lost 10 percent of their access lines to a facilities-based service. The video -- the study here was just to --
Q. Mr. Dircks, I believe that that's not -- that there were in fact two studies and you're correct in that regard. But I would refer you to just before that, it's page 10 on the copy I have, but in fact I think it's probably going to be -- it may be page 10 on the copy you have, as well. And Mr. Negaard says there's a study on facilities-based competition, not on wholesale resale and we believe it's highly proprietary, confidential. So during your deposition there were two different studies discussed, is that right, and one was on -- one of those studies, as you've just said, was on the effect of facilities-based competition?
A. Right.

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Q. The second study was on competition in video programming provided by your company with Midcontinent; is that correct?
A. Yes, I guess it is.
Q. That second study you just told me was completed before the decision to do the fiber upgrade. That's correct?
A. Say it again.
Q. You just told me about five minutes ago that the study on video programming, the second study, was completed prior to the decision to do the upgrade with fiber. Is that correct?
A. I guess the study was done to determine which way we were going to go as far as rebuilding our facilities in Devils Lake.
Q. And you concluded that you were going to do fiber?
A. We talked about it, yes.
Q. You're doing it now; right?
A. No.
Q. You're building fiber now?
A. Oh, we're building fiber now, yes.
Q. Okay. So in conjunction with the conclusion you were going to go to fiber, you had the study that was done on the question of video

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competition in Devils Lake? Yes?
MR. NEGAARD: Your Honor, if I could, the language in the deposition is my language. I think part of the confusion here is I'm not intimately familiar with this study, Your Honor. It was at a deposition. I made an objection about that study. I'm not sure that there were two studies. I believe that the study is the same study and that was referenced in the deposition, and I think that the witness is referring to two studies, one on the effect of a facilities-based competitor, the other one being the study whether or not they should replace their copper lines with fiber. And I think that's where some of the confusion is. I think at the deposition I referenced and objected twice. I think it's the same study that was referenced.
MR. HARRINGTON: Mr. Negaard, that's interesting. Not entirely clear to me how that confusion is possible in light of what the deposition says, but I'm going to move on.
JUDGE WAHL: Well, it's not at all clear to me, either, and I'm sure to nobody else, Mr. Harrington, so let's --
MR. HARRINGTON: I'm going to move on, Your Honor.

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JUDGE WAHL: Well, either that or let's get to the issue that you're -- the question that you're seeking, the witness either knows the answer or he doesn't and let's forget about which study it is.
MR. HARRINGTON: I'm not going to ask about the study anymore.
JUDGE WAHL: All right. Fair enough.
Q. (MR. HARRINGTON CONTINUING) I'm going to move on and just ask a question as it relates to the timing of all of that, which is, was the ability to offer video over the fiber upgrade part of the decision process in February or March of last year?
A. It carried some weight, yes.
Q. So the board concluded that it was desirable to be able to offer video in March or February of 2005?
A. We were building our infrastructure so that we could offer video sometime in the future. We made that decision, yes.
Q. Let's talk about the upgrade, itself, now. What's the capacity of your upgraded plant going to be compared to current capacity besides much more?

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A. I'm not a technical expert. I don't know if I could answer that. I think everyone knows the band width has much more -- or copper has much more band width and capacity than copper does.
Q. You meant fiber has more capacity?
A. Or fiber, yes. Excuse me.
Q. How many video channels do you think you will be able to offer over that, ballpark?
A. I don't know.
Q. More than 50?
A. I have no idea.
Q. Do you have a sense of what percentage of your capacity will be required for telephone service?
A. No, I don't.
Q. How about for high-speed Internet?
A. Again, I'm relying on technical experts that work for our company --
Q. Okay.
A. -- to say that -- make recommendations as that's the right decision.
Q. What technical steps do you know of that you'll have to take to offer video once you've built the fiber upgrade?
A. Basically I just know that we have to

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first obtain a franchise from the city and then enter into some agreements with the content providers.
Q. Mm-hmm.
A. And there's probably numerous other things that I'm not aware of.
Q. The fiber, itself, won't have to be changed in any way once you decide to offer video, will it?
A. The fiber won't, no.
Q. When you were making your purchase decisions to decide what to buy to upgrade the plant to fiber, you included the -- did you include the possibility of providing video as one of your factors in those decisions?
A. I think you just asked me that. Would you say that again?
Q. When you were deciding what to buy, specifically when you went out to make contracts with suppliers, was the ability to offer video part of what you asked about when you were talking to those suppliers?
A. For just the fiber?
Q. For the upgrade.
A. To actually put in fiber and cut it over,

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there wouldn't need to be any other equipment involved other than what the customer currently has on the side of their house, and, yes, we did go out and talk to providers about some of the equipment necessary to provide video.
Q. So, for instance, when you talked to Allied Telesyn who, I believe, is your supplier, you talked to them about whether they would be able to -- whether the facilities you bought from them to put in your network would be able to provide video?
A. Yes.
Q. I would like to talk a little bit about the cost of the fiber upgrade. You estimated during your deposition the cost would be about 11.5 million dollars. Is that still correct?
A. Actually, it came in a little lower than that.
Q. That's good.
A. It's close, yes.
Q. And that's to upgrade all of the Devils Lake area and some outlying areas; is that right?
A. Yes.
Q. But the Devils Lake exchange essentially?
A. Yes.

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Q. How are you paying for it again?
A. Part of it we're financing internally and the rest we're borrowing from CoBank.
Q. I'm going to ask some questions about how you're allocating the cost of this fiber upgrade on your books. What percentage of the upgrade are you going to allocate -- have you allocated to telephone service?
A. You know, I'm not a real expert on finances, but if it's just for regulated telephone service, it would be a hundred percent allocated.
Q. But the question is, what percentage of your fiber upgrade are you allocating to telephone service?
A. I don't know.
Q. As the general manager, are you involved in decisions about cost allocation and spending money?
A. Yes.
Q. Are you responsible for making sure the company is appropriately profitable and understands what its costs and services it offers are?
A. Should be, yes.
Q. And you don't know what percentage of the cost is being allocated to telephone service?

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A. Not for sure, no.
Q. Was that allocation done prior to the time that you started the upgrade?
A. No, I don't believe so.
Q. Is the same thing true that you do not know what percentage of those costs have been allocated to high-speed Internet?
A. I just don't know. I can find out. I'm just not sure.
Q. That's all right. I'd like to talk a little bit about the part of your testimony where you discuss public statements on your entry into video. And for this purpose I would like to refer you to -- let me get the exhibit number correctly -- P4. Do you have a copy of Plaintiff's 4 up there -- Petitioner's 4? While we're at it, we should get 3 and 5, as well, because we'll be referring to them a little later.
JUDGE WAHL: That's Fischer's direct.
MR. HARRINGTON: I'm sorry. Maybe I have the numbers wrong. I'm sorry. It's only P3 and P4.
Q. (MR. HARRINGTON CONTINUING) Now, during your testimony you indicated that there had been no public statements from your company indicating you

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were offering video prior to your testimony. Is that correct? Is that correct?
A. Yes.
Q. I'd like you to turn to the first page of Exhibit P4.
A. Mm-hmm.
Q. And there's an article with the headline, "Company keeps equalization plan, cans long-distance offer." I'd like you to read the sentence that starts at the very bottom of that article and it continues on to the next page. Would you read it out loud, please?
A. "Dircks said equalizing"? --
Q. Yes.
A. -- "rates will even enable the company to bundle services and compete with cable providers".
Q. What did you mean when you said that?
A. I meant that our rates were all different at one time and that's why we went through the rate equalization.
Q. Right. What about the part where you say you'll enable the company to bundle services and compete with cable providers? What does that refer to?
A. I guess in that statement I was referring

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to local service and high-speed Internet, bundling those together.
Q. I see. Do you think it's effective -- in light of your other testimony, do you think it's effective for you to compete with cable operators just with telephone and high-speed Internet?
A. I guess I don't have any experience on that.
Q. Okay. I'd like you to turn now to what is the fourth page of Exhibit P4, which is the web page, press release from Allied Telesyn.
A. Mm-hmm.
Q. And I would like you to read the first sentence up to where it says "Devils Lake exchange," please, out loud.
A. First sentence starting with Allied Telesyn?
Q. Yes.
A. "Allied Telesyn, a global provider of secure Ethernet/IP access solutions and an industry leader in the deployment of IP Triple Play networks over copper and fiber infrastructure, today announced that its IP Triple Play solution has been chosen by North Dakota Telephone Company for a multi" -- is that far enough?

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Q. I was going to have you read up to Devils Lake.
A. Okay. -- "for a multi-million dollar fiber-to-the-premise overbuild of its Devils Lake exchange."
Q. In that sentence, the term "Triple Play," what does that refer to?
A. Triple Play in the industry standard, I believe, is voice, video, and data.
Q. Is that what you said in your testimony? Is that what you said in your testimony, Mr. Dircks?
A. Which page are you looking at?
Q. Let's look at page 4, lines 2 to 3.
A. I did say Triple Play, yes.
Q. And what did you describe the Triple Play as in your testimony?
A. I don't see where I did describe it.
Q. Why don't you read line 3 through the word "video."
A. "Triple play of voice, information, and video."
Q. So that was the understanding of Triple Play that you had when you wrote your testimony? Yes?

