

REPORT TO THE JOBS, ENERGY AND COMMUNITY DEVELOPMENT
COMMITTEE, MINNESOTA SENATE

TELECOMMUNICATIONS POLICY PROJECT

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Working Group Reports

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EXECUTIVE SUMMARY

Rationale for the Telecommunications Policy Project:

Far reaching changes in technology, industry structure and regulation have dramatically redrawn the relationships between consumers and providers of telecommunications and information services. Now another generation of technology change across several areas of service will break the mold on policy even further and challenge long standing policy arrangements, such as the technology and financing of 911 services to take only one example. Some serious debate began in the last legislative session on how to address these changes. The Telecommunications Policy Project was convened under the auspices of the TISP Forum at the Hubert H. Humphrey Institute of Public Affairs, University of Minnesota, to discuss and present ideas to the Minnesota Legislature on the next best policy steps in light of past and impending changes.

What is the Telecommunications Policy Project?

The Telecommunications Policy Project invited key participants with a stake in telecommunications and information policy in Minnesota to convene regularly in the fall of 2004 to identify and discuss some key elements of a going-forward telecommunications policy approach in Minnesota. A series of six half-day meetings were held with upwards of fifty participants apart from the Co-Conveners. The agenda of discussion was to some extent developed from within the group, but the intent of the discussion was to consider new policy approaches.

What Was Done?

The Co-Conveners formulated an initial new policy question asking the participants to consider the future of tariffs for telecommunications services in a competitive service world and asked whether a contract approach would better. The initial discussion of that led to the formation of three working groups who were each asked to develop reports:

- (1) Shared Values Work Group
- (2) Consumer Protection (Detariffing) Work Group
- (3) Regulatory Strategy Work Group

The Work Group reports were discussed by all participants in plenary sessions and the reports are intended to reflect overall discussion consensus. While there was a high level of open discussion and a sense of agreement on most points in the report, Co-Conveners and individual participants may reserve their own views on particular points. One of the benefits of the Project format was to hear side-by-side viewpoints on specific policy choices from different telecoms sector service providers and consumer representatives. and to hear reaction from public sector participants on public impact, desirability or feasibility of possible policy choices.

What are the Chief Consensus Points?

The Shared Values Work Group fully agreed that already established policy values should continue as future policy goals including competition, interconnectivity, 911, CALEA, privacy, single party service, consumer protection and dispute resolution by experts for consumers and providers.

A high (though not full) level of agreement supported the idea that if a service uses a phone number, it should help provide support for 9-1-1, the Universal Service Fund and the maintenance of the Public Switched Telephone Network. A similar level of agreement endorsed the “no free rider” concept and the concept that all measures should be taken to support those who want to get on the network, at fair and reasonable prices with technology choices in a competitive service world and with some controls over basic service.

There was less agreement on the concept that every telecom service provider should offer a minimum level of service.

The Consumer Protection (Detariffing) Work Group considered three specific questions:

1. What would be the results of a general detariffing approach in telecommunications regulation?
 - The benefits and risks of residential, business and wholesale contracts were discussed. Since business and wholesale relationships already rely heavily on contract, the major questions attach to residential contractual relationships.
2. What would be the elements of contracts if they replaced tariffs?
 - The Work Group developed contract guideline ideas embodying contract practices understood by average consumers. See the full report for specific terms.
3. What would be the funding approaches to preserve social programs, such as 9-1-1, low-income assistance, message relay service, etc.? Would a per number charge be desirable and workable?
 - Four ideas were considered; the first or last options were preferred:
 - A state general revenues appropriation
 - Assessments on all telecommunications services providers offering voice, data and video services in the state
 - Assessment on all users of voice, data and video services in the state
 - A charge on telephone numbers in use

There was no general agreement to proceed with detariffing and substitution of contracts for tariffs for all classes of customers at this time. But there was support to explore some combination of detariffing and individual contract formation with appropriate safeguards for consumers.

Last, this group noted that a number of difficult questions affecting how individual consumers both urban and rural would fare under a detariffed, contract approach were outside the charge to the Working Group and thus remain unresolved. These include obligation to provide basic service plan to residential customers as well as geographic and class of service price de-averaging. Other critical questions include whether technological parity is achievable/appropriate for consumers--especially rural consumers; the problem of insuring a competitive market; and how to achieve equal treatment of different types of providers in regard to contracts.

The Regulatory Strategy Working Group was asked to consider what might be included in re-formulation of telecommunications policy in Minnesota. The report exposes a range of issues and approaches to regulatory changes and discusses some possible effects of the proposed changes. It is no surprise that the report was heavily discussed both in Work Group and plenary sessions.. Nevertheless, some differences remained among participants at the end of the day.

Therefore, the full report should be read as a foundation for further discussion to assist Minnesota lawmakers with choices regarding the proper role and scope of regulation by states of telecommunications when telecommunications services are likely to migrate to unregulated technologies or are unregulated or preempted at higher levels.

Five options for possible re-formulation of policy are suggested:

1. Regulate the last mile physical connection (state has limited ability to do this)
2. Regulate basic essential service only; market covers the rest
3. Regulate where no competition exists; market covers the rest
4. Regulate the customer (businesses required to have 9-1-1)
5. Incentives rather than regulation (certification programs)

The report also considered the question of re-evaluating the roles of the several public agencies involved in telecommunications policy. The regulatory role of the PUC is likely to diminish both by reason of federal encroachment and by technology shift. However, the need for consumer protection will remain and possibly expand if Minnesota were to adopt consumer contract relationships for most or even all telecommunications services. The report asks how duplication might be reduced while at the same time preserving needed consumer protection.

What are the chief recommendations?

The Telecommunications Policy Project was initiated because key policy makers understand that major pieces of the policy framework for telecommunications policy may simply drift away. Technology presents options to service providers to migrate services to a less regulated form of delivery, revenues derived from older more regulated technologies and transactions are sliding downward. These trends could accelerate without much notice.

The letter of invitation sent by the Co-Conveners to participants states “The winds of change are blowing hard in the telecommunications and information services world.” How should those changes be addressed? This report provides several recommendations in response to that question.

First, it provides two recommendations for legislative consideration in the near term. One policy recommendation is to examine further whether a per number charge is the right path for responding to the public support needs for 9-1-1 and other public programs. However, if that policy is to be seriously considered, then further policy work needs to be done to settle on the right concepts for resolving technology and regulation issues. The second policy recommendation is to examine more thoroughly the precise needs for migrating individual service and small business relationships from the tariff umbrella to open contract. The Work Group noted a number of difficult questions remaining to be resolved including the hard questions of obligations on basic service, geographic and class of service de-averaging, all matters which would have disproportionate effect on rural areas. .

Second, the report provides a starting point for general re-formulation of telecommunications policy in Minnesota. However, to move effectively on either the specific policies recommended in the preceding paragraph or on a general re-formulation of Minnesota policy, it is recommended that the Legislature authorize a Joint Interim Committee to work intensively with key stakeholders to create a modernized policy framework capable of meeting consumer protection and public program needs and wins the support of both industry and consumers. It is worth noting that a number of states around the country have renovated or are now renovating their telecommunications law and policy framework with these goals in mind. The time is more than ripe for such an effort in Minnesota.

