

PHOENIX CENTER ROUNDTABLE TRANSCRIPT:
What Hath the FCC Wrought?
Examining the Triennial Review and the TELRIC NPRM
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Lawrence Spiwak: Let me introduced myself once again for the record. My name is Larry Spiwak and I'm the president of the Phoenix Center. I'd like to thank all of you for coming here. We have these brown bags from time to time and what we try to do is have a small intimate group as a have here of major players to try and have an open and Socratic discussion where some of these issues, especially when we have an order which is a thousand pages long, or close to it with everything, we can talk about some of the issues, flush them out that perhaps have not come to the forefront. So, I appreciate everybody's showing up and I encourage it to be open and a vigorous discussion and again, I appreciate it. So what I'd like to do (these round tables tend to have a rather open format) what I like the start with is to have everybody go around the table, introduce themselves and basically give me one or two of their biggest pet peeves of the Triennial Review. Or issues that they think are interesting or colloquial but give me one or two points that perhaps that you want thought about of interest and once we go around, we can then start to talk about and flush those issues out. So I'll tell you what, why don't we start with Harold and we'll just work around the table.

Harold Furchtgott-Roth: Well thank you Larry. That's a very tall order to come up with just one or two. And something that no one has thought about; there probably are very few regulatory orders in American history that haven't been thought more about than the Triennial Review.

There's no point in coming here and not be slightly provocative, so I will be provocative. I think the importance of this order is greatly exaggerated. The telecom industry has had no order that has withstood court scrutiny on unbundled network elements since the passage of the act and somehow, the industry has muddled along. Not well, but I think it's fair to say that there are other issues that have withstood court scrutiny that the commission is looking at now, including TELRIC rates. Every time the FCC loses in court, what it does is creates a vacuum of federal law which doesn't remain a vacuum, it's still typically by state law. That has been the pattern in the past several years and I think will become more of a pattern as the 271 process is finished and the FCC no longer has a big club to hold over the head of the states to keep in line with federal rules. In fact, it isn't obvious to me that if the states really are in any way constrained by what the federal government does because the resolution likely will wind up in District Court for years and years, and in very paradoxical way, we have wound up with a situation where local telecom regulation is migrated back to the states, where it all began. I don't know whether this is good or bad, but that's kind of how I see the way Telecom regulation is played out.

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I will say that the state of the local telecom industry is a mess. I talk to folks on Wall Street about investments in various parts of the industry and they're completely dismayed, unsure of what to do, heavily distracted by all types of legal proceedings. And I think it really is a sad commentary that which Circuit Court hears a case matters that a case is heard by a Circuit Court at all, matters. And ultimately that's not what competition is about. Ultimately what competition about is the companies going out and doing things. I'm very dismayed at the legal costs that companies are going to have to incur to participate in this industry, particularly when some states frankly the market is not very large and to participate in that market, you may have to spend millions of dollars and that's not a very attractive outcome. And hopefully going forward, many of the states, with or without the FCC's blessing, will look at new ways to deal with relationships between carriers and I hope they'll try some innovative approaches that do not involve necessarily fixed regulated rates, but encourage negotiation between carriers and quite possibly explore various parts of arbitration that will get the government out of dictating terms and conditions and allow for some meaningful form of relationships, business relationships between carriers. And I think there are opportunities here and I'm hopeful that the states will show some innovation.

Lawrence Spiwak: Thank you very much. Larry.....

Lawrence Sarjeant: Larry Sarjeant, United States Telecom Association. First I'll issue a disclaimer that everything I'm going to say today is not necessarily reflective of USTA policy but I think it's pretty consistent, but in a sort of chat like this, you need to have a little flexibility.

I'll make four observations, I don't know that they're pet peeves, but I think they are things that do not augur well for the commission as it continues to try and get itself out of a box that it's in. I remember a presentation I did at McCullough one time and used the analogy to that movie where the guy keeps waking up and it's the same day all over again. And I think the commission finds itself in that situation, with not just new meanings in section 251, but a host of issues around the evolution and migration of telecommunications in this country to a new level, a new plane, a new model, a new paragon, you can pick your word. Part of is just the challenges of the agency and the government trying to move the ball, not necessarily in conflict with, but perhaps at a different pace than the culture in which the industry and the model grew up in. And it's a difficult task.

First, with respect specifically to 251(d)(2), which is the core of the Triennial Review order and the impairments under, there is a natural tension that exists between an analysis that is fundamentally subjective and analysis that is fundamentally objective when it comes to competition and impairment. If you go down the road of subjectivity, which is where I think this commission has been inclined to go, you get the debate we have between intramodal vs. intermodal competition with a very strong bias at the commission of looking at competition purely in the context of whether or not there will be facilities-based CLEC competition as sort of the sine qua non of what it is intended to accomplish under section 251. I think the courts have

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great trouble with that and you saw that in USTA vs. FCC, particularly on line sharing. How do you just blithely ignore competition in the marketplace, particularly when you look at competition from the perspective of a consumer as opposed to the market players? So I think that's an issue of this commission is going to have to come to grips with and until it does and puts more objectivity in its analysis, and I don't mean that from the standpoint of a bias as much as the analysis looked at impairment as individual competitors as opposed to a sort of a broader marketplace objectivity. It's got to come up with more consistency in its definition of what is competition. What constitutes competition? Again, looking at it from the standpoint of its ability to finally get something through the courts. Most judges are trained in terms of competition law in the context of antitrust. And in that context, the biases towards competitors, particularly dominant players in the market, not impeding competitors from entering the market, as opposed to competitors or dominant players having to facilitate entry by competitors into the market. Again, at the core of what we have seen over time with Section 251's application, the bias has been towards the facilitation of entry of competition by affirmative assistance of those who are seen as dominant in the marketplace. It's an alien concept to most judges that its [inaudible] think that the FCC has such difficulty in the courts selling its analysis and outcomes, in terms of its impairment analysis. It's one with which judges are generally not familiar and quite frankly, for the most part, doesn't make sense in a marketplace and you're hard-pressed to find another example of where this kind of affirmative assistance, particularly applied the way the commission as applied it, has been used in any other industry. But that's the politics of federalism and I think this 251 and [inaudible] is just one part of this, but we continue to have to live with a regulatory construct that separates out state entities and federal entities in a world that simply doesn't respect those boundaries anymore. And as long as we have to live with that construct, we're going to have difficulties, not because anybody is still motivated, but there are different incentives. If you are a state regulator, you have every incentive to keep local rates down. Well, if you have every incentive to keep local rates down, you have every incentive to have low [inaudible] rates too; because that's the only way you're going to bring competition into that market with the way you've kept the incumbent with low local rates. It just one thing follows from the other. And we're seeing its attention in the debates about whether or not certain services are going to be classified as interstate and intrastate because the only way and get to the national policy is to take the states out of the game by defining something as intrastate and we're seeing that debate play itself in broadband VOIP. But that's going to be a tension that's going to continue to exist and its a tension that's a big part of I think the FCC getting itself out of the box that it's in, that can come up with a workable analysis on the 251(d)(2) that's going to pass legal muster.

Jason Oxman: Jason Oxman from Covad. One or two from the order. My number one incongruity, it would be, not surprisingly in the line sharing section, where the commission concluded that line sharing could be eliminated because of the availability, on a nationwide basis, of line splitting, which allows DSL carriers to partner with UNE-P providers, given the commission's decision to preserve UNE-P, and offer a bundled package of voice and data

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services, so the availability of line splitting, meant that line sharing could be eliminated. And then there's a footnote that the commission drops, granting for the first time, a 3 1/2 year-old petition for clarification filed by MCI and the commission concluded for the first time, that line splitting applied to UNE-P. So, the obvious question is, and the commission proceeded to adopt line splitting rules into the CFR for the first time. They had never done that before. So the obvious question is, how could line splitting be a nationwide substitute for line sharing, that the commission clarified for the first time in the order, albeit in a footnote and not in the actual text of the order, that line splitting was applicable to UNE-P and that it adopted line splitting rules for the first time? In fact the commission dropped a second footnote where it encouraged the state commissions to act as quickly as possible to implement line splitting process and procedures across the states, as quickly as possible, obviously because the commission had concluded that line splitting was available on a nationwide basis as a substitute for line sharing. This, not surprisingly is the reason that Covad and a coalition of nine other DLS providers from around the country, filed a stay request with the FCC asking for a stay of the phase-out of line sharing until line splitting is actually implemented across the country, for the simple reason there's an incongruity there. I think that would be my number one issue.

My number two issue actually follows on something that Larry mentioned. And that was The D.C. Circuit's disposition of line sharing and use to the FCC. As Larry noted, the court called into question the commission's determination that line sharing needed to be unbundled given the availability alternate providers of broadband services to consumers. And the court remanded to the FCC, not its determination that line sharing was a network element because it upheld the commissions determination that it was a network element, but rather remanded to the FCC for further analysis of the availability of alternative broadband platforms, cable modem it sited, and to a lesser extent, satellite. Well, what the commission did on remand is not the granular analysis that USTA in particular (the trade organization, not the case) argued to the FCC that it had to do, particularly in the switching context, but the commission made a blanket conclusion that cable modem was available on a nationwide basis, and thus again, line sharing could be eliminated. It did not do a single granular analysis on a geographic basis to determine where cable modem was actually available. It did not respond to, for example, the evidence in its own data gathering that it does on an annual basis, that in the state of California, for example, DSL deployment vastly outpaces cable modem, and that there are many more DSL subscribers in California than there are cable modem subscribers, thus suggesting that the granular analysis required by USTA would result in line sharing being preserved in California. That type of analysis and it's interesting that I'm making the same kind of point that Larry was about the failure of the commission to do a granular analysis on the switching side, because they did fail to do that analysis on the line sharing side as well. Obviously USTDA and Covad probably will not be sharing a brief before the D. C. Circuit, but we will be making a similar argument in that respect on two different issues. So, that would be number two on my list of interesting conclusions in the commission's order.

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Lawrence Spiwak: Great, thank you. John...

John Mayo: I'm John Mayo, Georgetown University. Before I launch into sort of incongruities, I think one might generously say, let's be generous to this order and to the folks at the FCC, that I can think that most generously interpreted, might be said to be attempting in this order, to move forward with a new regulatory paradigm that really was established beginning in 1996, or should have been and really was affirmed by the Supreme Court in 2002 in the Verizon case and that new regulatory paradigm is one of the enabling competition. What do you do to set a set of rules in a marketplace that will truly enable competition as opposed to an old regulatory paradigm of simply disabling monopolies? And it is a more affirmative challenge I think for commissions in that that I think is a subtle but very very important message that hopefully commissions both at the federal level and the state level are going to get.