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A. Yes.
Q. All right. I'd like you to turn now in that exhibit to the second to the last page.
A. P4?
Q. Of P4, yes. And I'd like you to read the second sentence of -- let me ask first, this is a letter that you sent to customers where you're starting to do your fiber rebuild to tell them that you plan to put fiber on their premises; is that correct?
A. Looks like it, yes.
Q. And you didn't actually sign it, but your name is at the bottom?
A. Yes.
Q. I'd like you to read the second sentence of the second first full paragraph, please, begins "By converting."
A. The second sentence of the --
Q. The paragraph begins, "NDTC's fiber to the premise."
A. Mm-hmm.
Q. I would like you to read the second sentence of that paragraph, please.
A. "By converting to this type of network, NDTC will be able to deliver telephone, Internet

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and new products in the future all on one fiber optic line."
Q. Right. What new products?
A. Video would be one of them.
Q. All right. I'd like you to turn to the last page of that exhibit, which is the ad for the account executive job, and I'd like you to read the second sentence of that ad, please.
A. Starting with "a substantial degree"?
Q. A substantial degree.
A. "A substantial degree of knowledge and experience in all aspects of telephony with emphasis in voice, data, IP" --
Q. Continue.
A. -- "computer based networking, video, surveillance and security cameras, et cetera, is desired."
Q. So video was part of the job description in the ad for that job?
A. It's something we had in there as desired.
Q. Okay.
A. I don't think it's any secret that we're not going to be offering video. Hopefully when you hire someone, it will be for quite a number of

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years.
Q. When was that ad placed?
A. July 5th, 2005, it says.
Q. That's the closing date; right? That's the date by which you had to have the resumes in?
A. Yes.
Q. In your testimony you attach to that a job description that is dated -- was approved in May of 2005. So would the ad have been run roughly contemporaneously with the approval of the job description?
A. I'm going to have to look at the description because --
Q. Because if you look at the top of the job description, it has a prepared date and an approved date and they're both May '05.
A. Do I have this in here?
Q. It's in your testimony, Mr. Dircks. Are those dates accurate?
A. Apparently it looks like we revised it and then it was approved that day, yeah, 5-5.
Q. Okay. I'd also like to ask you about other ways you might have of getting into video service. Has North Dakota Telephone considered reselling DirecTV?

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A. We've looked at it, yes.
Q. But decided not to?
A. Haven't pursued it, no.
Q. How about EchoStar DISH Network?
A. No.
Q. Do you need anybody's permission to do that outside of DirecTV or EchoStar?
A. No.
Q. You don't need a franchise?
A. I don't believe you do with those.
Q. So if you wanted to make video available to your customers today via those mechanisms, you could?
A. We could, yes.
Q. I'd like to move on to Midcontinent's request to you for resale in May of last year, and that is the other exhibit that you were given, which is P3.
A. Mm-hmm.
Q. You indicate in your testimony that you received that letter. That's correct?
A. Yes.
Q. The enclosure in that letter was a draft resale agreement, wasn't it?
A. Yes.

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Q. Are you aware that the agreement was an agreement for wholesale resale?
A. That's the agreement that's attached here?
Q. Yes.
A. I think I probably did, yes.
Q. Okay. Did you ever read the agreement?
A. I looked through it.
Q. Not closely?
A. No.
JUDGE WAHL: The answer is no?
THE WITNESS: No.
Q. (MR. HARRINGTON CONTINUING) Did anyone else at North Dakota Telephone look at it closely, to your knowledge?
A. I don't believe so.
Q. Did North Dakota Telephone ever send a substantive response to that agreement to Midcontinent saying we don't like this part, we do like this part, or something like that?
A. We sent a letter of clarification.
Q. Now, that letter said you weren't sure if Midcontinent wanted wholesale or retail resale; right?
A. Based on the fact that we have the rural

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exemption.
Q. And yet the agreement is a wholesale agreement, isn't it?
A. Yes.
Q. Okay. Has NDTC at any point identified any parts of this agreement that it finds objectionable?
A. Never got that far with it.
Q. Now, your other witness in his reply testimony, Mr. Meredith, said Midcontinent has never requested retail resale. That's on page 10 of his testimony. How is that consistent with your testimony?
A. I'm going to have to look at his testimony because I don't know.
Q. Do you have a copy?
A. I don't think so.
Q. I would give you mine except that it has markings that I prefer not to show you.
JUDGE WAHL: I have a copy, Mr. Harrington.
MR. HARRINGTON: Thank you.
MR. DURICK: I've got one here, too, Judge.
JUDGE WAHL: Whichever.

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MR. HARRINGTON: This is on page 10, lines 3 through 4.
MR. NEGAARD: Whose testimony are we reviewing?
MR. HARRINGTON: Mr. Meredith's.
MR. NEGAARD: Your Honor --
MR. HARRINGTON: Are you asking whether it's appropriate for me to cross on testimony that's not been admitted? We'll stipulate we are not going to object to that testimony.
MR. NEGAARD: If you want to ask Mr. Meredith about his testimony, I believe, Your Honor, that that would be more appropriate to ask Mr. Meredith.
JUDGE WAHL: I don't think that's the question, Mr. Negaard.
MR. HARRINGTON: I'm asking --
JUDGE WAHL: I understand. Proceed.
Q. (MR. HARRINGTON CONTINUING) So, Mr. Dircks, on page 10 of his testimony, Mr. Meredith said Midcontinent has never requested retail resale, on lines 3 and 4. How is that consistent with your testimony where it appears that you thought that Midcontinent was asking for retail resale?

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A. Well, apparently wholesale. If I understand, retail is the one that's not in the discount.
Q. That's correct.
A. That's what I mean.
Q. I want to turn to the impact of offering resale on NDTC for a moment. During your deposition you indicated that there were no technical issues that would prevent NDTC from offering wholesale resale; is that correct?
A. That's correct.
Q. So once the rural exemption is lifted, all that's needed prior to implementation is an agreement between NDTC and Midcontinent?
A. Yes, to the best of my knowledge.
Q. I'd also like to move on -- I'd now like to move on to the benefits of competition. This is the last thing I'll be asking you about unless something surprises me.
In your testimony you indicate that NDTC provides excellent customer service and that there have been very few complaints against your company. That's on page 1 -- I'm sorry -- page 4, I believe.
A. Okay.

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Q. Do you know how many complaints were filed against your company at the North Dakota Commission from September 2004 through August 2005?
A. I did check, and I think within the last five years we had 15.
Q. Would you be surprised to know that the correct number is 94 for that one year?
A. I would be surprised. I'm talking about service-related issues.
Q. Oh, okay. So what would the other complaints be about? Would they have been about your rate increase?
A. They could have been.
Q. So if you think -- if customers were concerned enough to complain about rate increases, do you think they might find competition beneficial?
A. I'm not saying that competition isn't good. I've had nothing against that. I'm not afraid of it. We haven't raised our rates since 1984.
Q. Mr. Dircks, do you think your customers would find competition beneficial?
A. I think they would, yes.
Q. Do you think competition helps make you

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more responsive to customer needs?
A. I'll just answer that by saying, again, I'm not against competition. I think we're very responsive to our customers' needs now.
Q. I understand, Mr. Dircks. I would like you, though, to answer the question.
A. Say it again.
Q. Do you think competition makes you more responsive to customer needs?
A. I think it could, yes.
Q. Do you think choice is better for customers?
A. Choice is good.
Q. To your knowledge, how did choice affect long distance customers in the prices they pay?
A. It's pretty common knowledge that it reduced the cost of long distance once the competition was introduced.
MR. HARRINGTON: Thank you. Your Honor, I have nothing further.
JUDGE WAHL: Mr. Binek.
MR. BINEK: An awful lot has been covered here.
COMMISSIONER WEFALD: May we take a five-minute break?

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JUDGE WAHL: We may. We'll be in recess for --
THE WITNESS: Why don't you let me finish first.
JUDGE WAHL: -- at least five minutes. We won't start without you, Commissioner Wefald.
COMMISSIONER WEFALD: All right. Thank you.
(Recess taken at 2:37 p.m. to 2:48 p.m.)
JUDGE WAHL: You're on, Mr. Binek.
MR. BINEK: Thank you. Hopefully I just have a few questions.

EXAMINATION

BY MR. BINEK:
Q. I'm going to address the issues that were set forth in the Commission's hearing notice. First of all, the first issue is whether the request of Midcontinent is unduly economically burdensome. And I just would like clarification as to what your position is on that issue. Do you believe that it's economically burdensome for the request to be granted?
A. I can't argue that it's economically burdensome.
Q. So it is not economically burdensome?

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A. Not now, but --
Q. Okay. Is the request of Midcontinent technically feasible?
A. I believe it is, yes.
Q. And the third one is whether the request of Midcontinent is consistent with 47 USC Section 254, which is the universal service part of it. Do you believe that if the request is granted, that there will be any major effect on universal service?
A. Should not be any short-term effect, no.
Q. Now, getting to -- the fourth issue is the implementation schedule. Are you familiar with what other states have done regarding implementation schedules when a rural exemption has been lifted?
A. No, I'm not.
Q. Based on my reading of the testimony in this case and the testimony that's been given here, it appeared that -- to me that the concerns or objections are essentially limited to establishing a level playing field for competitors both for telecommunications and for video. Is that your position?
A. Yeah. We'd like to have a level playing

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field, yes.
Q. If the Commission were to deny Midcontinent's request for lifting the rural exemption, that would mean basically that resale of telecommunications at a wholesale discount would not be available to Midcontinent until you began offering video; is that correct?
A. That's how I understand it, yes.
Q. At the point that you begin offering video, of course, your exemption no longer exists. How long would you say it would take for Midcontinent to begin providing telecommunications service -- resale service at a wholesale discount from your company?
A. Now, you're saying if the rural exemption --
Q. Assume that you have started providing video service so your rural exemption no longer exists.
A. Mm-hmm.
Q. At that point you would not be able to deny Midcontinent the right to obtain resale --
A. At a wholesale --
Q. -- services at a wholesale level.
A. Right.

