

-BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH-

In the Matter of the) Docket No. 09-2511-01
Petition of TracFone)
Wireless, Inc., for)
Designation as an Eligible)
Telecommunications Carrier)
In the State of Utah for) **HEARING** and
Limited Purpose of Offering)
Lifeline Service to) **PUBLIC COMMENT**
Qualified Households)
)

* * *

June 7, 2010

9:05 a.m. - 5:33 p.m.

Public Service Commission
160 East 300 South, Fourth Floor
Salt Lake City, Utah 84111

* * *

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I N D E X (Continued)

<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
Jose A. Fuentes	6	9,36,58	63	77,82
Casey J. Coleman	84	95	109	--
Shauna Benvegnu-Springer	111	--	--	--
Cheryl Murray	131	153	171	--
Douglas Meredith	173	175	--	--
Sonya Martinez	188	196	216,224	221

<u>PUBLIC WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>
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<u>EXHIBITS</u>	<u>Identified</u>	<u>Received</u>
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1 P R O C E E D I N G S

2 ALJ ARRENDONDO: Let's go ahead and go on the
3 record. My name is Ruben Arrendondo. I'm the ALJ
4 assigned by the Commission to hear this matter. This
5 is the Petition of TracFone Wireless, Inc., for
6 designation as an eligible telecommunications carrier
7 in the state of Utah for the purpose of offering
8 Lifeline Service, Docket No. 09-2511-01. With that,
9 let's take appearances, please, beginning with
10 representatives for TracFone.

11 MR. BRECHER: Good morning, Your Honor.
12 Mitchell Brecher of the law firm of Greenberg
13 Traurig, representing TracFone Wireless. With me is
14 Gary Dodge, who is our local counsel.

15 MR. DODGE: Your Honor, I would like to formally
16 make an appear an on this docket. I have not done so
17 previously.

18 ALJ ARRENDONDO: All right. We'll note that.

19 Do you have testimony as well, Mr. Brecher?

20 MR. BRECHER: Excuse me?

21 ALJ ARRENDONDO: Or a witness. I'm sorry.

22 MR. BRECHER: Yes. Mr. Fuentes, who is our
23 witness. His prefiled testimony is here and he'll be
24 available for cross-examination.

25 ALJ ARRENDONDO: Thank you. And with the

1 Division, please.

2 MR. GINSBERG: Michael Ginsberg for the Division
3 of Public Utilities.

4 ALJ ARRENDONDO: Mr. Proctor?

5 SONYA MARTINEZ: Sonya Martinez, Salt Lake
6 Community Action.

7 ALJ ARRENDONDO: All right.

8 MR. PROCTOR: I'm Paul Proctor, representing the
9 Utah Office of Consumer Services. Ms. Martinez has
10 asked the Office to assist her in her appearance
11 today, so that's why she's here.

12 ALJ ARRENDONDO: That's fine.

13 MR. PROCTOR: Thank you.

14 ALJ ARRENDONDO: And you are?

15 MR. MEACHAM: Steve Meacham representing Utah
16 Rural Telecom Association, and I have with me Douglas
17 Meredith, who will be testifying today for URTA.

18 ALJ ARRENDONDO: Thank you. So with that, my
19 plan was to begin with TracFone, Mr. Fuentes.

20 Did you want to have him sworn in? Is that
21 how we were planning to proceed?

22 MR. BRECHER: That will be fine, Your Honor.

23 ALJ ARRENDONDO: Mr. Fuentes, sit right here for
24 me. Then make sure that microphone is on. It should
25 be.

1 THE WITNESS: Yes, sir.

2 ALJ ARRENDONDO: If you could raise your right
3 hand for me, do you solemn affirm the testimony
4 you're about to give will be the truth, the whole
5 truth and nothing but the truth?

6 THE WITNESS: Yes, I do.

7 ALJ ARRENDONDO: Go ahead.

8 THE WITNESS: Thank you, Your Honor.

9 MR. BRECHER: May I begin?

10 ALJ ARRENDONDO: Go ahead.

11 **JOSE A. FUENTES,**

12 called as a witness on behalf of TracFone, having
13 been duly sworn, was examined and testified as
14 follows:

15 **DIRECT EXAMINATION**

16 **BY MR. BRECHER:**

17 Q. Mr. Fuentes, please state your name and
18 business address for the record.

19 A. Jose Fuentes, director of government
20 relations for TracFone Wireless. We are located at
21 9700 Northwest 112th Avenue, Miami, Florida 33178.

22 Q. Mr. Fuentes, do you have before you two
23 documents that are captioned Direct Testimony and
24 Exhibits and Rebuttal Testimony and Exhibits?

25 A. I do not have them in front of me, but I am

1 familiar with them.

2 Q. Would you like to see copies of them?

3 A. Please.

4 Yes, I'm familiar with them.

5 Q. If you don't need them, I'll take them.

6 A. Absolutely.

7 Q. I'd like these marked for identification as
8 TracFone Exhibit 1 and 2, I guess.

9 ALJ ARRENDONDO: Exhibit 1 is direct.

10 MR. BRECHER: And Exhibit 2 is rebuttal.

11 ALJ ARRENDONDO: No objections.

12 Q. Mr. Fuentes, were those documents your
13 direct testimony and your rebuttal testimony prepared
14 by you or under your immediate supervision?

15 A. Yes, it was.

16 Q. Do you have any corrections or additions to
17 either of those testimonies?

18 A. The direct testimony page 4 line 13, list
19 of other states that have been designated as an ETC,
20 I would like to correct that and add that Nevada,
21 Puerto Rico, Minnesota, and Arkansas have been
22 approved as an ETC.

23 Q. Those approvals occurred after the
24 submission of your direct testimony; is that correct?

25 A. That is correct.

1 Q. Continue, please.

2 A. Also the rebuttal testimony document on
3 page eight, Colorado point of sale has passed both
4 the house and senate, and it is awaiting the
5 governor's signature, and also under rebuttal
6 testimony page 14, lines 2 through 23, on May 7 the
7 California Public Utilities Commission issued an
8 order vacating its resolution which found that
9 TracFone had violated state law regarding fees.

10 Q. Mr. Fuentes, with those corrections and
11 additions, if I were to ask you the same questions
12 today under oath, would your responses be the same?

13 A. Yes.

14 MR. BRECHER: At this time, I move the admission
15 into evidence of TracFone Exhibit 1 and TracFone
16 Exhibit 2, and Mr. Fuentes is available for
17 cross-examination.

18 ALJ ARRENDONDO: All right. Note those were
19 already prefiled and no objections. Admit those.

20 **(Exhibits TF-1 and TF-2 were admitted.)**

21 ALJ ARRENDONDO: Mr. Ginsberg, any questions on
22 cross?

23 MR. GINSBERG: Yes.

24 MR. BRECHER: Your Honor, could I give
25 Mr. Fuentes an opportunity to summarize his

1 testimony. I think that will be helpful.

2 ALJ ARRENDONDO: Sure.

3 Q. Mr. Fuentes, could you take a few minutes
4 to summarize your direct rebuttal testimony.

5 A. Basically I'm here today to discuss the
6 TracFone Lifeline offering, which in the state of
7 Utah will provide a free handset and free 67 minutes
8 to qualified low-income households in the state of
9 Utah. We are currently operating in over 25 states,
10 and we've been approved in a total of 29 states.
11 We've been active providing Lifeline service for a
12 little over two years now. We are basically the
13 pioneers when it comes to free wireless service and
14 we are very honored and excited that we've been
15 providing such an outstanding service almost to half
16 of the United States, and we look forward to be
17 providing service very soon in the state of Utah.

18 MR. BRECHER: Thank you, Mr. Fuentes. At this
19 time Mr. Fuentes is available for cross-examination.

20 ALJ ARRENDONDO: All right. Thank you.

21 Mr. Ginsberg.

22 **CROSS-EXAMINATION**

23 **BY MR. GINSBERG:**

24 Q. Good morning, Mr. Fuentes.

25 A. Good morning, Mr. Ginsberg.

1 Q. Let me see if we can first clearly
2 establish what the TracFone offering is as it stands
3 right now in Utah. You said you've been authorized
4 in how many states?

5 A. Total of 29 states.

6 Q. And is it fair to say that the plan that
7 you offer in Utah is sort of your -- basically a
8 standard offering?

9 A. That would be more or less a fair
10 statement.

11 Q. And I think in your testimony you indicated
12 that when you establish an offering in a state, the
13 offering has to be comparable to the -- in the usage
14 and the offerings that are made by the other Lifeline
15 providers, the ILECs in the state but not necessarily
16 the same. Is that fair?

17 A. Yes.

18 Q. And that's what the 67 minutes is supposed
19 to represent?

20 A. It's based on a weighted average in the
21 state of the ILECs in the areas that we'll provide
22 service.

23 Q. All the ILECs in this state, the usage is
24 unlimited; is that right?

25 A. For the ILECs, you mean?

1 Q. Yes, local usage.

2 A. Local usage unlimited -- I would assume so
3 in their plans. I'm not familiar with the plans that
4 the ILECs have here.

5 Q. How did you determine that this plan is
6 comparable to but not the same as what is offered in
7 this state?

8 A. It's based on the subsidy amount. That's
9 how we get the weighted average to 67 minutes.

10 Q. So it's based on the subsidies that the
11 various ILECs and their Lifeline offerings currently
12 receive?

13 A. Correct.

14 Q. So it's not based on usage or the type of
15 plan they offer?

16 A. No, it is not.

17 Q. And I thought the FCC in setting that
18 standard didn't set any minimum usage requirements
19 except that it had to be comparable to what's being
20 offered in the jurisdiction that you're requesting
21 ETC status. Is that fair?

22 A. Yes.

23 Q. So, again, you made no attempt to decide
24 that the 67 minutes was comparable except on this
25 dollar basis to what's currently being offered in

1 Utah for other Lifeline providers?

2 A. It's comparable based on the most preferred
3 rate that we have which is 20 cents a minute, and
4 that's the best rate that TracFone offers.

5 Q. Let's see if we can clearly understand
6 then. You get 67 minutes a month, a Lifeline
7 provided customer, and that's basically free to that
8 customer?

9 A. Correct.

10 Q. If he wants additional minutes, it's 20
11 cents a minute?

12 A. At the 27 minute rate, yes -- 20 cents a
13 minute. Forgive me.

14 Q. Are there plans available -- so let me see
15 if I understand it now. The 67 minutes carry over
16 one month to another?

17 A. Yes, they do.

18 Q. Are there any free minutes that are
19 available to that customer?

20 A. Other than the 67 minutes and if they
21 purchase additional air time cards at the 20 cents a
22 minute rate, which we provide on those air time
23 cards, they would receive additional minutes based on
24 the 20 cents a minute rate.

25 Q. I know in some states you have allowed the

1 customer to call customer service without additional
2 charges.

3 A. Right now there's no state that we're
4 providing customer service calls for free, active.

5 Q. There's states you've offered that; is that
6 right?

7 A. One state has conditioned us, but that
8 order still has not come through yet.

9 Q. That was in Washington?

10 A. Yes, sir.

11 Q. And that was something you agreed to in
12 Washington?

13 A. Yes, we did.

14 Q. And but you're not making that type
15 available in any other jurisdiction?

16 A. Not at this time. We can provide it, but
17 we will not be operationally ready until the fourth
18 quarter of 2010. There's an operational procedure
19 that has to be involved in providing the customer
20 service calls for free.

21 Q. Is it fair that even Washington won't be
22 available until the fourth quarter of 2010?

23 A. Yes.

24 Q. Is that something that will be available in
25 Utah, fourth quarter 2010?

1 A. Yes.

2 Q. In other states, for example, Washington,
3 again, you agreed to 10 cents a minute, did you not?

4 A. Yes, we did.

5 Q. And you also agreed that customers can
6 purchase packages at a lower rate than you currently
7 offer to other TracFone customers?

8 A. I believe not. It's still the same air
9 time cards they would purchase on a regular TracFone.
10 Air timecard, for example, 19.99 you can get a
11 60-minute card that will give you -- I'm sorry -- 100
12 minutes.

13 Q. Ten cents a minute?

14 A. That's based off the 20 cents a minute
15 rate. We also have double minute cards that are
16 purchased for 1999, which will then lower your rate
17 to ten cents a minute if you were to purchase any of
18 our TracFone air time cards.

19 Q. Now, you're not requesting any state USF
20 support, are you?

21 A. No, we are not.

22 Q. Nor have you requested that in any
23 jurisdiction?

24 A. No, we have not.

25 Q. So you if ever wanted any state USF

1 support, you would have to re-petition the commission
2 for that?

3 A. I'm not familiar -- I'm not a lawyer.
4 Whatever counsel advises us on, we proceed -- we
5 would follow.

6 Q. One other, I notice in answer to a data
7 request that the state traditionally does not have
8 jurisdiction over wireless. Do you understand that?

9 A. Yes.

10 Q. But for purposes of customer complaints, in
11 an answer to a data request, you indicated that
12 TracFone would operate under the current customer
13 complaint process that exists in the state; is that
14 right?

15 A. That is correct.

16 Q. Can you explain your understanding of what
17 that is.

18 A. It would be basically either the customer
19 would contact directly the consumer agency, file a
20 complaint. At the same time if for any reason we
21 reject a customer's application based on any
22 findings, we would provide the information to them so
23 that they can have a proper outlet where they can go
24 ahead and file a complaint and we can follow up
25 directly with the agency.

1 Q. So what would be available to the customer
2 for complaints? Would it be service quality?

3 A. It could be multiple, but service quality
4 could be one.

5 Q. I think in answer to my data question you
6 indicated everything but rates.

7 A. Uh-huh.

8 Q. Is that correct?

9 A. That is correct.

10 Q. Now, you indicated in the Colorado that
11 legislation was recently passed on point of sale; is
12 that correct?

13 A. That is correct.

14 Q. Now, in Colorado, point of sale to cover
15 which fees?

16 A. Prepaid fees on 911.

17 Q. Does it also cover the other state funds?

18 A. I believe it does not.

19 Q. So at least in Colorado would you be paying
20 into their state universal service fund in some other
21 manner?

22 A. At this time, no, we would not, but we also
23 withdraw our application from Colorado.

24 Q. You withdrew your application when you
25 determined that the best course of action was to have

1 point of sale legislation passed and then I believe
2 you indicated that once that occurred you would
3 reapply?

4 A. That is correct, but we haven't made a
5 determination yet.

6 Q. Of whether you'll reapply or not?

7 A. That is correct.

8 Q. When you withdrew your application there
9 were objections from those who thought you should be
10 paying those fees before you received ETC status?

11 A. That is correct.

12 Q. And you received those kind of objections
13 looks like in a variety of the proceedings that
14 you've been in around the country; is that right?

15 A. Yes.

16 Q. For example, California was another one
17 that you withdrew your application because of a
18 dispute over fees?

19 A. That is correct.

20 Q. And you indicated that in California -- I
21 wasn't clear what this meant when you said that they
22 vacated their order that found you in violation.
23 What order is that?

24 A. It was I believe an order regarding the
25 fees and its interpretation of how the fees were

1 applied to us.

2 Q. As I understand it, California denied your
3 application for ETC status?

4 A. I would need to double-check, but I believe
5 they did.

6 Q. When you say they vacated the order, I
7 understood that TracFone asked for rehearing of that
8 denial; is that right?

9 A. Yes.

10 Q. Is that the order you're referring to?

11 A. Yes.

12 Q. California also -- as it stands right now,
13 TracFone tried to withdraw the application in
14 California, did they not?

15 A. Yes, we did.

16 Q. And it was for the same reasons, that fees
17 had not been worked out in a way that was acceptable
18 to the state and until those could be worked out --
19 and maybe they are being in California -- that
20 TracFone chose to withdraw its application?

21 A. Yes.

22 Q. And are those fees being worked out in
23 California?

24 A. I'm not privy to those discussions, but I
25 believe they are ongoing.

1 Q. Ongoing discussions to work out, again, 911
2 fees?

3 A. No. Different -- it is different fees
4 altogether. The way that the statute is written in
5 California is a little vague to say the least, and
6 we're working with the Utilities Commission and other
7 groups to come to some kind of settlement with the
8 California PUC.

9 Q. Does TracFone pay into the Federal
10 Universal Service Fund?

11 A. Yes, we do.

12 Q. How do they -- do they pay in using the
13 FCC's Safe Harbor?

14 A. I'm not familiar how we pay. That's done
15 by our tax attorneys. I suppose that at the end of
16 the year or on a quarterly basis we just file with
17 the FCC the amount that we owe.

18 Q. But you have to determine in order to pay
19 into the Federal Universal Service Fund an estimate
20 of what is interstate and international calling, do
21 you not?

22 A. I'm not familiar, to be honest with you.

23 Q. You have agreed in your testimony -- I
24 think it's page 18 of your rebuttal. Do you have
25 your testimonies up there?

1 A. No, I do not.

2 Q. It sounds like you have a good memory.

3 A. Depending on the day.

4 MR. BRECHER: This is small print.

5 THE WITNESS: Thank you.

6 Q. You agreed in a number of parts of your
7 testimony -- I think page 18 is where -- 17 and 18,
8 and I think there was some other parts earlier when
9 you were responding to Mr. Coleman you agreed to use
10 the DCC verification process currently in place in
11 Utah; is that right?

12 A. That is correct.

13 Q. Can you give me your understanding what
14 that process is?

15 A. My understanding is that in the
16 applications that we receive we send over to the DCC
17 they will verify the customer's program. If they are
18 approved, we will get a -- receive a notification
19 from the DCC telling us yes or no this person does
20 qualify for this service.

21 Q. And that occurs annually or -- so when you
22 receive an initial application, you would send that
23 to DCC and they would let you know whether this
24 person qualified or not?

25 A. Right. Exactly. Before we go ahead and

1 issue them the free phone and minutes.

2 Q. Does that occur once a year or does that
3 repeat itself annually? I understand people have to
4 be recertified every year.

5 A. There's three different mechanisms that
6 would happen in this case in the state of Utah. If a
7 customer came and applied for the first time for
8 Safelink, we would then send the information to the
9 DCC to verify this person does qualify for the
10 program that they say they do. If they do so, they
11 would then -- would be approved and we would go ahead
12 and send them a phone with free minutes. The other
13 portion that you're referring to is the annual
14 verification that the customer is still head of
15 household and is only receiving the Lifeline benefit
16 from TracFone and no other company. That is done
17 before the year anniversary date, meaning the year
18 anniversary of when they first became a Safelink
19 customer. The third and final component is the FCC's
20 annual verification which is based upon an FCC
21 algorithm that is provided to all the ETCs in which
22 then we would contact the customer and ask them for
23 supplemental information such as copy of their food
24 stamp card, a Medicaid card, something that proves
25 they are on the program. If they fall into that

1 quote, unquote, audit, they would have to provide
2 that information to us.

3 Q. Is that your understanding of how the DCC
4 program works?

5 A. That is my understanding.

6 Q. Maybe you can give us a feel of the -- I
7 believe you indicated that once TracFone -- tell us
8 what happens after if the Commission gives you this
9 ETC. What will then take place with you rolling this
10 program out in the state?

11 A. We would begin our internal operating
12 procedures and, so to speak, come online. Once we
13 are operationally ready within the state, then we
14 begin the second component which is advertising our
15 services in various different mediums through print,
16 radio and TV, notifying low-income households that
17 there is a free -- there's a choice now when it comes
18 to free service and our service is free and you can
19 get a free handset and explains in detail how they
20 can sign up for Safelink Wireless.

21 Q. How long does that initial time period take
22 before you are ready to roll out the advertising?

23 A. Normally it takes about anywhere two to
24 three weeks for us to become operationally ready, and
25 during that time we are buying media spots in the

1 area, and that can range anywhere between two to
2 three weeks of when we'll be able to have a spot
3 where we can run our advertising.

4 Q. You indicated in your testimony that once
5 TracFone rolls this out there will be a substantial
6 amount of increases in customers wanting to sign up
7 for your Lifeline program; is that right?

8 A. That's correct.

9 Q. And I think you indicated that's based on
10 your experience in other states?

11 A. Correct.

12 Q. Do you understand how many Lifeline
13 customers currently exist in Utah?

14 A. Currently exist in Utah this is based off
15 of -- this is based off the Universal Service
16 monitoring report of 2008 that came out in 2009. The
17 monitoring report stated there's 29,982 current
18 subscribers on the Lifeline program. Based on our
19 internal research using economic data and census
20 models, we estimate actually the number of households
21 is 145,986.

22 Q. Is that out of the ordinary of what you've
23 looked at from other jurisdictions or sort of within
24 the ballpark?

25 A. It's within the ballpark.

1 Q. So normally about 30,000 -- that percentage
2 would be out there as a possibility?

3 A. Yes.

4 Q. And what's the 145,000 based on? Is that
5 income statistics?

6 A. It's based off the 2000 U.S. Census data
7 which then using current economic factors gives more
8 or less a forecast of what you can expect to see in
9 terms of low-income household participation.

10 Q. These are all people who would be head of
11 households in Utah?

12 A. Correct.

13 Q. And they would have an address?

14 A. Yes.

15 Q. So more likely they would be either renters
16 or owners of a property in Utah?

17 A. Yes.

18 Q. In other words, the program is currently
19 not available for homeless?

20 A. No, it is not.

21 Q. So everybody has to have an address?

22 A. Yes.

23 Q. So can you give us an estimate then of what
24 normally would happen after your program is rolled
25 out?

1 A. There would be a spike. People would
2 either call the 1-800 Safelink number or they would
3 visit us online at Safelink.com, and they would begin
4 to fill out the application. If they go through the
5 web, they would have to input their name, address,
6 date of birth, program for which they qualify for.
7 Internally TracFone has a series of authentication
8 procedures to verify the customer does exist, that
9 they do reside in the address they state they are in.
10 Once they pass that prescreening, what we would end
11 up doing in the case for Utah is sending that
12 information over straight to the DCC for
13 verification.

14 Q. And that would be electronically sent to
15 them somehow?

16 A. However the DCC in the end would like us to
17 send it. Normally, nine times out of ten it is
18 electronic.

19 Q. What amount of these applications would
20 occur within -- if you could give us some time
21 period, what the workload expectations would be for
22 DCC as a result of TracFone ETC status?

23 A. It could end up being -- a rough estimate
24 could be over a thousand applications a week, two
25 thousand applications a week they could be receiving.

1 Q. For --

2 A. For Lifeline.

3 Q. For what period of time? Is there usually
4 a spike in the beginning and it drops off?

5 A. There's a spike in the beginning. Then it
6 lulls. It could last anywhere from four to
7 six months. It really just depends on the volume of
8 the state itself too.

9 Q. So a thousand a week which could last
10 anywhere from -- a substantial increase in the amount
11 of applications that DCC would be expected to verify?

12 A. Yes. More or less or anywhere between
13 1,000, 2,000.

14 Q. Do you have a feel for what percentage of
15 these will be existing Lifeline customers from
16 another telephone company or those who are not
17 currently on any kind of current telephone Lifeline
18 program?

19 A. I do not. It's very hard to gauge.

20 Q. You've done -- companies, I know, study to
21 try and figure that one out, where their market
22 really is.

23 A. No. We do market studies to show where the
24 low-income segment of the population is and how do we
25 market directly to low-income families in order to

1 attract them to our program, but unless there is a
2 database really on a consistent basis that is adding
3 on the Lifeline rolls, who is on Lifeline, there's
4 really no way of knowing if that customer is in fact
5 receiving Lifeline.

6 Q. You understand that at least in any
7 substance you are the first wireless ETC coming to
8 Utah?

9 A. Yes.

10 Q. And you understand that as a result of now
11 a choice of two ETCs for that head of household, that
12 that could lead to -- "double-dipping," I guess, is
13 the best word to call it.

14 A. Yes, we are aware of that. And within our
15 applications we state very clearly that if they
16 decide to continue with a Lifeline program with
17 TracFone, they need to contact their local telephone
18 company and, for lack of a better term, de-enroll
19 from the Lifeline program they are currently
20 receiving on their land line.

21 Q. You understand at least in Utah there is no
22 system to verify that house of household has only one
23 Lifeline?

24 A. Yes.

25 Q. Is that common?

1 A. Yes.

2 Q. I know some states you worked out programs
3 where that potential for -- fraud, I guess is a good
4 word to call it -- is checked?

5 A. Yes. There is one state that on a yearly
6 basis they request all the ETCs to submit their rolls
7 so they can do a cross-check for any double-dipping.

8 Q. That's Washington again?

9 A. That would be the state of Florida.

10 Q. Oh, Florida. And, again, that system -- I
11 know there's been discussions in Utah of that system,
12 but that has not been developed here?

13 A. No, it has not.

14 Q. You understand that DCC does verifications
15 for other programs besides telephone Lifeline?

16 A. Yes.

17 Q. You understand they do verifications for
18 the Heat program?

19 A. Yes.

20 Q. And for the electric Help program?

21 A. Yes.

22 Q. And soon to be in effect Questar's Lifeline
23 program?

24 A. Yes.

25 Q. And is that unusual that when you use a

1 state agency for verification they do verifications
2 for a number of programs?

3 A. Yes, that is correct. Well, no. Actually,
4 no. The other states that we've done verifications
5 with directly through them only check the Lifeline
6 program. I'm not aware of any other state that does
7 not only Lifeline program but multiple other programs
8 that they are doing the verifications on.

9 Q. Probably would make it easier for
10 verification of a Lifeline program when all the
11 verifications for the other programs are also taking
12 place, would it not?

13 A. That would be up to the state's resources
14 to see if they can allocate and have the manpower to
15 do all of it at the same time.

16 Q. Are there other states that use a state
17 agency for verification?

18 A. There's a hybrid model in -- other than
19 Florida, which we have -- all the ETCs can check on
20 various social service programs. Texas has a hybrid
21 model in which they have a third party which keeps a
22 record of the database and will automatically check
23 for the customer on whether or not they qualify for
24 the service.

25 Q. You understand that DCC for the telephone

1 Lifeline program is funded through the State
2 Universal Service Fund?

3 A. Yes.

4 Q. And you do not contribute to that fund, do
5 you?

6 A. No, we do not.

7 Q. In fact, you don't think you're obligated
8 to contribute to that fund?

9 A. Yes. That is a fair statement to make,
10 yes.

11 Q. The reason you don't think you're obligated
12 to contribute to that fund is you don't know what the
13 amount of your traffic is intrastate?

14 A. That is correct.

15 Q. Isn't it whatever traffic is not interstate
16 you're able to figure that out the rest is
17 intrastate?

18 A. That would be for the tax attorneys to
19 decide how that would be issued. I really don't have
20 an idea of how much traffic we receive intrastate or
21 interstate.

22 Q. And basically since you have taken the
23 position and your tax attorneys have taken the
24 position that you're not subject to the state
25 Universal Service Fund, that's why you've made the

1 suggestion that you're willing to pay your cost for
2 the DCC program?

3 A. Yes. We understand that we're going to
4 burden somewhat the system. That's why we have said
5 that we would like to contribute but in a fair and
6 equitable amount.

7 Q. Well, you understand everyone else
8 contributes by paying into the state Universal
9 Service Fund?

10 A. On their bill. It's very hard to see how
11 you can -- you can charge on a prepaid customer when
12 there is no billing mechanism whatsoever. In
13 reality, unless you know for certain how much the
14 customers are in each state and what the billing is,
15 really you don't know with prepaid unless there's
16 some kind of point-of-sale mechanism that can be
17 collected for those fees.

18 Q. My question, though, is you understood that
19 all other ETCs, ILECs, they support DCC by their
20 customers paying into the state Universal Service
21 Fund?

22 A. Yes, on their billed customers, yes.

23 Q. You indicated earlier that we talked about
24 that the impact on DCC could be substantial, could it
25 not?

1 A. Yes, it could be.

2 Q. And that has not been -- in other words,
3 within three weeks of granting this ETC, you could
4 impose an enormous burden on DCC that could result in
5 your application taking significant amounts of time
6 to go through their process without dealing with that
7 issue ahead of time; is that right?

8 A. That is correct.

9 Q. So is your proposal to -- to do what?

10 A. Our proposal early on was to pay for each
11 application that is submitted to the DCC in order to
12 not over burden the costs associated with
13 verification of the Lifeline program.

14 Q. So is your expectation that the
15 Commission -- you understand that the contract with
16 DCC is administered through the -- administered
17 through the state Universal Service Fund?

18 A. Yes, that is correct.

19 Q. Would your expectation be that contract
20 would have to be rewritten somehow?

21 A. That is open to the state on how this needs
22 to be done. And if we need to be privy to the
23 negotiations with that party, we would certainly sit
24 in and come up with a fair and equitable amount on
25 how much we should pay for each application.

1 Q. Is your expectation that the commission
2 will come up with what that amount should be?

3 A. I think the -- I think the staff has come
4 up with a number, and we have our own number, and we
5 probably still need to work a little bit on that
6 dollar amount.

7 Q. Was your expect -- you're not presenting
8 any number to the commission though, are you?

9 A. Originally when we came to the staff we
10 proposed 15 cents per application. I believe staff
11 came back with three dollars, which, if the
12 Commission was to approve us as ETC, we would not
13 provide service in the state of Utah. That is an
14 enormous cost that will burden immensely the company.
15 Our cost per gross ad in terms of advertising would
16 skyrocket and significantly would hamper our own
17 service to provide an adequate service within the
18 state.

19 Q. Who would you expect -- if that is the cost
20 the DCC actually incurs as a result of processing an
21 application, who would you expect to pick up those
22 additional --

23 MR. BRECHER: Let me object to that question.
24 That's assumes facts not in evidence. I haven't seen
25 a scintilla of evidence about what the costs are.

1 Until the costs are established I believe it's
2 premature to ask the witness to address who will bear
3 the costs of each application.

4 MR. GINSBERG: It doesn't, in my mind, the
5 objection to question -- I don't even have to put a
6 dollar amount in there.

7 ALJ ARRENDONDO: My understanding is your
8 question is who in their understanding would bear
9 those costs.

10 MR. GINSBERG: Right, whatever the costs are.

11 ALJ ARRENDONDO: I'm going to overrule the
12 objection.

13 A. Can you repeat the question. I'm sorry.

14 Q. You mentioned that there's -- at least from
15 discussions there's a large difference in cost
16 estimates. And whatever those costs are, who would
17 you expect to absorb or pick up the costs associated
18 with it?

19 A. It's an unknown. There's a lot of things
20 that need to be hashed out in terms of that cost.
21 You provide a breakdown, but that's something that
22 needs to be analyzed on our end and reanalyzed on
23 your end because the current contracts that we have
24 that provide verification software in our security
25 systems is not even comparable to the \$3 amount. It

1 is significantly less than what we have with our contract
2 with partners that we have to ensure that the persons
3 whose qualify for the Lifeline program say they
4 qualify for that, and to incur such an enormous cost
5 would hamper the operations here in Utah. We would
6 not roll out if today the Commission decided that is
7 going to be the amount. We would not be providing
8 service at all.

9 Q. I understand that TracFone supports these
10 point-of-sale legislations.

11 A. Yes.

12 Q. And I think you indicated that they have
13 been becoming prominent in various jurisdictions
14 throughout the country; is that right?