There are, I think, embedded in this order, a number of challenges in that respect and our ability move this forward. As an economist, I will say that my reading was both one of, particularly with respect to the impairment issues, a large voluminous and I thought relatively unobjectionable discussion of the notion of barriers to entry and how the linkage between the notion of barriers to entry and cost asymmetries that are imposed upon new entrants and the notion of impairment. I didn't have a particular set of problems with that. And in that way, the order seems to cloak itself a bit in the notion and rhetoric of the economic theory and economic concepts. And I was pleased by that. What I found to be a bit more challenging, and I think the public, both at the state level and the federal level, and all the people here are going to struggle with, is as the order unwound into the dimensions of practicality, and in the name of simplicity, it was arguably a tremendous slit between cut and lip, between the economic theory and the way this is going to play out.

There are a number of challenges that, and let me mention just a couple, two or three. In the trigger analysis, that would trigger an impairment analysis, here, unlike economic theory, the sound advice from economic theory, we simply are going to proxy whether there is effective competition in the provision of switching by counting numbers of competitors. Well, that's not something that industrial organization economics or the community of scholars really has ever subscribed to. And so I found that to be a bit puzzling that that was going to be the case. I think it's going to be a challenge as we move forward at the state level. Secondly, there is a notion that the after talking about barriers to entry, and cost asymmetries, there's a notion somehow that commissions, state commissions should count or offset any cost asymmetries imposed on new entrants with the proposition that there might be efficiencies that new entrants have that incumbents do not have. I find it a little bit odd that one might, in a public policy context, find that there's not impairment, despite cost asymmetries imposed on a new entrant. Simply because the new entrant might have, let's just say, a smarter CEO who's more efficient than the incumbent. And somehow we are going to be challenged to monetize those efficiencies that I think somehow that strikes me as an affront to sound economic thinking.

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And third, to the extent that we are going to count competitors, George Ford and I were talking about this just before we began here, if we are going to count competitors, it seems to me that we ought to again, be a little more respectful of the economics community and think about something like George Stigler's old survivorship principals of saying that it's not really just the fact that firms exist, but rather whether they are in fact surviving or not. There's a dynamic involved with new competitors that I think any dispassionate observer would say that the landscape has not been particularly healthy for new entrants into this arena. So I think again, the challenge is these are all challenges that the states are going to have to deal with and I'm interested in hearing how other people think those are going to play out.

Lawrence Spiwak: Thanks John. Bob....

Robert Blau: I'm Bob Blau, with BellSouth. You won't be surprised; I have a little bit of a different perspective on this. One thing that does continue to amaze me though is the fact that the policy process, including the folks around this table, don't seem to be sort of stopping and thinking about how much this is costing the industry and how much it will ultimately end up costing the consumer if it's not turn around. I think that if one particular industry group represented at this table or elsewhere was benefiting by this deal, it would be one thing. But it's apparent, it's become painfully apparent by now, I would think, but that's not the case. The practical effects of the order and we could talk about the detail and so forth and so far this begun to suck a lot of capital of the business and that continues to occur. I think Harold put his finger on part of the problem. If you look at what Wall Street is writing about this business, they're [inaudible] more time now talking about these court cases and all the litigation that's going on surrounding the Triennial Review and they are talking about the fundamental economics of the business or growth prospects. There's probably only one other industry in the economy that can make the claim, and that's tobacco. That is really a sorry comment when you think about it. When they think about the kinds of other technologies that are riding on our respective networks and what this might mean to the computer industry, to the computer industry, or the information services industry, or the ISP industry going forward.

The other point that I would make is I just don't think that the policy making process either here in Washington or at the state level are equipped to deal with these issues. That's also becoming, should be becoming, painfully apparent. And the industry really needs to step back from this and start thinking about some alternative ways of dealing with these problems. Some of you folks may have heard Dave Dorman's comments at AEI a few weeks ago when he made the same remarks. Every time the Commission or the state commissions get into this, they try to cut the salami and it makes things worse for both sides. I think a lot of these decisions, maybe not all, a lot of them really sort of need to be worked out on a commercial to commercial basis and taken out of the hand of regulators where that is possible. In some instances, that may not be appropriate or possible entirely and there are consumer interests both the states and the commission have got to respect and there may be some instances where there may need to be some arbitration of disputes that need to be resolved. But, I tell you, to ask the FCC or the states

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to do what they've been asked to do in this proceeding and were going to go through the same thing with the TELRIC proceeding, I guess. It's not a good idea, and we should have learned that lesson by now and I'm not sure we have.

Todd Dubair: Hi, I'm Todd Dubair from [inaudible] and I'm here to represent the American ISP Association. It's a little bit difficult to focus on just a few issues, but I'll keep my comments to really three points. I think it's important to understand, the American ISP Association represents very small ISPs, which we think have been very important to the rollout of information services across the U.S. To look at what happened with the narrow band rollout, we think that the small ISPs played a key role in focusing in on end user's and cleaning up the services that were created, that created incentives for people to want these services. And unfortunately, what we're seeing today is that many of the smaller ISPs are locked out from providing broadband ISP services. And if you look what happened in the Triennial Review Order, we are really very concerned because it really boils down to this: we use telecommunication services, we use the underlying transport, the DSL transport services. Where there is competition for these transport services, smaller ISPs have a choice. They get better prices; they get to go to the provider that offers them better service. Where there's no competition, the prices for that underlying transport aren't right and frequently, we can't even enter the market because the margin between the underlying Transport and the retail services of the ISPs that are affiliated with that provider of the Transport are so low that we can't compete. So, if you look at the Triennial Review Order, there's only two points I'll limit myself on that, and one is line splitting, which I think is a big problem, and Jason made a lot of comments, and so I won't repeat what he said, but we're thankful for line sharing, but were very disheartened to see what has happened with line splitting because, the small ISPs should not have to get into the Telecoms service in order to be able to provide broadband services to end users. And we shouldn't have to affiliate only with the CLEC, only with certain types of providers to get access to the underlying transport. I think that's a very important point to remember.

We also don't really, with respect to fiber to the home, we don't agree with that decision. It's based on this idea that there aren't enough incentives to rollout fiber to the mass market, at least that's what the order was based on originally. And now you see, and a nurata that comes out a little bit later that changes that to all premises. To end user premises and we think it's a real problem because we didn't agree with the original reasoning, but even if you assume that reason was true, it only makes sense limiting it to fiber to the home, fiber all the way to the home, not just fiber to the curb. And we're very disturbed by [inaudible] order that took six months of careful consideration to issue, now being challenged [inaudible] fundamental and that are inconsistent with their reasons that under lie the order, now at the last minute.

The only last point that I would make is that one of the best things the FCC has done over the last couple of decades, is really the recognition that if you want to have competition in the information or unregulated services marketplace, unaffiliated providers of those services have

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to have access to the underlying transport. And we're concerned about how the combination of the Triennial Review Order and what the FCC is considering in the broadband proceedings mainly removing this Computer 2, Computer 3 [inaudible] requirement, how that will affect the ability of competitive ISPs to survive.

And one last point is we haven't talked that much about TELRIC. If TELRIC prices are correct, there's no reason to believe that you need to lift the unbundling requirement to create incentives to rollout broadband facilities. And rather than go back through and revisiting all the TELRIC methodology that the Supreme Court has already approved, we think that the wiser approach is if people believe that TELRIC prices aren't set correctly, they should go back to the states that set the price, and explain why, support the data, with data, their arguments and look at this state look at the price again. It's really unnecessary to overturn what we just got settled.

Brad Ramsay: Brad Ramsay with NARUC. And almost anything I say today is completely my own opinion and unedited. Before I talk about the problems I personally have with the order, I want to talk about some problems or pet peeves a have with what Larry said and then with what Bob said.

Lawrence Spiwak: We'll do rebuttal in a moment.

Brad: OK. The best of a bad situation, in terms of the FCC and I think the length and depth of the order and detail in the order, reflects the fact that they were making, I think, the best of a bad situation in terms of the way they addressed the issue and the referral to the states. In looking to the record that was created and all of the UNE proceedings, I didn't see a massive addition or influx of granular evidence in the last go around either. And the court wanted a more granular analysis. And the best way to do that is somehow harness the power of the states who are very familiar with this type of inquiry. And so, was it the best outcome? Well, I don't know if it was the best outcome, but it but it's probably the only real response, realistic response to the court's call for more granular analysis.

Things in the order that I was not fond of, I wasn't really surprised by any of these. I was aware that they were coming, but I it wouldn't be a surprise to anybody to know that the aspect of the order that constraints residual state authority to add new UNEs to the list, I think is bad from a policy perspective, and it's also inconsistent with the position the FCC took in a previous order. With respect to line sharing, we now have a direct conflict pre-emption issue that undoubtedly will be litigated in the D.C. Circuit. With respect of other items that the states could add to the list from a policy perspective, you will always find me saying that it's better to let the states experiment in a small pool then let the FCC make a big mistake in a larger pool. And you will always find me siding to the California commission is my prime example. Think how wonderful it would be, if the FERC had imposed their view of competition with no ability to hedge contract on the nation as a whole. It would have been, instead of a disaster that

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already affected the economy, when it happened in California, it would have been a bigger problem. So state experimentation, as I think Justice Brandeis wisely suggested many years ago is a good idea.

Larry was talking about incentives on state commissions for low rates. I think that's overly simplistic and quite frankly insulting. But beyond that, move incentives at the federal level are much worse. The state commissions have one type of competition that nobody else has, they have competition among states. And if you don't think it's real, you haven't been paying attention and haven't looked at regulatory history. If the state adopts a policy or practice in two or three years down the road, it looks like it's working, it may not actually be working, but if it looks like it's working, the other states will follow along. Because they want a good telecommunications infrastructure, they want a good power infrastructure, they want good critical infrastructures. They've got to have them and they compete with other states for those. And if the allegations that the state is done wrong is true, we will find out and the other states will learn from the leader states. They'll be able to see it happening, and hopefully change direction. That's what happened with the experiments with electricity competition, the states took a step back what they saw what happened California everybody's going back to look and see where were their mistakes, how can we adjust our program to experiment. After you know what you're doing, after you know what the impact is going to be, and most of the time we are venturing into new areas, then it makes sense for the federal regulator to come in and maybe do things on a uniform national basis. But in this area, and with the UNEs, it seems to me that experimentation, nobody knows what the rise right price point is, nobody knows, I think most people think it should be a transition mechanism, it doesn't matter. Congress says that it's supposed to be there so it's going to be there. So the question is; if the problem is the price, which some people have alleged it is, why don't you let the states experiment with the price, which they have done and see where it goes.