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Q. How long would it take to implement that process of having them be able to receive those services from you and begin offering telecommunications service in the Devils Lake exchange?
A. I'm assuming that would be dependent on when an agreement was reached on an interconnection agreement.
Q. Do you have any idea how long that would take?
A. No, not really, I don't.
Q. Midcontinent has suggested a 90-day time period. Do you think that's realistic?
A. I don't see how it could be. There's a lot of issues to resolve there. I'm not an expert on what those would be, but just getting everybody together for this hearing took quite some time.
Q. So if the rural exemption were not lifted and you began offering video service, at that point doesn't North Dakota Telephone Company have the advantage?
A. They would have, but I'm saying that to have a level playing field, that we should be able to offer that both at the same time.
Q. How is that going to happen? I guess

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that's what I'm trying to figure out. How can you get both companies providing the same thing at the same time?
A. Just off the surface, we'd have to work together to make sure that an interconnection agreement was in place so we could both offer that service at the same time.
MR. BINEK: I have no further questions.
JUDGE WAHL: Questions by the Commissioners. Commissioner Clark.

EXAMINATION

BY COMMISSIONER CLARK:
Q. Just one. On the universal service side, I think you responded to Mr. Binek regarding universal service support and the impact of losing voice customers to Midcontinent potentially would have. As you understand it, is universal service support calculated for North Dakota Tel as such that if you lost a line to a customer to a Midcontinent or any competitor, that when you recalculate that line next year for purposes of high cost support, that you just reweight the average cost per line, right, so that in effect is North Dakota Tel made whole on the case when you lose a customer and the support goes away? Do you

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understand what I'm asking? So that all you do is you recalculate the average cost per line?
A. I believe that's the way it works, yeah. The only way we would really be affected is if we lost it to a facility-based, then we would lose the whole thing, of course.
Q. A facilities-based ETC?
A. Yeah.
COMMISSIONER CLARK: Okay. Thank you.
JUDGE WAHL: Commissioner Wefald, any questions?
COMMISSIONER WEFALD: I have no questions at this time.
JUDGE WAHL: Commissioner Cramer.

EXAMINATION

BY COMMISSIONER CRAMER:
Q. I have a couple, and forgive me if they have been answered and I know that some have, so I'm been trying to keep track of that.
Getting back to what, I think, Mr. Binek was asking, and I'm not sure I got it real clear, what would prevent North Dakota Telephone Company from offering triple play bundle or triple play services as soon as you're able?
A. That's what we plan on doing as soon as

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we're able.
Q. But is that in a level playing field then with the competition, because they're going to have to, as I understand it, go through what you and -- you have testified would be a long process to be able to offer resale telecommunications service. So if a level playing field is the basis of your position, that doesn't seem level to me.
A. Well, however it's worked out. I guess what I mean by a level playing field is that we both would be able to offer that service at the same time.
Q. Okay.
A. And I'm not sure how all that would work out.
Q. So you're saying, as I understand it and if I understand your testimony, if all goes according to plan and the buildout works, basically a year from now or a year from February, you'll be able to offer video service?
A. If things go as planned, yes.
Q. If everything goes as planned. Well, then would you be -- is there a possibility, I guess, or would you be willing to work with Midcontinent that would guarantee that on February 1st everybody

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would be able to offer everything? In other words, as soon as you're ready to go, they would be ready to go and that we wouldn't have another situation where suddenly we would be talking about 90 days and then 90 days turns into all the nightmares we have been hearing about today? In other words, we have a year to be prepared for this, depending on, of course, the Commission's decision.

A. Yes.

Q. Evidently you don't agree, but -- maybe this is a better way to put it. Do you agree with Mr. Gates' presumption that calculating a resale rate agreement should not be complicated? You know, he testified that it shouldn't be that complicated. I hear you saying it could be very complicated. Which is --

A. Again, this is all new to me and I've never done it before, but I guess I believe it could be complicated or it could be worked out.

Q. Has North Dakota Telephone been preparing for competition? Would it be safe to say you have been preparing for competition?

A. Yes.

Q. Certainly the recent decision by this Commission on your rebalancing rates was -- largely

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your arguments were you want to be prepared for competition?

A. Well, we have competition today and we know that Midco is going to be offering telephone service, both facility-based and otherwise, and we have to prepare for the future.

Q. Just one other thing then. Mr. Binek went down the issues that we have to consider in this matter and, if I heard you right, it almost sounds like they're settled -- I mean, unless I heard something -- unless there's something that I'm not seeing, but you said that the request by Midcontinent is not unduly burdensome -- economically burdensome, that the request is technically feasible and that the request is consistent with 47 USC 254, basically the universal service.

A. Yes, sir.

Q. Then the only outstanding issue would be the implementation schedule for compliance, which we can start working on it right now, or am I missing something? I mean, technically there's no reason we couldn't do what Midcontinent is asking right now other than, as I understand you to say, other than it just doesn't create a level playing

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field?

A. You know, it's technically feasible to do it, but --

Q. And it's not economically burdensome to North Dakota Telephone?

A. At this point in time, no, it isn't.

COMMISSIONER CRAMER: That's all I have.

JUDGE WAHL: Mr. Negaard, followup.

MR. NEGAARD: Okay. Just a couple questions.

REDIRECT EXAMINATION

BY MR. NEGAARD:

Q. The discussion about the person you hired, did you hire someone to fill that position?

A. Yeah. It was October, I think, they were hired.

Q. Okay.

A. Or November. I'm not sure.

Q. Is that person out selling video today?

A. No.

Q. The discussion about the USF funds, some of those dollars could go away, as I understand it, if there were a facilities-based competitor?

A. That's correct.

Q. And the money that's received from that

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USF funding, is that for money that your company has invested in serving as an essential telecommunications carrier?

A. The way I understand it, yes.

Q. Is that from the investment that you've made in the system that you have and the business operations that you conduct as an ETC?

A. Yes.

MR. NEGAARD: That's all I have. Thank you.

JUDGE WAHL: Mr. Harrington, anything further?

MR. HARRINGTON: Just a couple.

CROSS-EXAMINATION

BY MR. HARRINGTON:

Q. Mr. Dircks, you just testified that some of the universal service support could go away. Can you identify what support you're referring to?

A. I was referring to a facility-based.

Q. I'm sorry. I may not have been clear. During cross-examination you identified two sources of support from the FCC, one was interstate common line support and the other was local switching support. Is one of those vulnerable particularly, or both of them, or is there some other place you

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would lose universal service funding?
A. Not that I know of. On a facility-based loss of a customer, I think we lose all that, if I'm not mistaken.
MR. HARRINGTON: Thank you. No further questions.
JUDGE WAHL: Anything further, Mr. Binek?
FURTHER EXAMINATION
BY MR. BINEK:
Q. Just a clarification following up here. We're not talking about facility-based competition here, are we?
A. No.
Q. So you wouldn't lose any universal service funds --
A. No.
Q. -- from competition from Midcontinent at this time; is that right?
A. That's correct, I believe, yes.
MR. BINEK: Thank you.
JUDGE WAHL: Anything further, Mr. Binek?
MR. BINEK: No.
JUDGE WAHL: Any further questions from the Commissioners? If not, Mr. Negaard, anything further for this witness?

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MR. NEGAARD: Not at this time, no.
JUDGE WAHL: Thank you, Mr. Dircks.
THE WITNESS: You're welcome.
JUDGE WAHL: Mr. Negaard.
MR. NEGAARD: Your Honor, Mr. Moorman will take the next witness.
JUDGE WAHL: All right. Mr. Meredith, I believe.
MR. MEREDITH: Yes, sir.
JUDGE WAHL: As you heard me advise previous witnesses, your testimony is required to be under oath and I'm required by law to advise you regarding perjury before administering the oath. Perjury is a false statement of material fact which you do not believe to be true; in other words, generally speaking, a lie. In North Dakota perjury is a Class C felony, punishable by a fine up to $5,000, imprisonment for a period of up to five years, or both. Will you raise your right hand, please.
(Witness sworn.)
JUDGE WAHL: Mr. Moorman.
MR. MOORMAN: Thank you, Your Honor.
DOUGLAS DUNCAN MEREDITH,
being first duly sworn, was examined and testified

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as follows:
DIRECT EXAMINATION
BY MR. MOORMAN:
Q. Would you please state your name, title and business address for the record?
A. Yes. My full name is Douglas Duncan Meredith. My title is director of economics and policy for a consulting firm named John Staurulakis, Incorporated -- that's S-t-a-u-r-u-l-a-k-i-s -- headquartered in Greenbelt, Maryland.
Q. And on whose behalf are you testifying today?
A. North Dakota Telephone Company.
Q. Are you the same Mr. Meredith that had caused to be filed prefiled testimony on January 9th, 2006, in this proceeding consisting of 17 pages of testimony and 16 pages of attachments?
A. Yes.
MR. MOORMAN: Your Honor, I would like to have designated as Exhibit, I believe, R6 his prefiled testimony for identification purposes.
JUDGE WAHL: It is, pursuant to stipulation of counsel.
Q. (MR. MOORMAN CONTINUING) Do you have any

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corrections to that prefiled testimony?
A. Yes, I have one correction on page 8, line 23. The sentence that begins in that line says, "These procedures are followed by state commissions and the FCC," and I need to strike the words "and the FCC." So it reads, "These procedures are followed by state commissions in resolving."
Q. With that correction, if I ask you the same questions today, would your answers be the same?
A. Yes.
Q. Do you accept this testimony as your testimony in this proceeding?
COMMISSIONER WEFALD: I'm sorry. I can't find the place. Is this the January 9th reply testimony?
MR. MOORMAN: Yes.
COMMISSIONER WEFALD: Was it on page 23?
COMMISSIONER CLARK: Page 8.
THE WITNESS: Page 8.
COMMISSIONER WEFALD: Page 8, line 23. Thank you.
MR. MOORMAN: The last three words on that line.