15 A. That is right.

16 Q. How many jurisdictions now have that?

17 A. I believe six at the top of my head, six or
18 seven.

19 Q. And do those point-of-sale legislations
20 address mainly 911 fees or all fees?

21 A. 911 fees.

22 Q. They do not address state USF fees?

23 A. Not to my recollection, no.

24 Q. So you don't anticipate through any process
25 including the point-of-sale legislation any mechanism

1 being developed where you would as a prepaid wireless
2 company pay into the state Universal Service Fund?

3 A. At this time, no, unless there's some kind
4 of an agreement that we can have with the Commission
5 on how to pay the state Universal Service Fund fee,
6 but it's open -- if legislation is introduced for
7 point of sale in the state of Utah, it's really up to
8 the legislatures if they also want to include a state
9 Universal Fund Fee on prepaid at the point of sale.
10 So it's entirely up to them really how they want to
11 move forward.

12 MR. GINSBERG: Can I have a minute?

13 ALJ ARRENDONDO: Uh-huh.

14 MR. GINSBERG: I think that's all I have. Thank
15 you.

16 ALJ ARRENDONDO: All right. Thank you,
17 Mr. Ginsberg.

18 Mr. Proctor?

19 MR. PROCTOR: Yes, thank you, Judge.

20 **CROSS-EXAMINATION**

21 **BY MR. PROCTOR:**

22 Q. Mr. Fuentes, I have a couple questions
23 about a topic that Mr. Ginsberg just asked you about
24 and that is with respect to the costs of confirming
25 the eligibility of a Lifeline applicant. You stated

1 your current contracts with your partners to acquire
2 information is much lower than the three dollars that
3 the Division had discussed. Is that the 15 cents per
4 applicant contract that you were speaking of?

5 A. Yeah. Actually, we -- I reverified with
6 the company, and it's actually seven cents per
7 application.

8 Q. And that company is LexusNexus?

9 A. That is correct.

10 Q. From LexusNexus do you learn whether or not
11 an applicant for a Lifeline phone is receiving food
12 stamps?

13 A. No.

14 Q. Do you receive any other information from
15 LexusNexus as to whether or not that person is
16 receiving some social service benefit?

17 A. No.

18 Q. What do you receive from LexusNexus?

19 A. We verify that the customer's information
20 that they state on the application such as address,
21 date of birth, and lasts four digits of social
22 security and full name matches what LexusNexus has on
23 file.

24 Q. So you certainly don't get anything other
25 than an applicant's statement that "I am receiving a

1 social service benefit"?

2 A. Correct.

3 Q. And you don't confirm that?

4 A. Well, in the case of a Utah, we would
5 confirm it through the DCC.

6 Q. But as to any other -- excuse me -- seven
7 cents only covers the address and name and some check
8 on that?

9 A. Uh-huh.

10 Q. Seven cents doesn't cover any of the
11 information that you would expect DCC to provide with
12 respect to their participation in social service
13 programs?

14 A. Correct.

15 Q. Would you admit there is a cost to DCC
16 state agency to search records, search databases to
17 determine whether or not the person who told you they
18 were receiving food stamps, for example, is in fact
19 receiving food stamps?

20 A. Correct. But it would only be checking the
21 person's eligibility of the social service program.

22 Q. Other than social service program
23 participation, what other criteria does the federal
24 Lifeline program require of an applicant in order to
25 get the Lifeline program?

1 A. The federal requirement is actually
2 self-certification based on penalty of perjury, and
3 the majority of states we operate in currently have
4 penalty of perjury under self-certification, meaning
5 that the customer just states that based on their
6 oath under penalty of perjury that the information
7 they provided is correct.

8 Q. And there's an income threshold as well
9 besides the social service benefit?

10 A. Correct. Depending on the state but there
11 is an income guideline as well.

12 Q. In Utah do you understand the Public
13 Service Commission requirements for applicants is
14 they be cleared through the DCC?

15 A. Yes.

16 Q. So the statement on your application that
17 your statements are made under penalty of perjury
18 would not satisfy Public Service Commission
19 regulations, would they?

20 A. At this time, no. However, Utah would be
21 the first state to charge TracFone for -- actually
22 any ETC for its operational costs to verify
23 customers. Other states, for example, Florida the
24 Office of Public Counsel does all the income
25 verifications for the Lifeline program, and they do

1 not charge ETCs at all for the service.

2 Q. So that would make Utah taking the lead in
3 respect assessing proper responsibility for the
4 payment of the costs that TracFone generates?

5 MR. BRECHER: Counsel, restate the question. It
6 sounded prejudicial the way it was asked.

7 ALJ ARRENDONDO: Can you restate it.

8 MR. PROCTOR: No, I'll go on.

9 Q. You mentioned in Texas there's a third
10 party that -- and I would use the word "checks" -- to
11 determine whether or not a person is eligible. Is
12 that the fair or did I misunderstand what the Texas
13 third party does?

14 A. Yes. The third party is contracted by the
15 state of Texas to provide the service and no ETC has
16 incurred a cost for those applications.

17 Q. Is TracFone offering Lifeline service in
18 Texas?

19 A. Yes.

20 Q. Are there any other fees collected from
21 TracFone in Texas such as state USF or partial state
22 USF fees?

23 A. That I'm aware of, no.

24 Q. Well, if they were, you would be aware of
25 them, I assume?

1 A. I would assume so.

2 Q. Is that a legislative funded contract?

3 A. It was a contract I believe that was done
4 through the Utilities Commission of Texas.

5 Q. Does that third party also work with the
6 gas and electric utilities to provide Heat programs,
7 other discount rate programs, to utility customers?

8 A. I do not know.

9 Q. So it could very well be the same in Texas
10 as it is in Utah where the DCC or a version of the
11 DCC is contracted in order to determine whether or
12 not a person is eligible for the Heat program for
13 natural gas or energy use in the wintertime; correct?

14 A. With the exception that the third party
15 doesn't charge the ETCs for each application, but the
16 process would be somewhat similar.

17 Q. I have some other questions about the
18 nature of your offering in Utah. First of all, I
19 understand that in Utah it's TracFone's policy to
20 round up minutes; is that correct?

21 A. That is correct.

22 Q. In Illinois your policy, is it not, to only
23 charge for the minutes or seconds used?

24 A. I believe we have the same standard policy
25 of rounding of minutes.

1 Q. Do you remember having a conversation with
2 Christine -- I hope I pronounce this correctly --
3 Garennes of the news Gazette in Illinois on or about
4 the 24th of January of this year in which you were
5 describing the Safelink program in Illinois?

6 A. I'm not familiar. I speak to a lot of
7 reporters.

8 Q. Is it possible that you did in fact state
9 that the company does not round up minutes, so you
10 talk for 45 seconds and 45 seconds are deducted from
11 your monthly usage?

12 A. I do not recall. If I did, that was an
13 error on my part.

14 Q. Well, have you ever made such statements in
15 this state in this proceeding that in fact you want
16 the right to round up, but you don't?

17 A. I did mention that once, yes.

18 Q. You made that statement in this proceeding?

19 A. Not in this -- well, in discussions with
20 staff I may have said that.

21 Q. Have you ever made such a statement in any
22 other state in which TracFone has applied to provide
23 Safelink?

24 A. Not that I'm aware of but --

25 Q. But you don't recall?

1 A. But I don't recall.

2 Q. Well, as a federally sponsored program in
3 which there is some federal funds being given to
4 TracFone for low-income people, would it not make
5 sense for this Commission to recognize that indeed
6 they should get the full benefit of the 67 minutes
7 that you're offering and not permit you to round up?

8 A. That would be something that I would need
9 to discuss with the company on how the usage policy
10 would be with Safelink customers. All of our
11 TracFone customers in my understanding is -- the
12 minute is rounded up, and there is really no
13 difference between the TracFone company and the
14 Safelink customer when it the comes to the minute
15 usage.

16 Q. Isn't there one major difference and that
17 is the TracFone customer is actually paying out of
18 their own pocket with an agreement and they
19 understand going in it's going to be rounded up
20 versus TracFone receiving federal funds in order to
21 offer low-income a free phone and 67 minutes of free
22 phone usage? Isn't that the difference?

23 A. That's something that is a company decision
24 and that would have to be individuals that are way
25 above my pay grade making that decision.

1 Q. You would recognize, however, that the
2 Commission certainly has the authority to direct that
3 TracFone for the Safelink program, the Lifeline
4 program, in fact not round up?

5 MR. BRECHER: I'm going to object to that
6 question. It calls for a legal conclusion. I don't
7 think this witness is trained as a lawyer. He hasn't
8 represented he's an expert on the law --

9 ALJ ARRENDONDO: Sustained.

10 MR. BRECHER: -- and the scope of the
11 Commission's jurisdiction is cause for a legal
12 conclusion this witness isn't qualified to make.

13 ALJ ARRENDONDO: Sustain the objection.

14 MR. PROCTOR: If I may, Your Honor, it doesn't
15 call for legal conclusion. It calls for a regulatory
16 conclusion, and I understand Fuentes is a highly
17 experienced manager of regulatory affairs for
18 TracFone.

19 ALJ ARRENDONDO: I'm going to sustain the
20 objection.

21 MR. PROCTOR: Thank you.

22 Q. Mr. Fuentes, I want to talk to you for just
23 a moment about the availability of additional minutes
24 to the Lifeline or Safelink customer. Okay. Now,
25 presently as I understand it, a Lifelink -- a

1 Safelink customer would be able to purchase a
2 30-minute additional minute card for 9.99 and receive
3 a total of 50 minutes. So that's where the 20-cent
4 per minute option comes with respect to those
5 additional minutes; correct?

6 A. Correct.

7 Q. Now, in Washington I think you acknowledged
8 that in Washington state TracFone actually amended
9 its application to provide ten-cent-a-minute excess
10 minutes; is that correct?

11 A. That is correct.

12 Q. It still applies to, for example, the 50
13 minutes. So instead of paying 20 cents a minute for
14 50 minutes, you would pay ten cents a minute for
15 50 minutes -- is that correct? -- in Washington
16 state?

17 A. The minute rate would change -- it would go
18 down from 20 cents to 10 cents. So if you did a
19 quick calculation for 9.99 based off the ten cents a
20 minute it would be --

21 Q. Five dollars?

22 A. More or less. It would be an additional
23 40 minutes on top of that. You're looking at
24 90 minutes. I'm not very good at math.

25 Q. I'm not either. But nevertheless you're

1 going to offer bonus minutes. That may not be a
2 proper explanation. But you're going to offer bonus
3 minutes in order to get that cost down to ten cents a
4 minute?

5 A. Correct. All of air -- not all of our -- I
6 would have to double-check. I'm not sure on all of
7 our air time cards, but the air times cards that I
8 mentioned 30, 60, 90, 120 would be at a
9 ten-cents-a-minute rate.

10 Q. Are there any other states in which
11 TracFone has applied for the Lifeline eligibility ETC
12 status based upon a ten-cent-a-minute charge?

13 A. Not to our applications, no.

14 Q. What about in the result?

15 A. As a result, conditions, yes, there is an
16 additional state. That would be South Carolina.

17 Q. Did not South Carolina also have an issue
18 pertaining to the 911 charges?

19 A. Yes, it did.

20 Q. Just one more topic, Mr. Fuentes, I have
21 some questions about the customer service calls. For
22 a regular TracFone customer -- can I call them retail
23 customers as opposed to Safelink or Lifeline
24 customers? Is that fair?

25 A. That's fine.

1 Q. How are calls to customer service managed
2 for retail TracFone customer?

3 A. Just like any other company really. You
4 call the 1-800 number. You would go through a series
5 of IVR prompts, and one of the options would be to
6 speak to a customer service representative. You
7 would be connected directly to a customer service
8 representative to address the issue of your phone.

9 Q. And is that the same system that would be
10 utilized by the Safelink customer to get to customer
11 service?

12 A. That is correct.

13 Q. Has TracFone ever analyzed the average
14 waiting time for retail TracFone customers to reach
15 customer service?

16 A. Yes, it has, but at the top of my head I
17 don't recall the amount of time that they could spend
18 on hold.

19 Q. Have you ever experienced your own customer
20 service system?

21 A. Actually, I have, yes.

22 Q. Have you ever experienced any problems
23 getting to customer service -- dropped calls, for
24 example -- the things that usually or can happen?

25 A. Never.

1 Q. Are you aware of customers generally with
2 TracFone who have had difficulty or at least they
3 perceive difficulty or inordinate lengths of time on
4 hold with TracFone?

5 A. I would have to check with our customer
6 service representatives. Like any other company, I'm
7 sure you have customers that are not happy with the
8 amount of wait time they have to experience
9 sometimes.

10 Q. Now, under that circumstance then -- and I
11 understand you're attempting to change the TracFone
12 customer service system so that it would allow no
13 charges or no minute deductions for customer service.
14 But at the present time, a Safelink customer,
15 low-income customer, can expect that their minutes
16 are going to be deducted from the 67 total if they do
17 need to contact customer service?

18 A. Correct.

19 Q. And would it be fair to assume also that
20 because a low-income customer can't have a land line
21 Lifeline and a wireless Lifeline -- in other words,
22 double-dipping is prohibited -- it may be that the
23 low-income customers only source of phone into
24 TracFone is going to be their Safelink wireless?

25 A. Yes, that is true. That is a possibility.

1 Q. And so between now and the fourth quarter
2 of 2010, you would still require that the -- that
3 minutes in calls to customer service would be
4 deducted from the 67?

5 A. Yes.

6 Q. When you reach a TracFone customer service
7 representative, do they have a means by which to
8 reverse that minute deduction?

9 A. Not that I'm aware of.

10 Q. Will the free customer service calls apply
11 to both TracFone retail and Safelink customers?

12 A. I believe at this time a final
13 determination has not been made. What I could tell
14 you for sure would be Safelink customers.

15 MR. PROCTOR: If you could just give me one
16 moment. Judge, I'm sorry --

17 ALJ ARRENDONDO: Can we take a break? Why don't
18 we take a ten-minute break.

19 MR. PROCTOR: That would be great.

20 **(A break was taken.)**

21 ALJ ARRENDONDO: Okay. We're back on the
22 record.

23 Mr. Proctor, do you want to continue?

24 MR. PROCTOR: Thank you, Judge, yes. I have a
25 couple of more questions that arose from my own

1 cross, and then with permission of The Court or the
2 Commission and everyone else, Ms. Martinez asked me
3 to ask some questions as well, if that's acceptable.

4 ALJ ARRENDONDO: That's fine.

5 Q. Mr. Fuentes, right now how many Lifeline
6 customers participate in the Safelink program for
7 TracFone?

8 A. That's a number that we don't -- that we do
9 not give. I can provide it, but normally it's under
10 confidential settings that we provide the total
11 number of subscribers.

12 Q. But you know the number?

13 A. I do know the number.

14 MR. BRECHER: The witness has my permission to
15 answer that. We've made that number in public
16 filings, so I see no reason not to respond.

17 A. Okay. Just it's my job.

18 Q. I appreciate that very much. I thought
19 that you had given the number in your testimony at
20 some point but --

21 A. It was probably around the 2 million range
22 at that time. We're now at 3 million.

23 Q. That's the number I think that we believed
24 we had read somewhere. Thank you very much.

25 And thank you, Counsel.

1 The next question, we had a discussion
2 about how one acquires the Safelink phone and the
3 Safelink benefits, and we talked in terms of an
4 application directly to TracFone and then an
5 application that is in conjunction with another
6 benefit utility, benefit such as the Heat program
7 which is federally funded, the Help program, which is
8 a Utah electric benefit program, and then Questar
9 gas, the local retail gas distributor, is also
10 developing a low-income program.

11 Does TracFone object to the fact that a --
12 let's say a Heat -- a person who's applying for Heat
13 benefits comes in May to the DCC and asks for Heat
14 and at the same time they sign up for the Lifeline
15 program through TracFone. Does TracFone oppose that?

16 A. No.

17 Q. So that type of application would in fact
18 be managed and administered by DCC; correct?

19 A. Correct.

20 Q. Okay. Ms. Martinez had some questions, and
21 the first dealt again with your Washington state
22 offering, and in that case I'm familiar with your --
23 that TracFone's agreement, that not only was the
24 Safelink program going to be eligible for the
25 Lifeline benefit, the monthly contribution from the

1 federal USF, but also their Straight Talk program.
2 Now, that's not something that has been discussed in
3 Utah, I don't believe, but could you describe to the
4 Commission, please, what the expanded offering is in
5 the state of Washington?

6 A. The Straight Talk lifeline offering would
7 be a \$10 discount that a customer would receive on
8 purchase of a Straight Talk phone. They would have
9 two options. You have the unlimited plan, which
10 means unlimited usage for text calls for \$45, so it
11 would be minus a \$10 discount. Or for \$30 you would
12 receive, minus a \$10 discount, a thousand minutes
13 worth of calling which include -- let me see. I
14 think you might have it here on the -- plus 30
15 megabytes worth of texting.

16 That is an offering that the Washington
17 state commission requested. That is currently being
18 developed, but it's really to not us -- up to us.
19 This is a brand exclusively sold out of Wal-Mart, so
20 we are currently discussing with Wal-Mart this
21 condition, and really at the end of the day it's
22 Wal-Mart making the determination whether or not they
23 would agree to such an offering.

24 Q. As I understand, the Straight Talk program
25 that was offered or is to be offered in Washington

1 state, the participant has to qualify for a Lifeline
2 benefit just as they would for the Safelink; is that
3 correct?

4 A. Same, same.

5 Q. In the case of Straight Talk, they have to
6 purchase a phone?

7 A. Correct.

8 Q. There is no free phone associated?

9 A. No, there is not.

10 Q. And may I assume then they have to buy the
11 phone at Wal-Mart?

12 A. Yes, they would. They would purchase it as
13 a regular Straight Talk customer and they would
14 contact us to sign up for the benefit afterwards.

15 Q. And so if they chose the Straight Talk plan
16 that was \$45, instead of paying \$45 to Wal-Mart, they
17 would pay then \$35?

18 A. To purchase the air time card itself each
19 month?

20 Q. Right.

21 A. Depending on which value, the 30 or the 45.
22 The 45 would end up being more or less \$35. The \$30
23 card would be \$20.

24 Q. Are these only in-store purchases?

25 A. Yes. Or if they have access to the

1 internet. It's conceivable that there might not be a
2 Wal-Mart in their area.

3 Q. That's not conceivable.

4 A. It's very hard to believe, but, yes, there
5 might be.

6 MR. BRECHER: For the record, there is no
7 Wal-Mart in my hometown or anywhere near where I
8 live.

9 MR. PROCTOR: Where do you live? I want go
10 there. I'm sorry.

11 Q. And then I assume Wal-Mart and TracFone
12 would then somehow pass through the federal -- the
13 monthly contribution?

14 A. Correct. We're still trying to work out
15 how that will be done, and it takes a little time.
16 This is a very, very unique offering.

17 Q. Is it -- has that plan been offered as part
18 of the Lifeline from TracFone in any other state?

19 A. Not that I'm aware of.

20 Q. Next series of questions has to deal with
21 the amount of minutes that you are making available
22 to the Safelink customer in order to get in excess of
23 the 67. There's been some discussion, and I believe
24 it might even appear in your testimony that a
25 30-minute card, which in Safelink terms right now is

1 a 50-minute card -- is that card available in stores?

2 A. No. It is what we term as a web exclusive.

3 Q. And so in order to get 50 extra minutes for
4 9.99, the low-income person, the Safelink participant
5 would have to have access to the internet?

6 A. Yes.

7 Q. But as to the other cards that you're
8 offering -- 60, 90, and 120 is my recollection. Am I
9 incorrect? Excuse me. 100, 125, and 150, are those
10 the other three options for excess minutes that are
11 being offered in Utah?

12 A. I'd have to check for sure, but it would
13 have to be same 60, 90 to 120 would be offered at
14 stores.

15 Q. Do you offer -- so the lowest amount that a
16 Safelink participant would have to pay to get excess
17 minutes in a store, either can't get to or don't have
18 internet access, is 19.99; is that right?

19 A. That is correct.

20 Q. Do they pay sales tax on that 19.99?

21 A. I would assume so, but I'm not familiar
22 with the tax laws in the state, but if they purchase
23 it, I would assume they do.

24 Q. That would be the phone card purchase from
25 Wal-Mart or Target or whatever?

1 A. Uh-huh.

2 Q. So let me recap then. So the Safelink, the
3 low-income consumer, he gets free 67 minutes. It's
4 going to cost him \$20 for any extra minutes unless he
5 can get on online; is that right?

6 A. For the 30-minute card?

7 Q. Yeah.

8 A. Yes.

9 Q. Has TracFone through part of its Safelink
10 program offered any lesser amount of excess minutes
11 for less than 9.99?

12 A. No, not that I'm aware of. Just --

13 Q. Go ahead.

14 A. But to follow up one thing, less than
15 7 percent of our base total goes and purchase air
16 time cards. They stay within their minutes and they
17 use it for exactly what the phone was intended, for
18 quick conversations, a way an employer can reach you,
19 an emergency which is not just dialing 911. It can
20 just be somebody calling you to tell you that, heaven
21 forbid, your son or daughter was injured in school.
22 It's just a tool that is literally a lifeline to
23 them. And the majority of our base, 93 percent of
24 our base, do not purchase any air time cards
25 whatsoever.

1 Q. That's in testimony; correct?

2 A. Yes.

3 Q. So the ones I'm talking about then are the
4 low-income persons who only have your phone who need
5 extra minutes.

6 A. Or choose.

7 Q. Or choose. I agree. For example, if they
8 are on hold with TracFone customer service the next
9 couple of months and they chew up 20 minutes, they
10 are going to have to buy some extra minutes to get by
11 maybe that month.

12 A. Or if they are using a land line, they can
13 use their land line.

14 Q. In Florida doesn't TracFone offer Safelink
15 customers as little as \$3 for excess minutes?

16 A. Yes. The only exclusive in Florida is the
17 Safelink card itself in the 3, 5 and \$10
18 denomination.

19 Q. So they don't get any base minutes with
20 their card? I don't understand what you just said.

21 A. I can't remember now exactly the number of
22 minutes that are provided. I think \$3 is 15 minutes,
23 \$5 is 25 minutes, and \$10 gives you 50 minutes, I
24 believe. But it's a card that is not sold very much,
25 if any at all. It's only exclusive through CVS right

1 now in the state, and it really it was a condition
2 that was placed on us by the Florida Public Service
3 Commission.

4 MR. PROCTOR: Mr. Fuentes, thank you very much.
5 Thank you, Judge.

6 ALJ ARRENDONDO: Thank you, Mr. Proctor.

7 Mr. Meacham.

8 MR. MEACHAM: Thank you, Your Honor.

9 **CROSS-EXAMINATION**

10 **BY MR. MEACHAM:**

11 Q. Mr. Fuentes, my name is Steve Meacham, and
12 I represent Utah Rural Telecom Association, an
13 association of independent rural communication
14 providers around the state. We are actually about
15 80 percent of the geography and probably serve 20
16 percent the population.

17 Just a couple of questions about -- or for
18 clarification to begin with. Refresh my memory: 911
19 calls are not counted against the 67 minutes?

20 A. That is correct.

21 Q. Calls that aren't completed are not counted
22 either?

23 A. No, they are not.

24 Q. In your testimony -- in your
25 cross-examination when you were speaking to

1 Mr. Ginsberg you said that TracFone is not seeking
2 support from the State Universal Service Fund?

3 A. That is correct.

4 Q. Is that a commitment to never seek it?

5 A. That's a good question. At this time we
6 are only seeking federal funds. That would be -- I
7 wouldn't -- I can't even say yes or no whether or not
8 we would request to seek State Universal Service Fund
9 at some point. Right now the focus has only been the
10 federal, and I'm not a lawyer, but I'm assuming
11 there's a whole different procedure that we would
12 have to go through to get state funding, which we
13 never requested.

14 Q. Okay. I know in your testimony you
15 addressed the 911 statute which is 69-2-5 in the Utah
16 Code.

17 A. Uh-huh, yes.

18 Q. You analyzed TracFone's obligation insofar
19 as whether or not a customer has a billing address.
20 Is that basically -- your approach is "If you don't
21 have a billing address you can't pay 911 surcharges"?

22 A. Not only from a company perspective but
23 this is an industry wide issue when it comes to 911
24 fees. All prepaid have the same issue because it's
25 pay as you go and there is no billing address

1 associated with a prepaid customer.

2 Q. Did you analyze that at all through the
3 section just below that, that it's -- I'm not
4 expecting -- I understand you're not a lawyer, so I
5 don't want a legal conclusion. I'm trying to figure
6 out what your analysis was. In 69-2-5 Section 3, it
7 gives you three choices and you chose number two
8 referring to radio communications, access lines,
9 billing addresses. But then there is an
10 all-encompassing section below that number three that
11 talks about any other service including -- did you
12 look at it from that standpoint or was it strictly
13 that number two where you have a billing address?

14 A. I would -- I don't know. I would need to
15 check with our counsel back in Miami.

16 Q. All right. Thank you. Now, on the 3rd of
17 May the chief of the Wireline Competition Agreement
18 with the FCC issued an order addressing a petition
19 from TracFone. Have you seen that?

20 A. Yes, I vaguely remember it.

21 MR. MEACHAM: Your Honor, could I distribute a
22 copy?

23 ALJ ARRENDONDO: That's fine. Do you want to
24 mark this as an exhibit?

25 MR. MEACHAM: Perhaps.

1 Q. Are you familiar with the background of
2 this order?

3 MR. BRECHER: I have a question. Is this being
4 admitted into evidence?

5 MR. MEACHAM: It may.

6 A. Yes, I am familiar with it somewhat.

7 Q. Okay. Well, maybe you could just give me a
8 narrative. What does this order address?

9 A. Basically this order addressed the
10 requirements of E911, 911, by TracFone.

11 MR. BRECHER: Mr. Fuentes, have you read this
12 order in its entirety?

13 THE WITNESS: I have not read it.

14 MR. BRECHER: I would direct the witness not to
15 answer because it's an order he's not familiar with.

16 MR. MEACHAM: I guess we could read the order on
17 the record if you would like. It's not very long.

18 MR. BRECHER: As much as I would hate to burden
19 everybody with reading in the record an FCC order, if
20 you're going to move it into evidence, I would rather
21 have that than have a witness inadvertently misstate
22 what an order says when a witness hasn't read it. I
23 don't think that would be in anybody's interest.

24 MR. MEACHAM: Your Honor, I would suggest we
25 take four or five minutes off the record and allow

1 him to read it because I would like him ask him a few
2 questions about it. It's relevant. It goes to the
3 911 issue. It goes to whether or not actually
4 supporting the 911 service is in the public interest
5 and was a requirement imposed on TracFone when they
6 got their forbearance order in 2005.

7 MR. BRECHER: That's incorrect. That has
8 nothing to do with forbearance order. And if that is
9 the premise you're operating under, has just -- read
10 the order.

11 THE WITNESS: I just read it.

12 ALJ ARRENDONDO: We have post-hearing briefs. I
13 don't see why this couldn't be raised in a
14 post-hearing brief.

15 MR. MEACHAM: It could or you could take
16 administrative notice of it, Your Honor.

17 ALJ ARRENDONDO: It's public record. I guess
18 you could raise it in a post-hearing brief. My
19 concern is I agree with Mr. Brecher, if he hasn't
20 read it --

21 MR. MEACHAM: It happens all the time here, Your
22 Honor.

23 ALJ ARRENDONDO: Well, if you're raising an
24 objection, I'm going to sustain it, and you can raise
25 it in a post-hearing brief or -- we'll take

1 administrative notice of the order.

2 MR. MEACHAM: If you take administrative notice
3 of it, that's fine.

4 ALJ ARRENDONDO: Okay.

5 MR. MEACHAM: Can I just have one minute.

6 Nothing further.

7 ALJ ARRENDONDO: All right. Thank you,
8 Mr. Meacham.

9 Redirect.

10 MR. BRECHER: Thank you, Your Honor.

11 **REDIRECT EXAMINATION**

12 **BY MR. BRECHER:**

13 Q. Mr. Fuentes, I'm going to ask you a series
14 of questions that relate back to the questions you
15 were asked by Mr. Ginsberg and Mr. Proctor and to a
16 certain extent Mr. Meacham. Bear with me while I go
17 through my notes. I hope you remember your prior
18 discussion with each of them.

19 Mr. Ginsberg asked you about whether
20 TracFone's Safelink wireless offering is comparable
21 to the offerings of other ETCs, specifically ILECs.
22 Do you recall that discussion?

23 A. Yes.

24 Q. Now, is it your understanding that the
25 offerings of other ETCs in Utah provide unlimited

1 local service?

2 A. Yes, that is correct.

3 Q. And is that service limited to local
4 calling areas?

5 A. Only local, yes.

6 Q. Does it include any other services?

7 A. No, it doesn't contain any of the features,
8 let's say, TracFone has.

9 Q. Does it include long distance?

10 A. No, it does not.

11 Q. Does it include international calls?

12 A. No, it does not.

13 Q. Do they include call waiting?

14 A. No, they do not.

15 Q. Do they include voice mail?

16 A. No.

17 Q. Do they include caller ID?

18 A. No.

19 Q. And in how many jurisdictions has TracFone
20 been designated as an eligible telecommunications
21 carrier?

22 A. 29 states.

23 Q. And isn't it correct -- and I realize
24 you're not a lawyer. But is it your understanding
25 that the comparability requirement is applicable to

1 every jurisdiction where TracFone seeks designation
2 as an ETC?

3 A. That is correct.

4 MR. PROCTOR: Objection. His own witness said
5 he's not a lawyer, and then he asked him a question
6 calling for a legal conclusion. And as a consequence
7 the objection should be sustained. Furthermore, he's
8 leading the witness, number two, and, third, these
9 are asked and answered with respect, for example, to
10 how many states they have been certified in.

11 MR. BRECHER: I'll move on.

12 ALJ ARRENDONDO: I'll overrule the objection.
13 We talked about comparability.

14 Q. Are you aware of any jurisdiction, state or
15 federal, that has concluded that TracFone's Safelink
16 wireless service is not comparable to that of
17 incumbent LEC's within the comparability requirements
18 of the FCC's rules?

19 A. No.

20 Q. I believe it was Mr. Ginsberg that asked
21 you about the status of the Colorado 911 point of
22 sale legislation and TracFone's decision to withdraw
23 its application. Has that Colorado legislation been
24 enacted into law yet?

25 A. No. The governor -- it's on his desk, but

1 he has not signed it.

2 Q. Just to be clear so the record is clear,
3 the Colorado point-of-sale legislation which you
4 described in response to Mr. Ginsberg has been passed
5 by both houses of the state legislature; is that
6 correct?

7 A. That is correct.

8 Q. But has not yet been signed by the
9 governor?

10 A. That is correct.

11 Q. California, Mr. Ginsberg asked about the
12 actions of the California Public Utility Commission,
13 and you indicated that the California Public Utility
14 Commission had issued an order in response to
15 TracFone's application for rehearing; is that
16 correct?

17 A. That's correct.

18 Q. Could you summarize what that order did,
19 and if you don't recall, don't guess.

20 A. I don't recall all of it, but I know that
21 it was denied without prejudice.

22 Q. Let's be clear. Are you testifying that
23 the application for designation as an eligible
24 telecommunications carrier was denied without
25 prejudice?

1 A. Correct.

2 Q. Does that mean TracFone may reapply to be
3 an ETC in California?

4 A. Absolutely, yes.

5 Q. And was the prior resolution, which is
6 attached to one of the witness's testimony -- I
7 believe it was Ms. Murray, but I don't recall. Was
8 the prior California PUC resolution vacated?