Anyway, back to the order, one thing that seems very inconsistent to me is toward the back if you find non impairment in the mass-market on switching, then suddenly the FCC, and it's the Bell operating company, the FCC is going to apparently decide the rates, either in the context of 271 proceeding or an enforcement action of the just and reasonable rates for non impaired items to come off the lists, seems to me that that's massively inconsistent with whole scheme of the Act. If we are doing an arbitration where explicitly we're allowed to add other issues that aren't listed in the arbitration and we're dealing with interconnection agreement, it makes no sense at all for the J&R rate not to be dealt with in the context of the arbitration. It's completely logical, inconsistent with their [inaudible] statute and that's something that I don't of some reason to get involved and I've probably will be encouraging them to, but it's inconsistent and we're going to be doing arbitration anyway, it's inefficient, and bad from a policy perspective also.

The third thing that I was not over fond of in the item was the effective presentation of the state's respect new fiber facilities. And partial reliance all Section 706 requires the SEC and

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states to promote the deployment [inaudible]. I haven't spent as much time on that part of the order because that's not a part of the order that's clear to me that Larry is going to be able to get involved in, but just in my first read through that section, I didn't like it.

Tom Navin: Hi, my name is Tom Navin, and I'm a deputy chief in the division that was responsible for drafting this order. And I will start off with a similar statement that I do not, nor could I speak for the commission. I'm expressing my own views. I have no pet peeves with the order. I will make some observations. The first observation is the multitude of issues that we were required to address in this order. In this order we addressed every petition that has been pending at the commission since implementation of the 96 Act. And this and you could tell from the breadth of the order, there were quite a few issues that we were called on to address.

That said, my other pet peeve is the fact that the parties to the proceeding were not able to take a single issue off our plate. There was no prioritization on issues, there were parties that were diametrically opposed to where their advocacy was, and it required I can say quite a bit of work on the part of the commission to come up with a rational order in light of the views expressed by the parties.

My other pet peeve tactually goes to the issue that I raised initially is the level of specificity necessary when giving competitors access to a company's network is, from a regulators perspective, certainly has turned into a daunting task. It seems that we're being pushed for more and more and more specificity [inaudible] the USTA court decision as a result of the practices of the incumbents. There is the result of the advocacy by the competitors. And in a dynamic market, in a market that is evolving at a very quick pace, that is quite a challenge for regulators. I think at a high-level, the line drawing that we did, which was to regulate more lightly in areas that provided the incumbents an incentive to deploy advanced services makes sense. And regulate the legacy network more heavily; make it a high level, that makes sense to me. And what we're debating here is the policy implications of that, whether or not that makes sense from a policy standpoint. It certainly.. that I've heard the commissioners talk and one their stated policy objectives we're searching for the rationalization for why the order turned out the way it did, I would just say in response to the gentleman's comments about the errata, it did seem odd to me that he would interpret the errata so broadly into a position that broadband rules only applied to fiber to the home, but we can get as one of the many issues that we're getting to here.

George Ford: My name is George Ford, and I'm an Adjunct Fellow with the Phoenix Center and the chief economist Z-Tel Communications, a CLEC that uses UNE-P to provide service. My comments are my own today, unless that Larry wants to take blame for whenever I say. The good thing about been towards the end is that I get to footnote Most of the things that I was thinking of. I think Harold and Bob Blau are exactly correct that this order is probably one of the most substantial entry barriers in the industry today. It's going to cost millions and millions and millions to go through this process. A process, which I think, is a somewhat of a waste of

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time it because I don't think this order has a chance of withstanding scrutiny. But then again, as Harold mentioned, we've never had one that's been upheld and we have on bundling today. We've got 12 million access lines in the hands of UNEP providers and we've never had an order that justified the availability of any unbundled element. So I think that part of the danger is that even though this process is a bit nutty, there's been proposed that it's Nevertheless going to happen and we are going to live with upsides and down sides of it whatever they are forever. I don't think we'll ever, once something's taken off the list, I think it's going to take a lot to get it put back on.

I would say that probably my biggest pet peeve with the order has to do with the retail triggers and it's somewhat at Mr. Mayo's point. The order states, paragraph 37, I believe, that 80% of the facility-based entrants failed. Are out of business. 80 %. You've got 20 % probability of success. And then, the order says the best evidence that you can overcome entry barriers is the fact that we observe entry. That can't be. If the fact you had to enter to fail, 80 % of them failed. So you can't say that the fact that we observe, I could sit here and drink a glass of cyanide and I'd be fine for probably an hour, or so and then I'd die. OK under the FCC's argument, well, you can drink cyanide and it's fine, it's not harmful to you. That's sort of the way this thing goes. And what's really weird, to me is that is sort of based this impairment standard on primarily sunk cost and the order said that they'll give you a slide if you want it. So really impairment thing is about whether or not revenues are sufficient to cover sunk cost. OK, and sunk cost has this feature of producing an equilibrium number firms, a six number of firms. In loops, the order says that number is 1, for the most part. Nobody is going to build loops. OK, and that's not acceptable, for it to be 1. OK, that's when we have unbundling, right because there's no cost and it creates this monopoly problem. And then it says, OK then well there are all these sunk costs and sunk costs limit the number of firms, the order is very clear about that and then it says okay we're going to have for loops, for high capacity loops, we have this retail trigger of 2. So there's 2 firms that enter, than there's no impairment. OK and the logic is that well the first guy could just be weird, right it could be some peculiar circumstance. Maybe like buying bankrupt facilities or something like that. The other one, it can't be free because of sunk cost high, because there's not sufficient revenue to cover sunk cost for 3 firms to enter. So the answer must be too, because the third guy is impaired. So, the reason you're not impaired is because you are impaired. That's very weird. And that and that flows through the whole cable wireless. Why it isn't cable relevant? Because only one person can do it. Why is 3 not a good number? Because the third guy can't do it. Same way with collocation. If you satisfied the trigger, but there's no more collocation space, then you're still impaired. Why? Because another guy couldn't do it. But, by the rule number 2, number 3 can't do it. So the fact that you are impaired means you're not is very peculiar. Okay and there is a number of issues and the same thing goes for most of the line sharing issue. And I really think that is..I really think that the analysis of the entry barriers in the order is quite incompetent and seriously, seriously flawed. Most of the entry barriers they talk about cannot be assessed until after the firm tries. When the firm enters he's only presuming or guessing that I can acquire enough market share

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to justify the fixed expenditures. It's a guess. 80 % of the time you're wrong. But yet, that's irrelevant. The fact that you guessed means that you can overcome an entry barrier, which is a patently false.

The other interesting point about that is the bankruptcy issue. Market, I forget the language that they used, its marketplace evidence is really what's key here, but yet we refuse to acknowledge bankruptcy. I mean there is no better marketplace evidence about entry barriers, then if people try it and they fail. And the fact that of the [inaudible] facility and now I'm bankrupt, that that facility is still there is really kind of silly, for a number of reasons, one because that's a peculiar circumstance that somebody could buy it which was something the FCC explicitly rejected as justification for non impairment. And the other is that the reason that you can buy things for 10¢ on the dollar. And that's because it doesn't have any value. So it just seems weird that we're going to ignore all marketplace evidence, except the fact that somebody tried. The fact that somebody could drink a glass of cyanide is the only thing that's relevant. It doesn't matter if they die doing it. If you can drink it, then it's safe. That seems to be the argument of the order and I think that on its face it's insane and if that issue alone doesn't send it back to the FCC, then we've got a problem with the court system.

Thomas Koutsky: I'm Tom Koutsky, also with Z-Tel Communications and have been working with Larry in the Phoenix Center since its inception, and so I appreciate this opportunity. Again as George said, I'm going to footnote what most people said and I'm going to keep it short. In many ways I'm sympathetic to some the points that Bob made about how long can this be going on? I like to think of the way that section 251(d), which is really the culprit, right? How the way that provision of the statute is set up is actually quite interesting. That first of all says the entire 251(d), not just (d)(2) that we've been focused on, first of all says the FCC supposed to do this all within six months. That's interesting, is that we want (2)(d). You go out and establish some baseline national principles. (d)(2) said here is the kind of unbundling principles we want you to think about. We wanted to think about impairment when you do that task. (d)(3) then says and state commissions can you know, go off be fruitful and multiply in many ways, utilize your section 251, 252 authority to arbitrate interconnection agreements as these things come up over time. And in many ways we've perhaps lost that by virtue of the fact that we've there has been a series of appeals of the rules and reversals. But the very basic concept I think is very easy to get lost in, and part of the problem as folks said that this order became the Alpha Omega of telecommunications policy in the United States. As Brad said that's very risky. And it's not entirely clear to me that Congress intended it to have that level risk associated with it. It seems very clear to me that Congress wanted the FCC to articulate some broad principles and that states would go off, and through the interconnection agreement arbitration negotiation process, we would go off and in a big extent that issues were addressed, issues were addressed. I think that's what the act set up and that's why it gave the ultimate power to the state commissions to make these decisions. In many ways we've kind of come full circle. I think that the way the order has set up is that it simply tells the states to go

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implement unbundling. And it does so under a pretty prescriptive set of standards. But, and I agree with Brad, that there's a lot of a pre-emptive aspect to it directly contradicts the Iowa 1 Mandate and I think deserves to be challenged on that.