TISP SHARED VALUES Work Group

November 10, 2004

Convenor/Recorder: Joy Gullikson

Attendees

Keith Weigel	AARP	Sean Simpson	Mid-West Wireless
Edward Garvey	DOC	Jeff Leuders	MACTA
Diane Wells	DOC	JoAnne Johnson	Citizens/Frontier
Peter Coyle	T-Mobile	Joy Gullikson	Onvoy

Discussion

The group spent a fair amount of time in general discussion mostly surrounding what was an appropriate minimum level of service and what kind of company should be required to provide it. We also discussed the ICEDs model, with Deputy Commissioner Garvey discussing the incentives of having companies rated to provide the types of services customers want (911, interconnectivity, etc.). As expected, each representative approached the discussion from a different angle, and we had a sometimes lively discussion.

Conclusions

The working group agreed on the following public policy points regarding telecommunications:

The following are good things:

- Competition
- Interconnectivity
- 911
- CALEA
- Privacy
- Single party service
- Consumer protection
- Dispute resolution by experts for:
 - consumers
 - providers

In addition, there was high level agreement on the following:

- If a service uses a phone number, it is appropriate to provide support for:
 - USF
 - maintenance of PSTN
 - 911
- No free riders
- Take all measures to support those who want to get on the network

In further discussion about the need to provide service to anyone who desires it at a reasonable price (which may be the cost of providing the service), the group determined:

- everyone consumer should have the ability to purchase the ability to communicate with the rest of the world at a fair and reasonable price
- people should have the right of technology choices
- public policy should facilitate and encourage competition
- there should be some control over the basic service that they have come to expect (retain service territories over which the ETC is required to serve, with some price controls)

There was less agreement concerning the following proposition:

- every provider should offer a minimum level service

Note

JoAnne Johnson called our attention to Commonwealth of Virginia Senate Bill No. 383 which offers a basic service only form of regulation, except by complaint. The link to this bill is <http://leg1.state.va.us/cgi-bin/legp504.exe?ses=041&typ=bil&val=sb383>

University of Minnesota

TISP Consumer Protection (Detariffing) Work Group

November 23, 2004

November 29, 2004

December 13, 2004

Convenor/Recorder: Mike Nowick

Attendees

Amy Brendmoen	Attorney General	Mike Nowick	MTA
JoAnn Hanson	Qwest	Kevin O'Grady	MPUC
JoAnne Johnson	Citizens/Frontier	Michelle Rebholz	MDoC
Jerry Knickerbocker	MTA	Andy Schriener	Qwest
Jeff Lueders	MACTA	Keith Weigel	AARP
Tony Mendoza	memo enterprises	Diane Wells	MDoC
<i>Jeanne Cochran</i>	<i>Attorney General</i>		
<i>Peter Coyle</i>	<i>T-Mobile</i>		
<i>Sean Simpson</i>	<i>Midwest Wireless</i>		

Discussion

The group was presented with an overall question of “What should be done by the state to protect the consumer if contracts replace tariffs?” Three specific questions were asked of the group. They were:

1. What would be the results of a general detariffing approach to telecommunications regulation?
2. What would be the elements of contracts if they replaced tariffs?
3. What would be the funding approaches to preserve social programs, such as 9-1-1, low income assistance, message relay service, etc.? Would a per number charge be desirable and workable?

These questions were discussed.

Conclusions

There was not agreement to proceed with deregulation for all classes of customers at this time. For purposes of this exercise the working group agreed that an assumption should be made prior to addressing these questions. The assumption was that deregulation of a telephone service or telephone service provider operating under Minnesota Statutes Chapter 237 and Minnesota Rules Chapter 7800 was desirable prior to moving away from tariffs. Once the deregulation

occurred, the service provider would establish a contractual relationship with the customer. As a result of this action, the appropriateness of continuing with the alternative form of regulation plans used by many companies would also need to be reviewed.

As a variation to this approach, some members of the work group felt that deregulation of telephone services before contracts replace tariffs down to the level of a single residential and business line level should be at the option of the telephone service provider.

Some group members also felt that all business lines should be completely deregulated. *Some felt that detariffing would only be appropriate where there had been deregulation of four or more business lines.*

Other group members believe that contracts could replace tariffs without deregulation occurring.

Question #1.

Telecommunications service providers would need to establish contracts with various classes of customers to govern the terms and conditions of the business relationship. These customer groups would be divided, generally, into business, residential and wholesale classes. There would be issues involved in moving each of these types of relationships from a tariff to a contract basis.

Business contractual relationships.

Benefits

1. Easily adapted to by the parties because they are in widespread use now.
2. Allow businesses to customize services and negotiate individual prices.
3. Contracts can be changed by mutual agreement without regulatory approval.
4. Creates a more stable business environment by reducing churn.

Considerations

1. More administrative responsibilities for small telecommunications service providers.
2. Consumer oversight protections provided in contract terms rather than by the Public Utilities Commission.

Residential contractual relationships.

Benefits

1. More flexibility for telecommunications service providers to offer services.
2. Promotes creativity and development of new products.

Considerations

1. Consumer oversight protections provided in contract terms rather than by the Public Utilities Commission.
2. Consumers *may not* read contracts closely or fully understand them.
3. Contracts need to be written and presented clearly and concisely.

4. More administrative responsibilities for small telecommunications service providers.
5. *Forms contract may provide little opportunity for individual negotiations; whereas tariffs are negotiated by government representatives on behalf of the consumer.*

Wholesale contractual relationships.

Benefits

1. Easily adapted to by the parties because they are in widespread use now following provisions of the Telecommunications Act of 1996.

Considerations

1. Mechanisms for dispute resolution may need to improved, i.e. MPUC, arbitration, the courts.

Question #2

The elements of contracts may include:

1. Inclusion of basic consumer contract law
2. Contract practices that are understood by average consumer
3. Standard language and format for terms and conditions of the contract
 - Truth-in-Billing standards
 - Line items accurately identified
 - Third party charges kept separate
 - Consider “10 Point” check off lists rather than typical contracts
 - Customer and sales representatives need to initial (or digitally record) a list of the terms and conditions so both are accountable to agreement.
 - Simplify, reduce terms
 - NO “ant print” (2pt font)
4. Need signature if definite term contract (as opposed to month-month agreement)
5. Need mutual agreement to change terms
6. Termination liability controls
 - Should be spelled out clearly at onset
 - Should be cost based
 - Could decrease over time (i.e., cancellation after two months more costly for company than after 11)
7. Clarity about what happens when contract ends
8. Disclosure of all start up fees that will appear in the first bill
9. First bill rendered well before guarantee expires
10. Complaint resolution guidelines
 - Mandatory arbitration clause prohibited
 - Arbitration permitted, but not required in all cases
11. Service quality standards statement
 - Service meets expectations based on company’s representation

- Box or area of contract that clearly spell out company's offering in basic language including, but not limited to, privacy statement, 9-1-1 offering and customer service.
12. Liability limitations of the service provider
- Short statement of liability limitation.