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COMMISSIONER WEFALD: Okay. Thank you.
MR. BINEK: What should those words be that were deleted?
MR. MOORMAN: Strike it.
MR. NEGAARD: Strike the words "and the FCC."
Q. (MR. MOORMAN CONTINUING) Mr. Meredith, again, with that correction, if I asked you the same questions today, would your answers be the same?
A. Yes.
Q. And do you accept this testimony as your testimony in this proceeding?
A. Yes.
MR. MOORMAN: Your Honor, pursuant to stipulation, I would like to move the prefiled testimony, R6, which was previously, I believe, docket entry 55, into evidence.
JUDGE WAHL: It is received pursuant to the stipulation of counsel.
Q. (MR. MOORMAN CONTINUING) Mr. Meredith, you also had several attachments which have been preliminarily marked as exhibits to your testimony. I believe R7 consists of six pages from Cornell Law School, U.S. Code collection; is that

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correct?
A. Yes.
Q. R8, I believe, is a five-page -- five pages, U.S. Code collection, Section 252 procedures?
A. Yes.
Q. R9, I believe, consists of two pages dealing with the North Dakota Century Code, Title 49, public utilities?
A. Yes.
Q. I believe R10 is two pages consisting of excerpts from the Code of Federal Regulations, Federal Communications Commission, in the bottom right-hand corner a notation Section 51.611 and continuing for two pages?
A. Yes.
Q. And, finally, if I haven't mistaken the number of exhibits, we have also an exhibit consisting of one page, 12/12/2005 Midcontinent Communications to Develop Family Friendly Choice?
A. Yes, I had filed that, but I do not have that marked as a marked exhibit in front of me.
Q. Mr. Meredith, I just handed to you something preliminarily marked as R11. Is that the document that I previously referred to?

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A. Yes.
Q. And that is entitled?
A. Midcontinent Communications to Develop Family Friendly Choice.
Q. And that was one of the exhibit attachments that were originally included in your prefiled testimony?
A. Yes.
MR. MOORMAN: Your Honor, I would like to move Exhibits, I believe, R7 through R11 into evidence.
JUDGE WAHL: Mr. Durick or Mr. Harrington.
MR. HARRINGTON: With the understanding that these are identical to the ones filed with the testimony, we have no objection.
JUDGE WAHL: Exhibits R7 through R12, inclusive, are each received.
MR. HARRINGTON: 12 or 11, Your Honor?
JUDGE WAHL: 12. I'm sorry.
COMMISSIONER CRAMER: 11.
JUDGE WAHL: 11.
MR. MOORMAN: Let's just make sure because I may have misstated.
JUDGE WAHL: I thought R12 was the Midco

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announcement.
MR. MOORMAN: I believe that's R11.
THE WITNESS: No, that's marked as R11.
JUDGE WAHL: Then I'm mistaken. All right.
MR. MOORMAN: Just with confirmation of counsel, that should consist of the 16 pages of attachments that were included with Mr. Meredith's original testimony prefiled on January 9th, and that's the intent here. If there is some variation, we can clean that up, counsel.
MR. HARRINGTON: Okay.
JUDGE WAHL: Well, but, counsel, for the record, what we have is Exhibits R7 through R11, inclusive.
MR. MOORMAN: Right. And we already admitted R6, I believe.
JUDGE WAHL: Yes. Well, it comes in pursuant to stipulation. So Exhibits R7 through R11, inclusive, are each received.
MR. MOORMAN: Just one moment. Just double-checking.
JUDGE WAHL: Indeed.
MR. MOORMAN: Your Honor, the witness is available for cross-examination.

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JUDGE WAHL: All right. Mr. Harrington.
MR. HARRINGTON: Thank you, Your Honor.
CROSS-EXAMINATION
BY MR. HARRINGTON:
Q. Good afternoon, Mr. Meredith.
A. Good afternoon.
Q. I'm J.G. Harrington. I'll be doing the cross-examination for Midcontinent.
A. Nice to meet you.
Q. I want to start with what I think is turning out to be the central issue in this proceeding, which are timing issues, and although I understand that this is probably an assumption you prefer not to make, I'd like you to assume for the moment that the Commission rules against your client and concludes that the rural exemption should be lifted.
A. Okay.
Q. In your testimony you argue that the Commission should adopt an order that starts the clock for interconnection negotiations only after the order is issued; is that correct?
A. Yes.
Q. Is it your view that once that order is issued, that Midcontinent will need to send a new

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bona fide request for interconnection negotiations?
A. Yes.
Q. So the clock will only start once Midcontinent sends a request to your client, in your view?
A. Yes. A valid request needs to be received before the clock starts.
Q. Now, therefore, your view that a bona fide request under Section 252 of the Communications Act is different from a bona fide request under Section 251(f); is that right?
A. A bona fide request for Section 251(f) deals with the rural exemption and the lifting of the rural exemption. They are different.
Q. I'd like you to turn then to what has been marked as Exhibit R7 for the moment, and page 4 of 6 in that exhibit.
A. Yes.
Q. Could you read the first sentence of what is (f)(1)(B) on that page?
A. Yes. "(f)(1)(B) states, "State termination of exemption and implementation schedule. The party making a bona fide request of a rural telephone company for interconnection, services, or network elements shall submit a notice

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of its request to the State commission."
Q. All right. Now, would you turn to Exhibit R8, which is Section 252 of the Communications Act.
A. Yes.
Q. And I would like you to read the first sentence of Section (a)(1).
A. 252(a)(1) entitled "Agreements arrived through negotiation, (1) Voluntary negotiations. Upon receiving a request for interconnection, services, or network elements pursuant to 251 of this title, an incumbent local exchange carrier may negotiate and enter into a binding agreement with the requesting telecommunications carrier or carriers without regard to the standards set forth in subsections (b) and (c) of section 251 of this title."
Q. Is it your view that the request described here would also be a request that triggers the period for arbitration under Section 252?
A. The difference is --
Q. This request, the request in 251 -- 252(a)(1), would that also trigger the 270-day period for interconnection arbitrations?
A. A 252 request under 252(a)(1), yes,

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triggers this -- the process.
Q. All right. Does 252(a)(1) say Section 251(c) or 251(f) or 251(b), or does it just say Section 251?
A. I'm sorry. 251(a)(1)?
Q. The first sentence of 252(a)(1). When it refers to Section 251, does it say 251(a) or (b) or (c) or (f) or any subsection, or does it just refer to that section?
A. The first clause refers to 251 of this title.
Q. Okay. That's the question I asked you. Thank you.
A. There is a difference between those two.
Q. Between 252?
A. Yeah, an (f)(1) needs to be filed with the state commission --
Q. Right.
A. -- to invoke the rural exemption.
Q. Let's talk about that. The request has to be filed with the Commission after it's made; right? That's what 251(f)(1) says, isn't it?
A. Yes. They shall submit a notice of its request to the state commission, and that particular process doesn't get started until that

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submission occurs.
Q. So there's nothing in the text of 251(f) or 252(a)(1) that says that those two requests can't be the same, is there?
A. No. They can be the same --
Q. Ah, okay.
A. -- to the extent that --
Q. Thank you. Thank you.
A. -- to the extent that the state commission --
MR. MOORMAN: Excuse me, Your Honor. Counsel is asking a question. Your Honor said this morning you were trying to get the most developed record possible.
JUDGE WAHL: The objection is sustained. The witness may be allowed to --
THE WITNESS: To the extent that the interconnection agreement is filed with the state commission, then that triggers a 251(f)(1) issue, and if it is not filed with the state commission, it stays over there in 252. So to my way of thinking in this regard, trying to answer your question fully, they have some different characteristics.
Q. (MR. HARRINGTON CONTINUING) Do you know

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of any cases at the FCC that say that?
A. That say what?
Q. That there's a difference between the request under 251(f)(1) and the request under 252(a).
A. Are you speaking of the document, itself, that is sent? The document, itself, can be identical.
Q. Is there anything in the FCC's rules that says a 251(f)(1) request cannot also at the same time trigger 252?
A. No, it can't, as long as it's filed with the state commission. That's the only difference between those two.
Q. But you've now testified that, in your view, Midcontinent will need to send a new bona fide request after this Commission acts --
A. Yes.
Q. -- to start the nine-month clock. How is it consistent for you to say that they can be the same request, but that Midcontinent will need to send another one?
A. The request sent to North Dakota Tel by Midcontinent, my understanding is that apparently it was trying to be a 252(a)(1) request and North