And the other point I'd like to make relates to TELRIC pricing which is one of the purposes of this panel and I'd like to touch this off because it's something that's deserving of debate right now. The idea of TELRIC pricing was based on the fact that we would have, that competitors would have access to the full features, functions, and capabilities of the network. That's not entirely true anymore under the Triennial Review Order. I personally think that calls for a fundamental reassessment as to what exactly are we trying to accomplish through TELRIC. If we can only access a loop to provide a qualifying service, or if we can only access a certain 64kbs channel on a loop, that's certainly capable and functional of carrying much more, we're not deriving as much value from that loop as a person who would have full access to that. That type of value-based pricing really is not in TELRIC right now. And certainly the idea that you don't have complete access to the common facility is something that really needs to be considered and thought hard through. In many ways, I wish that we were thinking this through that before the state commissions in the matter of First Impression. Because, I think again, people are going to struggle with it, there's going to be issues relating to what the particular incumbent is doing in their particular territory, as opposed to deciding from on high that we need to rewrite these and then we're going to have you guys do it. I think this puts us into another 18 month to 24 month process.

And the final point again relates to ultimately the order, in my opinion begins to undo what, I regard as the fundamental deal of the 1996 act, which was to replace the MFJ and tell the Bell companies that if you want in to the long distance market, you had to open up and provide unbundled access to your entire local market network. 271 spells out, very specifically, unbundled loops, transport, switching, and signaling. No limitation whatsoever as to what type of loop, what type of signaling, what type of transport. The deal was clear. Congress says if a Bell Company wants to provide long distance service, it's volunteering to offer these things up. The commission does agree that those are independent legal obligations and as Brad pointed out, I think that the commission dropped the ball with regard to enforcement of those conditions. Because I think again, section 271(b) itself says that state commissions are to implement [inaudible] through interconnection agreements. I think that's the place we need to go. That's my peeve with the order are more from a legal structural side and certainly welcome what other people think about these issues.

Lawrence Spiwak: All right, thank you. Let me give my recap of what occurred so far, and I thank everybody. First the thing that is immediately struck me was Tom's comments. As a former senior attorney at the FCC, I have great empathy for what Tom has had to go through. We had a motto that said you can't make things right, you try to make things as not wrong as possible. And it's a very difficult process, it's a very political process and I have great empathy over the quality and volume of the stuff you receive over the door step. That was in fact the

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genius of the Phoenix Center because we were tired of the lack of quality and the sheer volume of stuff that was coming across the door step.

That being said, we still have a very large order that's come out, which is the law of the land until the next court case. I take a slightly different approach to it than what everybody's talking about because to me, I think there's a fundamental, if you want to call it philosophical, but analytical issue that nobody's talked to. And this is a theme that comes out in my mind since the 96 Act. And the Triennial Review reveals, once again, that there is no cohesive analytical framework to get is from one to many. Take, for example, the issues of some costs that George raised. In my day job, in addition to doing this, I do a lot of investment banking. I can tell you right now that if you try to go out and borrow on assets that are sunk and defaulted, you will get zero from them. The Wall Street doesn't want to see them, they don't want to talk to them, they don't want to hear about it. Unless there's traffic going over those networks, it means nothing. So this presence that there is some costs in the market as a triggering mechanism, for those of you who are unaware, George and I did a paper over the summer time, where we used this notion of sunk costs and then if there's the presence of entry that therefore can be regulated, we use special access as a case study. Knowing where the Triennial Review was heading. And what we said was you can't take a Ron Poppiel "set it and forget it" approach to the problem. But gee, there's some costs: voila, that must mean a [inaudible] competition. And that's not there and I think in this tension of well we want to get rules that work, but yet the court keeps asking for more specificity, what do you do? That's a difficult problem, but I think again it goes to the overall structural issue.

And then I think that Harold and Bob also raised a really good point and that is look: I think in all worlds, we would all prefer, certainly, I would, that we don't have onerous regulation because regulation is inherently inefficient, and we would rather have a world where parties can resolve their differences by contract. It's a far more efficient way. It's standard transaction cost economics. I think that that concept has been noticeably absent in the FCC decision making. And I think if you actually look at the earlier IXC orders where they actually would they cite the Williamson, they actually counter [inaudible] that specifically. That's a great idea, but I don't think we have the structure, because of the such huge amount of asymmetrical bargaining power that we can reach that point where contracts would be an efficient way of allocating resources.

And then I personally have two general overall pet peeves with the order and that is one: I think from a legal standpoint, this goes back to the *USTA* case that the commission has completely ignored the findings in the *Verizon* case. I wrote a paper last summer called *The Telecom Twilight Zone* and it was right after the *USTA* case came out, right after *Verizon* came out and I tried to look at the *USTA* case in light of the *Verizon* case and *USTA* mentioned *Verizon*, and I think three times after doing a global. I think that the Triennial Review mentions *Verizon* in about that same number. It does not discuss it. Because the Supreme Court in that case, a repeated look the rules but unless you look at the underlying facts of it and you've got to

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look at everything in context, and I think the commission very deliberately did not look at the very carefully laid out decision in *Verizon* which said these rates are not below cost, that this is not [inaudible] competition, that intermodal competition is ephemeral, at best and so forth, and so on. And that the *USTA* case certainly ignored it. I wrote in the *Legal Times* paper out there that I did about a year ago, which said I find it amazing that Michael Powell did not choose to file suit on them, but we have that same problem. I think you have a massive factual and legal underpinning. The fact that is going back to the D.C. Circuit that thumbed its nose to the *Verizon* case in the Supreme Court and we'll see how that plays out.

Then we get to my big pet peeve and this is been growing for me for the last couple of years and what I find is a very deliberate evisceration of the concept of market power in the FCC lexicon. You go listen to people's speeches, you go read the order and you'll hear about regulatory symmetry, you'll hear about investment, you'll hear about stock prices, you'll hear about the equipment sector, but nobody talks about the key problems of can people under the FCC's jurisdiction raise prices over strict output. A pretty basic idea of economic regulation. In fact I have a quote here that I put in the tentative agenda and this [inaudible] quote: A market power analysis might be appropriate if the only act of a goal were to drive prices to cost. So that approach disregards [inaudible] other goals of encouraging the deployment of alternative facilities and new technologies and reducing regulation. I don't know how you reduce regulation in the face of abject market power. Unless, of course you get to George's point which is you promote a lot of entry and entry constrains market power. So, the question I'd like to deposit on the floor is again, how do we go from one to many? There seems to be this lack of cohesive thinking of picking non constituencies, but what we going to do to get to a world where we can have contract as an efficient way of doing it, where we can get rid of the onerous regulation, where we can have entry rather than the thought of drinking cyanide and not that. So I'd like to open that up to the floor.

Robert Blau: Well, I'd probably ask the question a little bit different, Larry and I would ask whether the cost of what we're going through are substantial [inaudible] to benefits. And the benefits being, choice and getting competitors out there that might not otherwise be there. I sort of think that's already happened. And it's going to continue to happen whether it be, certainly with intermodal platforms, whether it be wireless or cable. We've lost a lot of lines to intramodal competitors. There's no indication, at least from my perspective, in looking at this from a Securities Market standpoint, that there's a lot of market power being exercised by anybody. If there were, stocks, including the Bell stocks, wouldn't be selling at very deep discounts to the market. There's just no indication of that. I think what we are seeing is that plus the notion that as these markets get more competitive and more structurally complex, which they certainly have gotten in the last seven years or eight years since the Telecom Act was passed, they are much more complicated from the technological standpoint, certainly. And when you think about that and think about trying to regulate that, the incidents of [inaudible] of making decisions, policy decisions that are going to end up being costly, certainly from a

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capitol market standpoint, go up. So, the cost of regulation is going up and the benefits are not, of course alternatives are coming into the marketplace, whether they be intermodal, or intramodal and the cost benefit equation is just moving against the regulatory process. We don't seem to be recognizing that, certainly with the Triennial Review debate. I don't think it's a problem with the FCC, and I don't even think it's a problem with the states. I think the problem is with the industry in it's unwillingness to sit down and try to work some of these things out commercially. And that's where we need to get.

So I think the first step is just to recognize, all of to recognize that we've got a problem. And that what we are doing is not working and it's doing more harm than good. It's doing more harm than good for competition; it's doing more harm than good for the consumer. And it's certainly doing a lot more harm than good to the investor.

I think the second step probably ought to be to take some issues and see if they could be worked out in a different setting.

The Commission's got a lot of things on its table right now. On it's plate, intercarrier comp is one, universal service is another and those are issues that cry out for probably doing this a little bit differently, may be even the TELRIC proceeding and the issues that are raised there could be worked out differently. If you throw all this back in the hands of Tom, or Brad, shudder the thought, it's just not a good idea. It's just not a good idea. It's going to end up being much more costly than it should to all of us.

Brad: The only thing I wanted to say was he's right in saying that the industry is going to have to do it because I think the FCC and the states right now...I don't see any near-term movement afoot on Capitol Hill to change the Telecom Act in any significant [inaudible]. And the FCC is constrained somewhat in what it can do right now, near-term, they've got a few proceedings that you could work through [inaudible] before they can use it in any significant or sweeping fashion. In the states, I think are even more constrained, so it would have to industry. I'm not optimistic that industry is going to do that because most of the reason why this order is here...the fault lies more at the door of the industry, than it does the regulators. Why are we here? Why he had to draft up [inaudible] order?

George Ford: I think there's a relatively easy solution. We weren't asked to say what we thought what was good about the order, and I don't find much, but I find this good about it and that is that inevitably, the states will implement it whether it withstands or not, whether it passes court scrutiny, the states will do this in nine months. An undoubtedly, there will be states that will remove switching. I don't think there's any question that that's going to happen. The benefit of that as an economist and econometrician is cross-sectional variation. It is going to tell you exactly what happens when you take it off the table.

Brad: So that's the official word for experimentation?

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George Ford: Absolutely. I totally agree with you. And I have written a number of papers that use that using prices. It was always available, but when switch is \$25 like it was in California, it wasn't available. And UNE-P lines in Idaho than you had in the state of California, the largest market in the country. So you saw clearly what happens when you make UNE-P unattractive, now we're going to take it away and you're going to plainly see what happens. You're going to have less of all forms of competition, I'd bet my bottom dollar on it. Is that a good thing? Well it's not good companies doing UNE-P, of course, but it's good in the sense that now we get to see what happens when you take it away. And what good does that do us? Well now everyone realizes that when we don't have it, we don't get anything we want. When we do have it, we get competition. So I think we need something like it, but there's this problem. And the problem is that whatever price we set for that thing we want, it's less than the marginal opportunity cost to the Bell Company. The divergence between rate, if the rate is cost based, and the marginal opportunity cost is the retail margin. The only solution to get a commercial negotiation is to eliminate that component. The marginal opportunity cost. And regulate a wholesale provider of telecommunications plant that cannot, by law, be in the retail business. Because the sole source of all contention, with respect to unbundled elements, it the fact that the guy selling them is in the retail business. That is the sole source of contention. It's not about the wholesale guy going out of business, because we know what his finances look like, and we can assure that that won't happen. I challenge anybody and the economist that there's a difference, that there's something else that motivates that problem. That is the source of contention and until that happens, which this may help by giving us the cross-sectional variation we need to say without something like UNE-P, we don't have any competition we want. The only way we can get it is to get these guys out of the retail business.