Question #3

Funding approaches to preserve current socially valuable telecommunications programs and services (9-1-1, TAP, TAM) could include:

1. A state general revenues appropriation
2. Broad-based assessments on all telecommunications service providers offering voice, data and video services in the state
3. Broad-based assessments on users of voice, data and video services in the state
4. A charge on telephone numbers in use

Per number charge

Benefits

1. Broad-based
2. Technology neutral

Considerations

1. It may be difficult to monitor and audit new and out of state service providers.

The group also noted that options 2 and 3 would not treat all providers equally, are not technology neutral and are diminishing sources of revenues.

The group believed that option 1 or 4 was preferable to options 2 and 3.

Issues Identified at December 1, 2004 TISP Meeting

1. *Would the inclusion of a contract element that carriers must offer an affordable, basic phone be appropriate (and also reduce the possibility of cherry picking)?*

It would be appropriate to have a basic service plan available for residential customers. However, this question is outside the scope of this work group. There are a number of policy questions that need to be answered that are outside the scope of this work group. They include, but are not limited to, universal service (the affordability and availability of service), a minimum set of basic services, and geographic and class of service price de-averaging.

2. *How would moving to contracts impact dispute resolution? Would the PUC still be the decision maker or would private causes of action, decided by the courts, be the result?*

Either solution is workable. Contracts would have to state what is the method is for dispute resolution. Contracts should not contain mandatory arbitration clauses.

3. *Would these contracts be private or for public view?*

Standard terms and conditions of contracts would be made public. Individual contracts would be private.

4. *Are fluid (versus rigid) contracts better for consumers, particularly in a competitive environment? Or, are contracts that lock consumers in good for consumers?*

The group did not have sufficient information to form an opinion on whether fluid or rigid contracts were better for consumers. Consumers need to know the terms and conditions of contracts in terms they understand. The group agreed that having contract standards was beneficial to consumers.

5. *If contracts replace tariffs, are there some individuals (e.g. minors) that are not authorized to enter into contracts? How should this be dealt with?*

The same principle for standard language and format for terms and conditions should apply in this situation. Minors and vulnerable adults would not be allowed to enter into contracts.

6. *With bundled services as the future, how does the discussion of contracts replacing tariffs relate to equal treatment of providers, such as cable and wireless, if at all?*

This is a policy question that is outside the scope of this work group.

7. *Is technology parity appropriate for consumers, and should it depend on whether there is a competitive or non-competitive market, such as in rural areas?*

This is a policy question that is outside the scope of this work group?

8. *How would a contract approach impact rural consumers? Is there a potential for cherry picking?*

Moving from tariffs to contracts would not impact rural consumers any more than urban consumers. What would impact rural consumers would be legislative or regulatory changes that would allow geographic price de-averaging or changes to universal service requirements or financial supports. Any competitive service provider may already be cherry picking. Incumbent local service providers are required by law to serve all customers within their designated service areas upon request. They are the carriers of last resort.

9. *Is technology parity appropriate for rural consumers, and should it depend on whether there is a competitive or non-competitive market?*

This is a policy question that is outside the scope of this work group.

Amy Brendmoen is expanding the track of discussion in Question #2 and will be delivering it to the work group in separate correspondence.

TISP Forum
Telecommunications Policy Approach for Minnesota, Fall 2004
Regulatory Strategy Working Group

Report to the Forum

December 8, 2004

This working group was charged with devising recommendations as to what our state's regulatory strategy should be. In this report, we will attempt to expose a range of issues and approaches to regulatory changes and discuss some effects of those proposed changes. The purpose is to give the ad-hoc TISP Forum Policy group a base with which to hold its discussions and devise a consensus recommendation for our state's policy-makers.

The report is in several sections:

1. A preface to give background and introduce the narrative
2. A summary of the fundamental reasons for State regulation
3. An enumeration of basic principles that must be the basis for any regulatory construct
4. A brief description of the basic preparatory tasks to establish regulatory mechanisms
5. A list of possible regulatory mechanisms
6. A cursory description of current and future regulatory agency roles
7. A final summary

Preface

Technology advances and changes in Federal regulatory policy have necessitated a reexamination of our state telecommunications regulatory structure. Presently, voice telephony service delivered over fiber optic cable and copper twisted pair wiring is regulated as a vertically integrated service system. Likewise, television broadcast service delivered over fiber optic and coaxial cable is also regulated as a vertically integrated service system. Information transmitted over private or public Internets is not regulated. Various government agencies, including Federal, State and Municipal departments administer and enforce these regulations.

With the advent of packet switched networks using the Internet Protocol (IP) within the last 15 years, voice communications, video broadcast or conferencing and data services are all being delivered over this new common transport method. The content is no longer vertically integrated with the transport, and the transport is no longer vertically integrated with the physical network. This is often expressed as "everything over IP and IP over everything."

The current regulatory structure is no longer applicable in a future world where anyone can deliver applications and content over any means of connection; it appears that a radical change in regulatory structure is needed. But, since this changeover will not be instantaneous, a transition period will occur in which the old and new telecommunications systems must co-exist and be appropriately controlled to benefit society's interests.

The Need for Regulation

Regulations are necessary to:

1. Ensure a minimum level of essential services.
2. Protect the public rights and interest when the free market is not capable.
3. Encourage general benefits to the state as a whole when other influences are inadequate.

If conditions in telecommunications change so that true competitive choices, and thus market forces, are available, the need for regulation for consumer protection changes. Regulation may still be necessary to compel the provision of essential services that the market may not, on its own, make available such as extended 911 or service in areas of low population density. Governmental means may also be needed for consumers to seek redress when competition and market pressure are still inadequate to assure fair treatment.

We must recognize, in this endeavor, that the tools and capabilities available to the State are diminishing with the FCC and the Congress preempting many state rules and shrinking state jurisdiction in the new technology era. It is in our interest to assure that proposals for State regulatory structure are flexible to adjust to such realities, and creative and well-designed to provide a worthy example for Federal restructuring and activities in other states.

Basic Principles

Through many discussion forums, reports and hearings, several principles have evolved to provide the basis for any regulatory restructuring. These principles also evolve out of the basic need and purpose for regulation stated earlier, and the needs of the customers and clients of telecommunications services regulation:

1. ***A set of basic essential communications and information services must be defined and mandated as universal.*** Means must be devised (i. e. funding mechanisms) to assure universality of these services at affordable costs to residential and businesses customers. In the past, this definition has included basic voice communication and emergency calling (911). We are reaching a time when access to information may be just as important as voice communication and we may need to consider mandating broadband always-live connectivity and Internet information service as a minimum essential service. Rate regulation is one, but not the only, among many ways to assure universally affordable essential services.
2. ***Communication networks must be internationally connected, robust, reliable and secure.*** Customers must know that their service will be available when needed, that they can connect to any destination worldwide conveniently, that their communications be private and protected. Law enforcement agencies will want controlled access to individual communications.
3. ***Customers must be afforded real choice in service providers to the greatest extent economically possible.*** To take the greatest advantage of market controls to assure quality, reliability and low cost, a customer must be able to abandon a provider and switch to another. This obviates the need for extensive regulation. With IP transport and a broadband connection, it is now possible to purchase service from a number of different providers. However, there is still a limit in the physical connections to the customer site

that can impede choice unless there is unfettered access to those physical connections. However, it must be recognized that market conditions may not provide choice in all areas of the state. Government must not mandate unconditional choice but should create conditions to make it as widely available as possible.