9 A. Yes.

10 Q. I believe you may have answered --
11 testified in response to a question from Mr. Ginsberg
12 that there was a dispute between TracFone and
13 California regarding 911 fees. Do you recall that
14 discussion?

15 A. Yes.

16 Q. Is that accurate?

17 A. No.

18 Q. There is no dispute?

19 A. There is no dispute when it comes to 911
20 fees in California.

21 Q. Mr. Ginsberg also asked you about the
22 Federal Universal Service Fund, and I believe that he
23 asked you whether TracFone contributes to the Federal
24 Universal Fund using the Safe Harbor.

25 A. Yes, I remember that.

1 Q. Do you know what the federal Safe Harbor
2 is?

3 A. I'm not entirely familiar with Safe Harbor,
4 but I do know that we are not paying on Safe Harbor.
5 We pay directly for each customer.

6 Q. Based on actual usage?

7 A. Actual usage.

8 Q. Again, let's be clear. With Federal
9 Universal Service you don't pay per customer; is that
10 correct?

11 A. Correct.

12 Q. You pay based on revenues?

13 A. Based on revenues.

14 Q. And more precisely you pay based on
15 interstate and international telecommunications
16 service; is that correct?

17 A. That's correct.

18 Q. Are you testifying that TracFone pays based
19 upon its actual interstate and international
20 telecommunications service revenues?

21 A. That is correct.

22 MR. PROCTOR: Your Honor, if I might, it seems
23 every question is duplicate. Saying "let's be clear"
24 does not make it a new question. It becomes
25 repetitive and becomes a leading question. The

1 objection is that it's asked and answered.

2 ALJ ARRENDONDO: Overruled.

3 Q. Mr. Ginsberg asked you how many Lifeline
4 customers there were in the state of Utah. Do you
5 recall that discussion?

6 A. Yes.

7 Q. And you testified, based on my notes at
8 least, that there were 29,182 Lifeline customers?

9 A. Yes.

10 Q. Do you know what percentage of qualified
11 low-income households in Utah are enrolled in the
12 Lifeline program?

13 A. 12.4 percent.

14 Q. That's based on what?

15 A. That's based on the FCC's model showing
16 that that's the appropriate number.

17 Q. You also indicated that in your discussion
18 with Mr. Ginsberg that there are several states which
19 provide databases for ETCs to access; is that
20 correct?

21 A. That is correct.

22 Q. And you indicated that there were Florida
23 and Texas?

24 A. That is correct.

25 Q. Are there any others?

1 A. Maryland is also another state that
2 provides database. Going through all 25 in my
3 head -- that I'm aware of those are the states.

4 Q. There could be more?

5 A. There could be more, but that's at the top
6 of my head.

7 Q. Does Florida impose a per-transaction fee
8 for TracFone to access that database?

9 A. No, it does not.

10 Q. Does Texas impose a per-transaction fee?

11 A. No, it does not.

12 Q. Does Maryland impose a per-transaction fee
13 to TracFone to access that database?

14 A. No, it does not.

15 Q. Are you aware of any state that imposes a
16 per-transaction fee to access any database?

17 A. No state that I'm aware of.

18 Q. Now, you indicated in response to other
19 questions from Mr. Ginsberg that TracFone did not
20 believe it was obligated to contribute to the State
21 Universal Service Fund in Utah because it couldn't
22 identify which calls were intrastate. Is that an
23 accurate characterization?

24 A. That was my statement, but I was incorrect.

25 Q. Would you correct the statement, please.

1 A. We can identify based on intrastate and
2 interstate. It's the fact that the statute is just
3 not applicable to TracFone.

4 Q. So, again, to be clear, with apologies to
5 Mr. Proctor, TracFone's basis for not contributing to
6 the Utah Universal Service Fund is not based on any
7 inability to identify intrastate usage?

8 A. That is correct.

9 Q. You indicated that there were about six or
10 seven states that enacted point-of-sale fee
11 legislation. Is that an accurate number?

12 A. It's a little higher. It's probably about
13 nine or ten with a few more that are pending
14 signatures.

15 Q. If Utah were to enact legislation that
16 specifically obligated providers of nonbilled
17 services such as prepaid wireless service to
18 contribute to the State Universal Service Fund, would
19 TracFone comply with that requirement?

20 A. Yes, it would.

21 Q. Mr. Proctor asked you a series of questions
22 about whether TracFone rounds up minutes. Do you
23 recall that discussion?

24 A. Yes.

25 Q. So far as you're aware, has TracFone ever

1 represented on the record of this proceeding that it
2 does not round up minutes?

3 A. I'm sorry. Can you repeat the question.
4 Forgive me.

5 Q. Let's back up a little bit. Let me try to
6 clean things up a little bit. Would you explain your
7 understanding of the concept of rounding up minutes.

8 A. Basically if a customer uses the phone for
9 35 seconds or 36 seconds or so, it is rounded up to
10 the next minute, which is an industry practice. It's
11 not just TracFone. It's an industry wide practice
12 that is used.

13 Q. To be clear -- sorry -- it's whole-minute
14 rounding. You round up to the next whole minute.

15 A. Yes.

16 Q. And let's go back to the question I started
17 to ask you before. Has TracFone ever indicated on
18 the record of this proceeding that it does not engage
19 in whole-minute rounding?

20 A. No.

21 Q. Has TracFone ever indicated on the record
22 of this proceeding that it would not utilize
23 whole-minute rounding in the case of Safelink
24 wireless customers?

25 A. No.

1 Q. Has TracFone ever indicated on the record
2 of any ETC proceeding in any jurisdiction that it
3 would not utilize whole-minute rounding?

4 A. No.

5 Q. Has any state commission that you're aware
6 of imposed an obligation not to engage in
7 whole-minute rounding?

8 A. No.

9 Q. Is it your understanding that whole-minute
10 rounding, as you've described it, is a common
11 practice in the commercial mobile wireless industry?

12 A. Yes.

13 Q. Do other wireless providers engage in
14 whole-minute rounding?

15 A. Yes.

16 Q. Now, TracFone is a reseller; is that
17 correct?

18 A. That is correct.

19 Q. So TracFone buys usage from other
20 providers?

21 A. That is correct.

22 Q. Could you identify some of those providers.

23 A. AT&T, Verizon, T-Mobile.

24 Q. When those companies -- AT&T, Verizon,
25 T-Mobile -- sell service to TracFone, do they bill in

1 partial minutes?

2 A. No. It's on a whole-minute rounding.

3 Q. So TracFone is charged by those providers
4 in whole-minute increments; is that correct?

5 A. Correct.

6 Q. I believe Mr. Proctor asked you about South
7 Carolina.

8 A. Yes.

9 Q. I believe I heard you say that there was
10 a -- if I'm misstating something, correct me -- but
11 there was a problem in South Carolina with 911 fees?

12 A. Yes.

13 Q. Is that accurate?

14 A. No. It is not accurate.

15 Q. Let's clarify the record here. Was there a
16 dispute between TracFone and the South Carolina
17 Public Service Commission regarding the applicability
18 of 911 fees?

19 A. No, not on 911 fees.

20 Q. You were asked a series of questions about
21 the practice of charging for calls to customer
22 service. Are you familiar with the 611 dialing code?

23 A. Yes.

24 Q. Could you explain for the record what the
25 611 dialing code is.

1 A. 611 dialing code is a code that we will
2 eventually develop -- we are currently in the process
3 of developing which will provide free customer
4 service calls.

5 Q. Explain how that will work. I'm a
6 customer. I have a problem. What do I do?

7 A. You dial 611 and it will connect you
8 straight to our 1-800 number. And you would go
9 through a series of prompts to go through customer
10 service.

11 Q. If I dialed that 611 code, will I be
12 charged?

13 A. No.

14 Q. Will any customer be charged? Will any
15 Safelink customer be charged?

16 A. Any Safelink customer, no.

17 Q. If you can answer the question -- if you
18 can't, just say you can't -- what is involved for the
19 company to implement that 611 dialing code?

20 A. I do not know all the details but I know
21 it's a significant operation that they have to
22 implement.

23 Q. And are people within TracFone currently
24 working on that?

25 A. They are currently looking into it, yes.

1 Q. And is it the company's goal to implement
2 that as soon as possible?

3 A. Yes.

4 Q. Now, you were asked about a service called
5 Straight Talk. Is that currently being offered as a
6 Lifeline offering in any jurisdiction?

7 A. No, it is not.

8 Q. But it has been proposed to be offered in
9 the state of Washington; is that correct?

10 A. Correct.

11 Q. How soon can that be implemented?

12 A. We have a guideline right now -- be
13 anywhere between three to four months to have
14 implementation of Straight Talk.

15 Q. If you know the answer, what are TracFone's
16 plans to expand Straight Talk as a Lifeline offering
17 in other jurisdictions?

18 A. I'm not aware of any other plans about
19 Straight Talk in any other jurisdictions.

20 Q. Finally, you were asked about low-volume
21 cards, and you indicated that those are only
22 available in the state of Florida?

23 A. Correct.

24 Q. Why are those only available in the state
25 of Florida?

1 traffic that's interstate?

2 A. I would need to double back on that, but,
3 yes, it would be in that case.

4 Q. And in South Carolina, for example, you
5 indicated that dispute wasn't 911, but it was paying
6 into the state USF fund, was it not?

7 A. Yes.

8 Q. And as I understand it, in South Carolina
9 you've agreed to pay into the state USF fund?

10 A. On the Safelink customer -- I believe it's
11 on Safelink customers on the revenue that they would
12 purchase additional air time cards. It would be
13 based on all that.

14 Q. It would be paying in based on the
15 intrastate usage?

16 A. I would have to check. I do not entirely
17 know what the final agreement was on that, but it
18 would be based off of our Safelink customers making
19 purchases.

20 Q. Not the TracFone customers but Safelink
21 customers?

22 A. Safelink only, yes.

23 Q. Now, you were asked questions for
24 reasons -- in your testimony you say that reason is
25 that you don't bill -- you don't have retail

1 intrastate rates billed as your reason for not paying
2 in the fund; is that right?

3 A. Correct.

4 MR. BRECHER: Which one are you talking about?

5 Q. State USF.

6 A. Yes, that is correct.

7 Q. That's the fund I'm --

8 A. Yeah.

9 Q. But you're able to that actually tell us
10 what intrastate usage is in the state of Utah?

11 A. We can, but we believe the law does not
12 apply to us right now.

13 Q. The distinction is between intrastate usage
14 and billed intrastate rates. Is that the distinction
15 you're making?

16 A. I believe that would be the distinction,
17 but, again, I'm not the tax attorney. That is a
18 question that if you need more clarification I would
19 be more than happy to provide.

20 Q. Does any wireless company have intrastate
21 rates?

22 A. I would assume they do or do not. I don't
23 work for any other wireless company.

24 Q. When I buy a TracFone card for 200 minutes,
25 that phone allows me to make intrastate calls and

1 interstate calls, does it not?

2 A. It does.

3 Q. When I sign up for Verizon for 700 minutes,
4 that allows you to make intrastate calls and
5 interstate calls, does it not?

6 A. Yes.

7 Q. If I'm missing the distinction here --

8 MR. BRECHER: I'm going to object. I think if
9 counsel reviews Mr. Fuentes's testimony, there is a
10 lengthy explanation of the justification that the
11 company sites for the inapplicability of the Utah
12 statute, and I think if he looks at it, he'll see it
13 is not based on the ability to identify intrastate
14 versus interstate minutes. In any event, the
15 testimony speaks for itself. It can be briefed at
16 any time.

17 MR. GINSBERG: I understand it speaks for
18 itself. That's why I'm asking him questions.

19 ALJ ARRENDONDO: I'll sustain the objection.

20 Q. Is Utah the first state that you have made
21 the offer to help pay for the cost to a state agency
22 that you'll be imposing as a result of ETC being
23 granted in the state?

24 A. Yes.

25 Q. So all of these other states that were

1 given to you -- California, Maryland, Texas -- maybe
2 a few others --

3 A. Uh-huh.

4 Q. -- do you happen to know if in those states
5 the third party vendor that -- third party that is
6 doing the verification, that's what you're referring
7 to as funded out of the state Universal Service Fund?

8 A. No, I do not. You would have to contact
9 Texas Public Utilities Commission. I believe that's
10 a contract that was made directly with them.
11 Maryland's database is done through the Department of
12 Human Resources, and it's a service they provide.

13 Q. So Utah is somewhat unique then in that the
14 verification is funded out of the State Universal
15 Service Fund, if you know the answer?

16 A. No, I really don't know the answer. Each
17 state has its own rules that govern.

18 MR. GINSBERG: Thank you.

19 ALJ ARRENDONDO: Thank you, Mr. Ginsberg.

20 Mr. Proctor.

21 MR. PROCTOR: Just one question if that's okay,
22 Counsel.

23 MR. BRECHER: Be my guest.

24 ///

25 ///

1 RECROSS-EXAMINATION

2 BY MR. PROCTOR:

3 Q. You said that the Maryland Department of
4 Human Resources provides the database or access to
5 it. To whom -- is it a widely available database to
6 other than ETCs or other utilities who may need that
7 information?

8 A. I don't know for sure. I know that all
9 ETCs in the state of Maryland use this database. It
10 is a database that is developed and corrected each
11 month. And each ETC has to sign a confidentiality
12 agreement to access the database, which basically
13 they do not see any information other than a simple,
14 yes, this person is on the list or, no, they are not.

15 Q. Is it possible it's a database that's
16 utilized by, for example, low-income health clinics
17 or hospitals? I mean a wide variety of people who
18 can use the information as to whether or not somebody
19 is eligible for a particular social service.

20 A. I don't know the answer to that. You would
21 have to ask them.

22 MR. PROCTOR: Thank you very much.

23 ALJ ARRENDONDO: Mr. Mecham.

24 MR. MEACHAM: One quick questions.

25 ///

RECROSS-EXAMINATION

BY MR. MEACHAM:

Q. Today what happens when a TracFone customers calls 611?

A. It's not set up. We are currently in the process of developing 611.

Q. It's blank, nothing happens; correct? It doesn't go to the company you are reselling?

A. No, I don't know. I would have to dial 611 on my TracFone to see what it does. I've never tested it.

MR. MEACHAM: Thank you.

ALJ ARRENDONDO: Mr. Brecher?

MR. BRECHER: Nothing further, Your Honor.

ALJ ARRENDONDO: Thank you. All right.

Thank you.

THE WITNESS: Thank you.

ALJ ARRENDONDO: We'll go with the Division then.

MR. GINSBERG: The Division actually has Casey Coleman who filed prefiled testimony, also has the testimony of Sonya Springer that also wanted to present that deals with this cost issue that has come up. And I've handed out an exhibit that she put together earlier today, but we can go ahead and

1 present Mr. Coleman first.

2 ALJ ARRENDONDO: All right. Mr. Coleman, would
3 you come up, please, to the witness stand.

4 Raise your right hand for me, please. Do
5 you solemnly affirm that the testimony you're about
6 to give is the truth, the whole truth, and nothing
7 but the truth?

8 THE WITNESS: Yes.

9 ALJ ARRENDONDO: Thank you.

10 **DIRECT EXAMINATION**

11 **BY MR. GINSBERG:**

12 Q. Would you state your name for the record.

13 A. My name is Casey J. Coleman.

14 Q. And you have filed prefiled direct
15 testimony in this proceeding; is that correct?

16 A. Yes.

17 Q. And there's no exhibits attached to the
18 testimony consisting of 20 pages?

19 A. Correct.

20 Q. Could we have that marked as DPU Exhibit 1.

21 ALJ ARRENDONDO: That's his testimony you said?

22 MR. GINSBERG: Yes.

23 ALJ ARRENDONDO: DPU Exhibit 1.

24 Q. Do you have any corrections to make of that
25 testimony that you want to make?

1 A. No.

2 Q. Okay. So I would like to -- if those
3 questions were asked you today, that would
4 essentially be your testimony?

5 A. Yes.

6 MR. GINSBERG: So I would ask DPU Exhibit 1 be
7 admitted.

8 ALJ ARRENDONDO: No objections? Admitted.

9 Q. I would ask if you go ahead and provide a
10 summary of your testimony and also you have the
11 opportunity to provide any live rebuttal testimony
12 that you wish to present that -- either to the
13 rebuttal testimony that was filed by TracFone earlier
14 or testimony that you think is needed to present
15 based on the testimony that's been presented today.

16 A. Okay. Thank you. My testimony from the
17 Division basically began with looking at the
18 framework for an ETC on the federal level and what
19 some of those requirements are. As the Division we
20 analyze the application of TracFone and tried to look
21 at the information they provided to see if there was
22 going to be -- that those qualifications met. After
23 that analysis we went also and looked at a public
24 interest standard, and there is a public interest
25 standard that's required on the federal level, but we

1 also looked at the public interest standard because
2 we believe there's been some different dockets and
3 cases as far as a body of work that shows kind of
4 what the public interest standard has been within our
5 state of Utah.

6 Dealing with the public interest standard,
7 we basically had a conclusion that TracFone had met
8 the requirements needed to be clarified or designated
9 as an ETC. There are some points I wanted to clarify
10 or expand upon in my testimony that I think will help
11 to maybe clear up the record with that. On Lines 275
12 and 276 of my testimony I just asked the question as
13 far as has TracFone met the public interest standard
14 to be an ETC to provide Lifeline services, and then I
15 say yes and then my testimony goes onto that.

16 What isn't said in that question, what the
17 premise was of my testimony and also what the
18 position and the premise of the Division still is is
19 that TracFone would be paying into the state USF
20 funds. And if you take kind -- and the other fund
21 which was what my testimony was at the end, if you
22 take that qualification first that TracFone is paying
23 into the subsequent funds, being the state USF fund,
24 911 funds or any funds that is applicable to
25 telecommunications companies, before granting an ETC

1 designation we believe they should be following the
2 same rules, requirements, and regulations that would
3 be required of the other telecommunication companies,
4 and that's basically just going along with being fair
5 and equitable and treating all companies the same.

6 Also, I think it's important to point out
7 that with the Commission they are having the
8 opportunity to grant an ETC designation, but granting
9 an ETC is not mandatory. Basically it's a voluntary
10 designation that the Commission can choose if they
11 feel a company is following and going along with the
12 criteria that's out there. So there will be
13 testimony and a lot of different elements will be
14 provided today, but the bottom line is there is a
15 Lifeline program in the state currently right now.
16 Will TracFone add another element to that? Yes. But
17 does that mean the Commission has to grant an ETC if
18 there's some other things that haven't been worked
19 out or resolved? Our position as the Division is
20 that no, that ETC doesn't have to be granted. And
21 maybe waiting a period of time or saying, "Well,
22 we'll fix these problems. Granting an ETC may be a
23 little premature."

24 I believe, if I heard correctly,
25 Mr. Fuentes brought the up fact that dealing the

1 costs -- dealing with the contract with DCC and some
2 of those other elements, we don't know specifically
3 some of those aspects of it. As a Division we are a
4 little uncomfortable in saying "Let's grant an ETC"
5 without some of those elements being worked out and
6 clarified with it as well.

7 One thing that was brought up also in
8 Mr. Fuentes's testimony is the fact TracFone could be
9 ready to go within three weeks of being granted an
10 ETC application. The Division has talked to DCC. We
11 tried to come to an understanding as far as what it
12 would take if they were to follow the guidelines that
13 TracFone has agreed they would as far as verification
14 with DCC. And the Division is not 100 percent
15 confident that within three weeks DCC would be able
16 to handle the increased flow and increased
17 requirements that would come from an application.

18 Again, that's something that may need to be
19 looked at and understood better as far as the
20 contract with DCC. How is that going to work, not
21 specifically with TracFone, but with anybody that
22 comes in as far as a Lifeline customer, an ETC or
23 prepaid wireless or -- I'm not sure how Mr. Brecher
24 termed it -- the non-billed -- whatever it was --
25 other than prepaid wireless.

1 So as the Division, we do believe that the
2 service TracFone is offering is one that meets the
3 ETC requirements on that respect of it, but it may be
4 a little premature to say that we're ready as far as
5 a state or even that TracFone is it ready, knowing
6 some of the elements that are out there to be
7 classified as an ETC designation.

8 In my testimony I talk about a cost-benefit
9 analysis, and I believe the public interest standard
10 in our state is pretty clear. There has to be some
11 correlating benefits that outweigh any of the
12 negative. In my testimony I believe if we can get
13 past some of the elements as far as paying into the
14 fund, the cost of other things, that the service that
15 TracFone is offering is one that could be beneficial
16 to the low-income population. But to grant the ETC
17 without looking at some of those other elements, I
18 think would be difficult and it doesn't seem to be
19 good public policy to grant an ETC designation
20 without clarification on some of those elements.

21 Also, the USF fund that has been talked
22 about somewhat at length here, the Division is a
23 little uncomfortable with the facts, and maybe part
24 of it is because the state USF fund in Utah in and of
25 itself is somewhat unique as far as the state USF

1 fund. We recognize TracFone at application time I
2 believe said it was 25 states, and I believe
3 Mr. Fuentes said it was 29 states now that have been
4 approved, but not all 29 of those states have a state
5 USF fund. That number would be significantly less
6 than that, and again not each state USF fund is
7 administered the way it is here within our state.
8 And in our state what we've done, as a way to cover
9 the costs of the Lifeline program and what would be
10 required of the verification that is required by the
11 state, those funds come from the state USF fund.

12 And so, yeah, we recognize and feel that
13 maybe there is a difference between other states, but
14 we also believe as a Division where we're
15 administrators for the state USF fund, we have
16 responsibility to make sure that USF fund is able to
17 cover the costs and that everybody is treated
18 equitably as far as what they are going to need to
19 pay in and different things with that as well.

20 Part of our concern is as a Division we did
21 an analysis and talked with other states who Lifeline
22 had been given permission to service as an ETC
23 designation. We called to see if they had state USF
24 funds. Some of the states obviously didn't have a
25 state USF fund. Some did. But in our analysis we

1 didn't find -- and I believe Mr. Fuentes has
2 confirmed that as well -- they haven't paid into any
3 state USF fund in any jurisdiction where they've been
4 granted an ETC. And for us, as far as the state of
5 Utah, that creates a problem as far as where does the
6 cost recovery come from for these applications of the
7 increased part of it as well. We believe that's
8 something the Commission needs to look at and
9 definitely understand before granting ETC status.

10 Also, I wanted to clarify -- and I believe
11 Mr. Fuentes talked about this -- TracFone does not
12 currently seeking state USF funds at this time.
13 There obviously is a methodology and a possibility
14 that a company could ask for state USF funds. We
15 believe if TracFone ever wanted state USF funds, they
16 would need to reapply and ask for that specifically
17 because there are different criterion and different
18 requirements that is needed on state USF to be able
19 to do that. So we believe they need to come back in
20 and make sure if the Commission were to grant ETC
21 they would make sure to clarify that -- or state USF
22 they would need to do reapplication to be considered
23 and be eligible for that as well. And that kind of
24 sums up the testimony.

25 Q. Can you provide a little explanation of the

1 testimony that Ms. Springer will present and what
2 role you see for this charge that TracFone has
3 offered to pay and that you're presenting?

4 A. Yeah.

5 MR. BRECHER: I don't know if I'm going to
6 object or not. I find this a little bit irregular.
7 Couple things, first of all, I never heard of
8 Ms. Springer until today. There was an not prefiled
9 testimony. If she is going to attempt to submit
10 testimony, I suspect I will object based on surprise.
11 If she is, I think she be the one to summarize, not
12 Mr. Coleman.

13 MR. GINSBERG: I'm not asking him to summarize
14 the dollar amount but the role of this proposed
15 charge, and the schedule allows for live responsive
16 testimony. The issue of payments was brought up in
17 the rebuttal testimony a number of parties
18 including --

19 ALJ ARRENDONDO: Well, can you tell us what you
20 expect Ms. Springer to testify about, what she would
21 testify.

22 MR. GINSBERG: Her testimony will relate solely
23 to how that \$3 charge was calculated but not what the
24 proposal is with respect to that charge.

25 ALJ ARRENDONDO: Okay.

1 MR. GINSBERG: So her testimony relates to a way
2 of determining what the costs are.

3 ALJ ARRENDONDO: How to pay the DCC.

4 MR. GINSBERG: Estimate what the costs are for
5 DCC with respect to the work that will be associated
6 with additional applications that would be occurring
7 because of TracFone's ETC status.

8 ALJ ARRENDONDO: Okay. I'll let you -- have
9 you bring in Ms. Springer. You can question her. I
10 think that's good enough. I think that's what I
11 would allow Mr. Coleman to say essentially what
12 Mr. Ginsberg just said. So I'm going to overrule the
13 objection. If you want to present Ms. Springer for
14 additional testimony, you can raise an objection
15 there when Mr. Ginsberg attempts to do that. Go
16 ahead.

17 A. Can you restate the question for me.

18 Q. I'm asking for you to provide any kind of
19 context of the role of this -- TracFone offered to
20 pay some additional costs that are caused by their
21 ETC request; is that right?

22 A. Yes.

23 Q. Can you provide any responses to what the
24 purpose is of the Division presenting the \$3 proposed
25 charge?

1 A. Yes. The premise of the Division is that
2 companies are required to pay into the USF fund, you
3 know, wireless or any type of phone companies.
4 Basically the statute as it is now is they should pay
5 into the USF fund on 1 quarter of 1 percent of their
6 intrastate retail rates. We still believe that's
7 applicable to TracFone, but as they've said on
8 testimony and we've heard on the witness stand, they
9 are not able to come up with an amount they feel
10 comfortable that would meet that requirement. So as
11 an alternative for covering the cost that's going to
12 happen as these applications come in for the company
13 to help offset those expenses, the Division did an
14 analysis to try to determine what those costs would
15 be to be able to provide a number to TracFone that
16 say -- which they talk about in the testimony they
17 would be willing to cover those costs. In lieu of
18 paying what all the other companies pay and what is
19 going into the USF fund because for their business
20 model that doesn't work and isn't, in their mind,
21 applicable -- and I guess that's a legal argument I'm
22 not going to get into -- we proposed another option,
23 which is what Ms. Springer will present, and that's
24 the costs we estimated for DCC to process these
25 applications.

1 MR. GINSBERG: Thank you.

2 ALJ ARRENDONDO: Any further questions, Mr.
3 Ginsberg?

4 MR. GINSBERG: That's all I have.

5 ALJ ARRENDONDO: Mr. Brecher.

6 MR. BRECHER: Thank you, Your Honor.

7 **CROSS-EXAMINATION**

8 **BY MR. BRECHER:**

9 Q. Good morning, Mr. Coleman. I agree with
10 much of your prefiled testimony and much of what you
11 said this morning, so my cross-examination is not
12 isn't going to be lengthy. I just want to address a
13 couple points with you with your permission.

14 A. If I say no to my permission, would you
15 still address them?

16 Q. Yes.

17 A. Then I'll give you my permission so we can
18 be amicable.

19 Q. Page seven of your testimony, 157 and 162,
20 you describe the Division's concerns about the
21 potential for fraud, specifically referencing the
22 possibility that consumers might find ways to exploit
23 the system and obtain multiple Lifeline supporting
24 services. A practice some of us call double-dipping.
25 Are you familiar with that term?

1 A. Sure.

2 Q. Are you aware of the fact that the FCC as a
3 condition of forbearance to TracFone requires that
4 TracFone have every applicant certify under penalty
5 of perjury that they qualify to be a Lifeline
6 customer and verify annually that the customer
7 remains head of household and receives only Lifeline
8 service from TracFone? Are you familiar with that
9 requirement?

10 A. Yes, I was familiar with that requirement,
11 but I don't know if that in and of itself is going to
12 prevent the fraud or potential for misuse of federal
13 funds.

14 Q. Are you aware of the fact that no other ETC
15 operating in the state of Utah is subject to that
16 requirement? Let me restate the question.

17 Are you aware of the fact that TracFone is
18 already subject to greater verification and
19 certification requirements than any ETC operating in
20 the state of Utah, compliments of the FCC?

21 A. Yes. But I think that's also because
22 you're dealing with something that's different than
23 other ETCs you have in the state, and that's the fact
24 you're dealing with a mobile service that can be
25 carried anywhere in the state. Our other Lifeline

1 customers have a fixed line going into their house,
2 and it's not very easy to change that and move that
3 to another house unless you call up the phone
4 company. And that's partly why the DCC is in place
5 to help verify that double-dipping and other types
6 are not there. I do understand, to answer your
7 question, and there may be a certain extra level of
8 scrutiny. But I think that also comes from the fact
9 that the service you're offering makes it easier for
10 the fraud we brought up in our testimony to
11 potentially happen. I'm not directing it
12 specifically to TracFone. I'm just saying there's a
13 potential and telling the Commission that possibility
14 does exist. When we talked about it as a Division,
15 we believe there is that possibility.

16 Q. Are there no other wireless ETCs operating
17 in Utah now?

18 A. That give Lifeline service, no.

19 Q. Let's be clear. There are other wireless
20 ETCs operating in Utah but they do not provide
21 Lifeline?

22 A. I do not know of any that are receiving
23 Lifeline subsidies.

24 Q. I guess the other side of that coin,
25 Mr. Coleman, is there would be no other wireless ETCs

1 offering Lifeline; correct?

2 A. They could offer Lifeline and not receive
3 the subsidies which I know other companies have done
4 within our state.

5 Q. Now, you've expressed this concern about
6 the possibility of fraud. Do you have any evidence
7 in any state that such fraud is existing in any
8 significant degree?

9 A. Yes.

10 Q. Could you speak to that?

11 A. Yeah. I was able to go onto Craig's List
12 and saw specifically some advertisements from
13 Safelink customers where they were advertising you
14 could purchase a free phone -- sorry. Let me
15 rephrase that. For different dollar amounts on the
16 range from \$10 to \$50, you could get this phone that
17 would have minutes automatically reset every month
18 for 67 minutes. That seems like fraud because those
19 customer are probably Lifeline qualified, probably
20 went through the provider, were now selling it
21 because they weren't able to pay for card or weren't
22 able to pay for a phone and they decided they would
23 rather have money. So is that widespread? I don't
24 know. Your question asked me if I was aware of fraud
25 out there, and yes, there's potential for. They were

1 specific Safelink customer in Massachusetts and they
2 were in a couple other states. I don't remember off
3 the top of my head. There was at least five that I
4 saw that was specific to Craig's List of people
5 offering Safelink to others, free phone.

6 Q. Are you familiar with TracFone's policies
7 and practices when customers attempt to sell Safelink
8 wireless phones on Craig's list?

9 A. No. But that wasn't your question. You
10 asked me if I was aware of fraud.

11 Q. I'll ask the questions. Are you aware of
12 the fact that TracFone routinely removes those
13 customer from its Lifelink program immediately and
14 works with Craig's List and Ebay to prohibit those
15 companies from accepting listings of Safelink phones?

16 A. No.

17 Q. Now, the verification process that you
18 describe, if it were implemented, how would that stop
19 a customer that qualified for a phone -- using your
20 procedures, your proposed procedures, how would it
21 stop or prevent a customer from subsequently listing
22 the phone on Craig's List for sale?

23 A. It wouldn't.

24 Q. So basically the example of fraud that you
25 cite has nothing to do with your proposed remedying

1 the fraud?