Lawrence Sarjeant: I think the good news is that the courts don't subscribe to that analysis. It is so wireline CLEC-centric that that is the only definition of competition. And the courts have simply said, and I don't think it would have been any different had this had stayed in the 8th Circuit, but that is not how you define competition. Nothing, if switching comes off the table, and CLECs blow away tomorrow, it will effectuate no change in the wireless spaces. Zero. Wireless will still keep coming and wireless will still be a viable and robust competitor to those wireline providers who survive. And that is the fundamental flaw in the analysis that we have.

And I go back to where I started, until this commission stops looking at competition as solely wireline-based CLEC competition, we'll never get anything through that are sustained in the courts because it makes no practical sense from a consumer standpoint. So, you may be right if you define the universe solely as the viability of CLECs, but it gives me nothing if you expand it to all opportunities that consumers have to do voice communication.

George Ford: The problem with that argument is that economics will tell you that people don't bundle substitutes.

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John Mayo: I think this question really is a very interesting one. I have an observation on George and then on the most recent exchange. First, I think that George's observation is very interesting regarding the perspective of an academic interest in doing econometric analysis using cross-sectional data on failures. As an academic, I'm as intrigued as he is by that. If one were to, in any sense, put on a public policy hat and say that the goal of the Telecommunications Act was to, in fact, enable competition, then I would say that that is indeed an extraordinarily costly experiment. And, in fact if one were to adopt the perspective, and I don't think George was embracing, or endorsing that experiment, just observing it, but it is a very costly experiment and if one were to adopt the perspective of a consumer, I think, my sense is that consumers, while having an affinity for competition, are willing to engage in one bite of the apple. And if the apple, the competitive apple tastes good, then they'll keep eating on that apple. And if it doesn't taste so good, then they're not likely to go back a second or third time. If your experience with Z-Tel, for whatever reason, whether it's Z-Tel's own ineptness, not suggesting that you're inept, George, or if it was due to the failures of the underlying facility-based carrier, the consumer will hold Z-Tel, that retail competitor responsible, I think. And I'm afraid that at that point, the competitive experiment will have failed. And I hate to allow us to go down that path...I don't want to come back here in six years and be at this table and George being able to be here rather gloatingly saying see, I told you it was going to fail, see what happened. I'd rather, at this particular juncture, say what might we do to promote or enable that competition. I think George is right.

With respect to the second debate, and is a relevant debate that is one that I think that obviously Larry, you and George have different perspectives on, but I think that this is one that, again the economics community has something to say about. What you described is a very broad telecommunications market in which wireless and cable compete with wireline telephony. George's perspective is one of a somewhat more narrow market. This is one that the antitrust economics community can speak very clearly about. Of just simply starting with something like the Department of Justice and FTC merger guidelines and ask yourself the question: if one were to have a monopoly on wireline telephony, and were to raise that price by a small, but significant and non-transitory amount, that's the language in the merger guidelines, would that price increase be sustainable, or in the alternative, would it be constrained by wireless. I have a notion of what the answer to that is, not everybody may agree, but my sense is that right now, that a more narrow market definition is absolutely justified and that we're not to the point where we can point toward wireless and cable as being in the same market as wireline telephony.

Lawrence Sarjeant: I have to respond to that because they're just so many inadequacies of fact that find their way into it. If we were to apply an antitrust construct, using the antitrust and economists at the FTC and the Department of Justice, I seriously doubt whether you could find, quote, monopoly in the wireline market, except in limited situations, and then even in situations where you might and those tend to be those markets where we have determined through

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universal service subsidy, through cross-subsidy of services, access subsidization to keep prices low, yes you could raise it and the prices could not be matched by wireless, but it's only because we have prescribed such low rates to start with. You have to factor in the history of this industry, in the suppression of local rates before you do that analysis. This is not a market where you have the absence of government engaged on the pricing side. Those people who you call monopolist have regulated rates and so the analysis you do, cannot be done without factoring in, as the USTA court said, you have to factor in the issues of universal service. You have to factor in the issues of prescribed rates. You have to factor all those things in as you try and do this analysis, and then the ultimate question is: when you look at impairment, how different is it in terms of the hurdles into entry for these new entrants than for any new entrants coming into a mature market?

Lawrence Spiwak: Let's take a step back on that. I have long argued that in the issue market definition has always been a thorny definition for me, because the operative word that phrase is irrelevant. There might be a market for broadband services, in my mind, but that's about as irrelevant as global seamless service or video dial tone. The issue from a policy perspective is what should we be focusing on to see, you used the phrase, Larry, how do we define competition? When we were doing, when I was back at the commission, one of the cases I was working on was the [inaudible] non dominance case, which was a massive case for its time because this was setting "Ma Bell" loose. And it was a very big policy debate over what's the level of competition that you need to want deregulation? It came out, we took the standard IL analysis of what was workably competitive [inaudible] and that is Ok, it's not great. It's not bad. It's OK. But there was no chance of somebody raising prices or restricting output. Or acting in some sort of collusive factor. So if we take your stance, Larry, just sort of extrapolate on that: how should we define competition? Because, to me I personally read everything is a one and zero to distinguish between voice, data, information, it doesn't matter. But what I do know, and this was sort of the root of Computer 2 is that you have a market power policy in my mind for that last mile. And then you get into George's issue of are they subsidies or complimentees. So how do we construct that analysis, because, clearly in my mind, the FCC has not done that, it's sort of hodge-podge all over the place, but it goes back to point, I think of having some sort of cohesive analysis. We're at point A, where do we want to get to point B? I don't know. And I think that we need to start thinking about that. John, how would sort of tee it up?

John Mayo: What's the question?

Lawrence Spiwak: The question is the issue of market definition, Larry [inaudible] was very broad, George is a little narrow. What's a good way of looking at the problem?

John Mayo: To give Larry his props here, I think there are in the retail market, there is, for historical reasons some difficulties looking at retail local pricing and concluding those are equivalent of a competitive market rate. I agree with his response, his response though was not really directed, or shouldn't have been directed, to my issue of market definition, which is a

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different matter. So I agree there are distortions in a retail market then. But what I was really talking about was really the issue of market definition. I think there are a set of well defined principals that one might use that are relevant in this particular...

George Ford: The difference in market definition in looking at the market today and market definition, I can presume, I can attempt to find a market for wheat and that market may be highly competitive, but I can do a hypothetical market definition analysis under the merger guidelines for wheat, even though the market is competitive. I think that's the distinction between...we really weren't talking about the same thing.

Brad: Well I just, the only thing that was interesting to me is right after George spoke, you said, I can't buy that analysis. And I thought what George was saying is....

Lawrence Sarjeant: I said the courts haven't bought it...the good news is the courts aren't buying that analysis.

Brad: OK. Because I thought George's point was we'll be able to see, and I'm not sure that the fact that the market definition changes, changes the fact that we'll be able to see because of the variance in the treatment by the state commissions. Rather, the policy is a correct one. I mean, just because the 18 to 24 age bracket, 30% of them are cutting the cord doesn't change the fact that if one state takes out switching, you'll be able to see the impact and you'll have some basis of comparison between the two different markets.

Lawrence Sarjeant: But his point was predicated on the assumption that what you will see is what happens to wireline CLECs depends on switching from the ILEC net, and my point was it will have no bearing, you will see no change in, for example wireless which is as I see as a competitive alternative for the voice market.

Tom Navin: And let's just be clear that the order did accommodate intermodal competitors, so I'm assuming that you're problem is the degree to which we made national conclusions based upon the intermodal competition, not the accommodation of intermodal climate because paragraphs 97 and 98 make the point clear and in any analysis that the state's doing, if they reach certain conclusions, they are certainly free to consider those intermodal competitors in there now.

Lawrence Sarjeant: Free to consider, not required to consider.

Tom Navin: I would say they must consider, but there is a qualitative decision that has to be made, depending on what part of the country you're in. George's point: you will find out. And some will rely on wireless competition, perhaps those states that relied on wireless competition for purposes of getting their section 271 application proved. And if in those states, George's fear comes true that the fact that wireless competition will not do anything to drive the prices down for consumers and there not substitutes. We'll find that out.

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Lawrence Sarjeant: How can they possibly drive prices down that are so low today on the local side?

George Ford: Please, please, look at these bundled prices...nobody on the planet has to spend more than \$60 a month for all the long distance you can eat and local service. \$1500 customers never have to spend more than \$60... prices are plummeting in the local....

Lawrence Sarjeant: Who's providing those prices?

George Ford: You guys, we guys, MCI, AT&T.

Todd Dubair: I thought that a couple of points that you made were very interesting, first of all about how everybody's sort of ignored Verizon in this situation, and [inaudible] to the next consideration: what does competition mean? And I think that that sort of is reflected in this order. Since the 96 Act, to the point where we are now, there's been a big shift in what we think is competition and what we think is acceptable competition. And I think that sort of this debate leads to orders that don't seem to be entirely consistent amongst all the parts, but to get to the main point, let's use one specific example to talk about a market definition; small ISPs desperately want to provide broadband based Internet access services. There's a certain ILEC right now in one region where if you want to get in, it's almost impossible and this sort of goes to your point George about where you're competing the retail space as well, there's this conflict and the problem is this: if you look at the gap between the retail rate for broadband ISP services, and the DSL transport rate that the ILECs are required to provide under the Computer 2 and Computer 3 [inaudible] requirements, it's very narrow. Now, if you...say your and ISP, a big ISP, and you qualify for the largest term commitments and the largest volume commitments, the margin between that DSL transport rate that you can get today and the retail rate that the ILEC-affiliated ISP is offering is \$3 per month per subscriber. None of AISPAs members qualify for those volume and term commitments, so the rate that we are qualified for, it's a negative \$10 margin. So, we face a choice; we can either not enter the broadband Internet access market at all, or we can try to cross-subsidize our entry into broadband with revenue from the narrowband. And that's the choice we face and that's why we think that there is an issue now.