4. ***Consumers must have effective fraud protection and dispute resolution mechanisms.*** When the free market is inadequate to the task, mechanisms must be established, likely administered and enforced by government, to address customer grievances. This may be most effective at the state level because of the differing regional needs and strength of the state as an advocate against large businesses that cannot as effectively be done at the higher Federal or lower Municipal level.
5. ***An environment must be created to encourage investment in extensive telecommunications facilities that would benefit the State's economy and enhance the State's social and cultural vitality.*** Policy-makers should not mandate investment where such investment would not be economical, but should instead provide incentives or create conditions that encourage investment. Policy-makers should be careful that their decisions do not actually discourage investment by private sector companies.

Regulatory Evolution: How to Proceed

To summarize, we have two regulatory redefinitions before us:

1. What the regulatory structure should be like in the packet-based info-communications world of the future.
2. What the regulatory structure must do to accommodate the transition period while the current and future systems co-exist.

To migrate to a new structure that better addresses the environment created by the new technologies, we must:

1. Define what regulation is intended to accomplish. What are the state's compelling essential services, public safety, and public benefit needs.
2. Assign measures to verify accomplishment.

Regulatory Mechanisms or schemes

There are several options for transitory or permanent regulatory structuring. None of these may be comprehensive, but some form of each has been proposed to address various changing conditions and regulatory needs.

1. Regulate the physical layer, relieve regulation on the transport and application layers.

With the ability to purchase services from a number of providers (assuming a broadband IP connection), market forces may provide much of the consumer protection usually assigned to regulatory agencies. However, there is still a physical limit on the physical end connections to the customer. The provider that owns this resource has a significant competitive advantage and even the capability to lock out competition unless all end links (DSL, cable, fiber) are open and available to all providers at reasonable prices. Wireless would fall into this same group for licensed bands. However, it must be recognized that currently the state has limited jurisdiction over the different physical paths.

Advantage: It gives consumers the ability of true choice if they can switch providers without extensive effort or cost penalty..

Disadvantage: It may hinder the cost and technology advantages of vertical integration of service and the ability of providers to price discriminate. Funding of the physical network may be inadequate to expand and maintain its quality, reliability and enhancement without revenue from upper layer services.

2. Regulate basic essential service only, let market forces cover the rest.

Essential communications services, once defined, can be regulated to guarantee a universal minimum communication ability to all consumers and businesses at reasonable cost. Any additional enhanced services would be available as the market allowed. Consumer protection could be through enforcement of private contracts.

Advantage: It minimizes regulatory overhead and cost, guarantees a basic universal service, and unfetters development of new technologies and services. The complex and lengthy tariff process can be replaced with individual or master contracts with customers, similar to cellphone or cable TV service. Regulators can specify a minimum set of requirements and avoid involvement in individual contract term approvals.

Disadvantage: Contract enforcement would be difficult for individuals outside of a large group. State agency assistance would be necessary, but may be beyond its capacity if there are excessive complaints. Excessive litigation is possible.

3. Regulate by competitive zone.

Establish strict rules in geographic areas where true competition is not economically or logistically feasible and monopoly conditions still occur. Relieve regulation in areas where true competition exists and the market forces accomplish the State's services, protection, and benefits needs.

Advantage: Deregulates the vast majority of the State.

Disadvantage: Still requires a strict regulatory structure for those few areas where it is needed.

4. Regulate the customer.

This would apply to businesses primarily. Non-residential customers would be required to have a minimal set of telecommunications services available in their locations such as emergency calling or basic voice calling.

Advantage: Puts more teeth into any voluntary self-regulatory compliance systems.

Disadvantage: May impose onerous unfunded mandates on business.

5. Incent rather than regulate.

Many providers are outside the jurisdiction of the State. However, economic incentives can be made available to encourage providers to provide a desired set of services and be responsive to customer service demands. A certification program akin to a "Good Phonekeeping Seal of

Approval;” specifying of a minimum set of services and protections. Providers voluntarily decide whether they want to participate, but they have to agree to comply with rules (e.g. like the NY stock exchange membership - an industry self-policing regulatory mechanism). Government regulatory agencies are available on a complaint basis. This provides information to customers so they may make their choices. If a provider had certification, that would obviate their requirements under existing regulation (Chapters 237 and 238).

Advantage: Circumvents jurisdictional limits of state regulatory agencies

Disadvantage: Voluntary only; limited and indirect state influence on compliance or desired results. Customers will have to be a lot more responsible and knowledgeable to make good choices.

Regulatory Agency Roles

Minnesota is distinctive from most states in dividing the public interest advocacy and decision-making functions between two separate agencies, the Department of Commerce and the Public Utilities Commission (PUC). The Attorney General is charged by statute to represent the interests of residential and small business interests in telecommunications. In addition the Attorney General has broad consumer protection enforcement and investigative authority.

Though perhaps less efficient, sometimes duplicative, and sometimes a cause of confusion for consumers seeking assistance, it can be argued that Minnesota’s approach best assures a full and fair hearing for all interested parties and should be retained. Minnesota’s structural separation between the advocate and decision-maker best assures independent and objective consideration of the increasingly contentious disputes presented in the telecommunications industry.

As we move to a new regulatory structure, it will be necessary to determine what the role each of the state regulatory players will have.

It is the PUC that provides the primary enforcement role. Currently:

The mission of the Minnesota Public Utilities Commission is to create and maintain a regulatory environment that ensures safe, reliable and efficient utility services at fair and reasonable rates (M.S. Chapters 216A, 216B and 237).

It has been proposed that the Commission of the future, at a minimum, should be involved in the following to the extent that the State’s ability has not been preempted by Federal authority. Depending upon the regulatory mechanism(s) adopted, there may be other appropriate functions for the Commission:

- Administration of public safety programs
- Adjudication of consumer complaints
- Overseeing inter-carrier contracts and resolving intercarrier disputes and wholesale transactions between competitive carriers and incumbent providers.
- Administration of social programs (low income, disabilities)

Going forward, the Commerce Department should remain the agency that does the basic regulatory analysis or brings cases before the Commission on behalf of the public interest. Additionally, the Attorney General’s Office should focus on residential and small business

consumer issues. Consumer complaints should be investigate exclusively by the Attorney General's Office and, absent informal resolution, disputes should be brought by the Attorney General to the Public Utilities Commission or the courts for resolution. Importantly, the role of regulatory agencies should not be duplicative.

Summary

Regulatory structure must be adjusted significantly to accommodate the change in telecommunications services brought about by technology advances. This requires:

- A re-examination of what regulation is intended to accomplish.
- A determination of the state's compelling public safety, essential services and public benefit needs.
- Establishment of measures to verify effectiveness and accomplishment.

From these we can then determine:

- What the regulatory structure should be like in the packet-based info-communications world of the future
- What the regulatory structure must do to accommodate the transition period while the current and future systems co-exist.
- What the roles of the various regulatory agencies should be and what mechanisms must be employed to assure the State's best interest.