2 A. But it speaks to the point -- why I talk
3 about is because we are dealing with a wireless
4 service, potential for fraud now has increased from
5 where we're going from a wireless service to the land
6 line service. That's all I was trying to tell the
7 Commission is because of this service, as a Division,
8 with we're uncomfortable there could be a potential.

9 Like I said, I'm not saying it specific to
10 TracFone, but because we're adding another element
11 for Lifeline service, there is another potential now
12 that individuals could create a fraudulent situation
13 where just like we talked about where people figure
14 out "Maybe I could sell this on Ebay or Craig's
15 List." Is that a fault of TracFone's? No. But is
16 it fraud? Yes. Is the person who's supposed to
17 getting subsidy getting it? No.

18 Q. Let me see if I can summarize where we are
19 with your testimony, Mr. Coleman. Wireless Lifeline
20 is different. You haven't seen it before. There's a
21 possibility for fraud, and you investigated by seeing
22 five listings on Craig's List and your solution is
23 impose a series of verification procedures, which by
24 your own admission on the stand, would not prevent
25 the kind of fraud you found; is that correct?

1 A. That's not my testimony.

2 Q. Correct me if I'm wrong.

3 A. What I said and what I said in my testimony
4 and what I'm saying right here is there is a greater
5 potential for fraud because they are wireless
6 customers, because they can move their phone because
7 they can go different places. I think generally that
8 would mean that -- everybody could accept that.
9 Granted -- okay. That's my premise.

10 Q. I don't want to belabor the point.

11 A. Can I finish -- you asked the question.
12 Can I clarify what my testimony is? I'm curious.

13 MR. GINSBERG: You can finish.

14 A. Thank you. So what my testimony is is
15 because we saw a potential for -- in our state we
16 haven't had any prepaid wireless before, so there's a
17 potential for increase of fraud. We were telling the
18 Commission -- or suggesting to the Commission to put
19 in place some other elements that maybe will help
20 minimize that. As far as double-dipping, which is
21 what this was specifically talking to, I don't know
22 how I would verify double-dipping unless there's a
23 prepaid wireless in here. Until right now, I don't
24 have to worry about double-dipping in our state
25 because it's specifically tied to geographically to

1 one spot.

2 So what we are suggesting and saying is
3 with DCC we need to come up with a method or an
4 alternative method that works but that we as a
5 Division feel comfortable will help to verify to
6 ensure double-dipping as potential fraudulent
7 position is taken care of. That's what my testimony
8 was.

9 Q. Thank you. I apologize for cutting you
10 off. Let's talk about double-dipping for a second.
11 If I understand you correctly, you are postulating a
12 situation where a Lifeline -- wire line Lifeline
13 customer attempts to enroll in the Safelink program
14 or any prepaid wireless program at the same time it
15 has an existing Lifeline supported wire line account;
16 is that correct?

17 A. That would be one scenario.

18 Q. I don't want to put words in your mouth. I
19 just want to understand correctly what you're talking
20 about.

21 A. Double-dipping to me would be where there
22 are two individuals or two people within a household
23 both getting the subsidy, which I believe according
24 to the guidelines of the Lifeline program is not
25 allowed.

1 Q. I agree with you. Let me ask you this:
2 Suppose TracFone were designated as an ETC in the
3 state of Utah and began to enroll Lifeline
4 customers -- they qualified, verified -- and some of
5 those customers then attempted to enroll in a wire
6 line carrier's land line Lifeline program. Wouldn't
7 that be double-dipping as well?

8 A. Yeah, the potential goes both ways.

9 Q. What procedures does your office propose to
10 implement to prevent that kind of reverse
11 double-dipping where the Safelink customer attempts
12 to enroll in a wire line Lifeline service as well?

13 A. I believe by having all of our carriers use
14 DCC and verify as far as those individuals are
15 Lifeline customers that are accepted and then also,
16 which would be part of the contract that I talked
17 about in my surrebuttal testimony, there may be
18 processes or other elements that would need to be put
19 in place with DCC to be able to verify double-dipping
20 doesn't happen anyway, and that's -- I'm not trying
21 to specifically say prepaid wireless is the culprit
22 here. I'm just saying there's a possibility that
23 individuals who are using this service could try to
24 double-dip and there needs hopefully to be a
25 methodology put in place that can help to minimize

1 that. Will it get rid of it completely? Probably
2 not. People are creative and they can come up with
3 other ways around it, but let's try to minimize or
4 make sure that who is supposed to receive the
5 benefits of the Lifeline program is the one that's
6 receive it.

7 Q. Is the DCC process required by the
8 Commission's rules? By that I mean the DCC
9 verification process we've been discussing this
10 morning.

11 A. My understanding is that the Commission has
12 the one who is taking care of the Lifeline program is
13 contracted and that's the process they are using to
14 verify that those people are eligible.

15 Q. With your permission, I'd like to show you
16 a copy of a Commission rule. I suspect everybody can
17 take administrative notice of it. It's R746341.3,
18 Eligibility Requirements, and I'd like you to spend a
19 moment or two focusing on Section A.

20 A. Okay.

21 Q. Would you read into the record, if you
22 would, Paragraph A, and you can stop at the colon.

23 A. "Program base criteria, the ETCs shall
24 provide Lifeline telephone service to any applicant
25 who self-certifies under the penalty of perjury whose

1 household is eligible for public assistance under one
2 of the following or its successor programs."

3 Q. "Colon," and a list of 11 programs. We
4 don't have to spend a lot of time on it. Would you
5 agree that this specifically provides for
6 self-certification under penalty of perjury?

7 A. That specifically does, but not knowing all
8 the rules and other statutes and you're only giving
9 me a certain portion of it, I believe there's other
10 parts within the rules -- again, I'm not attorney --
11 that allows the Commission the ability to have
12 someone verify that someone is certified for those
13 programs or those funds.

14 Q. And that's my question, and I'm not going
15 to try to embarrass you on the stand by asking you
16 the detailed nuances of the rule that you haven't
17 spent time looking at right away, but I would like,
18 if you have no objection, perhaps later in the
19 hearing to point to me where the requirement is that,
20 despite the language of Subparagraph A, there is a
21 verification requirement that involves accessing the
22 DCC database. Is that codified anyplace? And you
23 can check at the break.

24 A. I'm not attorney, so I don't know that.
25 Again, what I think this says here, though, is the

1 applicant is the one that self-certifies, and the
2 Commission is using again the organization to verify
3 that self-certification is accurate. I think that's
4 a distinction that's there. The person is saying
5 they self-certified, but the Commission still wants
6 to verify for sure that that self-certification is
7 accurate. That's why they use the DCC.

8 Q. Trust but verify; right?

9 A. Yeah.

10 Q. Let's turn your testimony toward the back
11 of -- I guess it's page 18, lines 422 and 428, and
12 you indicate, if I quote you correctly, that "All the
13 telecommunications companies have retail intrastate
14 rates required to pay into the state USF which the
15 Division believes includes prepaid wireless
16 competitors."

17 A. I sorry. You said 18 and you said line
18 422, those don't correlate to my testimony. I'm
19 trying to make sure I'm in the right spot.

20 Q. On my copy of your testimony it's page 18
21 lines 424 to 426.

22 A. My lines 424 is on a different page. Line
23 424?

24 Q. It's the first question in Roman numeral 6.

25 A. "Besides the impact of the USF, does the

1 Division have additional" --

2 Q. Yeah. And it's the second paragraph that
3 begins with "The Division believes."

4 A. Okay.

5 Q. You've testified there that the Division
6 believes that the statute requires -- the statutory
7 requirements include prepaid wireless competitors.
8 Has the Division investigated whether any other
9 providers of prepaid wireless services are
10 contributing to the state Universal Service Fund on
11 their prepaid services?

12 A. Yes.

13 Q. They have?

14 A. Yes.

15 Q. Could you share with us the result of that
16 investigation?

17 A. Virgin Mobile is a prepaid wireless company
18 doing service in the state has paid into our state
19 USF fund.

20 Q. How about AT&T?

21 A. They pay into our state USF fund.

22 Q. On their prepaid?

23 A. I don't know because we haven't asked them
24 to break it out between prepaid and nonprepaid, but
25 they AT&T does pay into our state USF fund.

1 Q. And Verizon Wireless?

2 A. They pay into our state USF fund.

3 Q. On their prepaid?

4 A. We don't ask them to determine which is
5 prepaid and which isn't, but they have paid into our
6 state USF fund.

7 Q. Are you aware of fact that Verizon Wireless
8 has stated on the record in a California Public
9 Utility Commission proceeding that it does not
10 contribute to any state funds based on its prepaid
11 wireless services?

12 A. No.

13 Q. Just to be clear, have you ever asked any
14 provider of wireless service, whether it's
15 contributions to the state Universal Service Fund
16 include contributions based on the prepaid portion of
17 their intrastate revenues?

18 A. I have a report that shows the companies
19 that have paid into our USF fund. I know Virgin
20 Mobile is a prepaid wireless, and they have paid into
21 our state USF fund. In fact, we changed what our
22 contribution rate was about a year ago, and they
23 realized they overpaid because of the change in
24 contribution, so they went through a proceeding and
25 asked the Commission for a credit. Did I need to go

1 back and ask if they were prepaid wireless carriers
2 and then they paid into our State USF fund? No, I
3 didn't think so because my premise was they were a
4 prepaid wireless carrier and we had seen money coming
5 into our state USF fund. I put, point A together
6 they were prepaid wireless, point B they paid into
7 our funds as far as saying they had paid. Now, do I
8 know that all other companies have paid with prepaid
9 wireless? I have not asked that question
10 specifically of them.

11 MR. BRECHER: Thank you, Mr. Coleman. I have no
12 further questions at this time.

13 ALJ ARRENDONDO: Thank you, Mr. Brecher.

14 Mr. Proctor?

15 MR. PROCTOR: No.

16 ALJ ARRENDONDO: Mr. Mecham?

17 MR. MEACHAM: No.

18 ALJ ARRENDONDO: Thank you, Mr. Coleman.
19 Actually, Mr. Ginsberg, any follow-up?

20 **REDIRECT-EXAMINATION**

21 **BY MR. GINSBERG:**

22 Q. Currently, as far as you know, there is no
23 system within DCC in order to determine whether a
24 prepaid or a -- whether our two ETCs that check and
25 determine whether there are two being registered in

1 the same household?

2 A. Well, I guess the best way that I can
3 answer that is the way that DCC deals with that now
4 is they will verify that an address is only getting
5 the Lifeline subsidy. So, for example, if it was a
6 CLEC, Comcast, who was providing the Lifeline program
7 and that person switched to Qwest, they still verify
8 to make sure that there aren't two Lifeline subsidies
9 going to that one address. That's the only
10 verification I know that DCC does as part of their
11 process or at least that's my understanding of what
12 they do.

13 Q. Do you happen to know whether as far as you
14 know -- maybe you don't know the answer -- that all
15 applications for Lifeline telephone verifications go
16 through DCC?

17 A. That's my understanding.

18 MR. GINSBERG: Thank you.

19 ALJ ARRENDONDO: Thank you, Mr. Ginsberg.

20 Thank you, Mr. Coleman.

21 It's quarter to noon. Is everybody okay if
22 we take a lunch break now, hour and a half, and then
23 we have -- you'll be presenting Ms. Martinez; right?

24 MR. PROCTOR: Yes.

25 ALJ ARRENDONDO: Okay. Ms. Springer, Martinez.

1 MR. PROCTOR: Ms. Murray and then Martinez.

2 ALJ ARRENDONDO: Let's come back about 1:15 and
3 then we'll start with the Office. Thank you.

4 (A lunch break was taken.)

5 ALJ ARRENNDONDO: Back on the record and turning
6 it back over to the Division. Do we have
7 Ms. Benvegnu here?

8 MR. GINSBERG: Yes.

9 ALJ ARRENNDONDO: If you could raise your right
10 hand for me. Do you solemnly affirm the testimony
11 you're about to give is the truth, the whole truth
12 and nothing but the truth?

13 THE WITNESS: I do.

14 **SHAUNA BENVEGNUM-SPRINGER,**
15 called as a witness on behalf of the Division, having
16 been duly sworn, was examined and testified as
17 follows:

18 **DIRECT EXAMINATION**

19 **BY MR. GINSBERG:**

20 Q. Would you state your name for the record.

21 A. Shawna Benvegnu-Springer.

22 Q. What's your position with the Division?

23 A. Utility analyst with the Division of Public
24 Utilities.

25 Q. What is the purpose of your testimony

1 today?

2 A. The purpose of my testimony today is to
3 explain the methodology that the Division used in
4 order to come up with a \$3 alternative fee for those
5 ETC's that would not be paying into the state
6 Universal Service Fund.

7 Q. Can you give us a little bit of your
8 background and qualifications to prepare the exhibit
9 you've put together?

10 A. Sure. My experience is derived from
11 33 years of service with the state of Utah in
12 preparing budgets, monitoring expenses and revenue
13 for various state agencies. I'm also a certified
14 financial manager, and I am certified financial
15 government manager. I have a bachelor of science
16 degree in accounting and management from the
17 Westminster Colledge of Salt Lake.

18 Q. Can you give us your role with respect to
19 the administration of the contract with DCC and USF
20 fund?

21 A. Yes. Part of my assignments as utility
22 analyst with the Division requires me to develop a
23 relationship with the contract agency the Public
24 Service Commission has engaged with, which is
25 Department of Community and Culture. With that

1 agency we have developed a relationship where we work
2 on both the Lifeline program itself and the processes
3 that are used and how they interact with the carriers
4 that provide those discounted services for customers,
5 also work with the carriers in helping them process
6 their reimbursement payments, and we've also worked
7 with the Department of Community and Culture on
8 outreach programs in order to get more individuals
9 accessing these services.

10 Q. Now, your role with respect to DCC is only
11 with respect to the telephone Lifeline program? Does
12 it cover any of the other programs like Help or Heat?

13 A. My experience has only been with the
14 Lifeline program.

15 Q. Can you give us a general understanding of
16 the verification program that DCC goes through?

17 A. Yes. Currently applicants will either
18 complete a hard copy application or complete an
19 application online and submit it to the Department of
20 Community and Culture. Community and Culture does
21 have offices throughout the state that do receive
22 that information. As those applications are
23 received, one of the things they are required to do
24 is to verify the information that is on the
25 application. Many times the information that is

1 supplied is not legible and so they will be required
2 to make a phone call to the applicant to determine
3 the proper information that is being submitted.

4 Sometimes if they have a phone, the phone number is
5 maybe incorrect or mistaken. Sometimes individuals
6 will apply for Lifeline, and they've forgotten that
7 they already are receiving the discount from the
8 current carrier and so they forget and they reapply.

9 And then as the applicant goes through the
10 process of being verified currently, we have an
11 eligibility household function that is done through
12 the geographic areas with the carriers. By adding
13 the wireless component to it, it allows for more than
14 one provider to be in a geographic area. So it's
15 going to add a new layer of verification that we'll
16 need to check -- that DCC will need to check to make
17 sure there's only one discount being applied to that
18 household.

19 After they check the application, then they
20 will go through and determine which program is the
21 one that qualifies them for the Lifeline discount, so
22 it may be either through a public assistance program
23 or it may be through the income eligibility program
24 that they will need to determine which of those
25 programs helps them qualify for the discount. After

1 that eligibility verification is completed, then they
2 will send a letter out to the applicant and either
3 let them know they've been approved or denied or if
4 there are problems with their application, whatever
5 they may be, then the information is provided to the
6 carrier who is going to be providing that discount to
7 them. And there's a confirmation back then from the
8 carrier that the discount has been applied and the
9 application process has been completed.

10 Q. Do you have in front of you the exhibit you
11 put together? I think you called it DPU-1. I think
12 the asked the court reporter to mark it as DP-2; is
13 that right?

14 A. I do.

15 Q. Did you prepare this exhibit?

16 A. I did.

17 Q. Can you give us the general process you
18 went through to prepare it?

19 A. In order to gather the information of
20 facts, I conducted several interviews with both
21 Sherma Ferro, who is the program director with
22 Department of Community and Culture, and Eva Salazar,
23 who is one of the program specialists that processes
24 these applications. In our conversations I gathered
25 the information and facts that were presented. I

1 also verified that information through the contract
2 that we current have negotiated for the current
3 fiscal year, and I also verified that information
4 through the state data warehouse that the state
5 Division of Finance uses to gather that information
6 which is available to the public.

7 Q. The notes under the source of the
8 information; is that --

9 A. Correct.

10 Q. Can you give us the information of what
11 assumptions that you've made in this.

12 A. Sure. One of the first assumptions we made
13 was how many new applications are going to be
14 anticipated, and from our discussions with TracFone
15 and testimony they've provided, it was determined
16 that even though they may be -- they have an
17 assumption of maybe 1,000, 2,000 a week applications,
18 we determined that we applied a 200 percent rate to
19 the current population. So that would be 60,000
20 applications we anticipated would be receiving
21 annually. That converts to 287 applications a day.

22 Currently DCC has processed through 2009
23 28,800 total both Heat applications and Lifeline, and
24 the reason why they are coupled together is because
25 of the automatic capability that there is if someone

1 applies for a Heat benefit they can automatically
2 qualify for Lifeline. Other programs are not
3 automatic like that, and they have to actually go
4 into the various database that's required to
5 determine what the eligibility is. Unfortunately, in
6 the state of Utah we don't have a large clearinghouse
7 where all of these public assistance programs and
8 their information are in one place. They are in
9 numerous databases throughout the state.

10 Q. Let me see if I understand. If someone is
11 a Heat customer, he can mark on there and
12 automatically become a Lifeline customer?

13 A. If they qualify for the Heat program and
14 check the box they would also like to qualify for
15 Lifeline. Assuming their Heat application is
16 approved, they automatically qualify for Lifeline.

17 Q. So they would have to at that point select
18 which Lifeline program they want?

19 A. That's correct. And we'd have to change
20 the program in order to allow that because right now
21 with the single provider in one geographic area they
22 only have one option.

23 Q. Are there any other assumptions that are
24 included in here?

25 A. Yes. The next assumption that we

1 calculated was based on the 28,800 applications that
2 were processed in 2009. We determined what the
3 average minutes -- number of minutes it took to
4 process those applications. And, again, these are a
5 variety of types of applications because of the
6 various numbers of eligibility types that they can
7 qualify under. We calculated that average minute
8 processing time to be 6 minutes and -- 6.53 minutes.
9 Based upon that and the anticipated number of 60,000
10 applications, we determined we would need 6,531 work
11 hours in order to process those applications
12 resulting in what the state refers to as an full-time
13 equivalent employee of 3.13.

14 In talking with Sherm in determining what
15 cost then would be needed in order to cover those
16 staff for those three FTE, the level of position that
17 they hire is a program specialist. This person does
18 more than just a simple data entry. They have to
19 understand all the various eligibility programs that
20 are available and how to access those various
21 programs. Many times just as an example they'll get
22 an application for a Lifeline customer, and as they
23 call you and verify the information they'll say,
24 "Well, are you aware that you might be able to apply
25 for various other programs" because of the

1 information that they have, and so they go a little
2 extra further and -- extra mile and share that
3 information with them. So it does take a little bit
4 longer, but overall we've determined that they
5 probably can get it done in about six minutes per
6 application on average for the various types of
7 applications.

8 Anticipating they would need to hire these
9 three staff, the personnel costs for that which
10 includes the salary and the related benefits that the
11 state offers, total amount would be \$175,000.
12 There's also additional operating costs that we came
13 up with. The first one would be some computing
14 charges that the Department of Technology and
15 Services charges which are referred traditionally as
16 port charges. There's a port charge charged to every
17 computer that sits on a desk if you're tied into the
18 state network. So those costs for the Department of
19 Community and Culture are \$208 a month per computer
20 for 12 months for a total of \$7,488.

21 In order to send out the letter to the
22 customer, either informing them they are approved for
23 the Lifeline discount or denied or otherwise, we
24 calculated there's a 43 cent cost there for the
25 stamp, envelope, paper, et cetera, to send that out.

1 So it would be \$19,916. These individuals also need
2 a telephone on their desk in order to make the phone
3 calls necessary. Those costs are \$42 a month for the
4 phones. 12 months would be \$1,512. There are some
5 printing, copying, and supply costs.

6 As I mentioned, there are also some
7 regional staff costs where there are offices in the
8 outlying areas. We lumped all of that together and
9 came up with a cost of 53 cents per application for
10 those cost. Multiplying that out would be \$31,800.
11 Each staff member in an agency is required to be
12 covered under the state self-insured plan, which is
13 known as risk management, and those risk management
14 cost per employee for employee liability is \$266 a
15 year. Multiply that out for \$798. And then because
16 they would be hiring the three additional staff,
17 there would be additional space rented in the
18 building that DCC is currently operating in, and the
19 space requirements for that would be \$7,500.
20 Therefore, the total costs for the staff to process
21 this number of applications would be \$244,398. When
22 we divide that amount by the 60,000 applications, the
23 per rate application cost is \$4.07. There are some
24 other additional costs in this -- in implementing
25 this process and one is a one-time upgrade software

1 fee to some outside programmers so that DCC has a
2 program that would track all the individuals that are
3 on Lifeline currently. That is not being tracked
4 because they work with the carriers in developing and
5 relying upon the carriers to do some of that
6 information, and they are using actually a paper
7 file. They are not using an electronic file.

8 In addition, there's a second process or --
9 we've talked a little bit about the recertification
10 process. This is done annually. Currently DCC is
11 the one that performs that process, and that is
12 calculated into these costs that we already have
13 here. This year they are pulling a sample of
14 2 percent of the population which amounts to 596
15 participants that they are auditing to determine if
16 they still meet the eligibility certification
17 requirements.

18 Q. So this would be a one-time charge?

19 A. Yes. It's a one-time charge, but we did
20 not include those two costs, both the one-time
21 upgrade software fee and the cost for the audit. We
22 did not include those costs in the costs of computing
23 the \$4.07 per application fee, and there were a
24 number of reasons why we did not include that. One
25 of the reasons why we did not include the 60,000 was

1 because this is a software upgrade that's actually
2 going to be benefiting all the carriers, not just the
3 wireless. So we would recommend to the Commission
4 that that amount be funded from the current USF fund.
5 In talking with TracFone, because there's an amount
6 of applications that would not be coming in with
7 other programs, they would be what we know as
8 stand-alone applications, and so we discounted that
9 by 25 percent and came up with the \$3 fee.

10 Q. You made an assumption as to how many would
11 be stand-alone applications?

12 A. Right. We said 25 percent would not be
13 attached to any other program, and so that's where we
14 came up with the 75 percent.

15 Q. That was an estimate on your part?

16 A. Unfortunately, that was -- yeah, that was
17 an estimate.

18 Q. Is it just a swag or is it an estimate?

19 A. I'd probably call it a swag.

20 Q. These numbers would have to be refined
21 depending on what that number is?

22 A. Yes. This is an interim fee that we have
23 estimated. We feel that the base number of \$4.07 is
24 a good solid number. The part that we don't have a
25 good handle is how many would be coming in alone

1 versus how many would be -- I'll use the term
2 "bundled" with another public service or public
3 assistance program.

4 Q. Can you describe how you take into account
5 the so-called bundle. How was that taken into
6 account if the larger number are tied with Heat or
7 Help?

8 A. Right. We took that into account by taking
9 the totally number of applications and averaging the
10 number of minutes used for that and coming up with
11 the six minutes. Normally when they receive a
12 Lifeline stand-alone application, it takes much
13 longer than the six minutes and you can see during
14 2009 they only actually processed 3,440 stand-alone
15 applications, but those applications do take much
16 longer because of the phone call they need to make,
17 the verification issues, and sometimes -- in most
18 cases these are income-eligibility situations where
19 they have to document the income with the applicant.
20 Many times there's -- they'll -- applicants will send
21 in a bank statement and the bank statement may not
22 have all the relevant information they need, so they
23 are calling them numerous times to get the proper
24 information.

25 Q. So were most of the applications in 2009

1 combined applications?

2 A. Yes.

3 Q. Anything else you want to add to this?

4 A. No.

5 MR. GINSBERG: With that I'd ask Exhibit 2 be
6 admitted.

7 MR. BRECHER: I object, Your Honor.

8 ALJ ARRENNDONDO: Okay. Any response you want
9 to make?

10 MR. GINSBERG: What are the grounds of the
11 objection other than -- I think a proper foundation
12 has been raised -- made for the exhibit. It was
13 raised in testimony by their witness offering to pay
14 the cost. It's certainly relevant for the Commission
15 to understand what the costs are regardless of how
16 you ultimately make a decision here, whether they pay
17 for it or someone pays for it. This is the estimate
18 of the cost that is the best estimate that is being
19 presented. So I think it's admissible.

20 MR. BRECHER: Let me respond, Your Honor. With
21 all due respect, this is nothing less than an
22 outrage. Until 9:00 this morning I never heard of
23 Ms. Springer. I walk into the hearing room, and I'm
24 presented for the first time with a piece of paper
25 that purports to be some kind of cost study. I have

1 no idea what this is based on. I can't possibly
2 cross-examine this witness. I will need to issue a
3 series of data requests. I need to depose her to
4 understand this. I never saw this before. Prefiled
5 testimony was filed by all parties in advance. All
6 the parties in case were given ample opportunity to
7 address TracFone's testimony, take discovery on it,
8 and to cross-examine Mr. Fuentes accordingly. It's
9 simply unfair to submit a one-page cost study -- if
10 this is a cost study, and I'm not sure that it is --
11 on the day of the hearing and ask it be entered into
12 evidence and expect to have meaningful
13 cross-examination on it.

14 Moreover, I respectfully move that the
15 entirety of Ms. Springer's direct testimony, her own
16 testimony given today, be stricken. She didn't even
17 spell the company's name correctly.

18 ALJ ARRENNDONDO: I'm going to sustain the
19 objection. The concern I have is that we did have a
20 provision for surrebuttal testimony. There was
21 testimony with regard to the costs. I guess some
22 settlement negotiations, you know, with Mr. Fuentes
23 talked about the seven cents and three dollars. To
24 tell you the truth, I don't know what basis we can
25 give this as a Commission. I mean, whether -- whose

1 going to bear the cost is one question versus what
2 those costs actually are is, I think, another
3 question. So I'm going to sustain the objection and
4 strike the testimony.

5 MR. GINSBERG: Okay.

6 ALJ ARRENNDONDO: Okay. Anything else,
7 Mr. Ginsberg?

8 MR. GINSBERG: No.

9 ALJ ARRENNDONDO: Office?

10 MR. PROCTOR: Given your ruling with respect to
11 what the costs are which has been an issue raised by
12 the Commission -- or by the Office, can I have a
13 moment with my client?

14 ALJ ARRENNDONDO: Yeah, uh-huh.

15 (Counsel and client confer.)

16 MR. PROCTOR: Thank you, Your Honor. Given the
17 Office did in fact raise the issue of the cost as
18 well as who bears the cost in its prefiled direct
19 testimony and it's been the subject of discussions
20 throughout, if you could provide, please, the Office
21 10 minutes to 15 minutes to figure out what we are
22 going to do under the circumstances where a
23 significant part of our direct testimony has
24 essentially been stricken too because now we can't
25 discuss what the costs truly are in relationship to

1 performing of the Commission's contract with DCC.
2 That's our concern.

3 ALJ ARRENNDONDO: Okay.

4 MR. PROCTOR: So if you could give us
5 15 minutes, we'd appreciate it very much.

6 ALJ ARRENNDONDO: Okay.

7 **(off the record)**

8 ALJ ARRENNDONDO: Okay. We're back on the
9 record then. Would the Office, please.

10 MR. PROCTOR: Your Honor, if I might, I wasn't
11 given an opportunity to speak to the issue of
12 counsel's objection where this is an issue that has
13 been raised by the Office in direct testimony,
14 prefiled testimony. Would you hear my argument as to
15 why --

16 ALJ ARRENNDONDO: Go ahead.

17 MR. PROCTOR: -- in fact it was not
18 objectionable? The objection based on surprise may
19 be counsel's surprise, but it certainly is not
20 TracFone's surprise as evidenced by the testimony
21 that was provided this morning. Mr. Fuentes noted
22 the contrast between 15 cents -- actually then he
23 corrected that to 7 cents -- that TracFone was paying
24 for an outside service to provide certain
25 verification of certification versus the \$3 that had

1 been discussed as the cost from DCC. And those costs
2 were discussed last week. But certainly it was
3 recognized by TracFone that there is a cost to
4 acquiring that information. So it wasn't a surprise
5 as Mr. Fuentes addressed the very issue this morning.

6 Secondly, he also acknowledged that while
7 the 7 cents or 15 cents covers a very basic "Who are
8 you and where do you live and do those match," it
9 does not cover any of the verification of the long
10 list of public assistance and social service programs
11 that participation in which qualifies you for
12 Lifeline program. Only DCC provides that in Utah per
13 a contract as described by Ms. Springer with the
14 Public Service Commission. So under the
15 circumstances -- oh, and live surrebuttal was called
16 for, absolutely called for.

17 So under the circumstances if there's any
18 surprise, it can be readily remedied by permitting
19 TracFone to ask questions if they wish about the
20 underlying assumptions, although Ms. Springer
21 certainly described them, and can challenge them, and
22 certainly if TracFone wishes, they can certainly
23 supply additional testimony responding to these
24 numbers, this analysis in some way. But counsel's
25 surprise, that's not really an objection in an

1 administrative proceeding in this state that goes to
2 the admissibility of this particular document. So I
3 would ask The Court with great respect to reconsider
4 striking it. And I know that the rules in the
5 administrative process are sometimes far too liberal
6 for me. I have quarrels with it at times. But one
7 of the things often done is information is allowed
8 because it's informative and the weight to which it
9 is -- which is given or its meaning to the ultimate
10 conclusion from the Commission is addressed in the
11 report and order. And I think that would be an
12 appropriate way to manage this.

13 ALJ ARRENNDONDO: Okay.

14 MR. MEACHAM: May I support that, Your Honor.

15 ALJ ARRENNDONDO: Okay.

16 MR. MEACHAM: Because the February 9th
17 scheduling order in this matter did provide for live
18 surrebuttal, and there's testimony on the record now
19 of Mr. Fuentes addressing a 15-cent cost to which
20 there's no rebuttal. So I think that was completely
21 in line to allow Ms. Springer to take the stand and
22 rebut what they believe the costs are. And really if
23 you look at the top of what was marked as DPU-2, a
24 good deal of that is coming straight out of the
25 Department of Community and Culture.

1 MR. PROCTOR: And I might add, TracFone has, I
2 believe, at least once -- perhaps on more than one
3 occasion -- actually visited DCC and spoken directly
4 with the people.