Robert Blau: Well I was just going to answer your question, Larry. I don't know what the answer is and I don't think any of us do, but what I do know is that if that question is answered in the context of regulatory process, the outcome is going to turn far more on political considerations that it is on underlying economic considerations, and that's part of our problem.

Lawrence Spiwak: That's true; I've seen many a market gerrymandered.

George Ford: I think the Act plainly states what kind of competition we should be looking for. In some cases there are difficult questions to answer, and that reasonable people will not agree, and every now then, Congress says this is what's going to happen. We've made the

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determination that this stuff will be unbundled, period. I don't want to hear about investment, I don't want to hear about this, you're going to do it. And I think they did that, they said here's what we want. We want you to do these things and, by the way, we want you to do these things....we require for you to be in long distance, that you not only unbundle, but there be a facilities based competitor. So you can't say the facilities-based competition is what's makes the obligation to unbundle, because you don't get to 271 until you get unbundled.

Robert Blau: George, UNE-P doesn't appear in the Act, TELRIC doesn't appear in the Act, there's a bunch of stuff here that doesn't appear in the Act....

George Ford: Section 251 explicitly requires the unbundling of loop switching and transport which are three components of UNE-P.

Lawrence Sarjeant: If you want my opinion, that argument is a different issue than the Triennial Review Order. We can convert this discussion....the 251 issue is and what the continuing obligations are once something comes off the 251 checklist is another procedure.

Harold Furchtgott-Roth: I think this discussion is probably overly pessimistic. You're missing out on...there are big winners [inaudible]....and the net expenditures on legal procedures will probably far exceed any potential profits. We could be here six years from now debating, yet again, the [inaudible] section 251. There's something Tod said; maybe..[inaudible], you know, Tod you're [inaudible] in as such there is in your industry is an unregulated retail rate, but the wholesale rate you're facing is regulated. That's not something that's some kind commercial conspiracy to get to you. I think the market place is changed since 1996; I'm not going to get into how many competitors there are. I think it is as [inaudible] exactly the same way as you were exactly right, that is to say; why is that number 2? There is no magic number. It goes to John's point about this kind of anti-academic, anti-[inaudible].. there is a way to get [inaudible] business, but and [inaudible] what's going to have to happen..[inaudible]..it's the business. And this is why we're in a different situation today than we were in 1996.

?: A state regulator can come in and say; why do business in our state?

Harold Furchtgott-Roth: Right. Y'all come in and our state is going to have no regulated rates. There'll be no generally available terms and conditions. You can opt into any [inaudible] and place in the state and you two go off and negotiate this. And at some point, my pal here....I've got a dog, here name is Lapse, and she's going to go one way or another, whichever way the tail wags, you all decide. Or maybe, it could be some intelligent person, maybe Tom sitting over here is going to decide. That he's going to pick one or the other. He's not going to be able to add or subtract, or split the baby. And you decide this. There are competitors already in the marketplace; there are some senses of what works, what doesn't work. There are prices at which even for an ILEC it makes sense to engage in a commercial contract. It doesn't always make sense to simply say no. This actually does go on in other industries. And somehow we

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have become wrapped up in an unending sense of pessimism about the future of this industry and it's because all we can see right now is really that this thing is going to be litigated forever. And at some point, I'm not sure that that's the way things have to necessarily evolve. The ILECs are facing...the ILEC situation is slightly better than the CLEC situation, but not by a lot. And they're massively losing lines and they've got massive legal costs and all parts of this industry are in a profoundly difficult situation. Sending more lawyers to the D. C. Circuit to spend tens of millions of dollars litigating this thing for what is a predictable outcome, is more litigation.

Lawrence Spiwak: So what do you do about it?

(banter)

Harold Furchtgott-Roth: You can make it based on cost, it's the arbitration.

Lawrence Spiwak: That's for the generally available terms and conditions. Arbitration doesn't have to do any of that.

Harold Furchtgott-Roth: But there has to be some....when I talk to both CLECs and ILECs there initiation reaction is I don't want to do that and I explain the alternatives.

Lawrence Spiwak: I don't think the issue, by the way, is pessimism in the industry. There might be a lot of cynicism and sarcasm, but let's keep it mildly optimistic here, otherwise we wouldn't be doing what we're doing. That was interesting. Tom, did you have something you wanted to....

Thomas Koutsky: Yes, I just had a quick follow on that because I've actually longed for that personally the fundamental problem in this industry has been actually one of contract negotiation and enforcement. And I think the two have to go together. I don't think we can talk about having a business to business negotiations and contracts when those contracts can't be enforced. So I think if we took an idea that Commissioner Roth just put out, in order for it to work, there has to be a commitment on all parties to have it work. You'd have to have the state be true to it's baseball-style arbitration and not request a resubmission of proposals after looking at it for two or three months. That's the consequences of a baseball player making a bad baseball salary offer is the fact that he gets paid maybe half of what he thought he was worth, because he might have made a mistake in that arbitration process. The punishment needs to be felt for putting forward a proposal that goes beyond the pail. And the other part actually really has to go down to; are we going to enforce these contracts? And this is where I do start to bristle about the idea of business to business negotiations in the industry right now don't exist because these are not negotiations, these are discussions over what provisions in FCC and state commissions orders mean. That's very different than negotiating. It's talking about, did footnote blank in the line sharing order really mean it when it said copper. One of my favorite's of all time and the fact that we had to negotiate what a footnote meant. It wasn't negotiations, it was

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litigating. So I think that there are perhaps some core of the idea what Harold just talked about, but there needs to be a commitment not only to following through on it, but also then the subsequent enforcement of it, make these contracts enforceable swiftly and readily.

Harold Furchtgott-Roth: Tom, I completely agree that one of the things that's completely absent since '96 is meaningful enforcement of anything.

Lawrence Spiwak: You don't like voluntary contributions to the U. S. Treasury? I feel bad about September 11th, here's a couple bucks? It's a joke, I agree.

Harold Furchtgott-Roth: And I don't even know where to begin on that and frankly, the FCC has just turned a blind eye to the enforcement of it.

Brad: [inaudible]..and I thought at least two states did the true baseball style arbitration; is that not true? And the question that follows behind that, is if it's true, why hasn't anybody [inaudible] done a study that the fastest way to get the states to the right way is to show them it's the right way or at least use an example.

Robert Blau: Tom, can I ask you a quick question? Were we to buy into what Harold just put on the table, I heard no regulation of rates, you have a professional arbitrator sort of go through...to make that work, we're going to have to be politicized at the process. Ok, now let's assume that contracts are worked out in that setting. Assume the enforcement you're talking about not would enforce the terms and conditions of that contract, not FCC rules that might be left open it wouldn't necessarily lay down with that.

Thomas Koutsky: I still think that at its core, the contract should perform the basis for a relationship. Then there may be something about privacy of customer information that the regulators may never step out of, but if we're just talking the very basics, we have to recognize we do live in a world that has a government and so we're not going to be able to have the [inaudible] entirely, but...

Lawrence Spiwak: Do you take those contracts in after they're privately negotiated and file them with the regulator?

Thomas Koutsky: I think what's interesting; we are not that far from what is consistent with 251 and 252. This idea is not too far...if you think back, maybe Congress is smarter than we gave them credit for on this. The idea that you would have private negotiations with a mediator or arbitrator, resolving disputes over any open issue. That's what the Act says in 252. And then, these contracts are filed and then people can go in and see what kind of contract is available, and maybe that suits their need and they don't have to relitigate the case.

Lawrence Spiwak: The reason why I make that point is that in the electric utility world where I come out of, unlike the tariff world of the communications world, there that whole

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system was owned, because they're not common carriers. It was always predicated on two parties get together and negotiate a contract. You then file that contract, the contract rate with the regulator and the regulator approves it or disapproves it. Then though, the problem with that is that you get into the whole issue of Mobile C area issues. If one thing goes down, how far do you go back, when can the government void a private contract. How far are we going down...it's a contract, live with it or is it a contract with government oversight?

Thomas Koutsky: I think you're going to have Mobile C area issues. I do think though that that really is...it wouldn't surprise me if...I think the Act looked at that experience. The idea of interconnection very much came from somewhere. It came from efforts in New Jersey Bell and [inaudible] efforts in the Ameritec region to jump-start competition in those areas, but it was not..they were borrowing extensively from some of the Federal Power Provisions.

Jason Oxman: We're actually going to see, Larry, for the first time whether this works. Because in the Triennial Review, we have a UNE that's eliminated, that's line sharing. And after the order was announced and after the order was released again, Covad went to all four of the Bell Operating companies and asked to open negotiations on a true contract basis, because, after all, that's the basis that we're operating under now that a UNE has been eliminated with all four of the Bell Operating companies. So it's a kind of real commercial negotiations that Larry and Bob are talking about are actually going to work. This is the first occasion, I think, where we really have the opportunity to prove whether it's going to work or not. We obviously think it's in the economic interest of the Bell Companies to continue selling line sharing to us. They've all built the architecture, spent tens of millions of dollars putting the OSS in place and any customer that they're going to lose to another broadband provider because a certain number of customers don't want to buy service from the Bell. If they can't go to us, they're going to a cable company and they get no revenue whatsoever. Or if they go to line splitting, then they lose the voice customer as well. We think it's in the economic interest of the Bells, so we have reached out to all four. Do we have any commercial deals yet? No. But this will be the first occasion, I think where we really get to put Larry and Bob to their prove to see if the idea that the regulation is not necessary, that the parties can reach real contracts, is true or not. Because that's one of the arguments that Larry is making to the D. C. Circuit. That this regulation is not really necessary, the real commercial contracts can replace that regulation, and we'll see if that's true.

Thomas Koutsky: I would offer the point that if we go into this commercial world, we go into the commercial world; we don't go into part of it. And that means the antitrust laws begin to apply again under the Bell Company's way that they framed it, it's well known that in less than two weeks, we're going to having an oral argument before the Supreme Court on that very question in the Trinco litigation. And I think that if you go into a commercial world, you've got to recognize that you've got to play by the same antitrust rules that everybody else in the U. S. economy play by.