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Dakota Telephone Company sought clarification as to whether it really meant it to be a 251(a) request or something else because of the issue of whether it was a retail service or a wholesale service. And my understanding is the response to that letter that North Dakota Tel sent was a request by this Commission to review an (f)(1) exemption.
Q. That, however, was not the question. The question was, how is it consistent -- how are the two positions you have taken here about what the meaning of the law is consistent? That is, you have said at one point that they are the same request and that a 251(f)(1) request triggers a 270-day period and at another point in your cross-examination you have said that there needs to be a second request following the lifting of the exemption, and my question is, how are those positions consistent as a matter of law?
A. The first request was not technically a valid request because there was a rural exemption that was already in place, and this is consistent with what other state commissions have done. For example, in South Carolina the same issue came up with Horry Telephone Company, and the state commission there said the responsibility -- the

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duty to negotiate, the duty to have an interconnection agreement for 251(c) duties is not valid until the rural exemption is removed. They removed the rural exemption and the clock started at the time of that order.
Q. Is there an FCC rule that addresses this topic?
A. No, I do not believe so.
Q. In fact, are there any FCC rules, to your knowledge, that address how the rural exemption must be applied that have not been overturned by a court?
A. No. I believe that's the purview of the state commissions, themselves.
Q. Let's go back to your time frame. I'm going to work on the assumption that, although I believe you are wrong, that you are correct. If you're correct and Midcontinent needs to make a request, that starts the clock for negotiation arbitration; correct?
A. If the rural exemption is removed --
Q. After the rural exemption is lifted in your scenario.
A. Yes.
Q. How long does that give this Commission to

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issue an arbitration order?
A. Under 252 --
Q. Yes.
A. -- rules?
Q. Yes.
A. It's a total of up to nine months through the various processes that are established in 252.
Q. Do states always make the 270-day, nine-month limit, or do they miss it sometimes?
A. They -- no, I believe they -- they make it. Sometimes they miss it and the FCC takes the responsibility, so, I'm sorry, sometimes they do miss the 270-day time period.
Q. All right. Once the arbitration order is issued, what's the next step?
A. Once an arbitration order is issued?
Q. Mm-hmm.
A. The state commission reviews that and it gets processed and becomes effective.
Q. Do the parties have to turn the arbitration order into an agreement?
A. Yes, they do.
Q. Do they have to submit the agreement to the Commission?
A. Yes, they do.

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Q. How long does the Commission have after the order is submitted to approve -- the agreement is submitted -- I'm sorry -- to approve the order -- approve the agreement? I will get it right.
A. I'm looking for it. It's in (e)(4) of 252, state commission -- I believe it's 90 days, if I'm looking at that particular paragraph correctly.
Q. So 90 days.
A. If the state commission does not act to approve or reject the agreement within 90 days after submission by the parties --
Q. It goes into effect?
A. -- then it goes into effect.
Q. All right.
A. I think that's the right -- it's 252(e)(4).
Q. Okay. Now, once the agreement is approved, the next step is for the parties to implement the terms; is that right?
A. Yes.
Q. Okay. Do you think that parties typically implement the terms of an agreement within a month after it's been approved?
A. It depends on the circumstances. I can't say typically in that scenario. It's all

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fact-based.
Q. Is it common for it to be less than a month, in your view?
A. In my experience, it can be done rather quickly. In other instances, it is not done quickly. So it depends really on the facts and the circumstances of the carriers.
Q. So is it common?
A. I don't know.
Q. All right. I'd like to put this time line together to see if you agree with me. Based on your testimony, what you've said is if a commission issues an order February 1st -- I realize that's unlikely, but we'll just use a time line. I realize we'll probably still be briefing on February 1st. If the Commission issues an order on February 1st, Midcontinent needs to make a request, let's just say for argument's sake that it takes until February 4th.
A. Oh, I would expect it to be February 1st, the effective date.
Q. Let's say February 1st. Midcontinent makes the request February 1st. The Commission then -- the process could then take, if the proceeding goes to arbitration, nine months or a

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bit more; is that right?
A. That's possible.
Q. On top of that nine months there's a period of time for the parties to put the agreement into written terms?
A. That's what I understood your "plus more" was.
Q. Right. And then after that, as you said, the Commission has up to 90 days to act on the agreement?
A. Yes.
Q. And as you said, after that there's an implementation period where you're unsure of how long it would take, but it would take some period of time?
A. That's all what I described -- what I understood you to say what "plus more" was.
Q. Right. All right. So in your analysis if all the time periods go to the end of the time periods -- and I understand you probably think they don't have to, but if all the time periods go to the end of the time periods, the soonest Midcontinent could be providing resale in your analysis would be about -- a time period which Midcontinent could be providing resale under your

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analysis is a year from the date the Commission issues an order; is that correct?
A. Given the numbers that you've just provided, yes.
Q. You provided the nine months; right?
A. The nine months is the maximum time limit --
Q. Right.
A. -- for this Commission to make a determination and arbitration.
Q. You provided the 90-day period under the statute; correct?
A. That is the maximum time provided under the Act for the Commission to act on an approved agreement.
Q. That's correct. But it could be a year or more; is that right?
A. If you maximize the time lines as we've just described, it can be a year.
Q. So that's yes?
A. Yes.
Q. When did your client say that it expects to be in the video business?
A. My understanding is the date in this hearing is February 1st, 2007.

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Q. Okay. Now let's say the Commission rules in favor of your client and denies the exemption -- or continues the exemption -- I'm sorry -- denies the request of Midcontinent. As you just stated, your understanding is your client is going to be providing video in February of 2007.
A. Yes.
Q. Using the same time lines, does that mean that Midcontinent might be unable to offer resale in Devils Lake until sometime after February 1st, 2008?
A. No.
Q. Now, you've just testified that the Commission has nine months from the time the request is made and that the Commission has at least -- has up to another 90 days after that --
A. Mm-hmm.
Q. -- which by my calculation is 12 months.
A. Yes.
Q. And that's the maximum period. And you just agreed that would apply if the exemption were lifted, and you're saying it would not apply if the exemption were lifted by the action of NDTC in February of next year?
A. Yes, because you specified the question as

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resale, and Midcontinent has the ability to offer retail resale right now out of North Dakota Telephone Company's tariff.
Q. All right. Then let's ask about wholesale resale. The same question. Wouldn't Midcontinent potentially not be able to offer wholesale resale in Devils Lake until February 2008 if your client prevails in this proceeding?
A. Yes.
Q. Are you aware that Midcontinent provided a draft agreement for wholesale resale to NDTC in May?
A. I reviewed it, yes, last fall.
Q. Has your client objected to that agreement in any way?
A. North Dakota Telephone Company at the time that it was given to North Dakota Telephone Company was unclear given its cover letter whether it applied to resale -- retail resale or wholesale resale.
Q. You've read the agreement, though?
A. Yes.
Q. Does the agreement call for wholesale resale?
A. The agreement has a wholesale discount. I

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also understand that a lot of times in this industry cover letters don't correspond exactly to what the attachments are, and so that's -- therefore, it was very prudent for the company -- for North Dakota Telephone Company to ask for clarification.
Q. You had no question what the agreement said when you read it?
A. When I read the cover letter, I had lots of questions as to what Midcontinent wanted to do.
Q. When you read the agreement, did you have any doubt what the agreement said?
A. No, because I read it in the context of reading it after a bona fide request for rural exemption was filed by Midcontinent.
Q. Is there anything ambiguous in the agreement, itself?
A. I didn't find anything terribly ambiguous, no.
Q. Let's talk about the discount analysis.
A. Mm-hmm.
Q. In your testimony you criticize the discussion of the FCC's interim rate -- discount rate range that's in Mr. Fischer's testimony.
A. Yes.

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Q. Is the range reported in the testimony the same as the range in the FCC's rules?
A. Yes, I believe it is, 17 percent -- at least 17 percent and no more than 25 percent.
Q. Was the rate used in the Midcontinent analysis higher or lower than the bottom end of that range?
A. My understanding is that Midcontinent used Qwest's rate, which was 16 percent and something, so it was lower.
Q. It was lower. Now, when a state adopts interim rates, for instance, under the FCC's rules and those rates turn out to be incorrect, can the state require a true-up?
A. Yes.
Q. States in fact do require true-ups, don't they?
A. I don't know of a case where the interim rates have been used for many, many years, so I'm not sure what states are using them right now.
Q. Let's talk for a moment about the specific rate. As you noted, Mr. Fischer used the Qwest rate as part of his analysis. Do you disagree with that choice?
A. For Qwest, no. It was a voluntarily

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negotiated rate that Qwest struck with its competitor.
Q. Do you disagree with that rate for North Dakota Telephone?
A. Oh, yes.
Q. Is it too high?
A. I'm not sure.
Q. Is it too low?
A. I would presume it to be too high based upon my experience in calculating wholesale discounts for scores of rural telephone companies around the country.
Q. Have you performed an analysis for North Dakota Telephone?
A. No, I have not. They don't have a duty to offer wholesale discount.
Q. That was not my question. You have not performed an analysis?
A. I answered no.
Q. So you don't actually know if that number is too high or too low then?
A. That's exactly what I said.
Q. Let's talk a little bit about how the resale pricing standard works. You're familiar with the avoided cost standard under the FCC's