Regulatory Strategy Working Group Members:

Dennis Fazio, co-chair
Joanne Johnson, Frontier-Citizens co-chair
Mike O'Conner, co-chair
Ed Garvey, Dept of Commerce
Diane Wells, Dept of Commerce
Amy Brendmoen, Attorney General's Office
Jeanne Cochran, Attorney General's Office
Dennis Ahlers, Eschelon
Dan Lipschultz, CLEC Coalition
Mike Martin, Minnesota Cable Communications Association
Jerry Knickerbocker, MTA
Kevin O'Grady, PUC
Mike Ahern, Minnesota Independent Coalition

Addendum, Regulatory Work Group Report

December 21, 2004

Wholesale issue remarks:

The regulatory restructuring options listed in the Committee Report are not intended to and should not have an impact on wholesale markets for two reasons (with one exception):

1. Accessibility to a local loop or end-customer connection, and therefore access to the consumer, is a core component of a competitive market environment and as such should remain under regulatory oversight at the state level unless or until that authority is preempted by federal agencies or until the time when multiple facilities are available for competitors to reach consumers. The inclusion of inter-company (wholesale) agreements is noted as a desired component in a restructured PUC on page 5 of the Committee Report.
2. Wholesale issues such as unbundling, access charge reform and others will be partially or conditionally resolved at the federal level within the coming months.

The wholesale effect that is our exception occurs in the first option for potential regulatory reform on page 3 of our Report that suggests limiting regulation to the physical layer of the network where the wholesale market operates. This would continue to include current open access to copper loops, and require open access to Cable operators' fiber and coax, and also phone company's customer fiber links. The outcome of the U.S. Supreme Court's ruling on the appeal of the 9th Circuit Court's reversal of the FCC decision to not require Cable operators to open their fiber and coax lines to competitive ISPs, and a similar challenge to the FCC ruling on fiber loops will determine where the Federal regulation/deregulation shift will end up.

Government Service Provision remarks:

Opportunities for Municipal or State provision of telecommunications service is possible and perhaps useful in a couple of areas.

Currently, we state that the State does have an interest in public safety, and there is significant participation in the provision of 911 emergency call service. This would likely continue to be supported by all parties.

Some municipalities have sought the ability to build infrastructure (usually fiber) throughout their towns either as a backbone trunk system or even to each home. There could be a legitimate role for municipalities, or even the

State, to be the providers of physical infrastructure on an equal basis as a public utility to all service providers of upper level services such as transport (ISPs), or application (telephone call routing and switching and user services, video broadcasting/narrowcasting, etc.). This would fit in with the strategy of regulating the physical layer. Such a strategy would be supported by many public interest groups and resisted by service providers.

If a Municipality were to provide physical connectivity services, the issue of "stranded investment" would be raised. That is, telecom companies that had recently invested in fiber and DSL upgrades in an area would argue for some mitigation of loss for investments not fully recovered. Infrastructure such as copper wiring installed long ago may or may not be considered depending upon circumstances in that area.

It could also be useful in some areas for the municipality to provide the entire layer set of services including voice, data and video in areas where commercial providers are reluctant to penetrate or where they are on an exit path. It can also be useful for municipalities and commercial providers to explore joint provisioning or joint investment in backbone facilities.

There is a statutory path for municipalities to follow to get into the POTS business. It is not clear what the status would be on the IP telephony business. There are also statutory prerequisites that apply to the State Dept. of Administration. Some in the group believe this is a topic that warrants additional discussion on its own.

Facilities based competition remarks:

Some members of the group representing facilities based competitors raised concerns that policy which aims to "regulate the physical layer" by requiring wholesale access to new facilities by other providers could act as a disincentive to build facilities based services.

TISP Forum
Wednesday, October 20, 2004

Attendees (According to sign-up sheet):

Andy Schriener, Qwest
JoAnn Hanson, Qwest
Keith Weigel, AARP
Amy Brendmoen, Office of Attorney General (OAG)
Steve Downer, MMUA
Mike Martin, MN Cable Communications Association
RaeAnn Kelsal (spelling?), Western Wireless
Eric Swanson, Winthrop & Weinstein
Tucker Carlson, Charter Communications
Joy Gullikson, Onvoy
Jerry Knickerbocker, MTA
Scott Bohler, Frontier Communications
Coralie Wilson, North Suburban Communications Association
Michael McDermott, Verizon Wireless
Scott Bergs, Midwest Wireless
Sean Simpson, Midwest Wireless
Jack Ries, Department of Administration-Intertech
Jeff Lueders, MACTA
Bob Eleff, Research Department-MN House of Representatives
Ron Elwood, Legal Services Advocacy Project
Pat Peterson, Rider Bennett
Kevin Saville, Frontier Communications
Don Jorovsky, Jobs, Energy and Community Development committee administrator
Dan Leary, T-Mobile
Emmett Coleman, Comcast
Diane Wells, Minnesota Department of Commerce
Michelle Rebholz, Minnesota Department of Commerce
Jeanne Cochran, OAG-Residential and Small Business Utilities Division (co-convenor)
Edward Garvey, Minnesota Department of Commerce (co-convenor)
Rep. Al Juhnke, Minnesota House of Representatives (co-convenor)
Sen. Ellen Anderson, Minnesota Senate (co-convenor)
Sen. Steve Kelley, Minnesota Senate (co-convenor)
Milda Hedblom, University of Minnesota (facilitator)

The meeting began at 10:15 am.

Introductions

Statements by co-convenors

Senator Kelley stated that the 2004 legislative session saw some progress on telecommunications deregulation, more than some wanted but less than what others wanted. There are other issues that need to be addressed. The partial deregulation of the telecommunications industry so far, as well as the recent legislation adopted on wireless contracts, implies more choice for consumers. The role of the state must be determined, as well as the threshold we should set as we move to a deregulatory environment. A different regulatory philosophy will have much less rigidity in the structure, like moving from tariffs to contracts. If we detariff, consumers will have more choices but there is the issue of what thresholds should be included in the contracts. Clearly there are other issues to be looked at, like access charges, wireless regulatory litigation, issues municipalities and cable companies are concerned about. So our charge is what should be in the package that we look at in the 2005 session.

Senator Anderson stated that a discussion is necessary about where we want to go and it is helpful to do so away from the Capitol and without the time constraints in place during Session. There is a need to

ensure that all (business and residents) have access to some type of telephone service at a reasonable price. True choice with no artificial barriers favoring one technology over another should also be assured so that consumers have access to the technology that best meets their needs.

Representative Juhnke noted that all of the senators that were co-convenors are from the metro area and the co-convenors that are representatives are from the rural areas of the state. He emphasized the need for a rural perspective and indicated we should not be afraid to say that what we are discussing is deregulation. People often spend their time debating the last-mile issue while overbuilding occurs as the debate proceeds. The struggle is how to protect rural interests while allowing the industry to do what it does best. Rep. Juhnke noted that rural telephone companies provide broadband to 85% of their customers that live within city boundaries, however, 18% of rural residents are outside city boundaries. He also emphasized that we should not confuse accessibility with affordability; broadband is still more expensive outstate where rural incomes are 20% lower than metro incomes. One question that always comes up is who are the winners and losers but this should be transparent. Finally, Rep. Juhnke said that we need to address the question of which regulatory agency is the appropriate agency to handle certain issues (DOC, PUC, or OAG-RUD).