5 ALJ ARRENNDONDO: Do you want to respond,
6 Mr. Brecher?

7 MR. BRECHER: Is it necessary, Your Honor?

8 ALJ ARRENNDONDO: I don't know. Here's my
9 concern -- and before I say anything, my decision is
10 not in any way a slight against
11 Ms. Benvegna-Springer. I worked with her on other
12 cases. I know her to be an honest, thorough,
13 analytical person. My concern is this -- is that I
14 understand that our administrative rules of evidence
15 are a little bit relaxed, but I also know that the
16 Commission can't make a finding based on hearsay
17 evidence, and it's not that I think
18 Ms. Benvegna-Springer made this up, but the fact of
19 the matter is I think the Commission needs -- I know
20 the Commission needs more foundation for some of
21 these numbers. They might have come from the
22 Division of Community and Culture. But we don't know
23 that. We need some more basis than this. So based
24 on that, I'm going to sustain the objection and
25 strike the testimony. You can bring this up in

1 post-hearing briefs if there's adequate evidence of
2 costs or not. I don't know what the Commissioners
3 will make of this five cent, seven cent. I don't
4 know if there is much to make about that, the
5 statement that Mr. Fuentes said here. But, again,
6 I'm going to go back to my original sustaining of the
7 objection and striking that testimony. Again, it's
8 no slight against Ms. Benvegna-Springer. So with
9 that --

10 MR. PROCTOR: Thank you, Judge, for hearing me
11 out. We will would call Ms. Murray.

12 ALJ ARRENNDONDO: Ms. Murray, raise your right
13 hand for me. Do you solemnly affirm the testimony
14 you're about to give is the truth, the whole truth,
15 and nothing but the truth?

16 THE WITNESS: I do.

17 ALJ ARRENNDONDO: Thank you.

18 **CHERYL MURRAY,**
19 called as a witness on behalf of the Division, having
20 been duly sworn, was examined and testified as
21 follows:

22 **DIRECT EXAMINATION**

23 **BY MR. PROCTOR:**

24 Q. Would you state your name and by whom
25 you're employed.

1 A. Cheryl Murray. I'm employed by the Office
2 of Consumer Services.

3 Q. What capacity are you employed by the
4 office?

5 A. I'm a utility analyst.

6 Q. Ms. Murray, what has been your role in
7 connection with TracFone Wireless's application for
8 ETC status in Utah?

9 A. I was the analyst assigned to work on the
10 case. I participated in discussions with TracFone
11 and the other parties involved in the case, submitted
12 data requests and reviewed responses.

13 Q. And would that be the Office and Division's
14 data requests?

15 A. Yes, it would.

16 Q. Have you also examined any other
17 information from other states pertaining to
18 TracFone's ETC status application?

19 A. I have reviewed a number of documents from
20 other states, and I hope you're not going to ask me
21 to list them all, but I have looked at a lot of
22 documents also a number of FCC documents that have
23 been associated with some of the filings made by
24 TracFone -- well, before the FCC.

25 Q. Were there any technical conferences held

1 either formally or informally with TracFone?

2 A. Yes, there were, and I did participate
3 in -- most if not all of those. There may have been
4 one I wasn't at.

5 Q. What other agencies attended or and
6 participated in those technical conferences?

7 A. The Division of Public Utilities, Salt Lake
8 Community Action Program, DCC. I believe Utah Rural
9 Telecom Association was involved in at least some of
10 them.

11 Q. Did the office ever meet separately with
12 any representative from TracFone?

13 A. Without any of the other parties?

14 Q. Without other parties being present?

15 A. I do not believe we did.

16 Q. As a result of your analysis in this case,
17 did you prepare and file on April 5th, 2010, direct
18 testimony consisting of 13 pages as well as an
19 Exhibit consisting of 29 pages from the Public
20 Utilities Commission of California, the direct
21 testimony being marked as OCS 1, Murray, and the
22 exhibit as 1.1?

23 A. Yes, I did.

24 Q. Do you have any corrections that you would
25 like to make to that testimony?

1 A. I do. In his rebuttal testimony
2 Mr. Fuentes asserts that the OCS inaccurately
3 characterized the reasons TracFone withdrew its ETC
4 petition in Colorado. After further review of the
5 documents pertaining to TracFone's petition and the
6 withdrawal, I would like to modify my testimony by
7 striking lines 220 through 223 on page 11.

8 Q. Is it your understanding, Ms. Murray, that
9 live surrebuttal was to be provided today?

10 A. Yes, that was how it was scheduled.

11 Q. In connection with your preparation of live
12 surrebuttal did you prepare also a document that's
13 titled Important Information About Your Safelink
14 Wireless Lifeline Service?

15 A. Yes, I did.

16 Q. What does this document represent?

17 A. It represents some information that we
18 believe is very important for new customers of
19 TracFone, Safelink wireless service as they become
20 Lifeline customers to have access to. We believe
21 that it points out some of the information that would
22 help them make a decision as to whether Safelink is
23 truly the appropriate service for them, if it meets
24 their needs well and if that's the route they want to
25 go. And it provides it in a means that is like a

1 one-page sheet so they don't have to go through the
2 welcome kit. There is a little booklet that's
3 provided with the TracFone, but it is a booklet, and
4 it's small print and we think that this gives them
5 the information so that they don't have to search for
6 it throughout the booklet.

7 Q. Now, when you reference a booklet, how did
8 you acquire this booklet?

9 A. I requested the Welcome Kit, and
10 Mr. Fuentes sent me a couple of phones that contain
11 the information as well as the phones which I have
12 returned to Mr. Fuentes.

13 MR. PROCTOR: With that the Office would move to
14 admit OCS 1 Murray, the exhibit OCS 1.1, and the
15 Important Information About Your Safelink Wireless
16 Lifeline Service, which I previously marked as OCS
17 Surrebuttal Exhibit 1.

18 ALJ ARRENNDONDO: Okay. No objections? All
19 right. Admit those.

20 **(Exhibit OSC-1, 1.1, OSC SR1 were marked.)**

21 ALJ ARRENDONDO: So let me make sure, her direct
22 testimony is OCS 1.

23 MR. PROCTOR: 1 Murray, yes.

24 ALJ ARRENNDONDO: And then the order I guess
25 from the Public Utilities Commission of California is

1 OCS Exhibit 1.1?

2 MR. PROCTOR: Yes, and that was attached to the
3 direct testimony.

4 ALJ ARRENNDONDO: And then what you submitted
5 today, the OCS Surrebuttal 1.

6 MR. PROCTOR: That's correct.

7 ALJ ARRENNDONDO: Do you have copies of these?

8 MR. PROCTOR: Yes, she does.

9 May we go on.

10 ALJ ARRENNDONDO: Sure.

11 Q. Ms. Murray, could you provide, first of
12 all, a summary of your direct testimony and then
13 provide live surrebuttal as was allowed.

14 A. Yes, I will. In my rebuttal testimony I
15 stated that the Office recommended approval of
16 petitioner because it meets the threshold established
17 by the Utah statute and rules. However, I also
18 presented for recommendation upon which the
19 Commission should condition the granting of ETC
20 status to TracFone. One, a requirement that TracFone
21 contribute to both state USF and 911 funds in order
22 to ensure that the public interest is met by having
23 all ETCs making the same types of fund contributions.

24 Although we recognize that other prepaid
25 wireless companies may not be making these payments,

1 our recommendation was that it be required in this
2 case since TracFone would be accessing other types of
3 public funds.

4 Two, a requirement that TracFone submit its
5 customer communications to the Commission for
6 approval. This would ensure that its communications
7 are accurate representations of a publicly funded
8 program and not styled as advertisements.

9 Three, a requirement that before TracFone's
10 Lifeline operations begin steps should be taken to
11 ensure that no customers receive Lifeline services
12 from multiple providers. Without a wireless Lifeline
13 provider there's no real danger of customers trying
14 to participate in more than one program since there
15 is only one provider allowed for each geographic
16 region. Now, that this potential fraud is real and
17 likely, our recommendation was that it be solved
18 prior to allowing TracFone to operate its Lifeline
19 program.

20 Number four was a requirement that TracFone
21 implement a 60-day deactivation process to eliminate
22 the potential for federal USF funds being received
23 for customers who are no longer active participants
24 with TracFone, and this ensures that TracFone would
25 not collect public funds for accounts that are no

1 longer benefiting from the program. In addition, the
2 Office raised some concerns about whether the service
3 provisions offered by TracFone were sufficient enough
4 to be appropriate use of public funds. The Office
5 also noted that TracFone intends to aggressively
6 advertise the availability of its Safelink wireless
7 service which would substantially increase the
8 overall number of Lifeline participants which in turn
9 raises concerns about the ultimate burden on the USF.
10 This is one of the reasons that appropriate service
11 offerings warrants examination.

12 I will now do my live surrebuttal. Since
13 the filing of our testimony, the Office has reviewed
14 TracFone's rebuttal testimony, additional data
15 request responses and information from similar
16 proceeding in other states. We have also done
17 additional research into the processes and
18 requirements associated with the payment of the
19 various state telecom funds and fees. I will now
20 present additional evidence through the live
21 surrebuttal allowed in this proceeding.

22 Fee payment, in testimony the Office made a
23 general recommendation that certain fees must be paid
24 by TracFone in order to receive ETC status. The
25 Office has better identified the fees in question.

1 The current monthly fees for services are local 911,
2 61 cents; state 911, 8 cents; relay service fund,
3 10 cents; poison control, 7 cents. Our additional
4 analysis has not changed the Office's position that
5 these fees should be paid by all telecom providers in
6 order for the public interest to be served. However,
7 the Office has also learned that the collection and
8 administration of some of these fees are controlled
9 by other agencies. This would suggest that the
10 resolution for achieving consistent fee payment may
11 not occur in front of the Commission. The Commission
12 should ensure that the issue is addressed if the
13 required resolution -- could ensure that the issue is
14 addressed if a required resolution before ETC is
15 granted. On the other hand, since the issue is
16 larger than the current docket, it may be best
17 resolved on a different time line and on a different
18 forum.

19 Based on our analysis, the Office is not
20 certain whether the payment into the state USF
21 warrants the same long-term solution because of the
22 various uses of the funds. However, one issue
23 related to the state USF is clear and must be
24 resolved prior to the granting of ETC status to
25 TracFone. Currently the cost associated with

1 eligibility verification of Lifeline customers are
2 payed out of the state USF buy a contract jointly
3 administered by the Public Service Commission with
4 and the DPU with the Department of Community and
5 Culture.

6 Since TracFone is not paying into the USF,
7 at a minimum the Commission must establish a
8 alternate method of payment for TracFone to
9 compensate for this service. In addition, to the
10 costs associated with verification, the advent of
11 wireless Lifeline providers creates the need to
12 upgrade the verification system. As explained in my
13 prefiled testimony, the Office is concerned that with
14 additional phone companies being granted ETC status,
15 the possibility will exist that customers may take
16 Lifeline service from more than one Lifeline
17 provider.

18 If additional prepaid wireless companies
19 are granted ETC status, the problem increases. This
20 is an issue that has not previously existed because
21 there was only one ETC per geographic area.
22 Therefore, there is no system in place to deal with
23 it. The systems used by DCC are not currently
24 designed to check whether one household is attempting
25 to take Lifeline service from more than one provider

1 and therefore requires upgrades. In the Office's
2 view the Commission must require two conditions to
3 remedy this emerging, potentially large fraud or
4 error resulting in multiple Lifeline providers to the
5 same household.

6 First the Commission must direct the
7 Division to work with the DCC to upgrade the
8 verification system to include this kind of check.
9 Second, the Commission must require TracFone to use
10 the same verification system for initial Lifeline
11 applicants as all current Lifeline providers to
12 facilitate this check. The Office believes that it
13 is essential to have 100 percent verification of all
14 customer's initial Lifeline applications rather than
15 allowing customers of TracFone or other prepaid
16 wireless providers to self-certify. This will
17 maintain an even playing field by not requiring a
18 more rigorous standard for customers of land line
19 telephone service providers than for prepaid
20 wireless. Also, it prevents the need to establish a
21 second verification system to verify that each
22 household receives no more than one Lifeline subsidy.

23 Although we have not conducted a technical
24 cost-benefit analysis regarding initial verification
25 versus a second check that occurs after the fact, it

1 appears that it will be easier and likely more cost
2 effective to make the verification initially. This
3 is primarily because of the complexity and costs that
4 would be associated with an after-the-fact check.
5 For reasons such as the needs to individually check
6 on circumstances surrounding potential duplication of
7 service or what appears to be duplication of
8 services, the appropriate determination of penalties,
9 notification of offense and repercussions, imposition
10 of penalties which could include civil proceedings.

11 The Office believes that the upgrades to
12 the verification are necessary to protect the public
13 interest by providing a reasonable check against
14 fraud. The upgrades associated with the system are
15 estimated to be less than \$100,000 are necessary to
16 ensure overall public interest is maintained and will
17 serve all ETC providers. Therefore, the Office
18 support using some of the balance in the state USF
19 fund to pay for those upgrades. It is the Office's
20 understanding that the DCC currently has system
21 upgrades underway. If these additional upgrades can
22 be accomplished in less than a year, then the Office
23 is comfortable with the verification process. If
24 these upgrades are going to take significantly
25 longer, then the Commission may need to consider an

1 interim solution to prevent these double-dipping
2 problems.

3 In addition to the upgrade cost, the
4 Commission must address the cost of verification on
5 an ongoing basis. TracFone has indicated its
6 intentions to aggressively market its program, and if
7 successful, will significantly increase the number of
8 Lifeline applicants. It is essential that the
9 Commission conditionally grant ETC status on the
10 determination of a methodology for TracFone to pay
11 for the incremental costs associated with the
12 verification of these applicants to a Safelink
13 program which could be significant. TracFone has
14 indicated that in three states where Safelink service
15 is offered, participation in the Lifeline program has
16 increased over 100 percent and they have clearly
17 stated that they expect substantial increases in
18 participation in Utah. This means that DCC will
19 likely have to very substantially -- verify
20 substantially more applications than is currently the
21 case.

22 In his rebuttal testimony Mr. Fuentes
23 indicates that TracFone is willing to work with DCC
24 and the Commission to participate in the current
25 certification process. The Office believes that all

1 of the parties have indicated a willingness to work
2 together. However, after a few months of working
3 together, we still do not have a concrete solution to
4 the problem. For that reason, the office suggests
5 that it is important for the Commission to condition
6 ETC status on the resolution of these issues and
7 require a compliance filing with a demonstration of
8 the resolution. It would not be sufficient to rely
9 on all of our assurances of cooperation because while
10 the process may be worked out, it is much less likely
11 that all parties will agree on incremental costs
12 associated with these processes.

13 Further, the resolution may ultimately also
14 require some amount of Commission rule making to
15 implement. The Office agrees not only to work
16 cooperatively but expeditiously, but nonetheless
17 strongly submit that ETC status must be conditioned
18 on the completion of this work. If ETC were granted
19 without resolving these payment program, then the
20 costs of additional verification would be borne by
21 the existing USF. Not only does this inappropriately
22 assign costs and put existing wire line Lifeline
23 providers at a competitive disadvantage, but it could
24 endanger of the health of the state USF if the number
25 of new applications is as high as anticipated.

1 Based on discussions with DCC and review of
2 their verification process, the Office understands
3 the current estimate of costs for verification of
4 each stand alone Lifeline application to be in the
5 range of \$4. Currently the majority of Lifeline
6 applications are submitted as a part of an
7 application for an emergency assistance program. Our
8 understanding is that while there are some
9 incremental costs associated with these joint
10 applications, they are much more minimal. Although
11 we can't provide a specific analysis of the costs,
12 based on the DPU's estimate and discounting for some
13 applications that we assume will come with the joint
14 Heat, Help application, we estimate reasonable cost
15 to attribute to TracFone is \$3 per application. The
16 Commission --

17 Given the level of uncertainty surrounding
18 the costs and the critical importance of having them
19 correctly borne by the cost causer, the Office
20 believes this proceeding is insufficient to make a
21 final determination on this matter. At a minimum the
22 Commission must condition ETC status and must not
23 allow TracFone to begin its Utah Safelink operation
24 until this issue has been resolved. This will likely
25 require a separate hearing to properly determine

1 costs.

2 Regarding communications, we've kind of
3 gone over the sheet that was passed out as a
4 surrebuttal document and the reasons for the Office
5 offering that document. So I won't go through
6 everything that is contained on that sheet, but we do
7 believe that the simple fact sheet provides important
8 information and that we would encourage the
9 Commission to order Trac -- in their Safelink --
10 TracFone in their Safelink package to include that
11 information for Utah customers.

12 One of the reasons that we think it's
13 important is because the customer is getting only 67
14 minutes of free air time, and they are going to use
15 that for employment, social service programs, trying
16 to obtain social benefits maybe food stamps, housing,
17 other things of that nature. They need to know
18 exactly what is going to be counted against those 67
19 minutes. Time on hold -- all of those kinds of
20 things are going to eat into the minutes they have.
21 Knowing exactly what they'll be getting and what is
22 going to be charged against it will help them
23 determine if Safelink is the best product and also
24 how to sort of spend the minutes that they do get.

25 Regarding the deactivation policy, in

1 rebuttal testimony Mr. Fuentes indicates that
2 TracFone has established and implemented a nonusage
3 policy. The Office is satisfied that this policy
4 addresses our concerns regarding ensuring that
5 TracFone does not receive Lifeline support for
6 customers who are no longer being served. However,
7 the Commission should include this requirement in its
8 order to make it clear that such a policy is required
9 for Lifeline providers in Utah.

10 Service offerings, in rebuttal testimony
11 the Office raised concerns regarding the total
12 service offering. The Office suggested that the
13 Commission should also consider adopting some of the
14 other specific remedies included in other state's
15 orders such as Washington's order requiring
16 additional minutes be sold at the 10 cents per
17 minute. The Commission will need to decide whether
18 the public interest in Utah is better served by
19 letting the market work to meet the needs of wireless
20 Lifeline customers through competing offers or if
21 public interest is better served by ensuring that ETC
22 status is conditioned upon providing the same or
23 better benefits for Utah customers that have been
24 ordered in other jurisdictions.

25 There's another issue that has come to our

1 attention since the filing of my testimony that is
2 extremely important, and we believe must be remedied.
3 The issue of new concern is that calls to TracFone's
4 customer service center from the handset are charged
5 against the account just as any other calls. In the
6 Minnesota TracFone case, an intervenor placed a call
7 for which between being cut off and placed on hold,
8 the elapsed time was 19 minutes to reach a customer
9 service representative. Any hold time is currently
10 deducted from free minutes. The Office believes it
11 is unacceptable for calls to customer service to be
12 deducted from the caller's minutes, especially given
13 the fact that TracFone does not have physical offices
14 or other options for assessing customer service.
15 Typically calls to customer service are free and
16 customers may be expecting the same of their Safelink
17 service. This is an extremely important issue that
18 must be remedied.

19 Mr. Fuentes has indicated a willingness to
20 provide free customer service calls when accessed by
21 dialing 611. However, he stated it will be the
22 fourth quarter of this year before that system is in
23 place. Because of the importance of this issue, the
24 Office recommends that the Commission should
25 condition the granting of ETC status to a compliance

1 filing demonstrating that this free calling function
2 is in place. However, if the Commission determines
3 not to withhold ETC status until compliance, at a
4 minimum the customer information sheet identified in
5 my testimony must be modified to include information
6 that calls to customer service from the handset will
7 be charged against minutes included on hold --
8 including time on hold and customers will be notified
9 later this year when those calls are free. And on
10 the second page of the handout we provided today, we
11 have some alternative language to that effect if the
12 Commission decided to go that route.

13 Final recap and summary -- I'm sure you're
14 all glad. In conclusion I would like to summarize
15 the position of the Office in this proceeding. I
16 would also like to make clear that the Office
17 believes many of these issues will apply to all
18 prepaid wireless companies that apply for ETC status
19 and it is our intent that the Commission would make
20 all of the recommendations generally applicable.
21 One, the Commission must make a determination of how
22 to best address TracFone's contribution to Utah State
23 Telecom fees and funds. Ultimately, it is in the
24 public interest for all prepaid wireless phone
25 companies to contribute to 911 and E911 funds. This

1 is particularly important where a company is drawing
2 on public funds such will occur if TracFone is
3 granted ETC status.

4 In this case the PSC can ensure the public
5 interest is met by conditioning the issuance of an
6 ETC on the resolution of this issue in the
7 appropriate forum. However, we acknowledge this is a
8 bigger problem than just TracFone and may be better
9 resolved elsewhere. Given that this issue has been
10 in existence for some time and has not previously
11 been raised, it may be preferable to work out the
12 issue on a different time table and in a different
13 forum.

14 Two, the Commission should require that
15 TracFone include the information provided in the
16 Office's hearing exhibit to ensure that participants
17 of Safelink a regulated service have access to clear
18 concise information about the program. As changes
19 are made to Safelink service as listed in the
20 information sheet, TracFone should be required to
21 submit a revised list for approval.

22 Three, the Commission should require that
23 the current process for Lifeline verification be
24 expanded to accommodate the number of applications
25 expected by TracFone and upgraded to include a check

1 that each household only receives one Lifeline
2 service. Four, the Commission should require that
3 TracFone follow the same verification as existing
4 Lifeline providers and also require that before
5 Lifeline operations begin, a process must be in place
6 to assess TracFone for the costs associated with
7 verification of applicants to TracFone's Safelink
8 service. Since this proceeding has been insufficient
9 to determine these costs, ETC status must be delayed
10 while proper determination has been made which will
11 likely require a separate hearing.

12 Five, the Commission should require a
13 60-day reactivation process to eliminate the
14 potential for USF funds being received for customers
15 who are no longer current active customers with
16 TracFone. Although TracFone currently has a 60-day
17 reactivation process, the Commission should include
18 this requirement in its order.

19 Six, the Commission should require TracFone
20 to demonstrate that the process for enabling free
21 calls to customer service by dialing 611 from the
22 Safelink handset has been implemented prior to the
23 start of Lifeline operations in Utah. And, seven,
24 the Commission's order should explicitly state all of
25 TracFone's obligations under FCC order and Utah state

1 statute and rules as well as specific requirements
2 resulting from this hearing.

3 Additionally, the Commission should
4 implement a rule making to deal with issues raised
5 here that effect not only TracFone but other prepaid
6 wireless phones that apply for ETC status. And that
7 includes my surrebuttal.

8 MR. PROCTOR: Ms. Murray is available for cross.

9 ALJ ARRENNDONDO: Mr. Brecher.

10 **CROSS-EXAMINATION**

11 **BY MR. BRECHER:**

12 Q. Good afternoon, Ms. Murray. In looking at
13 your prefiled testimony, I didn't see anything in
14 there about your background. How long have you been
15 with the -- Ms. Murray, how long have you been with
16 the Public Service Commission?

17 A. I have never been with the Public Service
18 Commission.

19 Q. I'm sorry.

20 A. I've been with the Office of Consumer
21 Services for 11 years.

22 Q. And what is your educational background and
23 postgraduate degrees?

24 A. I have a degree in education, and I have
25 taken regulatory utility courses offered at New

1 Mexico State University and in Michigan.

2 Q. You say regulatory utility courses?

3 A. Yeah.

4 Q. My condolences. Let's get the easy part
5 out of the way. You referenced a document customer
6 service -- I think it was labeled as surrebuttal
7 Exhibit 1.

8 A. Yes.

9 Q. Important Information About Your Safelink
10 Wireless Lifeline Service. Is that document the
11 product of some discussions that took place over the
12 last week or so between your office and TracFone and
13 other parties?

14 A. It is, yes.

15 Q. During those discussions --

16 A. I was just going to say it was kind of a
17 collaborative efforts.

18 Q. During those discussions was TracFone in
19 any way uncooperative or resistant to the idea of a
20 sheet or the information that would be in the sheet?

21 MR. PROCTOR: Objection. It's irrelevant.

22 A. No.

23 ALJ ARRENNDONDO: Overruled.

24 A. No, they were not.

25 Q. Now, before the afternoon part of the

1 hearing, you and I had a discussion about the sheet,
2 did we not?

3 A. Yes, we did.

4 Q. Did I indicate to you that the sheet with
5 your Office's revisions were acceptable to TracFone?

6 A. Yes, you did.

7 Q. Page 5 of your testimony you state that you
8 disagree with TracFone's conclusion that it is not
9 subject to Commission Rule R746364, and I think it's
10 lines 95 to 97 of your testimony. Have you ever
11 examined that rule?

12 A. I have read that rule, and you are maybe
13 going to point out that I'm not an attorney. I don't
14 know.

15 Q. Could you refer me to any portion of the
16 rule that indicates that it is applicable to
17 nonbilled service?

18 A. I'm sorry. Could you --

19 MR. PROCTOR: Objection. It's calling for a
20 legal conclusion, number one. Secondly, it's
21 invading attorney/client privilege with respect to
22 discussions about the meaning and impact of that rule
23 as applied to TracFone.

24 ALJ ARRENNONDO: Sustained.

25 MR. BRECHER: I don't think it's invading

1 attorney/client privilege at all. I asked the
2 witness to refer me to a portion of the rule. Either
3 she can refer me to that portion of the rule if it
4 exists or she cannot.

5 MR. PROCTOR: It tends to bear the nature of
6 client privilege there.

7 MR. BRECHER: I'm not asking about privileged
8 communications.

9 ALJ ARRENNDONDO: Sustained.

10 MR. PROCTOR: The very nature of privileged
11 communications, number one. Secondly --

12 ALJ ARRENNDONDO: Sustained. I already
13 sustained.

14 Q. Now, you testified I believe line 95 that
15 you would not address the legalities of TracFone's
16 position but that in your opinion it would be poor
17 public policy -- I believe those were your words --
18 poor public policy for an entity to draw on any
19 public funds without making appropriate contributions
20 to public funds. What public funds is TracFone
21 seeking to draw on?

22 A. The federal USF.

23 Q. So far as you're aware, is TracFone seeking
24 to draw on any Utah telecommunications service funds?

25 A. Not at this time.

1 Q. When you state in your testimony that a
2 company should make appropriate contributions to
3 public funds, what do you mean by "appropriate"?

4 A. I would say speaking specifically of
5 TracFone or any other prepaid wireless who might
6 apply for ETC status, that it would be appropriate
7 for them to pay the costs, the incremental costs,
8 that is caused -- that they cause through the
9 applications that -- the additional applications that
10 will result from their offering.

11 Q. That's not what your testimony says. Let's
12 leave that point. Let's move on -- strike that
13 partial question.

14 In your testimony you express some concerns
15 about the Safelink service, specifically the number
16 of free minutes. But you also concede -- and I
17 apologize I don't have the line reference, but I
18 think you know what I'm talking about -- that the
19 program would meet the needs of some low-income
20 consumers, do you not?

21 A. I do.

22 Q. For those low-income consumers in Utah who
23 believe the service would benefit them, do you
24 believe that those consumers should be allowed to
25 make that choice?

1 A. I believe that if the process has worked
2 properly and all of the appropriate safeguards are in
3 place, then, yes, the consumer has the ability to
4 make the choice of which provider best meets their
5 needs.

6 Q. You were in the hearing room this morning,
7 I believe, when Mr. Fuentes indicated that TracFone
8 has been designated as an ETC in 29 jurisdictions;
9 correct?

10 A. Correct.

11 Q. And he further testified that at the
12 present time TracFone is offering Safelink service in
13 25 jurisdictions I believe is the number. Did you
14 hear that testimony?

15 A. I heard his testimony. I don't recall
16 exactly if it was 25, but I'll --

17 Q. Whether it's 24 or 25 isn't critical.

18 A. Okay.

19 Q. But do you think that low-income customers
20 in Utah are any less capable of making those kind of
21 buying decisions than are the customers in those
22 other 25 states where Safelink service is available
23 today?

24 A. I'm not questioning the customer's ability
25 to choose or to make that kind of a decision.

1 Q. What percentage of qualified low-income
2 households in Utah are currently enrolled in
3 Lifeline?

4 A. I can only say that Mr. Fuentes this
5 morning I believe he said it was 12.4 percent. Is
6 that --

7 Q. Do you have any reason to question that
8 figure?

9 A. I do not.

10 Q. Now, I was never much good in math. Maybe
11 you are better than me. If Mr. Fuentes is correct,
12 about 12 and a half percent of Utah's low-income
13 consumers are participating in Lifeline, what
14 percentage of the low-income consumers are not
15 participating in Lifeline?

16 A. 87.6.

17 Q. Now, your office is a consumer advocacy
18 office, is it not?

19 A. Yes, it is.

20 Q. As a consumer advocate do you consider an
21 87 percent nonparticipation rate in a benefits
22 program acceptable?

23 A. I would say that we would have to look at
24 broader issues, what alternatives are offered, and
25 certainly we would like to see higher participation,

1 but it comes at a cost to the majority of ratepayers.
2 It may come at a cost to the majority of ratepayers.
3 So from our perspective, we want to make sure that
4 we're meeting the public needs, but also that
5 whatever costs are pushed onto the system or onto
6 other customers, that they are adequately taken care
7 of by the cost causer, if that's the case. Obviously
8 it's going to depend on circumstances but we are in
9 this instance having to also consider not just the
10 fact that you will be bringing more customers into a
11 service that -- it's a good service for customers of
12 Lifeline but also we have do consider the broader
13 implications of what that means.

14 Q. Has your office ever studied or
15 investigated why the Utah Lifeline participation rate
16 is only around 12 and a half percent?

17 A. We have not.

18 Q. Never looked at the question?

19 A. No, we have not.

20 Q. Are you aware that TracFone has increased
21 Lifeline enrollment by more than a hundred percent in
22 every state where it has been designated as an ETC?

23 A. I knew it had in some state. I did not
24 know it was in every state.

25 Q. Now, page 7 of your testimony, I believe

1 starting on line 130 you talk about a NASUCA
2 resolution. And for the benefit of the court
3 reporter NASUCA is N-A-S-U-C-A, National Association
4 of State Utility Consumer Advocates; is that correct?

5 A. Correct.

6 Q. You know more about NASUCA than I do. You
7 indicate that NASUCA may consider a resolution on
8 prepaid wireless Lifeline this month; is that
9 correct?

10 A. That's correct.

11 Q. And when is that going to occur?

12 A. I believe it's like June 16th, not next
13 week but the following -- next week. Sorry.

14 Q. Are you going to be there?

15 A. No, I'm not. Our director will be.

16 Q. Pardon me?

17 A. Our director will be.

18 Q. I'll be there too. Is your director a he?

19 A. Michelle Beck.

20 Q. Now, in your description on page 7 of what
21 NASUCA might consider, there are a series of bullet
22 points, each of which appears to be directed to the
23 FCC; right? "The FCC should consider establishing
24 minimum standards," et cetera?

25 A. That's correct.

1 Q. Do you agree with NASUCA colleagues that
2 these questions should be addressed in the first
3 instance by the FCC?

4 A. I believe they should be addressed by the
5 FCC, but where the FCC doesn't act all the time, I
6 think that the states have a responsibility to make
7 sure that the public interest is served.

8 Q. Are you aware of the fact that the FCC has
9 asked the federal state joint board on universal
10 service to report back to it on Lifeline verification
11 and certifications?

12 A. I'm aware of that.

13 Q. And that is an ongoing proceeding?

14 A. That's my understanding, yes.

15 Q. Do you think that is -- do you believe that
16 is an appropriate forum to address the Lifeline
17 eligibility verification issues?

18 A. I believe it is one appropriate forum, not
19 the only appropriate forum.

20 Q. Do you believe it would make sense for this
21 commission and other commissions to give federal
22 state joint board and the FCC an opportunity to
23 address those issues?

24 A. They certainly could do that. They could
25 withhold any ETC status for a wireless -- prepaid

1 wireless provider until that decision is made.

2 Q. Could they also approve an ETC designation
3 by a wireless provider subject to the results of that
4 proceeding?

5 A. That would be within their discretion
6 certainly.

7 Q. Of course that would have the advantage of
8 delivering service to low-income consumers sooner,
9 would it not?

10 A. It would deliver service sooner, but it
11 would also have some disadvantages. We don't know
12 how long that would take.