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Lawrence Sarjeant: I'm sorry, that's not the issue in Trinco, the Trinco issue is a very narrow issue and it goes to the scope of Sherman, Sherman II and whether or not allegations merely are violations of the Act in and of themselves can create a Sherman II cause of action in addition to the issue of whether or not a consumer, once removed from the contract, and the arrangement with the CLEC and ILEC [inaudible]..in and of itself. So I don't know that the question will be addressed by Trinco, but the Trinco case is clearly an important case, and we'll see where Trinco goes. I think if you want to have antitrust as the discipline in force in this commercial world, then we have to have a truly level commercial world. It astounds me that we can sit here and talk about the disabilities visited upon small ISPs and not talk about whether we should have a national policy of open networks that would include cable networks. Why should the only open network obligation be visited upon Telcos? Just because of their history? Is that how we should establish national policy?

Todd Dubair: Obviously the ISPs would like to have access to as many broadband.....

Lawrence Sarjeant: My point is that they're interrelated facts and to try to address one aspect of it without addressing the other aspect of it is wholly insufficient.

Todd Dubair: Well, what I failed to leave out in my comments is that for somebody in a small ISP situation like this, there may not be other competitive alternatives, intermodal competition. We clearly can't go to a wireless provider at this time, necessarily to provide broadband Internet access services. Cable may not serve that same household. And I gave that example, primarily just to show that the market definition problem is interesting intramodal competition, doesn't necessarily solve all of the problems.

Lawrence Sarjeant: But that's the nature of the market. The nature of the market is you may have cable available and DSL available. It doesn't answer the question of whether or not we should have a national policy of open markets and all platform providers of broadband should have equal obligations such that the market will bring discipline and the antitrust laws could fairly be a declining factor.

Todd Dubair: It also goes back to what our idea of competition is. Are we going to stand by, and this is how we got into this conversation, are we going to stick by where we've been in the past? Do we still believe sort of this Computer 2, with respect to Internet service providers? Do we still believe the Computer 2, Computer 3 model? That's the question.

Lawrence Sarjeant: Of course it is and it makes absolutely no sense in a marketplace where you've got the robust platform provider who has the largest share of the market to say we're going to look at someone with a lesser share of the market in this high-speed access to the Internet market and visit them certain rules upon them and because we haven't historically made the other guy do it, we'll just kind of forget they exist.

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Todd Dubair: Well regardless whether that's right or not, that doesn't necessarily, alone; justify lifting the obligation from ILECs. We can look at what happens to cable, but...

Lawrence Spiwak: Without getting into, what I like to call the fighting do-opulast argument, great name for a high school marching band, bad public policy. With regards to Supreme Court, whether or not you can bring a Sherman Act case against a regulated entity, going all the way back to Gulf States Power and a whole bunch of cases, there's plenty of case law out there. But with our time basically up, I do want to wrap up real quick. I think this has been an excellent conversation. I appreciate every single person who showed up here. This was exactly what we try to do at the Phoenix Center by having a high-level intellectual debate. I appreciate it. We're going to put the transcript up on the web page as soon as I get it back. And we can use this as a reference point. And again, I want to thank everybody for doing this and I look forward to having everybody at our next one.

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SPEAKER BIOGRAPHIES:

Moderator:

Lawrence J. Spiwak

President

Phoenix Center for Advanced Legal & Economic Public Policy Studies

Described by the SAN FRANCISCO CHRONICLE as a “knowledgeable and shrewd insider”, Mr. Spiwak is an internationally recognized authority regarding the legal and economic issues affecting regulated telecommunications and energy industries, and is often asked to speak before, and counsel to, industry business leaders and domestic and foreign government officials. For example, recent presentations include speaking at the Global Broadband Forum at George Washington University, Columbia University’s Columbia Institute for Tele-Information (CITI), the National Association of State Utility Consumer Advocates (NASUCA), the 52nd International Astronautical Congress in Toulouse France, the American Chamber of Commerce Telecommunications Symposium in Sao Paulo Brasil, and serving as a Reporter at a Symposium sponsored by the Robert Schuman Centre of the European University Institute (an arm of the European Union) on “Dispute Resolution and Dispute Prevention in the Transatlantic Partnership” in Florence Italy where his book – THE TELECOMS TRADE WAR: THE UNITED STATES, THE EUROPEAN UNION AND THE WTO (Hart Publishing 2001, forward by Professor Lucien Rapp and co-authored with Phoenix Center Adjunct Fellow Mark Naftel) – was used as a case study.

Moreover, Mr. Spiwak has written numerous acclaimed articles and papers addressing the complexity and variety of these issues and has been cited by, *inter alia*, the United States Federal Communications Commission, the United States Securities and Exchange Commission, the United States Federal Trade Commission, the United States Code Annotated, American Jurisprudence (2d), the Organisation For Economic Co-Operation And Development (OECD), and the International Telecommunication Union. Mr. Spiwak’s work is also used as teaching material at universities around the world. In addition, major media news outlets such as Public Television’s NIGHTLY BUSINESS REPORT, BUSINESSWEEK, the ATLANTA-JOURNAL CONSTITUTION, the UNITED PRESS INTERNATIONAL, the DALLAS-MORNING NEWS, the SAN FRANCISCO CHRONICLE and the WASHINGTON POST as well as key trade publications such as the WASHINGTON LEGAL TIMES, COMMUNICATIONS DAILY, COMMUNICATIONS WEEK INTERNATIONAL, THE DAILY DEAL, PUBLIC UTILITIES FORTNIGHTLY, WIRED NEWS, X-CHANGE MAGAZINE, PHONE+ MAGAZINE, MULTI-CHANNEL NEWS, TELEPHONYONLINE and the AMERICAN GAS ASSOCIATION MAGAZINE have quoted Mr. Spiwak as an expert.

Prior to co-founding the Phoenix Center, Mr. Spiwak was a Senior Attorney with the Competition Division in the FCC’s Office of General Counsel from 1994-1998. While with the Competition Division, Mr. Spiwak provided the Commission and its individual bureaus with legal and economic advice regarding domestic and international inter-exchange, local exchange, delivered video programming, broadcast, wireless and satellite policies. In addition, while in college, Mr. Spiwak was accepted into the Presidential Stay-In School program where he was responsible for delivering classified and confidential material among senior White House and Reagan Administration officials and received a full FBI security clearance.

Mr. Spiwak received his B.A. with special honors from the George Washington University in 1986 (Special Honors, Middle Eastern Studies) and his J.D. from the Benjamin N. Cardozo School of Law in 1989, where he was the international law editor of the Cardozo Moot Court Board.

Mr. Spiwak is a member in good standing of the bars of New York, Massachusetts, the District of Columbia, and the U.S. Court of Appeals for the D.C. Circuit.

Mr. Spiwak is a native of Washington, D.C. He, his wife and their daughter live in North Bethesda, MD.

Roundtable Participants:

**Sue Ashdown
Executive Director
American ISP Association**

Sue Ashdown founded the American ISP Association in Washington DC in 2000, after five years as Vice President and General Manager of XMission, Utah's first and largest commercial Internet service provider. While in Utah, she established the Coalition of Utah Independent Internet Service Providers (CUIISP), a non-profit trade association representing the business and political interests of Utah's independent ISPs.

Under her leadership, the CUIISP filed comments both with the FCC in its broadband proceedings, and with the Utah Public Service Commission regarding the discrimination Utah's ISPs were encountering in the broadband DSL market. The Coalition also intervened in the Qwest/US West merger and successfully persuaded the Utah Public Service Commission that US West's DSL discrimination must be addressed if competition was to remain viable.

Ms. Ashdown has continued to be a forceful advocate for small/medium ISPs, assisting them before Congress and the FCC in their efforts to obtain relief from discrimination.

She has testified as an expert witness on behalf of small ISPs, as well as before the U.S. Senate Telecommunications Subcommittee, and is a regular panelist on ISP business and regulatory issues at national industry, legislative and regulatory conferences. Her articles and opinion pieces from the small/medium ISP point of view regularly appear throughout the country, including USA TODAY, the CHRISTIAN SCIENCE MONITOR, BOARDWATCH, CLEC and INTERNET INDUSTRY magazines.

Ms. Ashdown now resides in Washington DC and travels the country as an advocate for the independent ISP community. She holds a journalism degree from the University of Utah, and has been recognized as one of Utah's 50 most powerful businesswomen.

**Robert Blau, PhD
Vice President, Executive and Federal Regulatory Affairs
BellSouth**

Robert T. Blau is Vice President of Executive and Federal Regulatory Affairs for the BellSouth Corporation. As a member of BellSouth's Government Affairs office in Washington D.C., he is responsible for representing BellSouth's positions and interests before the FCC, and with key officials in the White House, cabinet departments, and agencies within the Executive Branch.

Prior to joining BellSouth in 1985, he held similar positions with Bell Communications Research (Bellcore), Satellite Television Corporation, Communications Satellite Corporation (COMSAT), and the Federal Communications Commission.

Mr. Blau holds a Ph.D. degree in telecommunications and economics from Indiana University, and is a graduate of DePauw University and the London School of Economics. He is a Chartered Financial Analyst (CFA).

**George Ford, PhD
Phoenix Center Adjunct Fellow; Chief Economist, Z-Tel Communications**

George S. Ford a co-founder of the Phoenix Center and one of its original Adjunct Fellows. Concurrent with his responsibilities at the Phoenix Center, Dr. Ford is presently the Chief Economist of Strategic Policy and Planning at Z-Tel Communications. Dr. Ford is responsible for performing and evaluating economic analyses pertaining to Z-Tel's strategic plans and public policy positions. Prior to

joining Z-Tel, Dr. Ford was Senior Economist at MCI-Worldcom and, prior to joining WorldCom, was a Senior Economist in the Federal Communications Commission now-dissolved Competition Division.

Dr. Ford received his Ph.D. in Economics from Auburn University where his research focused on the nature of competition in the cable television industry, and Dr. Ford has maintained an active research agenda and has published numerous papers in leading academic journals ever since. Dr. Ford is currently working on a book with Phoenix Center President Lawrence J. Spiwak entitled: HOW DO WE GO FROM ONE TO MANY: UNDERSTANDING THE LAW AND ECONOMICS OF THE "LAST MILE" OF TELECOMS NETWORKS and recently co-authored PHOENIX CENTER POLICY PAPER NO. 18: *Set It and Forget It? Market Power and the Consequences of Premature Deregulation in Telecommunications Markets* (July 2003).