Deputy Commissioner Garvey spoke of the need to adopt the perspective of viewing issues from the end user's point of view. End users have six (6) services in mind: local telephone service, long distance service, wireless, high speed service, video and data (or ISPs). More and more of the providers in the industry do not just offer one of these services, but many. However, we are left with the legacy arrangement of regulating each service differently. We also need to pay attention to the role of the states, particularly in relationship to the role of the federal government. For example, at the state level we tend to regulate local telephone service primarily with some filing requirements for other services. However, yesterday the chair of the FCC announced that the FCC would address the issue of VoIP sooner rather than later with more oversight by the federal government than by the states. Mr. Garvey then addressed tariffing as a legacy regulatory regime with little place in the current industry but what do you use as a replacement. Whatever the replacement is, it is important to everyone in this room. For the ICEDs world we need to develop a system to protect delivery of these six services to the consumer that is provider and technology neutral.

Jeanne Cochran, OAG stated that we need to figure out how to accomplish our identified goals in the changing telecommunications world. The goal from the consumer's perspective is access to service at an affordable price, and the question is how to do this in an environment where technology is changing and there is more customer confusion. There will be a bigger role for states to play in consumer protection during this changing environment.

Milda Hedblom, facilitator, explained that the idea of detariffing was put forward as an illustrative example. There are other issues that need to be addressed and everyone's list of the top 3 or 4 issues may be different. The question for the group is what should we focus on during these sessions and in any possible report to the legislature. The meeting was then opened for discussion by attendees.

Don Leary, T-Mobile pointed out that while the meeting appeared to focus on deregulation, from the wireless industry's perspective, Minnesota did not deregulate wireless service but increased regulation.

Coralie Wilson, President of NATOA, believed that the group needed to abandon terms like "telephone service," because the industry is moving from discreet networks offering discreet services to networks that provide a variety of applications, including voice, television, and services we've never heard of yet. Deregulation may not be the correct term. First, the group needs to define the core values for this state, such as consumer protection, the 911 system, and public safety. In addition, Congressional staff is already rewriting the Telecommunications Act of 1996 and possibly the entire 1934 Communications Acts; the state needs to think about the actions by the federal government and provide input into that process because whatever we are able to do will depend on what Congress allows. As to core values, local governments want to ensure local authority over rights-of-way, protect revenue sources, and ensure public safety (911). Soft values include democracy, the diversity in what is carried over the wires (for example, telephone and cable companies may decide who can provide an application over their wires into the home). At the federal

level, there is a discussion about the “layered” approach to regulation, where the owners of the wires are regulated in one manner, and the applications that are provided over those wires are regulated differently.

Steve Downer, MMUA stated that another core value of municipalities was to continue allowing them to provide telecommunications services. Municipalities would also like to create business partnerships with private companies and would like joint venture authority. The 65% supermajority vote required in order to a municipality to provide dialtone is a barrier to entry and is not a level playing field.

Jerry Knickerbocker, MTA agreed that a level playing field was needed. Regulation should be done by the service and not the type of company providing the service. Tariffs are not necessarily a problem but are just the way that some companies do business. If tariffs are replaced by contracts, they are just a new vehicle by which to provide service. An equal amount of leverage between both parties is required in a contract. Since the state doesn’t regulate all services, he is unsure how detariffing would work. Mr. Knickerbocker stated that deregulating business customers with four (4) or more lines in the last legislative session was a good first step. Entirely deregulating telecommunications service, except for basic obligations such as 911, basic service, and having a forum for complaints, is appropriate. Subsidies are also necessary.

Sen Kelley responded that if hidden subsidies are eliminated, explicit subsidies are necessary. The subsidy concept is supportable in theory, but is more difficult to apply in practice, particularly when providers using different technologies are involved. Sen. Kelley also noted that there probably isn’t much difference in the cost of serving New Hope and the cost of serving downtown Willmar. In addition to talking about cost, one also must discuss reliability.

Tucker Carlson, Charter asked what is meant by the word service, is it dialtone? Broadband?

Sen. Kelley replied that as chair of the education committee, he recognized that rural school districts cannot get access to the same curriculum as metro school districts and that rural broadband service costs more than urban broadband.

Rep. Juhnke stated that service should include access to 911 for everyone. He cited to an example last month where all of Kandiyohi County was without service for six hours because of a cable cut between Willmar and St. Cloud. Thus redundancy is also a necessary part of service. Broadband availability in rural areas is an economic development issue. In summary, we do need to address what that “one Minnesota” looks like.

Scott Bergs, Midwest Wireless agreed with Rep. Juhnke. A change in perception is required. Historically, regulation was focused on delivery vehicles. Perception should change to ask whether consumers are getting the services they want. The provider types represented here have more in common than they have differences. Standards can be imposed in two ways: either they can be government mandated, or the industry can be challenged to arrive at standards themselves. Mr. Bergs noted that the wireless industry has worked to meet customer expectations by decreasing prices each year, expanding coverage and making more services available. There is still a need to educate consumers and regulators on what is a reasonable expectation of service but we also shouldn’t undersell what can be done in these communities, both urban and rural. For example, Midwest Wireless has deployed two data networks with one available in all of their service territory and about five times faster than dial-up and the second is in a trial stage. Companies are doing these things because of customer demand, not government regulation. Basic consumer protections are needed, but not additional obligations. Mr. Bergs stated that tariffs are between a company and the government whereas a contract is between a company and its customer.

Milda Hedblom, facilitator, spoke of the Canadian system of regulation, where providers work out an agreement as to what they will do and then the regulator enforces that agreement. Ms. Hedblom noted that there is some question about how effective this system is but that companies prefer it to full regulation.

Scott Bergs, Midwest Wireless, spoke of the differences between the Canadian and U.S. marketplaces. In Canada, there is one wireline provider and one or two wireless providers. In the U.S., we have at least one

wireline provider and at least three wireless providers. He concluded that the U.S. system is superior. We need to ask if there is an issue here. Are we trying to manage expectations or eliminate injustices.

Ron Elwood, Legal Services Advocacy Project, proposed goals of ensuring that the state does not end up with haves and have nots. Also, affordability should be equated with accessibility, because access without affordability is meaningless. We should not assume that all consumer decisions are perfect. The presence of more than just a few competitors can be confusing to consumers. Meaningful consumer protections and universal service are needed.

Deputy Commissioner Garvey equated what is occurring to water flowing out of a glass and our ability to control it is different from ten years ago. Today the marketplace has changed, technology has changed, consumers have migrated to different technologies, consumer expectations have changed, regulation has changed, etc. We have to look at what needs to be done and three or four tools to help do it. He also stated that we need to determine how to protect core values in an eroding world. The answer is to go back to the traditional state role of consumer protection, and do so in a neutral way. The alternative is to keep the same stick and keep beating the shrinking horse.