13 Q. I'm only asking about the advantages.

14 A. Okay.

15 MR. PROCTOR: Excuse me, Your Honor. I believe
16 the witness is permitted under the rule of this forum
17 to complete her answer including disadvantages.

18 ALJ ARRENNDONDO: Want to complete your answer.

19 MR. BRECHER: I have no objection.

20 A. That was my complete answer. Thank you.

21 Q. There are other ETCs offering service in
22 Utah today, are there not?

23 A. There are.

24 Q. Wire line ETCs. I believe the testimony
25 established there are no wireless Lifeline offers in

1 Utah?

2 A. That's my understanding, yes.

3 Q. Of those wire line ETCs has your office
4 ever sought disclosure from any of those companies
5 about how their services would be provided?

6 A. I'm not sure I understand your question.

7 Q. You have advocated at your office a series
8 of customer disclosures that TracFone will be subject
9 to, and my question was have similar disclosures been
10 sought by your office from other ETCs in the state of
11 Utah?

12 A. No.

13 Q. So you've never asked any ETC in the state
14 of Utah to notify its Lifeline customers it will be
15 charged separately for long distance?

16 A. No, we have not.

17 Q. You've never asked your asked the wire line
18 ETCs in the state of Utah to notify their Lifeline
19 customers that they will be charged separately for
20 caller ID?

21 A. No, we have not, but they don't have to
22 have caller ID.

23 Q. Understood. But if they wanted it, they
24 would be charged separately for it; right?

25 A. And they would be told there was a charge

1 associated with adding that feature to their phone or
2 phone service.

3 Q. Would they be told as part of the Lifeline
4 enrollment process?

5 A. I can't answer that.

6 Q. To the best of your knowledge, do those
7 wire line ETCs operating in the state of Utah impose
8 separate charges for directory assistance?

9 A. I would be speculating. I'm not certain.

10 Q. In most state they do. I'd be surprised if
11 they don't.

12 A. I could answer that way, but I don't know
13 for sure.

14 Q. What happens with a wire line ETC when a
15 customer -- Lifeline customer gets his or her
16 invoices for service and doesn't pay those invoices?

17 A. When they don't pay, then after a certain
18 period, I would assume they would be disconnected.

19 Q. I think that's a pretty good assumption.
20 Has your office ever advocated that wire line ETCs
21 notify Lifeline applicants as part of the enrollment
22 process that failure to pay their billed charges
23 could result in service termination?

24 A. We have not.

25 Q. Now, you've discussed in your testimony

1 certain goings-on in other states, and you refer
2 specifically to a couple -- Colorado, California,
3 South Carolina, and Washington. What was your source
4 of information regard those states?

5 A. In Colorado I reviewed several documents.
6 The one that comes to mind would be TracFone's
7 petition to withdraw. And California, I believe
8 that's attached to my testimony, and South Carolina I
9 don't recall the specific document I reviewed there.

10 Q. Let's talk about California because you
11 attached to your testimony a resolution of the
12 California Public Utilities Commission that is dated
13 December 17th, 2009. Ms. Murray, I'm going show you
14 a document -- I would like this marked for
15 identification as TracFone -- the document that I
16 just handed you, Ms. Murray, is an order issued by
17 the California Public Utilities Commission on May 7,
18 2010. Have you ever seen that document before?

19 A. I don't recall that I have. I couldn't
20 state definitively.

21 Q. I would like to refer you to the second
22 page of that document, and following the "Therefore,"
23 in capital -- in bolded letters there are a series of
24 numbers, sentences, or paragraphs. I direct your
25 attention to the first one, number one. Would you be

1 kind enough to read it.

2 A. "Rehearing of Resolution T-17235 is
3 granted."

4 Q. And just so we're all clear, Resolution
5 No. T-17235 is a document that was attached to your
6 prefiled testimony.

7 At this time, Your Honor, I would like to
8 move the introduction into evidence of this document
9 as TracFone Exhibit 3.

10 ALJ ARRENNDONDO: Objections? None. Designated
11 as TracFone Exhibit 3.

12 **(Exhibit TF-3 was received into evidence.)**

13 Q. Ms. Murray, I'm going to show you another
14 document. Now, Ms. Murray, in your testimony at
15 page 7 Line 230, you state that the South Carolina
16 Public Service Commission found that the TracFone ETC
17 application is not in the public interest because
18 TracFone said it would not contribute to the South
19 Carolina Universal Service Fund, and I believe your
20 testimony was filed -- correct me if I'm wrong -- on
21 April 5th.

22 A. That's correct.

23 Q. What is the date of the document that I
24 just handed to you?

25 A. March 30, 2010.

1 Q. I won't ask you to the read the entirety of
2 the document, but I direct your attention to the
3 caption on the right side. What does it say?

4 A. "Order approving Safelink Wireless, Inc.,
5 as an ETC."

6 MR. BRECHER: At this point I would move to
7 introduce into evidence this order of the South
8 Carolina Public Service Commission as TracFone
9 Exhibit No. 4.

10 ALJ ARRENNDONDO: Objections?

11 MR. PROCTOR: May I have a moment to read it.

12 ALJ ARRENNDONDO: Sure.

13 MR. PROCTOR: Your Honor, if I may, I believe,
14 that Mr. Fuentes discussed a particular part of the
15 negotiations underlying this order in South Carolina
16 with respect to TracFone's obligation to pay into the
17 South Carolina USF, and without reading this line by
18 line, which would take far too long, if counsel would
19 be kind enough to point out where within this order
20 that particular resolution is addressed, that would
21 help me to either state my no objection or whatever
22 objection I may have, and if I've misstated
23 Mr. Fuentes's testimony, I apologize.

24 Never mind. It's on page 3 the first full
25 paragraph, so if I could just have one more moment.

1 I have no objection.

2 ALJ ARRENNDONDO: All right. We'll admit
3 TracFone Exhibit 4 in.

4 **(Exhibit TF-4 was received into evidence.)**

5 MR. BRECHER: Thank you, Your Honor.

6 Q. I direct your attention, Ms. Murray, to
7 page 9 of this document which has a series of
8 ordering paragraphs, and I'm not going to ask you to
9 take the time to read into the record all of them.
10 The document is admitted into evidence and speaks for
11 itself, but I would like you to read into the record
12 numbers two and three.

13 A. "Safelink wireless is designated as an ETC
14 as of the effective date of this order with the
15 service area covering the state. Three, designation
16 of Safelink wireless as an eligible
17 telecommunications carrier will serve the public
18 interest."

19 Q. Thank you. Would you agree with me,
20 Ms. Murray, that contrary to your prefiled direct
21 testimony, TracFone, Safelink Wireless, has been
22 designated as ETC in the state of South Carolina?

23 MR. PROCTOR: Objection. It assumes facts not
24 in evidence, and in addition it's based on only two
25 of the total of ten provisions, and in particular he

1 has not read number one nor has he permitted
2 Ms. Murray to do so. For that reason, the question
3 is improper.

4 MR. BRECHER: First of all, I don't think it
5 assumes facts not in evidence because the facts are
6 in evidence Your Honor just admitted, but I am
7 sensitive to Mr. Proctor's concern and I hereby
8 request that Ms. Murray read paragraph number one.

9 A. "Safelink Wireless has met all applicable
10 requirements for designation as an eligible
11 telecommunications carrier for the limited purpose of
12 providing Lifeline service to low-income South
13 Carolina households including those requirements
14 codified at 47 USC 214(e)."

15 ALJ ARRENNDONDO: So I'll overrule the
16 objection. You can address it on redirect.

17 Q. Just to repeat my last question, it may
18 have been lost by the court reporter. Would you
19 agree that Safelink Wireless has been designated as
20 an ETC to provide Lifeline services to South
21 Carolina?

22 A. I'm pretty sure she didn't miss it, but
23 yes.

24 MR. BRECHER: Thank you, Ms. Murray. I have no
25 further questions at this time.

1 ALJ ARRENNDONDO: Let's take a quick ten-minute
2 break.

3 (A break was taken.)

4 ALJ ARRENNDONDO: Let's go back on the record.
5 Go ahead. Mr. Brecher, we were with you.

6 MR. BRECHER: I'm --

7 ALJ ARRENNDONDO: Did you finish? I can't
8 remember.

9 Mr. Meacham.

10 **DIRECT-EXAMINATION**

11 **BY MR. MEACHAM:**

12 Q. Let me make sure I understand the Office's
13 position now. Ms. Murray, you're holding out
14 agreeing to ETC status until there is some solution
15 for the payment to the USF?

16 A. I would say that we're suggesting that ETC
17 status not be granted until there is a resolution to
18 how the incremental costs associated with the
19 increase in applications would be handled, to be more
20 specific.

21 Q. And the other -- thank you. And the other
22 public interest programs like 911, poison control,
23 are you suggesting they be resolved in another forum?

24 A. We believe that the Commission could
25 certainly ensure the public interest is met by saying

1 they don't get ETC status until those are resolved,
2 but we do think that it could be handled in a
3 different forum and on a different time table and not
4 necessarily affect this process.

5 MR. MEACHAM: Okay. Thank you.

6 ALJ ARRENNDONDO: All right. Thank you.

7 Mr. Ginsberg? None. Mr. Proctor?

8 MR. PROCTOR: Nothing further. Thank you.

9 ALJ ARRENNDONDO: Thank you, Ms. Murray.

10 And I understand Mr. Meredith will take the
11 stand next.

12 Mr. Meredith, do you solemnly affirm the
13 testimony you're about to give is the truth, the
14 whole truth, and nothing but the truth.

15 THE WITNESS: Yes.

16 ALJ ARRENNDONDO: Thank you. You can proceed,
17 Mr. Meacham.

18 MR. MEACHAM: Thank you.

19 **DOUGLAS D. MEREDITH,**
20 called as a witness on behalf of the UTRA, having
21 been duly sworn, was examined and testified as
22 follows:

23 **DIRECT EXAMINATION**

24 **BY MR. MEACHAM:**

25 Q. Mr. Meredith, would you state your name and

1 address for the record, please, and who are you
2 representing.

3 A. Yes. My full name is Douglas Duncan
4 Meredith. My address is 547 Oakview Lane, Bountiful,
5 Utah 84010. I work for a company named John
6 Staurulakis, Incorporated, headquartered in
7 Greenville, Maryland.

8 Q. Did you cause to be filed what we
9 characterize as rebuttal testimony that consists of
10 eight pages with two attachments, the first being
11 entitled The Testimony of Jeffrey J. Irvin, and the
12 second being an order -- excuse me -- a Notice of
13 Withdrawal filed by TracFone in a Public Utilities
14 Commission case in Colorado in Docket No. 09A-393T?

15 A. Yes.

16 Q. If I were to ask you the questions that are
17 in that testimony, would your answers be the same
18 today as they are in the testimony?

19 A. Yes.

20 Q. Do you have any corrections to the
21 testimony you would like to make?

22 A. No.

23 Q. Do you have a summary of your testimony and
24 any surrebuttal based on what you've heard today in
25 the hearing room?

1 A. I have a very brief summary of my
2 testimony. My testimony addresses two matters.
3 First of all, whether this particular proceeding
4 allows TracFone to have state designation as ETC so
5 they would be eligible to receive state universal
6 service support either in high-cost support or
7 low-income support, and I understand that TracFone,
8 subsequent to my testimony, has indicated they are
9 not seeking ETC designation for state support either
10 high-cost or low-income. And, furthermore, I also
11 understand from staff's position, from the Division's
12 position, that such a designation would have to be --
13 come back up before the Commission for that type of
14 designation. So I believe my concerns about whether
15 they are getting state support have been resolved.

16 With regard to the second major issue that
17 I raised in my testimony, I believe and it's my
18 testimony that TracFone should pay for the public
19 interest programs, and they've been noted here.
20 Three in particular are the 911, the relay service,
21 and poison control. Those public interest programs
22 along with universal service -- state universal
23 service programs are in the public interest, and it
24 would not be in the public interest to give TracFone
25 designation without their contributing to those

1 public interest programs.

2 Q. Does that conclude your testimony?

3 A. Yes.

4 MR. MEACHAM: Thank you. Mr. Meredith is
5 available for cross-examination.

6 ALJ ARRENNDONDO: Thank you. Mr. Brecher.

7 MR. BRECHER: Thank you, Your Honor.

8 **CROSS-EXAMINATION**

9 **BY MR. BRECHER:**

10 Q. Good afternoon, Mr. Meredith.

11 A. Good afternoon.

12 Q. I'll try to make this quick because it's
13 late in the day. Your testimony discussed 911
14 funding and the other public service -- public
15 interest programs, and you articulated your opinion
16 that TracFone should be required to contribute to
17 those. As you're aware, I'm sure, if you've read the
18 testimony in this case, TracFone has asserted that
19 the 911 law as written is not applicable to nonbilled
20 services. I realize you're not a lawyer, and I have
21 no desire to engage you in a legal debate about the
22 nuances of the state's 911 law. Do you happen to
23 know what department of the state government is
24 responsible for interpretation and enforcement of
25 that law?

1 A. For 911 revenues I believe they are
2 collected by the Department of Revenue or whatever
3 name that agency has.

4 Q. Okay. Are you aware of any enforcement
5 action taken by the Department of Revenue against
6 TracFone regarding those fees?

7 A. No, I'm not aware of that. Nor am I aware
8 that they even know that this particular proceeding
9 is engaged. I have no information about Department
10 of Revenue or taxation, whatever that department is.

11 Q. But you would agree, would you not, that
12 the Department of Revenue's jurisdiction to enforce
13 state tax and fee laws is independent of ETC
14 proceedings before the Public Service Commission?

15 A. Yes, I believe -- yes, without a doubt, but
16 as I said, I don't know if they've even taken notice
17 of our efforts today.

18 Q. But so far as you know, they have not?

19 A. No. I have no information on that.

20 Q. You testified in your direct testimony
21 about what happened with TracFone's ETC applications
22 in the state of Colorado, and at page 7 lines 146 and
23 147 of your testimony, you make the following
24 statements -- I'm quoting -- "Rather than agreeing to
25 impose the surcharge, TracFone withdrew its

1 application in Colorado." That was your written
2 testimony. Please explain that statement to me, what
3 you meant.

4 A. Well, in reading the withdrawal, in
5 particular it's Attachment 2 -- it's Attachment 2 of
6 my testimony. On page 2, TracFone in the first full
7 paragraph talks about how it hoped the Commission
8 would have considered its application. In the next
9 full paragraph it talks about the primary reason for
10 the prolonged delay has been the intervention and
11 outright opposition of the application by Adams
12 County E911 emergency telephone authority, et cetera,
13 and that testimony for the -- that I have attached on
14 Attachment 1 deals squarely with their objection that
15 fees for 911 support will not be coming from
16 TracFone. That's how I understood these two
17 documents.

18 Q. Okay. Just so I understand, your testimony
19 was that TracFone withdrew its application rather
20 than agreeing to pay the surcharge, but the statement
21 from the attachment to your testimony reference the
22 intervention of several state 911 authorities.

23 A. Yes, because they were concerned about the
24 funding.

25 Q. Now, I direct your attention -- again,

1 sticking to your Exhibit 2 -- turn to page four, if
2 you would, the next to last page of that document.
3 And on the bottom of page four, the next to last
4 paragraph that begins with the word "therefore" --

5 A. Right.

6 Q. Would you be kind enough to read into the
7 record that statement.

8 A. Sure.

9 Q. That paragraph.

10 A. It reads, "Therefore, rather than continue
11 to contest the E911 authorities in this ETC
12 proceeding, TracFone prefers to work with the E911
13 authorities and other interested stakeholders to
14 formulate an appropriate E911 fee collection
15 mechanism for prepaid wireless and to seek enactment
16 of legislation containing such mechanism," end
17 paragraph.

18 Q. So you just read a statement that was filed
19 by TracFone in that case where it described its
20 desire to work with 911 authority to seek a
21 legislative solution. How would you reconcile that
22 statement with the statement in your testimony that
23 TracFone withdrew its application in Colorado rather
24 than agreeing to pay the fees?

25 A. Because TracFone could have taken the

1 opportunity to, say, "Okay, as a good corporate
2 citizen here, I'll go ahead and start making payments
3 to 911 even without legislation." Here in Colorado
4 they essentially complained about the 911 fees and
5 the objections that the 911 authorities have and then
6 come back in particular sentence and say "We're going
7 to withdraw and figure out a solution and get some
8 legislation."

9 Q. Let me make sure I understood what you
10 said.

11 A. Uh-huh.

12 Q. Now, is it your testimony that as a good
13 corporate citizen TracFone should pay fees that in
14 its view were not applicable to it under the law?

15 A. If it wanted to avoid this withdrawal,
16 that's one option that it could have taken.
17 Similarly in this proceeding, there's lots of issues
18 on these fees for public interest -- for public
19 interest programs, and one option for TracFone is
20 make a voluntary commitment to file -- provide that
21 support for those programs.

22 Q. Do you think that's a responsible thing for
23 a corporation to do?

24 A. It can be, yes, certainly. Certainly it
25 shows that the expectation that the legislation might

1 be delayed -- you're going have it anyway if the
2 legislation goes through like other states have
3 started to go forward on it. This would just
4 expedite the process and actually resolve a lot of
5 the issues that the office has and the Division have
6 with the application.

7 Q. Mr. Meredith, I don't want to inquire too
8 much into your financial situation, but do you own
9 stocks in publicly traded companies?

10 A. Yes, I do.

11 Q. How would you feel as a stockholder of a
12 publicly traded company if you found out that company
13 was voluntarily paying taxes that weren't applicable
14 to it thereby reducing its revenues and earning per
15 share?

16 A. There are a number of companies I own stock
17 in that voluntarily have, for example, created green
18 efforts that actually increase the costs of
19 production and distribution, and I'm glad that they
20 do that. And that is not a mandate from a
21 government. It's a voluntary commitment to have
22 green -- a green philosophy in their operations.

23 Q. But it's not a tax?

24 A. No, it's not a tax.

25 Q. Let me ask you another question. Do you on

1 your own home?

2 A. Yes, I do.

3 Q. Do you pay income taxes every year?

4 A. Yes. Not on my home. I pay income taxes
5 separate from my home.

6 Q. When you do your income taxes -- do you
7 have a mortgage on your home?

8 A. Yes, I do.

9 Q. Do you deduct the interest that you pay on
10 your mortgage from your income tax?

11 A. Yes, I do.

12 MR. MEACHAM: Your Honor, I've been tolerant
13 over here. I'm going to object because we're getting
14 afield of the testimony. I think this is personal
15 information. He's rendered his testimony. It speaks
16 for itself. He's addressed the issues that
17 Mr. Brecher has with respect to the testimony and now
18 we're going down through his tax statement.

19 MR. BRECHER: I have no desire to get into the
20 nuances of Mr. Meredith's tax situation, Your Honor.
21 I was simply trying to make the point that being a
22 good corporate citizen does not obligate one to pay
23 taxes that they are not subject to pay, but I'll move
24 on.

25 ALJ ARRENNDONDO: I'll sustain the objection.

1 MR. BRECHER: It's late in the day.

2 Q. Now, you recommended that TracFone's ETC
3 designation be conditioned on payment of these fees.
4 Have you studied the statutes and regulations which
5 establish those fees?

6 A. Yes, yes, I believe -- I've looked at the
7 911 statute, and I've looked at the universal service
8 contribution rule, and I've looked at the poison
9 control rule. I have not looked at the relay service
10 rule.

11 Q. Is it your view that those statutes are
12 clearly applicable to nonbilled services?

13 A. The rule with regard to the 911 has a
14 specific provision that deals with radio
15 communications with billed address, and then it has
16 another provision that does not address the
17 requirement. It says all other services. So in that
18 particular context, looking at those two subparts,
19 Romanette 2 or Romanette 3 of that rule -- I'm sorry
20 I don't have it by memory, but the 911 fees certainly
21 could be applicable under Rule 93.

22 Q. Just so I understand your testimony, again,
23 if I'm misstating anything, please correct me. I
24 think I heard you say there's one subsection that
25 would not be applicable to nonbilled services, but

1 there's another subsection that could applicable to
2 nonbilled services?

3 A. No, it's not a billed services. I believe
4 it's billed address. I know people have the statute
5 here. I could ask counsel for a copy, and I'll give
6 it to you.

7 Q. Not necessary for this purpose. All I'm
8 trying to establish is is it your testimony that the
9 obligation would depend on which of those provisions
10 applied?

11 A. Well, the issue, as I understand TracFone's
12 testimony and position, is that they don't bill and
13 so therefore they can't recover the charge, in a very
14 broad stroke. I know there's more nuance than that.
15 And the issue as I understood it relates to
16 whether -- where they send out a bill and collect
17 that bill from their customers. In a portion of
18 TracFone's operations, they do just that. When
19 people buy prepaid cards on the internet, they get a
20 bill and they collect money from customers. For the
21 portion of the services that are done at a point of
22 sale, POS service, I don't have any experience as to
23 whether that is considered a bill exchange or not --
24 a bill of exchange or not. So I can't speak to the
25 POS. But, however, so for the first -- the first

1 portion of rule deals with the billed address or
2 billing address. The second portion of that rule
3 does not address that. It just says all other
4 services including VoIP should have to contribute.

5 Q. I don't want to engage in an extensive
6 debate about what the law requires or doesn't
7 require. I think you would agree with me it's
8 subject to multiple interpretations. You offered
9 one. My clients offered another one on the record.
10 Now, you heard Ms. Murray a few minutes ago suggest
11 as a possibility or as an option for the Commission
12 to proceed with TracFone's ETC application and
13 address the questions of these fees in another
14 procedure perhaps, rule making -- again, I don't want
15 to put words in her mouth. I heard that discussion.
16 I trust you did as well.

17 A. Yes.

18 Q. Given the fact that reasonable people can
19 differ on the meaning of statutes, what do you think
20 about that solution?

21 A. Well, as I understood her testimony and the
22 position of the Office was that for purposes of the
23 universal service that she recommended that you
24 essentially set this proceeding aside until you have
25 a proceeding on cost for the universal service.

1 Q. For verification.

2 A. For verification and all of that. So that
3 would essentially table this particular request until
4 that proceeding could be done. Then I also heard,
5 for the public interest programs that I've mentioned,
6 two options. One option is to make ETC designation
7 contingent on actually showing that payments are made
8 or determination is made, that you don't have to pay,
9 that TracFone doesn't have to pay, or grant a
10 designation and then clean up the mess later, clean
11 up the fees for the public interest. I prefer the
12 first rather than the latter because I believe it's
13 imperative to get the policy right first before the
14 designation is made. So I would recommend they have
15 a contingent designation similar to the ETC
16 designation -- or the universal service program
17 recommendation of the office to say "Put this aside.
18 If you have to get legislation for this, then let's
19 go ahead and get legislation for it and whatnot."
20 But clearly the principles should apply that public
21 interest programs should be funded by all
22 participants including TracFone and it's not in the
23 public interest to give designation to a carrier that
24 is not going to contribute to the those public
25 interest programs.

1 Q. Again, just to be clear, I'm not addressing
2 in the context of this cross-examination the question
3 we spend a lot of time on today which is the cost of
4 verification and how those are recovered. I'm only
5 talking about what you call the public interest fees,
6 and as you testified there are several options, one
7 of which was to make it contingent, the other which
8 was to deal with it elsewhere.

9 A. Yes.

10 Q. Are you aware of the fact several other
11 states including Maine, Nevada, and several others
12 have in fact designated TracFone as an ETC and
13 commenced proceedings to address the fee questions?

14 A. No, I'm not aware of those state
15 proceedings that you mentioned.

16 MR. BRECHER: I have nothing further at this
17 time.

18 ALJ ARRENNDONDO: All right. Thank you,
19 Mr. Brecher.

20 Mr. Ginsberg? Mr. Proctor?

21 MR. PROCTOR: No. Thank you.

22 ALJ ARRENNDONDO: Any redirect, Mr. Mecham?

23 MR. MEACHAM: No redirect.

24 ALJ ARRENNDONDO: Thank you, Mr. Meredith.

25 THE WITNESS: Thank you.

1 ALJ ARRENNDONDO: Let's get back to
2 Ms. Martinez's testimony. From Mr. Meredith's
3 testimony, do you want to admit that, Mr. Meacham, as
4 URTA Exhibit 1?

5 MR. MEACHAM: Yes, I would like to move for its
6 admission if I failed to do that.

7 ALJ ARRENNDONDO: No objection. I will admit it
8 URTA Exhibit 1.

9 **(Exhibit URTA-1 was received into evidence.)**

10 MR. MEACHAM: Thank you.

11 Ms. Martinez, raise your right hand for me.
12 Do you solemnly affirm the testimony you're about to
13 give is the truth, the whole truth, and nothing but
14 the truth?

15 THE WITNESS: Yes.

16 ALJ ARRENNDONDO: Thank you. Go ahead,
17 Mr. Proctor.

18 MR. PROCTOR: Thank you.

19 **SONYA MARTINEZ,**
20 called as a witness on behalf of the Division, having
21 been duly sworn, was examined and testified as
22 follows:

23 **DIRECT EXAMINATION**

24 **BY MR. PROCTOR:**

25 Q. Ms. Martinez, if you could state your name,

1 spell it for the reporter, and state by whom you are
2 employed.

3 A. Sonya, S-o-n-y-a, L, Martinez,
4 M-a-r-t-i-n-e-z. I'm a low-income advocate for Salt
5 Lake Community Action Program.

6 Q. How long have you been with the Salt Lake
7 Community Action Program?

8 A. Approximately ten months.

9 Q. Prior to that, where were employed?

10 A. I'm sorry?

11 Q. Prior to the Salt Lake CAP where were you
12 employed?

13 A. With the University of Utah. I worked in
14 various social worker positions over the past five
15 years.

16 Q. Could you describe for the Commission
17 briefly your educational background.

18 A. I have a master's in social work.

19 Q. From what university?

20 A. University of Utah College of Social Work.

21 Q. And your bachelor's degree?

22 A. My bachelor's is in human services from the
23 University of Phoenix.

24 Q. Ms. Martinez, could you describe what your
25 position with Salt Lake CAP entails in relationship

1 to public utility matters.

2 A. Yes. Well, I normally work mostly on
3 housing policies, but I have been working with my
4 colleagues Betsy Wolf on the telecommunications
5 issues.

6 Q. And that's the TracFone application?

7 A. Specifically TracFone, yes.

8 Q. Could you describe also for the Commission
9 what you have done in order to prepare to participate
10 in this proceeding?

11 A. I've reviewed -- reread orders and consumer
12 advocates statements and testimonies in different
13 proceedings across the country as well as FCC
14 documents.

15 Q. Have you participated in technical
16 conferences and other meetings with TracFone and the
17 other parties here?

18 A. Yes, I have.

19 Q. Have you or Ms. Wolf, to your knowledge, on
20 behalf of Salt Lake CAP met separately with TracFone?

21 A. Yes, we have.

22 Q. Ms. Martinez, did you prepare prefiled
23 written direct testimony?

24 A. Yes, I did.

25 Q. And when was that filed?

1 A. April 5th, 2010.

2 Q. Were there exhibits attached to that
3 testimony?

4 A. No, there were not.

5 Q. Have you provided a copy of that to the
6 court reporter?

7 A. Yes.

8 Q. Do you have any corrections or amendments
9 that you wish to make to that testimony?

10 A. No.

11 Q. So if I were to ask you the same questions
12 today as you answered in your testimony, your answers
13 would remain the same?

14 A. Yes.

15 Q. Did you file any other prefiled written
16 testimony in this matter?

17 A. No.

18 MR. PROCTOR: With that, Your Honor, I would
19 move to admit Ms. Martinez's direct testimony.

20 ALJ ARRENNDONDO: Any objection? Admit Salt
21 Lake CAP Exhibit No. 1.

22 **(Exhibit SLCAP-1 was received into evidence.)**

23 Q. Ms. Martinez, do you understand that you
24 have the opportunity to provide surrebuttal testimony
25 today?

1 A. Yes.

2 Q. And will you be providing such testimony?

3 A. Yes.

4 Q. If you could first provide it in a summary
5 you wish to make of your direct testimony and then
6 provide your live surrebuttal testimony.

7 A. Yes.

8 Q. Thank you.

9 A. To summarize my initial testimony,
10 telephone services is truly a Lifeline for people
11 with limited income. The Lifeline program exists to
12 ensure accessibility and affordability of quality
13 telephone service to low-income households. We
14 understand the advantage and importance of wireless
15 service and believe that the use of Lifeline funds
16 for such services is appropriate. However, the entry
17 of TracFone and other potential wireless providers
18 into the Lifeline program raises many questions and
19 concerns that have not been previously explored. We
20 would prefer the Commission first make a
21 determination of what it considers to be an
22 appropriate wireless Lifeline product to ensure
23 services offered using public funds serves the public
24 interest.

25 We understand that TracFone is interested

1 in pursuing its application in a timely manner.
2 However, Salt Lake CAP finds that TracFone Safelink
3 proposal raises concerns in several areas and
4 believes that the Commission must at the very least
5 address the following issues prior to granting
6 TracFone's requested ETC designation.

7 One, the offering is inadequate. The
8 limited number of free minutes and the cost
9 associated with purchasing additional minutes should
10 be improved. Add-on minutes should be available in
11 smaller increments. Two, communications from the
12 company and the marketing of the product should
13 provide clear information on the offer and the cost
14 associated with purchasing additional minutes.
15 Three, TracFone should comply with Utah system for
16 eligibility and verification and should be required
17 to contribute to the associated costs.

18 I'll now provide live surrebuttal. We
19 still believe the limited number of minutes that
20 TracFone is proposing is inadequate. The 67 free
21 minutes provided would amount to approximately two to
22 three minutes of usage per day each month. In our
23 experience individuals do not utilize their phones in
24 this way. As stated in our previous testimony, a
25 person who is employed and/or accessing public

1 services could exhaust all of their free minutes in
2 one day. Research from low income advocacy groups in
3 Minnesota have indicated a minimum baseline should be
4 two to three hundred minutes of service per month for
5 a wireless product to be a value to a low-income
6 customer. It is also important to know TracFone has
7 proposed Safelink offerings higher than 67 minutes in
8 other states including a Safelink proposal of 83
9 minutes in Colorado and 80 minutes in Massachusetts.

10 While 80 to 83 minutes is still inadequate,
11 it is evidence that this Utah offering may not be
12 providing the most value for use of public funds. We
13 understand that in addition to the limited number of
14 free minutes, a customer may choose to purchase
15 additional minutes. However, the 20-cent per minute
16 cost associated with purchasing this additional air
17 time, potentially makes the service unaffordable.
18 Even with a purchase of more minutes, the minimum
19 offering provides only an additional 100 minutes of
20 air time, meaning that for about \$20 you still get
21 substantially reduced number of minutes compared to a
22 traditional Lifeline services which costs
23 approximately half that amount.

24 This contradicts the goal of Lifeline which
25 is to provide accessibility and affordable services.

1 In Washington and South Carolina TracFone is offering
2 additional air time at 10 cents a minute to their
3 Safelink customers. In Washington they are also
4 offering discounts on Straight Talk offers starting
5 as low as \$20 for a thousand minutes. TracFone's own
6 Net 10 prepaid wireless is offering their retail
7 customers the opportunity to purchase additional air
8 time at 10 cents a minute.