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rules?
A. Yes, I am.
Q. I'm going to describe that, and I'm going to ask you if the description is fair, and if it's not fair, I would like you to explain why it's incorrect.
A. Okay.
Q. The standard under the FCC's rules sets the discount by subtracting costs that the incumbent carrier will not incur on resold services from the incumbent carrier's retail rates.
A. Fair.
Q. Now, under those rules, is the incumbent's profit an avoided cost?
A. I'm sorry.
Q. The profit that's included in the incumbent's rates, is that an avoided cost?
A. No.
Q. So the incumbent continues to make the same profit on wholesale resale that it would make on retail services?
A. Yes. I understand how you're using the word "profit" and, yes, I agree with that layman term.
Q. I don't think economists think that's a

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layman's term, but we'll go from there.
Let me ask you a little bit about level playing field, which is discussed in your testimony on page 14. Now, we've heard testimony that North Dakota Telephone offers local service, long distance, Internet, and wireless; isn't that right?
A. Yes.
Q. Can those services be bundled?
A. I believe they can, yes.
Q. Are you aware of any barrier that would prevent NDTC from reselling DirecTV or DISH Network?
A. I don't know of any. I'm not -- I don't know of any.
Q. Are you aware of other rural incumbent local telephone companies that do just that?
A. Yes.
Q. Could those services be added to a bundle, as well?
A. I presume, yes.
Q. Would offering telephone help Midcontinent compete against DirecTV and EchoStar?
A. Repeat the question. I'm sorry.
Q. Would offering telephone service allow -- help Midcontinent to compete against EchoStar and

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DirecTV?
A. I'm not exactly sure. I'm not familiar with Midcontinent's operations, what they think are strategic plays against their competitors. I don't know that.
Q. You agree that bundling generally is a strategy that's useful in competing against other providers?
A. Yes, bundling can provide an advantage.
Q. So would it be reasonable, in your view, to believe that adding telephone would help a cable operator compete against a satellite provider?
A. Well, it depends on what the satellite provider is offering. I don't know what the satellite provider is offering. Is he just offering in your hypothetical only satellite and isn't bundling himself?
Q. Well, let's make it a hypothetical. Presume in fact that it is DirecTV and DirecTV is not offering telephone. Would it assist Midcontinent -- or a cable provider -- I'm sorry -- in competing against DirecTV to be able to offer a bundle that included telephone service when DirecTV could not offer the same bundle?
A. It may.

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Q. On page 14 of your testimony you also discuss the notion that the universal service burden on NDTC might increase. Did you provide any data on this issue in your testimony?
A. No.
Q. Did you perform any study or analysis on this issue in your testimony?
A. No.
Q. Or in preparation for your testimony. I'm sorry. Did you perform any study or analysis in preparation for your testimony?
A. Not for North Dakota Telephone Company specifically.
Q. Are you familiar with the FCC's rules on universal service for high-cost areas?
A. Yes.
Q. If an incumbent LEC loses a customer to a reseller, what happens to the incumbent LEC's universal service payments?
A. Nothing.
Q. Who is entitled to those payments if a carrier provides service via resale, the reseller or the underlying facilities-based incumbent?
A. The incumbent, like I said, receives the payments under current rules, under today's

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regulatory regime.
Q. I'd like to turn back for a moment to something you said earlier. You said you've done scores of avoided cost studies for rural incumbent carriers.
A. Yeah. I believe it's over -- it's over 40.
Q. That's scores.
A. Yes.
Q. Were those in the context of rural exemptions that had been lifted or in other contexts?
A. Both.
Q. So in some cases for lifted exemptions and some cases for not?
A. Yes.
Q. Were those studies done in the context of voluntary negotiations for rural carriers that had not had their exemptions lifted?
A. Yes. In some cases, yes.
Q. And you have not, as you said earlier, performed such a study for NDTC?
A. Not yet.
Q. I'd like to turn to some of your discussion of facilities-based services in your

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testimony and I just have a couple questions about that.
A. Okay.
Q. In your testimony you describe concerns about the development of facilities-based competition. As a practical matter, is facilities-based competition possible for Midcontinent without what we think of as the full interconnection agreement that includes physical interconnection between the parties and reciprocal compensation and the like?
A. I'm sorry. Is it possible or impossible? I'm sorry.
Q. Possible.
A. Is it possible to have full facilities-based competition --
Q. Without an interconnection agreement.
A. Not generally, no.
Q. Now, would the rural exemption prevent facilities-based competition for Midcontinent after NDTC starts offering video service?
A. No. In fact, this is an important point, that Midcontinent can provide facilities-based competition today without touching any of the rural exemption parts of 251(c).

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Q. Under 251(a), which I presume is what you're referring to for interconnection --
A. Yes.
Q. -- do you have a right to direct physical interconnection?
A. You have a right to interconnect directly or indirectly with another carrier.
Q. But not a right to direct physical interconnection?
A. No. You have a right to interconnection. So if you want special flavors or special arrangements, then we're talking a different thing, but competition can't exist without 251(c) being touched.
Q. Is it your view that 251(a) is subject to the arbitration provisions of Section 252?
A. The provisions in 251(b) are subject to Section 252 regulations or rules, which include retail resale, number portability, reciprocal compensation, the duty to -- reciprocal compensation is the duty to provide compensation for traffic that is exchanged between two parties.
Q. But I did ask about 251(a). What is your view on 251(a)? Is it subject to Section 252 arbitration, in your opinion?

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A. In 252 -- I'm not sure I have an opinion on that. I haven't looked at that particular question. But in 252, the voluntary negotiations deals with all of 251, pursuant to Section 251 of the title, so it's possible. I haven't thought about that particular scenario.
Q. I'd like to cover one other topic which relates to arbitration. You've done arbitrations?
A. Yes.
Q. They're long, difficult, expensive processes, aren't they?
A. Generally. Although I have experience with a very successful arbitration where everything settled before the arbitration actually started.
Q. That doesn't really count, though, does it?
A. Well, it was a wonderful time because I didn't have to -- that was in Puerto Rico and I did not have to hear the parties talk about those issues.
Q. But you didn't get to go to Puerto Rico.
A. Oh, I was in -- no, it settled literally five minutes before the hearing started. But generally they are -- they can be. They don't have to be, but they can be.

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Q. Right. So if a party that's a CLEC is going to arbitration, if Midcontinent is going to have to go to an arbitration, doesn't it have an incentive, since it's already going to have all the cost and difficulty and time and expense of doing it, to ask for everything it could possibly want, to ask for physical interconnection and collocation and UNEs and wholesale resale and all the terms on reciprocal compensation all at once rather than simply asking for one thing?
A. It's possible, but it's not likely given the testimony of Midcontinent. I understand the testimony to reflect that it wants to establish wholesale resale as a starting point and then move quickly to facility-based competition, which wouldn't need collocation generally, can be without it, doesn't need UNEs, or unbundled network elements, because it will provide them themselves.
Q. Are you aware that Midcontinent uses UNEs in some cases?
A. No.
Q. Are you aware of Midcontinent's practices for physical interconnection whether or not it uses collocation?
A. No.

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Q. So you don't actually have a basis for concluding they wouldn't want to do those things?
A. My understanding for cable play is a pure facilities-based bypass, which is -- which avoids those things as best as possible. And certainly some carriers need to use them, but generally that's the case where a cable -- my understanding of the cable play is that they try not to use those.
Q. Do you think Midcontinent's incentives might be affected if it had to wait a full year before it could actually seek interconnection?
A. Incentives, I'm not sure --
Q. Incentives about what to include in an interconnection request and arbitration might be affected if it had to wait a whole year.
A. It may, yes.
MR. HARRINGTON: I have nothing further.
JUDGE WAHL: Mr. Binek.

EXAMINATION

BY MR. BINEK:
Q. There's been a lot of testimony here about level playing field, and I guess listening to this hypothetical situation involving the possibility of the Commission denying the request to lift the

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exemption, it's possible then that Midcontinent would not be in a position to offer telecommunications service until a year after North Dakota Tel has been offering video services; is that a fair summary of your testimony?
A. That's the absolute maximum worst-case scenario.
Q. But it's possible?
A. Possible.
Q. What is your knowledge of other states -- what other states have done in implementing a schedule for -- I forget the exact terminology -- implementation schedule if the exemption is terminated?
A. I'm familiar with three cases that are on this point. The first one happened in New York State with Warwick and Citizens Telecommunications, and an implementation schedule for negotiation was started after a rural exemption was removed. I also know that in 1999 South Carolina, the case that I referred to before, when the state commission had to deal with a rural exemption, it removed a rural exemption -- or I should say Horry Telephone Company voluntarily removed itself from the rural exemption, and then the South Carolina

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Commission ordered that negotiations begin the date of the order of that removal, and its theory was that there was no valid request for a 251(c) interconnection until after the rural exemption was removed, which was the date of the order. And then also in Texas, just last -- just in 2004, there was a case in South Plains, I believe, is the name of the company, dealt with an issue of removal of a rural exemption and the Commission in its first order said, okay, we're going to remove the rural exemption and, therefore, go implement, and then, of course, the parties did not come to an understanding of how to implement the matter. The CLEC wanted 30 to 60 days for interconnection and for implementation and the ILEC said, no, we start with the 252 clock. The state commission in Texas agreed with the ILEC and started a 252 clock after the rural exemption was removed. Those are the three cases that I'm personally familiar with. I'm intimately familiar with New York and South Carolina because I worked on that matter and then I followed closely the Texas matter.
Q. Can you provide copies of those decisions?
A. Yes, I have copies of the South Carolina and the Texas. I'll have to find a copy of the New