Jeanne Cochran, OAG, agreed with Deputy Commissioner Garvey. Traditional revenue sources for 911, TAP, and TAM are shrinking. The wireless law and its consumer protections is correct. The FCC is also looking at issues like VoIP. There is a need to find core values and determine how we can achieve them. For example, given the evolving world, how should the state ensure access to voice service with 911 and consumer protections at an affordable rate? How can the state ensure that companies are providing what they promised the customer they would provide?

Sen. Kelley stated that he was aware of the actions at the federal level, that we are engaged at the federal level and that he understands what is going on at the national level. However, the area where states can have an influence is narrow. There is an opportunity to create a state system that becomes a model, particularly to the federal government. The FCC may then see that there is a reasonable state role. Sen. Kelley also noted that he doesn't believe that affordability will be an issue because costs are being driven down by technology. He fears that the cost of regulation will only serve to keep prices up. He also said that there is confusion over the number of choices available but that the state's role should be to mitigate the risk by the consumer of making a bad choice.

Mike McDermott, Verizon Wireless stated that he sensed a heightened anxiety by states regarding telecommunications and that states felt that if they didn't regulate or legislate, they would lose out. But that isn't the case. Verizon Wireless invests a large amount of money in order to stay competitive. Mr. McDermott is also sympathetic to the consumer protection issue but he believes that given the small number of complaints against Verizon, consumer protection is a solution in search of a problem. The wireless legislation passed last year will be problematic for Verizon because it removes economies of scale

Coralie Wilson, President of NATOA, stated that because few customer complaints have come into state agencies doesn't mean there isn't a problem. Customers are confused over who to complain to and many feel that they can't take on a Verizon or a Qwest. We absolutely need to address consumer protections. In addition to discussing core values, we should address how to pay for them. Shifting costs does not equal paying for programs or initiatives.

Discussion from various people over the wireless legislation.

Deputy Commissioner Garvey suggested that the group should look at what the "New World" or "ICEDS World" should look like and identify core values and how to achieve in a manner that is technology and provider neutral. The next question for the group to consider is how the transition to that new regulatory environment would occur. The "New" or "ICEDS" world would be a voluntary system, with incentives for carriers to move to that system.

Joy Gullikson, Onvoy, questioned the reason for regulating. She explained that in her economic studies there were three reasons for regulation: to provide a social requirement, for economies of scale because only one provider could function efficiently, and because of a tendency towards a natural monopoly.

Sen. Kelley, in response to Jerry Knickerbocker's comments, stated that there are many different issues intersecting, and detariffing is just one idea on how to get into the problem. Sen. Kelley also agreed with Ms. Gullikson that you should evaluate the reason for regulation.

Tucker Carlson, Charter Communications, stated that the priorities should be maintaining universal service of the highest quality and revenue streams continuing.

Scott Bergs, Midwest Wireless, stated that the ICEDS proposal has opportunities, but it should not focus on individual components of service. If one looks at each application being delivered, it is hard to regulate all of the industry the same way. For example, E911 is one application, and another is the delivery of sports scores. One set of rules for all applications isn't necessarily appropriate.

Jack Ries, Department of Administration, stated that to consider the ICEDS world, we have to determine what the landscape is going to look like. In addition, new and emerging technologies will have to be considered in the context of USF, particularly if a new technology is being offered in a rural/high-cost area (e.g., WiMAX).

Deputy Commission Garvey stated that end user or consumer perceptions are still at the core of any obligations. For example, a consumer buying cereal at the grocery store has the price of the cereal disclosed to them and also receives disclosures on the ingredients in the cereal.

Dan Leary, T-Mobile stated that T-Mobile has adopted internal standards, but would need to further consider how, in an ICEDS regulatory environment, different parts of the industry would all transition to that environment.

Steve Kelley discussed how any company providing voice service could be subject to minimal standards, as part of a new regulatory environment.

Scott Bergs, Midwest Wireless, stated that while a voluntary consumer code is an option, treating telecommunications carriers as subject to the same general consumer protections as other non-telecommunications providers is appropriate.

Sen. Anderson stated that while the traditional regulatory framework is reexamined, basic services must still be available and accessible.

Keith Weigel, AARP stated that if telephone service is detariffed, consumers lose their leverage, and this leverage should be preserved.

Sen. Kelley stated that tariffs may be more useful to carriers than consumers.

Jeanne Cochran stated that the value of tariffs may be beneficial to both consumers and carriers.

A subgroup was formed to consider some of the issues surrounding a new regulatory environment. Joy Gullikson, Scott Bergs, Sean Simpson, Dan Leary, and Edward Garvey agreed to participate in the subgroup.

The meeting concluded at 12:30 p.m..

TISP Forum
Wednesday, November 17, 2004

Attendees:

Rod Lewis, Time Warner
Dennis Ahlers, Eschelon
Ron Elwood, Legal Services Advocacy Project
Andy Brewer, MMUA
JoAnne Johnson, Citizens-Frontier
Amy Brendmoen, OAG-RUD
Cort Holton, Verizon Wireless
Kevin O'Grady, PUC
Robert Eddy, Connections (Sherburne County Rural Telephone Co.)
Carol Wirsbinski, Integra
Dean Polkow, RCC
Mike Nowick, MTA
Andy Schriener, Qwest
JoAnn Hanson, Qwest
Sean Simpson, Midwest Wireless
Jim Beutelspacher, DPS-911
Ron Whitehead, DPS-911
Don Jorovsky, Jobs, Energy and Community Development committee administrator
Tony Mendoza, Memo Enterprises
Jeff Lueders, MACTA
Dan Lipschultz, Moss & Barnett
Tucker Carlson, Charter Communications
Todd Hartman, Robins, Kaplan, Miller & Ciresi (Time Warner)
Mike Martin, Minnesota Cable Communications Association
Dennis Fazio (unaffiliated)
Joy Gullikson, Onvoy
Mike O'Connor
Jim Erickson
Lynnette Schneider, representing small telcos
Bob Eleff, Research Department—MN House of Representatives
Diane Wells, Minnesota Dept. of Commerce
Michelle Rebholz, Minnesota Dept. of Commerce
Rep. Al Juhnke (co-convenor)
Sen. Ellen Anderson, (co-convenor)
Edward Garvey, Deputy Commissioner-MN Dept. of Commerce (co-convenor)
Sen. Steve Kelley (co-convenor)
Milda Hedblom, facilitator

The meeting began at 10:15 am.

Milda Hedblom, facilitator, summarized the progress made at the first meeting. The group had decided to determine what our goals and values were in telecom policy, and a small group was convened to discuss this issue further. She then asked if any of the co-convenors had comments.

Sen. Ellen Anderson invited comments about the FCC's Vonage decision, particularly as the decision addressed preemption.

Diane Wells, Minnesota Department of Commerce, explained that the FCC found Vonage's service to be an interstate service; the MPUC was incorrect in comparing it to traditional telephone service, because the service's portability made it more like wireless service. The FCC did not address whether Vonage's service was a telecommunications service or an information service (as the court had found in Minnesota). The FCC also did not address issues such as 911, universal service or intercarrier compensation but indicated it would be addressing those issues in the future.

Milda Hedblom asked whether the decision changes the options for states.