9 Additional minutes cannot be purchased in
10 increments of less than 19.99 plus applicable taxes.
11 TracFone should be required to offer additional air
12 time cards in smaller, less expensive increments that
13 would be more affordable to customers with limited
14 incomes. We have seen a proposed flier where
15 TracFone indicates an offering of 30 minutes for 9.99
16 is available. However, this add-on offer is only
17 available online and isn't apparent that customers
18 will be aware or have access to that more affordable
19 offering. In Florida TracFone offers its Safelink
20 customer an add-on cards in as little as \$3
21 increments.

22 We understand the market can address
23 competitiveness of telephone offers, but at the very
24 least TracFone should be required to offer the
25 maximum amount of minutes at the least cost and in

1 the smallest increments available in other states.

2 In terms of the company's communications
3 with the customers, TracFone has suggested they plan
4 to roll out aggressive marketing campaign. Our
5 concern is with the emphasis placed on free phones
6 and free minutes. We do not want the emphasis on
7 free to be more prominent than the actual offering
8 and the cost associated with purchasing additional
9 minutes. Communication to the customers should
10 clearly state what is being offered such as the
11 limitation of minutes and the cost associated with
12 adding minutes. We appreciate the Office's document
13 entitled Important Information, and we believe this
14 should be included in any welcome packet sent to
15 Safelink customers.

16 In regards to eligibility and verification,
17 the Public Service Commission contracts with the
18 Department of Community and Culture to administer a
19 certification system for Lifeline eligibility.
20 TracFone's entrance to the market has raised the
21 issue of an increased cost burden to the state to
22 determine Lifeline eligibility. TracFone should
23 comply with the system in place in Utah and should be
24 required to contribute to the associated costs as a
25 condition of ETC status.

1 It has also come to our attention that
2 TracFone currently charges air time customers --
3 currently charges air time to customers accessing the
4 customer service number. TracFone should not charge
5 their Lifeline customers air time usage for calls
6 made to customer service. This is especially
7 important because there are no physical locations a
8 customer can go to deal with customer service issues.
9 We concur with the Office that ETC status be
10 conditioned upon TracFone's ability to provide free
11 calls to customer service.

12 We do believe the Commission should explore
13 the broader concerns such as those raised in the
14 correspondence filed from Crossroads Urban Center,
15 what has been brought up today regarding allocation
16 of costs and the customer service calls as well as
17 addressing the larger issue of what a minimum
18 Lifeline service should look like. The application
19 of TracFone has taken us into new territory, and
20 those issues should be addressed. The bottom line is
21 it's imperative that services offered using public
22 funds be of the best value for both low-income
23 customers and all other customers who pay into those
24 funds.

25 Salt Lake CAP whole heartedly believes in

1 maintaining the integrity of the Universal Service
2 Fund and the Lifeline program. We need to do
3 whatever is required to ensure this including
4 strengthening TracFone's offering and exploring the
5 additional concerns raised.

6 Q. Does that conclude your statement?

7 A. Yes, it does.

8 MR. PROCTOR: Ms. Martinez is available for
9 cross.

10 ALJ ARRENDONDO: Thank you. Mr. Brecher.

11 **CROSS-EXAMINATION**

12 **BY MR. BRECHER:**

13 Q. Good afternoon, Ms. Martinez. Where do we
14 begin. Let's start on page 7 of your prefiled
15 testimony. You make some statements regarding the
16 offering of the number of minutes, and I direct your
17 attention to page 7, lines 157 and 159, and you state
18 that the FCC requires ETCs demonstrate that they
19 offer a local usage plan comparable to the one
20 offered by the incumbent LEC. You also state your
21 opinion that TracFone's offering in Utah is not
22 comparable. Are you aware that the FCC has
23 designated TracFone as an ETC in 11 jurisdictions?

24 A. Yes, I am.

25 Q. Are you aware that as part of the analysis

1 that the FCC undertook in designating TracFone as an
2 ETC that they concluded that TracFone's offering was
3 comparable to that of the incumbent LECs?

4 A. That's correct. But the FCC also indicated
5 that the other states would have, you know,
6 discretion to deal with those issues as well, and I
7 didn't look at what's available in the other states
8 and whether or not that is comparable. I looked
9 specifically at Utah and the customers that we deal
10 with in Utah.

11 Q. Are you aware of the fact, of course,
12 TracFone has been designated as an ETC by
13 approximately 18 state commissions; correct?

14 A. Yes. I don't know the exact number off the
15 top of my head, but, yeah, the ballpark.

16 Q. Approximately.

17 A. Right, yes.

18 Q. Have any of those state commissions
19 concluded that TracFone's offering is not comparable
20 to that of the incumbent LECs?

21 A. Not that I'm aware of.

22 Q. Are you aware of any state commission where
23 TracFone has not been designated as an ETC -- for
24 example, where it has pending applications -- where
25 anyone has determined -- any state commission has

1 determined that its offering is not comparable to
2 that of the incumbent LECs?

3 A. Not that I'm aware of off the top of my
4 head.

5 Q. What is your understanding, Ms. Martinez,
6 of the concept of comparability as used in your
7 testimony?

8 A. Well, in looking at what our current
9 Lifeline participants or programs are currently in
10 Utah, they offer a substantial amount of minutes,
11 more than what TracFone is offering. And while I
12 understand that some of the service offerings are
13 different, the cost is half of what it would be to
14 even add additional minutes to the TracFone. So
15 that's why I've --

16 Q. Cost of what? I didn't understand.

17 A. The cost of a traditional land line
18 Lifeline product in Utah is probably around half of
19 what it would even cost to just add an additional
20 minute -- add additional minutes to Safelink.

21 Q. How much do those land line ETCs that
22 you're taking about in Utah charge for an additional
23 minute of long distance?

24 A. I don't know off the top of my head, but if
25 I can refer to my -- I have it broken down.

1 So the addition of taxes and then depending
2 the area that the customer lives in can bring a basic
3 bill into the \$10 per month range for unlimited local
4 service with the Lifeline discount.

5 Q. I'm going to repeat my question. How much
6 do those wire line ETCs charge for each additional
7 minute of long distance?

8 A. I didn't include that amount for the long
9 distance charges.

10 Q. Do you know?

11 A. I don't know that off the top of my head.
12 I have it in my office.

13 Q. Would you accept, subject to check, that
14 TracFone charges zero for long distance?

15 A. Yes.

16 Q. Now, at pages eight and nine of your
17 testimony, you state what I assume is your opinion
18 that some number of Safelink customers elect to turn
19 off their phones to avoid using minutes or run out of
20 minutes altogether. Do you see that up at the bottom
21 of page 8, top of page 9, lines 189 and 192, I
22 believe it is.

23 A. Right.

24 Q. Can you explain that statement.

25 A. Actually, that statement is based on the

1 fact that it's not clear to us how many Safelink
2 customers simply turn off their phone or do not
3 utilize their minutes.

4 Q. We are talking about two different things.
5 We are talking about turning off the phone and
6 talking about not utilizing the minutes. Let's talk
7 about turning off the phone.

8 A. Okay.

9 Q. Do you have any basis for concluding that
10 any TracFone customers turn off their phones?

11 A. Not specifically to TracFone, but in
12 working with low-income clients on a daily basis I
13 have many clients that I work with who have prepaid
14 cellular phones who do in fact tell me that they turn
15 their phones off because they only use it in an
16 emergency because they don't want to go through their
17 minutes because they have a very limited number of
18 minutes available.

19 Q. But your testimony is specific to Safelink?

20 A. Yeah. And I said it's clear -- it's not
21 clear how many of them do this.

22 Q. It's purely speculation on your part, isn't
23 it?

24 A. Yeah.

25 Q. Have you ever investigated how many

1 Safelink customers turn off their phones to avoid
2 using minutes?

3 A. We actually asked for that information in
4 meetings with TracFone, and they said they would try,
5 but there was really not a way to track that. I
6 mean, they would look into the data, but there's
7 really not a way for them to track that.

8 Q. You've done no independent investigation;
9 correct?

10 A. No.

11 Q. Now, page 9 of your testimony lines 199
12 through 219, you reference the offerings of a couple
13 other providers. You mention Qwest, Boost Mobile,
14 Virgin Mobil. You describe a Qwest plan with 180
15 minutes of outgoing calls and unlimited incoming
16 calls at \$2.23 a month plus EAS charges, plus taxes,
17 plus fees, plus surcharges?

18 A. Correct.

19 Q. Is that a wire line or wireless?

20 A. This is wire line.

21 Q. How much are the EAS charges?

22 A. I'm sorry?

23 Q. How much are the EAS charges?

24 A. It's dependent, I think, where the customer
25 lives, and I don't have that right that front of me.

1 Q. How much are the taxes, fees, and
2 surcharges?

3 A. Actually, I can clarify on the EAS fees.

4 Q. Please.

5 A. So in an area without EAS -- sorry -- in an
6 urban area where EAS is required, charges could be
7 about \$9, and in a rural area where EAS is required,
8 charges could be about 7.50. And then I don't have
9 the exact amount of taxes and fees.

10 Q. So that \$2.23 plan for 180 minutes of local
11 calling could cost substantially more than \$2.23,
12 could it not?

13 A. Actually, with the addition of the
14 applicable fees and surcharges, it would be around
15 \$5, so it would be probably close to double that base
16 amount.

17 Q. Are those taxes, fees, and surcharges
18 disclosed to Qwest's Lifeline customers when they
19 enroll?

20 A. I'm not -- I don't know. I don't know.
21 I've never seen that information.

22 Q. So just to be clear, your testimony
23 advocates that TracFone be required to make certain
24 disclosures, but apparently other companies according
25 to your testimony are offering Lifeline plans with

1 additional fees that are not being disclosed?

2 A. Well, I can't -- I mean, I can't address
3 those because I wasn't at Salt Lake CAP when those
4 issues may have arose.

5 Q. Now, does this Qwest plan that you
6 testified about, does that include long distance?

7 A. No.

8 Q. Does it include roaming?

9 A. It's --

10 Q. It couldn't include roaming. It's a land
11 line.

12 A. No. It's a wire line.

13 Q. Does it include international calling?

14 A. No.

15 Q. If a Qwest customer on this plan wants to
16 call his or her relatives in Mexico or Panama or
17 London or Japan, would that be included?

18 A. No.

19 Q. Does it include caller ID?

20 A. No.

21 Q. Does it include call waiting?

22 A. No.

23 Q. Does it include voice mail?

24 A. No.

25 Q. Would you agree that there maybe some

1 benefits to the TracFone plan that some customers
2 might want that are not available to other Lifeline
3 programs?

4 A. Yes.

5 Q. So would you agree that what might be the
6 most advantageous program for one customer may not be
7 the most advantageous program for another customer?

8 A. Yeah.

9 Q. And who do you think should determine which
10 programs are available to customers? The customers
11 or the Public Service Commission?

12 A. Well, I definitely think the customers.
13 However, I mean, given that the right -- that the
14 most valuable services are available and accessible
15 to them.

16 Q. Now, you talked about TracFone's offerings
17 in Massachusetts and Colorado. I guess we can take
18 Colorado off the table because that's not offered at
19 all. TracFone went through its application. That's
20 not on the record of this proceeding.

21 A. Wait. I'm sorry. Colorado. I don't think
22 I brought up Colorado.

23 Q. You mentioned it in your surrebuttal.

24 A. Oh, I'm sorry. Yeah, you're right. And
25 the reason I do realize that they are not offering

1 Safelink there, however, that was proposed in their
2 application. So I was providing it as an example
3 that TracFone has offered higher minutes in other
4 areas.

5 Q. Well, let's -- I'll give you the
6 opportunity. Would you be willing to strike that
7 portion of your surrebuttal testimony that talks
8 about TracFone's offering in Colorado since it
9 doesn't exist today?

10 MR. PROCTOR: Excuse me. Your Honor, I believe
11 her testimony was that it was an example of what had
12 been proposed, and I think we're correlating with the
13 term offering. It was a proposal. There's no reason
14 nor basis to strike that testimony.

15 MR. BRECHER: I'll approach it another way.

16 Q. Ms. Martinez, of the 29 jurisdictions where
17 TracFone is an ETC, in how many of those
18 jurisdictions does it offer more than 68 minutes --
19 free minutes per month?

20 A. Off the top of my head, Colorado and
21 Florida -- well, Florida, Florida. Sorry.

22 Q. I'm not aware of any testimony in the
23 record that indicates it offers more than 68 minutes
24 in Florida. I think you meant to say Massachusetts.

25 A. Oh, currently?

1 Q. Your surrebuttal testimony identified two
2 states.

3 A. Right.

4 Q. Colorado, which is where the application
5 was subsequently withdrawn, and Massachusetts. So if
6 there were two states and you take away one because
7 the application was withdrawn, that leaves one;
8 correct?

9 A. Yes. Sorry.

10 Q. So my question to you is are you aware of
11 any state other than the common wealth of
12 Massachusetts where TracFone offers a Lifeline
13 offering with more than 68 minutes?

14 A. No.

15 Q. Do you know why TracFone offers more than
16 68 minutes in Massachusetts?

17 A. No.

18 Q. Did you inquire why?

19 A. I'm sorry?

20 Q. Did you inquire why?

21 A. No. I wasn't aware of that until after we
22 met with TracFone. They didn't disclose that.

23 Q. Do you know how TracFone determines the
24 number of free minutes to provide each month?

25 A. No. I know there's some sort of business

1 model that they have based on the \$10 USF, but they
2 have never provided us with any kind of cost base
3 analysis or anything like that. So I'm not aware of
4 all the intricacies.

5 Q. Have you read Mr. Fuentes's initial
6 testimony?

7 A. Yes.

8 Q. Have you read TracFone's application?

9 A. Yes.

10 Q. I believe that you will you find in both
11 those documents, certainly in his initial testimony,
12 a rather detailed description of how TracFone arrives
13 at the number of free minutes.

14 MR. PROCTOR: Objection. Argumentive. It's a
15 statement, not a question.

16 ALJ ARRENNDONDO: Sustained.

17 MR. PROCTOR: Should be stricken.

18 MR. BRECHER: I'll ask it another way.

19 Q. Ms. Martinez, are you aware that TracFone
20 has testified in this proceeding that it determines
21 the number of minutes to provide in any state based
22 on the amount of federal universal service funding
23 available to it pursuant to the rules of the FCC?

24 A. Yes.

25 Q. So would you agree that the amount of

1 benefit that TracFone or any ETC can provide is
2 limited by the amount of available Lifeline support?

3 A. I would agree that it's limited. I
4 wouldn't agree on the amount necessarily.

5 Q. What do you think would be an appropriate
6 amount?

7 A. As stated in -- as already mentioned in our
8 prefiled testimony, we don't know because those
9 issues haven't been explored. This is brand-new
10 territory, and we're simply -- we can't compare any
11 comparable products. I proposed some of the costs
12 that are out there and some of the offers and I also,
13 you know, provided examples of what our current
14 Lifeline offerings looks like, but this is whole new
15 territory.

16 Q. It's different.

17 A. It is very different.

18 Q. And it's in some ways better and in some
19 ways maybe not as good, depending on your needs;
20 correct?

21 A. Right.

22 Q. Let's move on. At page 10 of your
23 testimony you discuss advertising. I believe that
24 you've reviewed certain advertising that's been
25 provided by TracFone, have you not?

1 A. Yes.

2 Q. Have you seen anything in any TracFone
3 advertising that is false?

4 A. Not that I'm aware of.

5 Q. Have you seen ads that say that Safelink
6 includes free phones?

7 A. I'm sorry?

8 Q. Have you seen TracFone advertisements that
9 state that Safelink customers receive free phones?

10 A. I believe their advertisements say, yes,
11 free.

12 Q. Are you aware that Safelink customers in
13 fact receive free phones?

14 A. Yes.

15 Q. So that's accurate, isn't it?

16 A. Yes.

17 Q. Does Safelink include free minutes?

18 A. Yes. A limited number.

19 Q. It includes free minutes?

20 A. It does, yes.

21 Q. So it would not be misleading or inaccurate
22 advertising to state in the ads that it includes free
23 minutes?

24 A. Right. And I never said that it was --

25 Q. Do you believe that the Commission should

1 require more of TracFone's advertising than it be
2 accurate and truthful?

3 A. Yes.

4 Q. It should be more than accurate and
5 truthful?

6 A. Oh, more. I'm sorry. I didn't hear the
7 more part. I believe customers should know exactly
8 what they are getting into, because it is -- it could
9 be very -- potentially very enticing to someone who
10 has not been provided with all of the information up
11 front.

12 Q. Well, let's go back to that question we
13 talked about a few minutes ago, the \$2.23 deal that
14 included no long distance, no caller ID, no taxes and
15 fees, no surcharges, no EAS additions. None of that
16 was disclosed in their advertising. Has your office
17 ever advocated to this Commission that Qwest or any
18 other company with a similar Lifeline program include
19 additional information in its ads beyond that the ads
20 be accurate and truthful?

21 A. I don't know.

22 Q. You don't know?

23 A. No, I do not know. I do not know if that
24 has happened in the past.

25 Q. But you are, if I understand your testimony

1 correctly, advocating the TracFone ads go beyond
2 being accurate and truthful?

3 A. No. I'm asking that TracFone provide the
4 information clear and upfront.

5 Q. Now, you saw the document that was
6 circulated today by -- I believe by the Office that
7 was surrebuttal Exhibit 1, the customer information
8 statement.

9 A. Yes.

10 Q. Have you had an opportunity to review it?

11 A. I have.

12 Q. Are you satisfied with it?

13 A. I believe at the very least something like
14 this should be in the welcome packet.

15 Q. You're aware that TracFone has agreed to
16 this document?

17 A. We have talked about it, but as far as I'm
18 aware, there was never like an actual -- it wasn't
19 resolved a hundred percent.

20 Q. As I indicated in my cross-examination of
21 Ms. Murray a few minutes ago, TracFone indicated to
22 Ms. Murray that it would accept that document.

23 A. Okay. But I --

24 Q. Does that satisfy any of your concerns?

25 A. This is -- like I said, at the very least

1 this should be provided in the welcome packet.

2 Q. Okay. Let's move on because we have no
3 real disagreement there. At page 12 of your
4 testimony -- I believe at lines 292 and 293 -- you
5 discuss a certification of eligibility system --
6 system that's administered by the DCC. And you
7 testify that TracFone would use the state's system to
8 qualify customers but the cost is not insubstantial.
9 I believe those were your words "not insubstantial."
10 How much is insubstantial?

11 A. I don't have a dollar amount to that, but
12 based on TracFone's conversation and TracFone's
13 testimony, they plan on significantly increasing the
14 number of applications that come through, and because
15 we work with DCC a lot, DCC has indicated that it
16 would be a fairly high number.

17 Q. Let's move on to page 13. You discuss the
18 possibility of multiple ETC's providing service at
19 the same address. I'll refer you to lines 306 to 313
20 of your testimony. And you then discuss -- and this
21 is your term -- an optimal solution -- I believe you
22 find that at line 318 -- as a system that would allow
23 tracking of Lifeline participation to a system
24 whereby Lifeline participation could be checked
25 across participating companies. How would that work?

1 A. Essentially the system that has been
2 described in a lot of the other testimony currently
3 does not have -- it doesn't require that DCC check to
4 see if an individual has -- wait. Hold on. I'm
5 sorry. Are we talking about -- I'm sorry. I am
6 getting ahead of myself. Are we talking about
7 multiple listings at one address; correct?

8 Q. Yes.

9 A. Right now with the system that's in place,
10 it will automatically flag if somebody -- like they
11 check to make sure that the person and the address
12 match. If there's more than one person at that
13 address, then they check it further to see what's
14 going on.

15 Q. Now, you were in the hearing room this
16 morning I believe and I believe you heard Mr. Fuentes
17 discuss similar systems that are in place today in
18 Maryland, Texas. I believe he may have mentioned
19 another state. You heard that discussion?

20 A. Yes.

21 Q. Have you studied those approaches, those
22 systems?

23 A. Not in great detail, but it's my
24 understanding there isn't essentially clear -- isn't
25 like a central clearing house in Utah that currently

1 would be able to do that. That would require DCC to
2 upgrade their system.

3 Q. You testified in your surrebuttal about
4 TracFone offering in the State of Washington and you
5 refer to TracFone's Net 10 offering. What is your
6 understanding of Net 10.

7 A. I realize that Net 10 is not a Safelink
8 program, but it is a TracFone subsidiary or sister
9 company, and I was illustrating the fact that they do
10 in fact provide the additional minutes at a lower
11 rate than what they are offering, and it sort of
12 raises the question in my mind why are Safelink
13 customers who are also low-income people being
14 charged a higher rate than these other retail
15 customers.

16 Q. Are you aware of the fact that Net 10
17 customers have to purchase their own phones?

18 A. Yes.

19 Q. They do not get free phones.

20 A. Yes. But in my testimony I also give an
21 example where Net 10, one of their offers, even with
22 purchasing a telephone, is substantially cheaper with
23 more minutes.

24 Q. Doesn't that depend on the quantity of
25 minutes that are being provided?

1 A. Yes.

2 MR. BRECHER: I have no further questions at
3 this time. Thank you, Ms. Martinez.

4 ALJ ARRENNDONDO: Thank you, Mr. Brecher.

5 Mr. Ginsberg. No.

6 MR. GINSBERG: No questions.

7 ALJ ARRENNDONDO: Mr. Meacham.

8 **DIRECT EXAMINATION**

9 **BY MR. MEACHAM:**

10 Q. Ms. Martinez, you know more about these
11 programs than I do. What's the cheapest card that
12 someone who wants additional minutes can get from
13 TracFone?

14 A. Well, initially and in the testimony we
15 were told 19.99, and then recently we've seen some
16 sort of advertisement that indicated there might be a
17 9.99 card for an additional 50 minutes, but it's not
18 clear. I mean, in fact, I believe Mr. Fuentes
19 testified that that is only available online.

20 Q. So if I wanted to -- if I were a TracFone
21 customer and I wanted to get my 68th minute, can I
22 buy one of those -- do you know? -- under the
23 program, just one minute?

24 A. Not that I'm aware of, no.

25 Q. Does that mean the cost of that minute is

1 19.99 essentially?

2 A. Essentially, yes.

3 Q. Even though you get more than that, if I
4 wanted that 68th minute, it would be 19.99?

5 A. Essentially, yes.

6 MR. MEACHAM: Okay. Thank you.

7 ALJ ARRENDONDO: Okay. Thank you,
8 Ms. Martinez.

9 Anything else, Mr. Proctor.

10 MR. PROCTOR: Yes, if I might.

11 **REDIRECT EXAMINATION**

12 **BY MR. PROCTOR:**

13 Q. With respect to the Qwest Lifeline program,
14 are you familiar with precisely what is provided to
15 the Qwest customer for the \$2 program that you had
16 mentioned?

17 A. For the -- title of it, yeah. Yeah, I have
18 it here. I can't think of it off the top of my head,
19 but I do have it my testimony.

20 Q. I believe you testified that for that
21 program, which was a basic cost of \$2, the land line
22 customer received 180 minutes per month outgoing and
23 unlimited incoming calls; correct?

24 A. Correct.

25 Q. And but that did not include any long

1 distance?

2 A. That does not include long distance.

3 Q. Nor any features such as call waiting?

4 A. No, it does not.

5 Q. Okay. Do we know that Qwest does not
6 notify those customers -- Lifeline customers of the
7 costs of long distance or call waiting?

8 A. No, I do not know that.

9 Q. This would be a billed service, would it
10 not?

11 A. Yes.

12 Q. And so in receiving a bill for the \$2, that
13 bill -- is it your understanding the bill would also
14 reflect long distance costs, any additional features
15 they may have asked for?

16 A. Yes.

17 Q. But essentially if a low-income customer
18 wanted 180 outgoing minutes, unlimited incoming
19 minutes, even with paying the EAS charges or the
20 taxes and the fees, their total monthly bill would be
21 something less than \$10?

22 A. Yes.

23 Q. Now, you mentioned that in your experience
24 providing service -- social services to clients,
25 clients have told you that they sometimes turn off

1 their phones. Are these prepaid wireless?

2 A. These are specifically prepaid wireless
3 customers, yes.

4 Q. If you could describe what circumstances
5 under which your client told you this. What was
6 typical?

7 A. I can give you a specific example of
8 something that happened actually two weeks ago. I
9 had a client who kept calling and leaving me
10 messages. They were actually inquiring about a
11 housing issue, a safety issue, and we kept missing
12 each other. And the client finally came in probably
13 after two days playing phone tag just to see if I was
14 in the office. And at that time he notified me that
15 it's very difficult for him to not play the phone tag
16 because he has such a limited number of minutes and
17 he can't afford to add those minutes each month, that
18 he has to call and check his voice mail after a
19 certain time. And this is a plan that allows him to
20 have free evening minutes. So essentially uses it as
21 a voice mail box, checks his voice mail in the
22 evening and tries to return calls without using too
23 many of his minutes.

24 Q. Now, in your experience given a choice
25 between 67 total minutes per month that would include

1 long distance so you could make your call to Japan --
2 I believe was an example given -- and local calling
3 that is essentially unlimited, in your experience
4 with your low-income clients, which would be -- which
5 would they prefer?

6 A. They would prefer the more local minutes.

7 Q. Why is that?

8 A. Because it's essential to their everyday
9 life. They utilize their phone services not only to
10 contact people like me to help them navigate systems,
11 but they also -- if they are unemployed, for example,
12 they have to contact unemployment for their
13 applications for unemployment. They have to contact
14 the unemployment office every week to update their
15 employment status and their job hunting. If they are
16 receiving any kind of -- any other kinds of benefits,
17 they have to contact their caseworker through a
18 telephone line and call times -- sometimes they are
19 on hold for a long time. Sometimes not. They are
20 having to talk to potential employers. If they have
21 children in child care, if they have a doctor's
22 appointment they have to schedule their doctor's
23 appointments using their telephone service. It goes
24 on and on.

25 Q. But you would agree, would you not,

1 Ms. Martinez, that prepaid wireless or -- excuse
2 me -- yeah, prepaid wireless Lifeline programs such
3 as Safelink is a value to some customers?

4 A. It is, and it can be.

5 Q. Just as would the land line customer --

6 A. Correct.

7 Q. -- find the most benefit in using a land
8 line?

9 A. Correct.

10 Q. Both of those customers receive through
11 their company federal funds on a monthly basis, do
12 they not?

13 A. Yes.

14 Q. Is the amount of the federal funds paid to
15 the carrier the same whether it be a land line or a
16 wireless?

17 A. Yes.

18 Q. And so is it the intent of Salt Lake CAP
19 and through your testimony that again the use of
20 public funds should provide the greatest benefit to
21 the consumer?

22 A. Yes.

23 Q. And at the same time, the carrier getting
24 the benefit of those public funds should also pay the
25 costs that they cause because of their federal

1 program?

2 A. Yes.

3 MR. PROCTOR: I have nothing further. Thank
4 you.

5 ALJ ARRENNDONDO: Thank you, Mr. Proctor.

6 Thank you, Ms. Martinez.

7 MR. BRECHER: I have one follow-up question.

8 ALJ ARRENNDONDO: Go ahead.

9 MR. BRECHER: With your permission.

10 **RECROSS-EXAMINATION**

11 **BY MR. BRECHER:**

12 Q. Ms. Martinez, I just heard you discuss with
13 Mr. Proctor the situation that some clients of yours
14 might prefer a land line, unlimited local plan
15 Lifeline offering to a prepaid wireless Lifeline
16 offering with limited minutes but the other features.
17 Is this a fair summation?

18 A. Yes.

19 Q. You also indicated that there might be some
20 customers that feel otherwise. Do you know how
21 Lifeline works? Let me be more specific. With
22 Lifeline service, how many companies get Lifeline
23 support when service is provided to one customer?

24 A. I'm not sure I understand your question.

25 Q. With Lifeline, if there's a customer out

1 there that wants Safelink rather than Qwest --

2 A. Yes.

3 Q. -- and Safelink captures a customer, you
4 understand, of course, that Safelink will receive the
5 Lifeline support?

6 A. Yes.

7 Q. But that Qwest will not receive the
8 Lifeline support. Conversely, that customer you
9 described in response to the last set of questions
10 who would prefer that Qwest wire line unlimited
11 offering, Qwest will get the Lifeline support for
12 those customers Safelink will not; is that correct?
13 Are you with me?

14 A. Yes.

15 Q. Don't say yes unless you're with me. Only
16 the company providing the service is going to get
17 support?

18 A. Yes.

19 Q. So if hypothetically speaking the
20 low-income residents of the state of Utah believe
21 that Safelink is a horrible program and none of them
22 sign up for it, how much public money from the
23 universal service fund will TracFone get in round
24 figures?

25 A. If in fact the customer does notify

1 TracFone that they are utilizing -- that they want
2 the offer on their Qwest phone -- because I'm still
3 not sure -- are you asking me if a person chooses
4 Safelink and then wants to go back to Qwest with
5 their benefit?

6 Q. Not necessarily. And I'm not asking about
7 double-dipping. I just want you to address the
8 impact on the universal service fund when a consumer
9 selects a specific Lifeline product, whether it be
10 Qwest, whether it be Safelink, whether it be somebody
11 else.

12 A. Right. In theory, yes, they should -- only
13 one company will receive the benefit.

14 Q. So if the Public Service Commission
15 designates multiple ETCs that compete with each other
16 and consumers like one of those company's products
17 better than they like another company's products,
18 that company will get most of the Lifeline support,
19 will it not?

20 A. I don't know.

21 Q. Why wouldn't it?

22 A. Because I can't predict that.

23 Q. We're not communicating. I'll try one more
24 time. I heard you testify that your clients, some of
25 your client at least, would prefer the unlimited

1 local plan; correct?

2 A. Correct.

3 Q. For those of your clients that prefer the
4 unlimited local plan to Safelink's plan, which ETC is
5 going to get the Lifeline support?

6 A. The wire line.

7 Q. That's my point. Which ETC is not going to
8 get Lifeline support?

9 A. Any other provider that they are not
10 utilizing.

11 Q. Including Safelink?

12 A. Including Safelink.

13 MR. BRECHER: That's all I want. Thank you very
14 much. No further questions.

15 ALJ ARRENNDONDO: Mr. Proctor.

16 MR. PROCTOR: Judge, I think it's my mistake we
17 forgot to deal with this one exhibit that we handed
18 out.

19 ALJ ARRENNDONDO: Yeah, I didn't get that.

20 (off the record)

21 MR. PROCTOR: Judge, this was my error in
22 presenting that. If I may ask her just foundational
23 questions.

24 ALJ ARRENNDONDO: Sure.

25 **REDIRECT EXAMINATION**

1 **BY MR. PROCTOR:**

2 Q. Ms. Martinez, could you explain the
3 document that we had earlier handed out that was Salt
4 Lake CAP exhibit that reflects the Straight Talk.

5 A. This is just a very brief spreadsheet of
6 some of the other offerings that I discussed in my
7 testimony including the Straight Talk, and I have the
8 information directly from the website, which shows
9 the Straight Talk offering that are currently being
10 -- it is a condition of their ETC status in
11 Washington, and the offerings are listed -- so for
12 example, the 1,000 minutes for \$30 that I talked
13 about in my testimony, they would get that \$10
14 discount from the Universal Service Fund, so it would
15 essentially be \$20.

16 Q. And of this was the Straight Talk program
17 about which questions were asked of Mr. Fuentes and
18 he described the Washington State Public Service
19 Commission ordered in connection with that; is that
20 correct?