Hon. Harold Furchtgott-Roth
President, Furchtgott-Roth Economic Enterprises
Former Commissioner, Federal Communications Commission

Harold Furchtgott-Roth is the president of Furchtgott-Roth Economic Enterprises. One of the few economists to have served on a federal regulatory commission, he is writing a book on telecommunications regulation. From 1997 through 2001, he served as a Commissioner of the Federal Communications Commission where he was a forceful critic of the agency's over-regulation of communications and broadcasting markets and a frequent dissenter from its decisions. Further information about Dr. Furchtgott-Roth's decisions at the FCC is available at <http://www.fcc.gov/previouscommish.html>.

Dr. Furchtgott-Roth is the coauthor of three books: CABLE TV: REGULATION OR COMPETITION? with R. W. Crandall (Brookings Institution, 1996); ECONOMICS OF A DISASTER: THE EXXON VALDEZ OIL SPILL, with B. M. Owen *et al* (Quorum Books, 1995); and INTERNATIONAL TRADE IN COMPUTER SOFTWARE, with S. E. Siwek (Quorum Books, 1993).

Dr. Furchtgott-Roth earned an S.B. from the Massachusetts Institute of Technology and PhD from Stanford University, both degrees in economics. Before his appointment to the FCC, he was chief economist for the House Committee on Commerce and a principal staff member on the Telecommunications Act of 1996. Earlier in his career, he was a senior economist with Economists Incorporated and a research analyst with the Center for Naval Analyses.

Thomas M. Koutsky
Phoenix Center Adjunct Fellow
Vice President for Law and Policy, Z-Tel Communications

Thomas M. Koutsky is a co-founder of the Phoenix Center and one of its original Adjunct Fellows.

Concurrent with his responsibilities at the Phoenix Center, Mr. Koutsky is Vice President - Law & Policy for Z-Tel Communications. In this position, he is responsible for formulating, articulating and executing Z-Tel's regulatory and government affairs policy positions at the federal and state levels. In this position, Mr. Koutsky shapes Z-Tel's positions regarding the deployment of advanced telecommunications services, the importance of vigilant enforcement of the Telecommunications Act of 1996, the proper role of the FCC and state commissions, and other issues of importance to Z-Tel. Mr. Koutsky has also negotiated several interconnection agreements with incumbent LECs and is actively involved in developing Z-Tel's strategic business relationships with CLECs and other commercial entities. Prior to joining Z-Tel, Mr. Koutsky was Vice-President - Regulatory Affairs for Covad Communications for five years.

Mr. Koutsky began his telecommunications career as a Senior Attorney in the now-dissolved Competition Division at the Federal Communications Commission. In that capacity, Mr. Koutsky

participated in key FCC decisions after the Telecommunications Act of 1996, including the FCC's implementation of Sections 251 and 252, universal service and access reform, the first "wave" of RBOC mergers, and the first FCC "271" decisions relating to RBOC provision of interLATA services.

Mr. Koutsky received his J.D. with Honors from The University of Chicago Law School in 1991. In 1988, Mr. Koutsky received a B.A. with Highest University Honors from the University of Illinois.

John Mayo, PhD
Dean, McDonough School of Business, Georgetown University

Professor Mayo teaches and conducts research in economics, business and public policy. His research interests lie in the areas of industrial organization, regulation and antitrust, and, more generally, the application of microeconomics to public policy. His research has appeared in numerous economics, law and public policy journals, including, the RAND JOURNAL OF ECONOMICS, the JOURNAL OF LAW AND ECONOMICS, the YALE JOURNAL ON REGULATION, the REVIEW OF ECONOMICS AND STATISTICS, the JOURNAL OF INDUSTRIAL ECONOMICS, the JOURNAL OF BUSINESS, and the JOURNAL OF REGULATORY ECONOMICS. He is also co-author (with David L. Kaserman) of a comprehensive text on GOVERNMENT AND BUSINESS: THE ECONOMICS OF ANTITRUST AND REGULATION, The Dryden Press, 1995.

Prior to taking his appointment at Georgetown University, Professor Mayo taught graduate and undergraduate economics classes at several universities including Washington University, the University of Tennessee and Virginia Tech. He has also served as the Chief Economist, U.S. Senate Small Business Committee (Democratic Staff). Additionally, Professor Mayo has served as an advisor and consultant to both public and private agencies including the U.S. Department of Justice, the Federal Trade Commission, AT&T, MCI, Sprint, Enron, the Tennessee Valley Authority, the Department of Energy, and Oak Ridge National Laboratory. In that capacity, Dr. Mayo has participated in a number of regulatory and antitrust proceedings and has testified before state and federal legislative and regulatory bodies on a number of matters, including monopolization, price fixing, mergers, and regulatory pricing policy.

Professor Mayo is a member of the American Economic Association, the Southern Economic Association, the Western Economic Association, and the Antitrust Law and Economics Association.

Professor Mayo received his B.A., Economics, Hendrix College, and his Masters and PhD in Economics from Washington University, St. Louis, Missouri.

Tom Navin
Deputy Chief
FCC Wireline Competition Bureau - Competition Policy Division

Tom Navin is currently the Deputy Chief of the Wireline Competition Bureau's Competition Policy Division. As Deputy Chief of the Competition Policy Division, Mr. Navin is responsible for implementing many key provisions of the Telecommunications Act of 1996, including the Commission's UNE Triennial Review pursuant to section 251 and issues affecting Broadband policy such as VOIP. Mr. Navin also has been responsible for evaluating several applications by the Bell Operating Companies to enter the long distance market and reviewing license transfer applications filed by common carriers. Prior to his new position, Mr. Navin served as Deputy Chief of the Wireless Bureau's Policy Division where he was responsible for implementing E911, CALEA, and local number portability policy for wireless carriers. Before joining the FCC, he was an associate at McDermott, Will & Emery in its regulatory practice group focusing on telecommunications issues.

Tom received a B.S. from Wake Forest University, and a J.D. from the University of Virginia, where he was an Executive Editor of the VIRGINIA JOURNAL OF INTERNATIONAL LAW.

Jason Oxman
Vice President - Federal Regulatory and Assistant General Counsel
Covad Communications

Jason Oxman is Vice President - Federal Regulatory and Assistant General Counsel at Covad Communications, the nation's leading competitive xDSL service provider, in its Washington, D.C. office. He joined Covad in September of 1999. In that capacity, he is responsible for all aspects of Covad's federal regulatory advocacy, including development and execution of federal regulatory and legislative strategy. He also gives frequent speeches and presentations on broadband legal issues before conferences and seminars around the country, and has appeared on CNN, CNBC, C-SPAN, and been quoted in the WASHINGTON POST, NEW YORK TIMES, WALL STREET JOURNAL, and numerous other publications. Until September of 1999, Oxman served as Counsel for Advanced Communications in the Office of Plans and Policy at the Federal Communications Commission. In that capacity, he advised the Commission on legal issues related to the deployment of broadband telecommunications services, and analyzed new communications technologies and Internet-related issues. He is also the author of the FCC Working Paper, "The FCC and the Unregulation of the Internet," which undertook an analysis of, and recommended a future course for, the FCC's regulatory treatment of the Internet. Oxman joined the FCC in 1997 as a staff attorney in the Common Carrier Bureau. From 1996-97, he served as a law clerk to the Maine Supreme Judicial Court. Oxman, a former broadcast journalist, holds a Masters of Science (M.S.) in Mass Communications and a Juris Doctor (J.D.) from Boston University. He holds a B.A. *cum laude* from Amherst College.

James Bradford Ramsay
General Counsel
National Association of Regulatory Utility Commissioners

Mr. Ramsay is the General Counsel for the National Association of Regulatory Utility Commissioners. NARUC was established in 1889 and is composed of the governmental agencies of the fifty states engaged in, *inter alia*, the regulation of telecommunications services.

As General Counsel, Mr. Ramsay manages the NARUC Policy Advocacy Department covering all policy, regulatory, and legislative matters. He is also responsible for addressing all association - related legal issues - both general law and regulatory.

During his 12 years with the association, Mr. Ramsay has always had first-chair responsibility for all the association's telecommunications litigation - related activity. This includes representing NARUC's positions (1) before the Federal Communications Commission, other federal agencies, and in the courts, and (2) in discussions with, *inter alia*, the Office of the United States Trade Representative, the European Community, and various industry associations. Mr. Ramsay also represents the association's interests in other forms, e.g., serving as a member of both the Separations and Universal Service Federal-State Joint Board staffs, the Section 706 Federal State Joint Conference, and as NARUC's staff representative to the ATIS Network Reliability working groups.

Before joining NARUC, Mr. Ramsay acquired significant experience in public utility regulation as an associate with the Washington, D.C. law firm of Grove, Jaskiewicz, Gilliam and Colbert. Prior to private practice, Mr. Ramsay was employed by the Federal Energy Regulatory Commission for three years as a rates attorney.

Mr. Ramsay received his B.S. in Chemistry in 1978 from Mississippi College, his J.D. in 1985 from Louisiana State University, and is licensed to practice (1) in both civilian and common law jurisdictions (including the District of Columbia and Louisiana) and (2) before the bar of the Supreme Court of the United States and the bars of 10 of the 13 United States Courts of Appeal.

Lawrence E. Sarjeant
Vice President - Law & General Counsel
United States Telecom Association

Lawrence E. Sarjeant is USTA's Vice President - Law and General Counsel. Mr. Sarjeant has responsibility at USTA for all legal and regulatory matters affecting the Association and its member companies. Prior to joining USTA, Mr. Sarjeant was Vice President Federal Regulatory at U S WEST, (now Qwest) directing U S WEST's regulatory advocacy and briefing administration and congressional staff on U S WEST regulatory positions. Mr. Sarjeant first joined the local exchange carrier industry in 1983 as an attorney with Pacific Northwest Bell Telephone Company in Seattle, WA. Before joining Pacific Northwest Bell, Mr. Sarjeant was an Assistant Attorney General for the State of Washington. Mr. Sarjeant began his career in 1976 as a staff attorney with Seattle-King County Legal Aid. Mr. Sarjeant received his law degree in 1976 from Rutgers, The State University of New Jersey, School of Law, Newark, NJ. He received an A.B. degree in Philosophy from Brown University. He is a member of the District of Columbia Bar Association, the Washington State Bar Association, the Federal Communications Bar Association and the National Bar Association.