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York, but I would be happy to provide you copies of those.
MR. BINEK: I'd request that those be provided as late-filed exhibits in the case.
JUDGE WAHL: The motion is granted. Mr. Negaard, you will note that, of course, or Mr. Moorman, as the case may be.
MR. MOORMAN: Just as a clarification, late-filed Exhibit R12?
JUDGE WAHL: Well, why don't we do -- Mr. Binek, what's the Commission's custom? Do you number those as exhibits?
MR. BINEK: Sure. I don't think it would be a problem labeling it as R12.
JUDGE WAHL: All right. Do you want to identify them as a group as R12?
MR. BINEK: Sure.
MR. HARRINGTON: It would probably be easier to identify them separately for reference purposes.
JUDGE WAHL: Yeah, that's a good point, Mr. Harrington. I agree. So let's identify them as -- Mr. Meredith, R12 is going to be what?
THE WITNESS: I would suggest that we use R12 as the South Carolina decision and R13 as the

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Texas decision and R14 as the New York decision, if it is available. I do not have a copy of that and I cannot promise that I can get that to you.
JUDGE WAHL: That's understood. Mr. Binek, anything further?
MR. BINEK: Yes.
Q. (MR. BINEK CONTINUING) Are you aware of any states that have determined a different implementation schedule?
A. I am not aware of any states or any case that involves a different implementation schedule. I have heard discussion where a rural exemption suspends the 252 clock during the time of a rural exemption review, and if it's found that the rural exemption should be lifted, then the 252 clock resumes. Do you understand? There's a difference between that scenario and the scenario where the clock starts after the rural exemption issue matter. But I do not know of any cases -- state cases where that has happened. I've heard that be argued, but I have not seen an order on that matter.
Q. How long would it take to do a cost study of North Dakota Telephone Company?
A. To determine -- an avoidable cost study?

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Q. Right.
A. I do not know, but I can imagine, based upon my experience, that it's probably in the two-month -- two- to three-month time.
MR. BINEK: I have no further questions.
JUDGE WAHL: Questions from the Commission. Commissioner Clark.
EXAMINATION
BY COMMISSIONER CLARK:
Q. I do have one. Granting that the Telecom Act is not exactly a model of clarity, how have other commissions that you've been aware of dealt with this issue of -- maybe you can provide sort of a little bit more meat to the bones along the lines of some of Mr. Binek's questions. The Act does say to implement a schedule once we make an order coming out of 250 exemption proceeding. It would seem to indicate that a schedule is more than just saying, okay, the decision has been made, the clock starts. How did they -- using your interpretation of how the commission should deal with this if we do lift the exemption, how do you both do something more than just start the clock, but also fulfill your mandate to establish an implementation schedule?

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A. The implementation schedule in 250 -- in that provision of the Act says that it needs to be consistent with the time and manner of FCC regulation, and so my experience with these other commissions -- these other state commissions is that they've looked at that and said we're going to follow the Act's time line in 252 as consistent with the FCC's -- FCC's regulation or with the time and manner to allow the opportunity for carriers to negotiate and then allow for eventual arbitration, if it's necessary, to resolve any matters.
Q. And you've testified that the FCC hasn't specifically put a lot on the record as far as what that should be, so is the idea that, lacking any clear direction from the FCC then, states have fallen back on the timetable established in the Act, itself?
A. That's what I generally perceive them to be doing. The FCC has regulation on what happens if a state commission doesn't act. That's clear.
Q. Right.
A. That's a different matter. They kind of leave it to the states. They don't --
Q. Has the FCC dealt with any of these issues in those states where the states have deferred

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action? I think probably the most notable would be Virginia where they've said that they simply are not going to -- I think by virtue of a constitutional provision in Virginia they're not going to subject themselves to being in federal court. Have they handled the Virginia-type case like they have with some of the ETC cases?
A. The Virginia case is a good example. The FCC took the Virginia case after the Virginia body -- regulatory body said we're not touching it and essentially said -- the FCC essentially said we'll deal with this -- and I just reviewed this this morning -- we'll deal with this under the (e)(5) provision, which is if the state defaults, then the Commission picks up the ball and follows its rules. That particular procedure was very lengthy, it's a very big case. If you've looked at it at all, it's many, many pages, thanks to -- I think you were part of that, weren't you, or you were counsel for someone.
MR. HARRINGTON: I was counsel for the party that didn't make it longer.
THE WITNESS: Okay. And it took like a year and a half -- I think a year and a half to do all those issues.

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Q. (COMMISSIONER CLARK CONTINUING) Was that a rural exemption termination?
A. No. No. This was with a -- this was the arbitration.
Q. That was the arbitration -- big arbitration. To your knowledge, the FCC has not dealt with any rural exemption cases?
A. No, not in that -- not in this context of removing a rural exemption.
Q. Would they have been the body to hear the case first?
A. I don't recall of any case where the FCC has done that.
COMMISSIONER CLARK: Thank you. That's all I have.
JUDGE WAHL: Commissioner Wefald.
EXAMINATION
BY COMMISSIONER WEFALD:
Q. Okay. My question relates to the scope of the rural exemption that's being requested here. Is it your understanding that the scope for this hearing is that the company wants to provide wholesale resale only, and that if the Commission grants the rural exemption, it's only for the purpose of wholesale resale, or -- I'm going to go

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on a little -- or do we grant a rural exemption and then it allows the company to not only -- once we determine if there's a rural exemption, could Midcontinent then decide they want to go for an interconnection request for unbundled elements, or is the scope narrowed by what they have requested in their letter to you that started this proceeding? Do you understand the question?

A. Yes, I do understand the question.

Q. Okay.

A. First of all, I would like to just note, and I'm sure it was just maybe how I heard it, but the rural exemption was granted by Congress and then the state commission has the opportunity to review whether that rural exemption should be removed.

Q. Okay. Removed. Should it be removed only for the purpose for the scope of wholesale resale, or --

A. Yes.

Q. What is the answer to that, in your opinion?

A. My view is -- and this is consistent with what other states have done -- is that they have limited it to the removal of the rural exemption to

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the matter that's been requested. So it would be specifically removal of a rural exemption for 251(c)(4), which is the wholesale discount provision. The other provisions remain. Although it's ambiguous because a state could -- you could go either way, but my experience is when you're dealing with that, you follow the guidance of the request, and the request is in this case for wholesale discount, and, furthermore, the request is only for the Devils Lake exchange.

Q. Yes, I understand that.

A. So I think it's limited in two respects.

Q. Okay. Then in that scenario, we talk about -- people say if they only use it for wholesale resale, there's not a lot of impact.

A. Mm-hmm.

Q. But wouldn't it be limited if the Commission chose to do that -- it would be limited to only --

A. Yes, it would be limited to wholesale discount.

Q. Yes.

A. And think of it this way, if you would, please. The facts for undue economic burden, technical infeasibility, universal service are very

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specific, and in this case before you you have facts dealing with wholesale discount.

Q. Mm-hmm.

A. The fact set can be very different if you're dealing with UNEs.

Q. Oh, I understand. I know. That's why I was wondering.

A. So each decision would be unique to the request and unique to the case that's before you.

Q. Then I'm going to do another what-if. So then what if North Dakota Telephone Company determined that they wanted to start and did start providing cable services next February, February 2007. At that point -- and let's say what if nothing had been done by this Commission before then.

A. Okay.

Q. Then they don't need to worry about 251(a) -- (1)(a), they don't have to worry about the exemption any longer; is that correct?

A. 251 --

Q. 251 and then I'm asking --

A. (c) or -- there's an (f).

Q. Right here.

COMMISSIONER CLARK: 251(f)(1).

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Q. (COMMISSIONER WEFALD CONTINUING) (f)(1). Okay.

A. That's right. When an incumbent local exchange carrier who has been granted a rural exemption by Congress provides -- starts to provide video programming after the date of the Act, then their exemption is limited and it does not apply to the incumbent cable provider in that same exchange -- in that same area where they're offering video.

Q. So at that point the company could come in and do an interconnection agreement with you -- with North Dakota Telephone Company?

A. For UNEs or --

Q. For UNEs or resale or they could provide facilities-based. I'm just trying to distinguish the difference in my own mind here. And they could have come in at this time and they could have asked for unbundled elements in this application, but they didn't, they asked for wholesale resale?

A. Correct.

COMMISSIONER WEFALD: Okay. I've got it. Thank you.

JUDGE WAHL: Commissioner Cramer?

COMMISSIONER CRAMER: I have nothing.

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JUDGE WAHL: Mr. Moorman, followup?
MR. MOORMAN: Yes. Thank you, Your Honor.