21 A. Yes.

22 Q. And on the very top there also a list of
23 four states and heading of free minutes add-on costs
24 and other. What do those reflects? Do these come
25 from your testimony?

1 A. Yes.

2 MR. PROCTOR: On behalf of Salt Lake CAP I would
3 offer to admit into evidence Salt Lake CAP Exhibit 1.

4 MR. BRECHER: I'm going to object in part to
5 this document. I have no objection to the Straight
6 Talk portion of it although I would point out that
7 any references to any Washington Utility and
8 Transportation Commission order imposing a Straight
9 Talk requirement on TracFone are inaccurate. To date
10 the Washington Commission has not issued any such
11 order. I'm objecting to the top line that references
12 Colorado and 83 minutes because as we established
13 already during this hearing that is not an offering
14 that's available, that TracFone withdrew its
15 application in Colorado.

16 ALJ ARRENNDONDO: So can we agree to strike that
17 or can Salt Lake CAP submit an exhibit blanking it
18 out?

19 THE WITNESS: Like I stated in my testimony, it
20 was a proposed offering, but that's fine.

21 ALJ ARRENNDONDO: Okay.

22 MR. MEACHAM: Isn't this otherwise 2 then? Her
23 testimony was -- 2.

24 MR. PROCTOR: That's right, yes. That would be
25 2.

1 ALJ ARRENNDONDO: Can I get a copy of that.

2 MR. PROCTOR: That's the extra copy.

3 MR. BRECHER: Now, the revised version that
4 we're getting on the record will one of us just white
5 out?

6 MR. GINSBERG: Seems like it's been adequately
7 explained what Colorado represents.

8 ALJ ARRENNDONDO: We'll admit exhibit -- Salt
9 Lake CAP Exhibit 2, and I agree with Mr. Ginsberg.
10 We understand the Colorado 83 minutes, and if it's
11 really a big deal, you can argue it.

12 MR. PROCTOR: Ms. Martinez would agree it could
13 be stricken since it referred to in her testimony as
14 proposed offering, so just strike that line.

15 ALJ ARRENNDONDO: We'll get a copy of that
16 whited out.

17 Thank you, Ms. Martinez, you're free to go.

18 Any other matters that we need to discuss?
19 Do we have public witnesses here? Any of you? Okay.
20 One person. Typically the Office, Ms. Murray takes
21 names, so let's come back on in a couple minutes, if
22 you could write the names down of those that want to
23 testify.

24 (off the record)

25 P U B L I C H E A R I N G

1 ALJ ARRENNDONDO: We're back on the record.
2 This is public witness portion of this hearing, and
3 we do have one public witness Mr. Tim Funk from
4 Crossroads Urban Center. Mr. Funk. Mr. Funk, you
5 may testify either under oath or just make general
6 comments as a member of the public. If you testify
7 under oath, you're also subject to cross-examination.

8 TIM FUNK: Under oath.

9 ALJ ARRENNDONDO: Will you raise your right
10 hand, please. Do you solemnly affirm the testimony
11 you're about to give will be the truth, the whole
12 truth, and nothing but the truth?

13 TIM FUNK: Yes, I do.

14 ALJ ARRENNDONDO: Thank you. Have a seat. Can
15 you state a business address or home address.

16 TIM FUNK: I work for Crossroads Urban Center.
17 Our address is 347 South Fourth East in Salt Lake
18 City. It may be to my credit or not, but I worked
19 for the Office of Consumer Services from 1985 to
20 1990, and one of the things that I also did is I
21 worked for the Community Action Program and helped at
22 one point, after I had left there, to set up the
23 original Lifeline program. So I'm fairly intimately
24 aware of what the Lifeline program is, was originally
25 intended to be, and I'm also aware of the regulatory

1 process. That process has helped us to develop a
2 Lifeline program has serve adequately if not
3 completely sufficiently a number of people. At the
4 same time I'm shocked to know that after 25 years of
5 Lifeline service that we only have 30,000 or so
6 people enrolled in the program. I'm also shocked to
7 hear today the process that people go through that
8 they wouldn't have better service than they have.

9 According to the reading I've done, there's
10 a 97 percent penetration rate meaning 97 percent of
11 the households in this state have Lifeline -- have
12 telephone service. That means there's a very small
13 number of households that don't have service, whether
14 it's Lifeline or otherwise. Also, the numbers that
15 we're hearing -- and I'm a little baffled -- because
16 we hear and see in the TracFone literature that was
17 in the endorsement letters that they've been out
18 trying to put together -- have put together, many of
19 them all -- all of them being the same, and the
20 quotation in the letter says 29,000 households are --
21 of 146 or 147,000. And then they say that there's
22 only 12.4 percent of the households are covered.
23 Well, I don't know if it's 12.4 percent is 30,000 or
24 is it 30,000 of 150,000. That's not 12.4 percent.
25 Whatever the number is, there haven't been enough

1 people who are enrolled in the Lifeline program. We
2 are not necessarily against TracFone or any other
3 company coming forth and offering the people that we
4 work with at Crossroads Urban Center better phone
5 service, but we would have to say that we don't think
6 that this service is adequate.

7 Universal service is a principle that as
8 far as I know in the regulatory world you want
9 everyone to have phone service and you want them to
10 have adequate service and service that's comparable,
11 not service that's less. 67 calls, that's 2.25 calls
12 a day or calls -- extra calls at 20 cents a call are
13 not affordable. Now, you've heard testimony today
14 that people who have phone service and buy a card --
15 and I know some of the same people -- low-income
16 people who come into Crossroads and we have many of
17 them. That's what we do. We have 45,000 households
18 we serve emergency food to and we do extensive work,
19 and I've spent the last 35 or 37 years working with
20 the poor in Utah, and I think I know them fairly
21 well, and I know that they have phone cards. They
22 buy the phone, and they go get the card, and if they
23 think they don't have enough phone service -- and I
24 can bring you people if you want to see and feel one
25 and talk to them -- they turn the phone off. "I have

1 a hundred minutes. I'm going to turn my phone off
2 because I know I can't use that phone anymore. That
3 might be the 15th of the month, and then they
4 become -- and I do an awful lot of work with housing
5 and people on Section 8, so I know people who do
6 this -- they will go use their neighbor's phone.
7 They'll use their neighbor's phone extensively.
8 Doesn't mean they stop communicating necessarily, but
9 they don't use the phone. They don't use their cell
10 phone because they can't afford to buy more minutes.

11 And I don't know -- and I'm not sure I
12 heard it right today that TracFone has said that
13 93 percent of their people don't ever exceed their 67
14 minutes, well, God, that means that phone service
15 isn't worth a whole bunch to them.

16 We sent a letter to the Public Service
17 Commission on the 15th of last month. We said in it
18 several things. We said that the TracFone service
19 proposed is not adequate -- is not an adequate
20 replacement for the existing Lifeline service and at
21 best it is a limited complement to it. If you don't
22 have Lifeline, maybe -- I mean, if you don't have a
23 land line phone, maybe having a cell phone that you
24 could carry for emergency purposes would be worth it,
25 but I don't know. The monthly offering, as we said,

1 of 67 TracFone minutes is inadequate for most users
2 and the 20 cents per minute charge on additional
3 calls is too high.

4 And you have heard plenty of examples of
5 other places that offer a phone card that you can buy
6 for 2 and 4 and \$10. We think that's the way to go.
7 We do have here and we're -- we'll pass this out.
8 This is a statement that was sent us to by one of our
9 advocate counterparts in Twin Cities, and her
10 statement -- this is from Mary Shapiro, the executive
11 director for Twin Cities Community Voice mail, and
12 this is a statement she made in the TracFone hearing
13 there. She works with homeless people and people who
14 are in the shelter. These are the most -- these are
15 the people who supposedly going to be served by the
16 TracFone service. Her statement is -- I have to put
17 my glasses on. She makes a statement very similar to
18 the one I'm making. They want to focus on three
19 things, the number of minutes per month, the cost of
20 additional minutes that Lifeline customers purchase
21 from TracFone, and charging air time minutes for
22 customer service. She recommends -- "We recommend in
23 our comments that 200 minutes provide a basic
24 foundation of service." They also say that it is
25 their hope that the public utilities commission there

1 will work with TracFone to cap additional minutes for
2 Safelink customers at the competitive retail price of
3 10 cents a minute.

4 And then using these fewer minutes for
5 customer service calls does not make sense. They say
6 they are aware that the state of Washington has
7 reached an agreement with TracFone to provide
8 customer service calls without consumption of air
9 time minutes. We think that's very critical.

10 Two or three more things -- we think that
11 TracFone should be required to contribute to the cost
12 of certifying customer eligibility at least. We
13 don't know how you can have another phone service
14 come into our customer service regulatory area and
15 not pay their fair share. However you determine
16 that, that remains to be seen, but we think that
17 needs to be done.

18 And, finally, in terms of making points or
19 emphasizing points, we think that the TracFone
20 advertising and promotion of Lifeline service should
21 be reviewed and approved by an independent panel of
22 some kind. I don't know what that panel should be.
23 I don't know who it should be, but I read the
24 TracFone stuff off your website, and I was shocked to
25 see that it's free service and a free phone. And

1 that is the impression you get. You don't get the
2 67-minute impression. You don't understand that
3 you're going have to spend 19.99 for 20 cents a
4 minute for a hundred minutes. You don't get that.
5 You don't understand that when you read your stuff.

6 And so if that's the impression I'm getting
7 and I'm supposed to be an educated and knowledgable
8 person, I think that would be overwhelming for some
9 of the people we know who might be attracted to this
10 phone service. We have asked the Division of Public
11 Utilities to consider holding a generic hearing on
12 this very subject on Lifeline, what it is in terms of
13 what it's been and is now and what it might be as a
14 cell phone offering. We don't see that they are
15 mutually exclusive. I don't think they are that
16 different. I do know that there are thousands and
17 thousands of people in this state, as I said earlier,
18 who have phone service that they just went ahead and
19 purchased that they didn't either know about the
20 Lifeline service or it wasn't appealing enough to
21 them to really go ahead and apply for it. How we can
22 have one out of five or might be one out of ten who
23 actually use the existing Lifeline service, that's
24 mind boggling. It's just mind boggling after 25
25 years this service isn't better utilized. We think

1 it's wonderful TracFone what wants to do and that
2 they want to advertise and they want to promote phone
3 usage, but give us phone usage that our people can
4 use. Don't give us phone usage that's going to put
5 people on the shelf for 10, 20, 25 days a month.
6 It's not of any use. It's a phone service -- you may
7 have the studies that say that 67 minutes is
8 adequate. I don't know. But my reading of the FCC
9 document says that on average people use their phone
10 700 minutes a month.

11 How can you expect a low-income person
12 under the issuance of a universal service declaration
13 to get less than 10 percent of what the normal person
14 uses. I think that the Virgin phone offering -- I've
15 read their initial offer -- their initial filing at
16 200 minutes at 10 cents a minute. I think that's a
17 fairly reasonable standard to follow, but I would
18 think that you really need to take all of this into
19 consideration, throw it all out on the table. You
20 could have a generic hearing if people were willing
21 to do that. I think you could have that concluded by
22 end of the summer. Short of that, I think everyone
23 is whistling in the dark. I don't think anybody
24 whether they've been in 29 jurisdictions or not -- I
25 don't think that this whole question has been

1 massaged well enough, and I'm not even going to take
2 to time to talk about what's happening federally.
3 You guys know that better than I do. But there are
4 federal -- the feds want to take a look at Lifeline.
5 They want to do a better job with Lifeline. They
6 want to help get more wireless Lifeline. I don't
7 think that's the question. I think the question is
8 what's the best thing -- what do people need as a
9 minimum, and it isn't 67 minutes. It's more like 200
10 or 300 minutes. Anyway, that's all.

11 ALJ ARRENDONDO: Thank you, Mr. Funk. Any
12 questions of Mr. Funk?

13 MR. BRECHER: I have a few.

14 **CROSS-EXAMINATION**

15 **BY MR. BRECHER:**

16 Q. Good afternoon, Mr. Funk. First of all,
17 thank you for your testimony. Thank you for your
18 service to the state. I heard a lot of what you said
19 that I agree with. I heard a few things I don't
20 agree with, and one of the things that I agree with
21 is you expressed concern about the low Lifeline
22 penetration rate in the state of Utah. And I would
23 like to use this opportunity to get a couple of
24 documents in the record. I'm going to show you two.
25 Let's do it this way: Mr. Funk, I just handed you

1 who two documents. One is a table with a bunch of
2 numbers.

3 A. Right.

4 Q. The other is a colored chart. Let's talk
5 about the first one first. That is a document that
6 comes from the Federal Communications Commission
7 report. It's caption Baseline Information Table 1A
8 and Baseline Lifeline Subscription Information, year
9 2002. And as you can see it lists states, and the
10 last column, the right-hand column, most right-hand
11 column, is captioned Percentage of households that
12 took Lifeline in 2002. If you scroll down or look
13 down, you'll see Utah, and what figure is given for
14 Utah for the percentage of households that took
15 Lifeline?

16 A. As has been stated many times, 12.4
17 percent.

18 Q. It has been stated many times, but I want
19 to put on the record where that number comes from.
20 At this time I would like move into evidence --
21 permission evidence that document as TracFone Exhibit
22 No. 5.

23 ALJ ARRENDONDO: Any objections?

24 MR. MEACHAM: Is there anything more recent than
25 this?

1 MR. BRECHER: I'm getting to that.

2 A. I could go back to my briefcase and give
3 you a 2008 figure.

4 Q. I think I did that for you. The color map
5 I handed you and each of the parties is captioned
6 2009 Lifeline Participation Rates by State. Have you
7 ever seen this document before?

8 A. I haven't seen this document. I've seen
9 these figures though.

10 Q. Okay. This document is prepared by the
11 Universal Service Administrative Company. Are you
12 familiar with the Universal Service Administrative
13 Company?

14 A. I am at least generally.

15 Q. Could you briefly describe what the
16 Universal Service Administrative Company is?

17 A. They are the people who report -- well, my
18 understanding is they are the people who oversee the
19 Universal Service Fund and the various elements of
20 it, not only the collection but what it does, and
21 produce these colorful maps to show what the
22 participation rate is.

23 Q. You're exactly right, Mr. Funk, and this
24 page is taken from the Universal Service
25 Administrative Company website, and you can see it

1 lists by state the 2009 Lifeline penetration. The
2 state of Utah is what color?

3 A. It's yellow and it says 20 to 50 percent.

4 Q. Okay. So we know that in 2009, according
5 to USAC, the Lifeline penetration rate in Utah is
6 somewhere between 20 and 50 percent?

7 A. Right.

8 Q. Correct.

9 At this time I would move for admission
10 into evidence as TracFone Exhibit No. 6 the Lifeline
11 participation rates by state?

12 ALJ ARRENNDONDO: Objections?

13 MR. PROCTOR: Was the number five -- pardon
14 me -- pardon me -- of TracFone No. 5 admitted?

15 ALJ ARRENNDONDO: No. I think we're doing both.

16 MR. PROCTOR: He did move, but I heard one
17 question and we moved to No. 6.

18 ALJ ARRENNDONDO: Let's talk about proposed
19 Exhibit 5. Any objections on that?

20 MR. PROCTOR: Go ahead.

21 MR. GINSBERG: I think I object to them. It's
22 easy to just throw a record into the record, but it's
23 impossible to ask questions about what these columns
24 mean. He's not going to be able to answer it. It's
25 just a public record that apparently was pulled of

1 off some public document, but it's impossible to have
2 any meaning I think in this record.

3 ALJ ARRENNDONDO: Mr. Meacham? Mr. Proctor?

4 MR. PROCTOR: I would agree it's an unconnected
5 Table 1A to Section 1 to a report, but we don't know
6 what that report is. We don't have a copy.

7 Furthermore, it's seven years out-of-date, assuming
8 that -- through 2009. So it's likely not the best
9 evidence if it is in fact a government record or
10 government-produced table. I would object to the
11 foundation out of this witness.

12 ALJ ARRENNDONDO: For 5 and 6.

13 MR. GINSBERG: Their witness could have clearly
14 presented this as an exhibit and we could have found
15 out what these columns meant.

16 ALJ ARRENNDONDO: Do you want to make those same
17 objections for 5 and 6?

18 MR. PROCTOR: I think 6 has an additional
19 problem on its face. It says that the methodology
20 employed to create the map is involves estimates,
21 assumptions, simplifications, and omissions and
22 therefore it's treated as estimates only. I don't
23 know that that's probative of anything that has taken
24 place up to this point and particularly not with
25 respect to the public witness test portion of the

1 hearing.

2 ALJ ARRENNDONDO: Mr. Meacham?

3 MR. MEACHAM: I concur.

4 ALJ ARRENNDONDO: I'm going to sustain the
5 objection for both 5 and 6.

6 MR. BRECHER: Your Honor, these are public
7 documents that are -- one is a reported FCC decision,
8 pending for a reported FCC decision. It's been
9 issued by a government-created entity. I assume that
10 the Commission can take administrative notice of
11 those kind of documents, can it not?

12 ALJ ARRENNDONDO: Yeah. The problem is -- I
13 don't know where these came from. You tell me that
14 and I trust you, but you're not a witness, so I don't
15 know.

16 MR. BRECHER: I wanted to get on the record --
17 there's been a lot of discussion today about low
18 Lifeline penetration rates, and I haven't heard
19 anybody -- any witness disagree with those numbers.
20 I thought it would be useful to have on the record
21 where those documents -- where those numbers come
22 from. I can tell you I and my staff have done
23 extensive research for other sources of Lifeline
24 penetration data, and the FCC 2002 report document
25 and the annual USAC map are the only things we can

1 find.

2 ALJ ARRENNDONDO: Thank you.

3 MR. BRECHER: So let's move on.

4 Q. Mr. Funk, you indicate that despite the low
5 Lifeline penetration rate in Utah that about
6 97 percent of the population has telephone service.
7 Did I understand you correctly?

8 A. That's my reading of the federal documents,
9 yes, sir.

10 Q. So even though a large number of low-income
11 qualified -- by qualified I mean qualified for
12 Lifeline Utah households -- do not participate in
13 Lifeline today, apparently a lot of them do get
14 telephone service?

15 A. Yes, sir.

16 Q. Would you agree with that?

17 A. I think that's very true.

18 Q. So what you have -- correct me if I'm
19 wrong -- is a lot of people in this state that are
20 entitled to federal support that aren't getting it
21 even though they have phone service?

22 A. Even the numbers you just were challenged
23 on indicate that at least other states seem to do a
24 better job of Lifeline than we've done in Utah.

25 Q. So what I'm suggesting to you is is it

1 possible that many of those qualified households that
2 today have telephone service, they are in that
3 97 percent, but do not have Lifeline support -- that
4 is, they are in that 87 percent that qualify and
5 don't get it -- is it possible some of those
6 customers might benefit from a wireless Lifeline
7 option?

8 A. We have no question that people would use
9 cell phone service and it would be a complement to
10 their lifestyle, poor or not. Our question is is
11 this the kind of service that they can best utilize?
12 Asking the question of whether I would replace the
13 universal service I have now as Lifeline service to
14 land line service where I have unlimited calling in
15 the Salt Lake area and South Davis county and that
16 EAS area, that has proven over time to be a very
17 adequate if not superior service to not having any
18 service at all or, in my opinion, having service
19 that's only 67 minutes long a month. The question is
20 is 67 minutes at 20 cents an additional minute an
21 adequate and, maybe you could say, fair service? And
22 I think not.

23 Q. You mentioned providing service to
24 shelters; correct?

25 A. Yes.

1 Q. Somebody who lives in a shelter, homeless
2 shelter, doesn't have a fixed address typically;
3 correct?

4 A. That's true.

5 Q. Are you familiar with the Lifeline
6 requirements that you have to have a residential
7 address?

8 A. Yes. And I'm also -- just on that point
9 that I failed to make in my kind of stumbling
10 statement.

11 Q. It wasn't stumbling at all.

12 A. The point that we wanted to make was that
13 there is an FCC proceeding that was initiated by the
14 National Consumer Law Center, I believe, on that very
15 question, who should get universal service, and I
16 understand that the FCC has actually opened the
17 docket, the docket they opened in May, May 17th, I
18 believe, will look at -- because of the request from
19 one of your counterparts in Washington D.C., they
20 will look at the question of how to handle phone
21 service especially now that we're talking about
22 promoting cell phone service -- how a homeless person
23 could get that phone service and be considered
24 eligible for it. I understand the whole thing about
25 needing an address, but we've -- you know, we work

1 extensively with homeless people. We have them in
2 our front door every morning when we come to work,
3 and the point is that they can't -- they don't have a
4 permanent address but on many things they will use
5 the address of shelter they may be staying in as
6 their official address. They get mail there. They
7 get bills there. They get -- some of them are on
8 federal subsidy programs, and that's the address they
9 use.

10 Q. Mr. Funk everything you said is correct
11 with one exception.

12 A. What's that?

13 Q. That is that the request to the FCC was not
14 made by the National Consumer Law Center. It was
15 made by TracFone. I can say that with some authority
16 because I filed it. National Consumer Law Center
17 filed comments in support. TracFone, so you know,
18 has been working with the FCC and shelters around the
19 country to establish procedures that enable temporary
20 residence of homeless shelters to receive Safelink
21 phones when they otherwise would be ineligible.

22 A. If that's successful, you will have a
23 higher place in heaven.

24 Q. We are doing all we can. And I guess the
25 point I'm trying to make is would you agree that a

1 service -- that a Lifeline service that is available
2 today to persons that do not have permanent addresses
3 would be a benefit to Utah?

4 A. I think it would be a benefit to them, but,
5 again, if what I say is true -- and I believe it
6 is -- that people who have that phone service become
7 afraid to use it because they are afraid they'll
8 exceed their 67 minutes, which I believe is
9 inadequate, then that service is really -- may be
10 counterproductive. When we ask for generic hearing,
11 it's to actually review that sort of thing. I think
12 we're at the threshold of a better world with
13 offering both types of service.

14 I'm really embarrassed as a citizen of the
15 state of Utah that Qwest has done -- they are the
16 primary Lifeline provider -- that they have done such
17 a lousy job promoting their own service. You have
18 2002 figures that shows nineteen or twenty thousand
19 people and eight or nine years later maybe we have a
20 thousand more households in the state using it each
21 year. Well, that just isn't what poverty dictates to
22 me. That's not how poor people are in this state.
23 They could use a better phone service. They could
24 use better promotion of the existing service, and
25 they can certainly use the cell phone service that

1 you're offering. We're just saying there are
2 questions about the cost, and I think that cost makes
3 it prohibitive for them at 20 cents a call, 19.99 for
4 a card, or \$10 for a card, whatever it is. And at
5 the 67 calls, I really don't understand how Virgin
6 can in their preliminary application be offering
7 those 200 at 10 cents. I just don't understand how
8 it can be so different.

9 Q. Let's talk about Virgin a little bit. Has
10 your office had discussions with any representatives
11 of Virgin Mobile?

12 A. No, I wouldn't know a person from Virgin
13 Mobile if they walked through the door.

14 Q. Are you familiar with the Virgin Mobile
15 Assurance wireless plan?

16 A. All I'm saying is I read their filing, and
17 I don't claim any anything beyond that.

18 Q. You testified it provided 200 minutes per
19 month.

20 A. That's what they are offering in their
21 application.

22 Q. Do those unused minutes carry over to the
23 succeeding months?

24 A. I don't know.

25 Q. Would you accept, subject to check, that

1 they do not?

2 A. If they do not, then -- my feeling would be
3 this: If you can't use the 200 minutes a month, so
4 be it, so be it. At that price, that's a good deal.
5 You know, if they are going to offer a free phone
6 like you're offering and they offer 200 minutes at 10
7 cents a call after that, that's probably a good start
8 on a true Lifeline system.

9 Q. Let's talk about that a little bit. Let's
10 take a Virgin Mobile customer who signs up for
11 Assurance Wireless and in a given month uses 50
12 minutes. At the end of the month he loses the
13 remaining 150 minutes. How many minutes did he get
14 that month?

15 A. Well, he got 50, but if he knew he could
16 use 200, he probably would get close to using that
17 200.

18 Q. And the TracFone who gets 67 minutes and
19 uses 50 minutes, how many minutes does that customer
20 get?

21 A. You'll certainly lead me there, but if he's
22 got an additional 17 minutes and he can save them --
23 I don't know if he can save them for a year or three
24 months or whatever it is -- that's a good feature of
25 your service, and if you can do that, why can't you

1 take that and turn it around and add that to the 67
2 minutes. If people are going to use 50 minutes, not
3 everyone is going to use 67 minutes, but some people
4 could certainly use 200.

5 I have here a professional statement from
6 somebody who has run a wireless phone service through
7 their shelter in the Twin Cities. I'm sure you know
8 about these people. They have been in your
9 proceedings, and they have talked about the need for
10 two to three hundred minutes a month, in some cases
11 400 minutes a month, just to do the very basic
12 services we've been talking about -- applying for
13 food stamps, getting your kids in school, talking to
14 the doctor, trying to find a job. 67 minutes a month
15 won't do that. It won't do that, not for a homeless
16 poor family. It won't do that.

17 We have people that come in every morning.
18 We have a free phone. We don't have long distance on
19 it. We have a long distance governor, and people
20 come in and use that phone, our phone in our front
21 lobby, all the day long. Eight hours we're open from
22 9 to 5, and people come in and use our phone, and
23 it's there for that very purpose. It's never not
24 used.

25 Q. Let's go back to Virgin plan that you

1 testified favorably about. We've confirmed -- we've
2 established the minutes don't not carryover. Do you
3 know what Virgin Mobile charge is for text messages?

4 A. I don't know. What is your charge for text
5 message? You don't have one.

6 Q. Yes, we do. It's in the record of this
7 proceeding. Text messages are charged at the rate of
8 .3 minutes per text. Does Virgin impose additional
9 charges for directory assistance?

10 A. They shouldn't.

11 Q. I didn't ask what they should do. I asked
12 what they do.

13 A. I don't know.

14 Q. Would you accept, subject to check, that
15 they do?

16 MR. PROCTOR: Excuse me, Your Honor, I apologize
17 for the record. This is becoming a competitive
18 comparison between TracFone and Virgin through a
19 witness who has testified to what he does know about
20 the various offerings and what in his judgment would
21 be better. It's a public witness. I think that at
22 this point going further with this argument about the
23 various merits of the companies is not productive to
24 this proceeding and perhaps has interpreted
25 Mr. Funk's explanation of what his constituents need.

1 MR. BRECHER: I concur with counsel on that.
2 I'm not going to pursue this any further. This is a
3 point I've been trying to make with prior witnesses
4 all day. It is not the role of this Commission to
5 decide whose plan is best because not one plan is
6 best for everybody. For some customers, Virgin
7 Mobile has a terrific plan. For some customer Qwest
8 has a terrific plan. There are other customers --
9 and there about 3 million around the country --
10 Safelink is pretty good.

11 And it seems to me once an applicant for
12 designation as an ETC has demonstrated its qualified,
13 this Commission like every commission should not be
14 in the business of deciding which one is giving the
15 consumers the best deal. Consumers are pretty smart.
16 They can figure it out themselves, and I'll let it go
17 at that.

18 MR. PROCTOR: I would have to move,
19 unfortunately, to strike the last part of the
20 argument.

21 ALJ ARRENNDONDO: I'll sustain that. I let it
22 go because Mr. Funk raised the Virgin Mobile and
23 Qwest. I thought it was fair for Mr. Brecher to
24 question you on it. But I don't believe we need to
25 go any further with the Virgin Mobile issue. I'll

1 strike that portion of Mr. Brecher's testimony.

2 TIM FUNK: Let me just conclude by saying that
3 in my professional experience working for the
4 consumer office in this state, we believed in
5 universal service, and we believed it should be
6 adequate, fair, and affordable. And the question of
7 adequate is -- and the question of fair is not -- in
8 our opinion -- and it's a qualified opinion. I've
9 got 35 years, maybe 40 years if you want to count
10 some of the other things I've done. But 40 years I
11 have worked with low-income people, and I know they
12 need a phone. I know they need phone every day. I
13 know they need phone for their personal safety and
14 health and for their social needs. We know that they
15 need more than 67 minutes at 20 cents an additional
16 minute. That's the baseline. That's the basic
17 thing, and then we can play with all of the other
18 regulatory ramifications of that. But what we really
19 do believe is that you need to have a -- you know,
20 you need to get down to -- we needed to have a
21 hearing process that lets us compare the 67 to the
22 200 to the unlimited EAS service that we have now and
23 find out how to best market that for people.
24 Frankly, I think that your marketing regime --

25 ALJ ARRENNDONDO: Mr. Funk, I'm going to have --

1 TIM FUNK: Give me one --

2 ALJ ARRENNDONDO: Don't start getting into
3 marketing. We're getting into a lot of tangents.

4 TIM FUNK: Your Honor, this has especially for
5 low-income people --

6 ALJ ARRENNDONDO: Mr. Funk, I understand that.

7 TIM FUNK: I don't think people understand.

8 ALJ ARRENNDONDO: I'm going to have cut you off
9 because you've taken 40 minutes of this time, one
10 hour allotted.

11 TIM FUNK: Well, I'm not the one who is asking
12 me questions.

13 ALJ ARRENNDONDO: Go ahead and finish up.

14 TIM FUNK: What we want to say is if you're
15 going to allow promotion of this service to
16 low-income people, many of whom don't speak very good
17 English, then you should be very careful about how
18 that's done, and in my humble opinion -- and I have a
19 master's degree in journalism, and I'm a very good
20 person in advertising. I know that business really
21 well, and I know if this program isn't well done and
22 if it doesn't have the kind of safeguards that are
23 recommended by your earlier witnesses, that you're
24 going have a real hard time giving people the service
25 they need at the price they can afford.

1 ALJ ARRENNDONDO: Thank you, Mr. Funk. Thank
2 you for your testimony.

3 Anybody else? Okay. We will recess until
4 somebody else comes on until 5:30, and we'll talk
5 about post-hearing briefs at 5:30.

6 (off the record)

7 ALJ ARRENNDONDO: Let's talk about post-hearing
8 briefs then. Any post -- how long do you think the
9 it will take for the transcript to get out?

10 I assume you want copies of the transcript.

11 MR. GINSBERG: I had a little discussion, and
12 I'm actually leaving -- are we off the record?

13 ALJ ARRENNDONDO: No, we are on. Do you want to
14 go off record?

15 MR. GINSBERG: Yeah.

16 ALJ ARRENNDONDO: Let's go off the record.

17 (off the record)

18 ALJ ARRENNDONDO: That's it. Thank you.

19 (Whereupon the taking of this hearing was
20 concluded at 5:33 p.m.)

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C E R T I F I C A T E

STATE OF UTAH)
)
COUNTY OF UTAH)

THIS IS TO CERTIFY that the foregoing hearing was taken before me, Letitia L. Meredith, Registered Professional Reporter in and for the State of Utah.

That the hearing was reported by me in Stenotype, and thereafter transcribed by computer under my supervision, and that a full, true, and correct transcription is set forth in the foregoing pages.

I further certify that I am not of kin or otherwise associated with any of the parties to said cause of action, and that I am not interested in the event thereof.

WITNESS MY HAND and official seal at Spanish Fork, Utah, this ___ day of _____, 2010.

Letitia L. Meredith, CSR/RPR