REDIRECT EXAMINATION

BY MR. MOORMAN:

Q. Very quickly. And I thought I was accused of talking fast.
A. I'm sorry.
Q. No. So I just want to make sure I heard. First, in your discussion with Midcontinent's counsel you reference February 1st, 2007. Was that the date that -- NDTC is not in the position to provide video programming in Devils Lake on its fiber installation until after February 1st, 2007?
A. Yes, that is the date. That's the date that is the earliest possible starting point. For purposes of this hearing, as I understand it, that's the date that we have as a threshold date.
Q. Until after February 1st. And, quite frankly, I am an attorney and I was trying to follow all of the cites that were going back and forth and, by golly, it was tough. I don't know if anyone else had that problem. But I turn your attention to page 4 of 5 of R8 dealing with Section 252(e)(4), I believe. And you had a discussion

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about that with Midcontinent's counsel.
A. Yes, subject -- yes, I did.
Q. The 90 days that is referred to in that section, is that 90 days by the parties of an agreement adopted by negotiation?
A. When I had this discussion, that was subject to check, but I believe that this is a 90 days.
Q. If there is a negotiated agreement and 30 days if it is subject to arbitration?
A. Yes. If we continue on with that -- that's the cite, and thank you very much for clarifying -- or helping me clarify. 90 days of a negotiated agreement, and then the next clause in that same section, "or within 30 days after submission by the parties of an agreement adopted by arbitration." So to be full, we should have probably read the whole section.
Q. The final point. There was some discussion on universal service, and is it your understanding that under current USF rules a reseller would not get any of the incumbent LEC's universal service disbursements?
A. A competitor who is a reseller, who is also -- is not eligible to become an ETC if they

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only provide resale, so they would not be getting any disbursements from the universal service program.
Q. And if it was a facility-based competitor, and that facility-based competitor was designated presumably by this Commission as an ETC and it served one of the customers of an incumbent LEC, would the incumbent LEC, if its rate of return, a small rural telephone company, under current rules would that incumbent LEC lose any USF?
A. No, but in the words of Bob Dillon, times are a-changing, and there is universal service change afoot at the FCC, so I don't know what -- under current rules that's the case, but in the future it might change.
COMMISSIONER CRAMER: Thank you for clarifying that.
MR. MOORMAN: Nothing further.
JUDGE WAHL: Mr. Harrington.
MR. HARRINGTON: Just a few questions.

RECROSS-EXAMINATION

BY MR. HARRINGTON:

Q. Mr. Meredith, when you were asking -- answering -- I'm sorry -- Mr. Binek's questions, you told him it would take two to three months to

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do an avoided cost study; is that right?
A. Yeah. My experience dealing with these other companies, it can take up to two to three months depending upon the availability of the data, depending upon the requirements -- you know, there are requirements for a study and there's some proof standards in the CFR in 51.609. That's part of my R10 exhibit.
Q. Yes.
A. And those proof standards take a little bit of time to get together so that everything is square and all the T's are crossed and all the I's are dotted.
Q. What information do you need to do one of those studies?
A. You need current information -- accounting information, and then you also need to make an analysis of some of those accounts and what costs would be avoidable, because the incumbent LEC, when they produce one of these studies, they have the -- they have the responsibility -- I claim it's the responsibility -- they have the right or responsibility to determine in those accounts whether some of those costs are not avoidable, and in order to do that, some study has to be taken

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besides just plopping numbers on a page.
Q. Section 6 of 51.609 provides significant guidance as to which accounts you're supposed to look at; correct?
A. Yes. And I'm speaking of subpart (d) of that same rule. It's 50 CFR -- that's 47 CFR 51.609(d), which describes the accounts and then it says, these costs are avoidable and may be included in wholesale rates only to the extent that the incumbent LEC proves to a state commission that specific costs in these accounts will be incurred and are not avoidable. So what happens is there's a presumption of avoidability, saying these accounts are all avoidable or 90 percent of them are avoidable. But the incumbent LEC can show to a state commission that, oh, no, that presumption doesn't quite work for a rural telephone company and that this particular study shows that these costs are not going to be avoidable.
An example is this, customer service operator. In some companies there's only one or two, and the presumption here is that you lose all of them or you lose a good number of them, and it may be for that particular rural LEC that you're not going to lose anybody for that particular

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service, and so, therefore, there's a proof -- there's an opportunity to prove to a state commission that those costs are not avoidable and should remain.
Q. Now, those accounts are all accounts the company keeps already, so you have a starting point from the existing accounts; correct?
A. You have the total amount, but for like customer service operations, how much customer service operations is affected can take a little bit of time, and that's why I say 90 days.
Q. I understand what you're saying. I guess the other question I would have about that is, all that information is in the hands of the incumbent carrier; right? You don't have to do discovery for the CLEC or any of those things, do you?
A. No, you don't have to do any discovery for anyone else, but you don't have all that -- all that information at the aggregated level is there for the account, but there are special tasks that need to be analyzed for a full understanding of that account, and that information is not available at the rural company level until the study is done, until you actually do the study.
Q. And you've done all those allocations,

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isn't it really pretty much a matter of arithmetic to figure out what the discount rate is? You don't have to do any elaborate cost modeling or any of those things, do you?
A. No. It's arithmetic and algebra.
Q. Can't forget the algebra. And just to confirm what you said now in response to my question, is it could take up to two to three months; that's right?
A. My experience with a cost -- with cost companies is it takes -- it takes, you know, two to three months to get that done.
Q. Now, on redirect you had a couple of questions concerning the timing of when NDTC is going to first provide video, and I just want to confirm what I understand from your testimony, which is that all the information you have on that question in fact comes from what you've been told by people at the company? You, personally, are not involved in any of that; you're not laying any fiber or the like?
A. That is correct.
Q. So this is entirely based on what the company has told you?
A. Let me just refresh my memory in my

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testimony.
Q. I think it's around page 4, but I could be wrong.
A. It's on page, I think, 8.
Q. 8. Well --
A. Lines 1 and 2, and I say, "I note that North Dakota Telephone Company is not in a position to provide video programming in Devils Lake on its fiber installation until after February 1, 2007."
Q. And that information is from the company?
A. Yes, that is a -- that particular understanding is cited as a footnote -- a footnote 2 and it refers to Mr. Dircks' testimony.
MR. HARRINGTON: Thank you very much. No further questions, Your Honor.
JUDGE WAHL: Mr. Binek, anything further?
MR. BINEK: No.
JUDGE WAHL: Any further questions from the Commissioners? Mr. Moorman.
REDIRECT EXAMINATION
BY MR. MOORMAN:
Q. Mr. Meredith, based on your recross by Mr. Harrington, is it safe to say that an avoidable cost study is not an add-water-and-mix proposition?
A. Yes, it is.

MR. MOORMAN: Thank you.
JUDGE WAHL: All right. Quickly, anything further, Mr. Harrington.
MR. HARRINGTON: Nothing further, Your Honor.
JUDGE WAHL: Commissioners?
COMMISSIONER WEFALD: No.
COMMISSIONER CLARK: No.
JUDGE WAHL: Thank you very much, Mr. Meredith. Anything further, Mr. Negaard?
MR. NEGAARD: No, Your Honor.
JUDGE WAHL: All right. Mr. Durick, anything further?
MR. DURICK: Nothing further, Your Honor.
JUDGE WAHL: All right. Counsel, quickly, beginning with you, Mr. Durick, briefing, what's your proposal?
MR. DURICK: Our proposal would be, I think you indicated -- or someone indicated it would be simultaneous briefs. We would like to do that on the Commission -- what would you like? -- two weeks from today.
JUDGE WAHL: Are you agreeing -- are you -- do you --
MR. DURICK: We would like responsive

briefs, Your Honor.
JUDGE WAHL: So --
MR. DURICK: We would submit ours within two weeks.
MR. HARRINGTON: Your Honor, could we have one moment? Could we go off the record for a moment, Your Honor?
JUDGE WAHL: Sure.
(Discussion had off the record.)
JUDGE WAHL: Anything else, Mr. Durick?
MR. DURICK: Nothing here, Your Honor.
JUDGE WAHL: Anything further for the record, Mr. Negaard?
MR. NEGAARD: Not at this time.
JUDGE WAHL: Mr. Binek?
MR. BINEK: In addition to briefs, we would also request --
JUDGE WAHL: Oh, I'm sorry.
MR. BINEK: -- the parties file proposed findings of fact.
JUDGE WAHL: The Commission also requests proposed findings of fact, conclusions of law. In fact, I assume you want a proposed order, too.
MR. BINEK: Right.
JUDGE WAHL: You want to -- write it up

the way you would like to see them sign it. Good luck.
Commissioner Clark, anything further for the record?
COMMISSIONER CLARK: Just thank you for a very interesting hearing.
JUDGE WAHL: Anything else, Commissioners? Any other directions from the Commission?
COMMISSIONER WEFALD: No. I would just like to say thank you, also. The witnesses who participated today really did a very good job on both sides and a lot of helpful information was provided by the questions of the counsel, et cetera. Thank you.
COMMISSIONER CRAMER: I would say the same thanks to everyone, although there were moments where I was more confused than when we began. In the end I think we had a lot of very good, helpful information.
JUDGE WAHL: All right. The record will be closed. Thank you, counsel.
(Concluded at 4:17 p.m., the same day.)

CERTIFICATE OF COURT REPORTER

I, Denise M. Andahl, a Registered Professional Reporter,
DO HEREBY CERTIFY that I recorded in shorthand the foregoing proceedings had and made of record at the time and place hereinbefore indicated.
I DO HEREBY FURTHER CERTIFY that the foregoing typewritten pages contain an accurate transcript of my shorthand notes then and there taken.
Bismarck, North Dakota, this 30th day of January, 2006.

Denise M. Andahl
Registered Professional Reporter

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