Diane Wells, DOC, responded that the FCC's order left a number of questions open and it remains to be seen.

Todd Hartman, Robins, Kaplan, Miller & Ciresi, asked what effect the decision may have on the MPUC case before the 8th Circuit.

Kevin O'Grady, PUC, stated that he was not close to the Vonage docket, but the FCC order raises questions on the whole preemption issue, and whether the possibility exists that the FCC is positioning itself for further preemption on those subjects that traditionally have been handled by states.

Sen. Steve Kelley stated that the FCC filed an amicus brief in the Minnesota cellular case and pointed out that the pressure is increasing at the national level for the FCC to regulate everything. He asked how the FCC can be direct regulators of customer relationships when there are 250 million consumers. The national-only approach ignores the benefits of a dual regulatory system and is unworkable, especially with respect to citizen complaints. It is up to Congress to think about this issue.

Jim Beutelspacher, DPS-911, added that the FCC order considers the "internet" both the public IP networks and private IP networks, which is a broad interpretation that excludes very little.

Mike Nowick, MTA, stated that through its order, the FCC told the marketplace that it will be going in the IP direction and it is only a matter of time before carriers all move to it. This is similar to what has happened in the past, with the move from magneto phones to dial phones to digital phones, for example. This particular change will just likely happen much faster than past changes, so decisions will also have to be made very quickly.

Milda Hedblom asked what number of years he thought this change would take.

Mike Nowick, MTA, responded that it depends how quickly the new technology is picked up.

Robert Eddy, Connections, had a question for Sen. Kelley: for rates, especially intercarrier compensation rates, will there be a national rate structure to reduce arbitrage, with states enforcing the rate?

Sen. Kelley responded that he was thinking that the states' role would be more about consumer protection issues than intercarrier compensation. On taxation, there is already a move to preempt states. Technology changes will make state intervention in rates meaningless fairly soon. The question is whether the FCC will leave any room for states on consumer protection measures.

Joy Gullikson, Onvoy, asked what the impact would be if the current FCC chair remains with the FCC and does not resign as had been projected.

Tucker Carlson, Charter Communications, said he didn't anticipate a change if Chairman Powell left the FCC.

Todd Hartman, Robins, Kaplan, Miller & Ciresi, added that if the chair leaves, Kevin Martin may be named chair, which would not result in much change as Commissioner Martin already influences decisions.

Milda Hedblom stated that the most controversial decisions at the FCC have not been related to telephone regulation, but concentration of ownership, such as in the broadcast industry. She noted that there is an FCC open hearing being held in St. Paul on this issue on December 9 at Hamline and hosted by the two Democratic FCC Commissioners (Commissioners Copps and Adelstein).

JoAnne Johnson, Citizens-Frontier, stated that the President has re-nominated Commissioner Adelstein, so there is little change anticipated at the FCC.

Dan Lipschultz, Moss & Barnett, said he thinks a change in FCC chairman could make a difference in FCC policy, even if Commissioner Martin becomes chair, because Chair Powell does wield a lot of power.

Milda Hedblom commented that she does not see a change in the FCC chair making a difference in the treatment of VoIP because there is a very deep level of commitment to VoIP by the FCC staff and commissioners. She also pointed out to Sen. Kelley that the regulatory relationship between the state and federal governments on "do not call" laws could be a model for telecommunications regulation; the authority to enforce the Do Not Call list sits primarily with the Federal Trade Commission, but states also assist and may have their own laws as long as they are not inconsistent.

Sen. Kelley responded that in the telecommunications field, there will be a push over the next four years to make things more the same between states through national guidelines.

Milda Hedblom asked that the discussion shift to the working group and called on Joy Gullikson to report on the working group's efforts.

Joy Gullikson, Onvoy, reported on the progress made by the working group and presented a one-page summary of the group's meeting. The group, which consisted of a diverse group of representatives, discussed what the telecommunications world should look like and the role of government. The group also compiled a list of "good things" such as competition, interconnection, 911, CALEA, privacy, single party service, and consumer protection. The most concrete suggestion from the group was that contributions to USF, 911 and the PSTN should be based on telephone numbers. There should also be a goal that everyone have access to communications at a reasonable price. While the FCC had in the past articulated its public policies, it did so at a time when a monopoly existed in the telephone industry. Therefore, there is a need to reevaluate public policy and determine government's role.

Milda Hedblom asked for comments in response to the report on the working group.

Edward Garvey, Department of Commerce, stated that Joy did a good job of facilitating the working group and summarizing the discussion.

JoAnne Johnson, Frontier-Citizens, stated that in light of the FCC's VoIP decision, it might be a good time for states to refocus on consumer protection and interconnection between carriers.

Milda Hedblom added that Jerry Knickbocker called her and commented on whether the group is ready to think about the institutional roles of the agencies in light of recent FCC decisions.

Mike O'Connor commented that the group needs to work harder on the "ends"; the group needs measurable outcomes. Before moving further on tinkering with the mechanisms, the group needs its destination better defined.

Tony Mendoza, Memo Enterprises, commented that he still had not heard what huge problem the group is trying to solve that would cause the group to discuss the role of state agencies. It appears that the large companies want consumers to have to go to Washington to complain. The state should not eliminate local outlets for consumers to report complaints. He also asked what happened to states' rights.

Joy Gullikson, Onvoy, responded that the issue is the PUC's focus is price regulation. How is that focus helping public policy? There is a need to shift the PUC's focus; for example, the role of states could be as a quick forum for dispute resolution. Instead of

protecting people by regulating prices, the PUC could protect consumers through dispute resolution.

Tony Mendoza, Memo Enterprises, responded that he works with consumers and he does not hear them clamoring for a change away from rate of return regulation and price regulation. Business customers are interested in detariffing and residential customers' concern is consolidation in the market.

JoAnne Johnson, Frontier-Citizens, pointed out that issues like TAP, TAM, and 911 are not issues that are at risk. If the PUC simply has a different list of issues to look at, consumer protection can stay on the list and no one in the industry disagrees. On consolidation, competition is not necessarily just another CLEC, but a wireless provider, for example.

Milda Hedblom summarized that refocusing is a good idea.

Sen. Kelley responded to Tony Mendoza's concern by stating that the customer is not thinking about rate deregulation, but the state must maintain the ability to act on behalf of its consumers. Unless the state comes up with a new approach, Minnesota is giving the advocates for national regulation more ammunition to argue against a state role. For example, in the Vonage case, the only options available to Judge Davis was whether Vonage was a telephone company or not, and if he determined that it was a telephone company, then all types of regulations applied. States must reflect the change in the marketplace. The cost structure of VoIP is completely different than other services and is going to change the pricing structure. We should engage in the discussion of how to change. In responding to Mike O'Connor's concern, Sen. Kelley stated that he thinks we do have a good idea of what the "ends" look like. We should look at how much competition is good and how can we measure it. In this new environment, we also need to determine how to measure items like access to communications, speed, price, etc.

Dennis Ahlers, Eschelon, stated that it doesn't seem as if the PUC has spent much time regulating rates recently. In Minnesota, most carriers are under AFOR plans. The problem is that the remnants of the old statutory framework are still on the books and the hoops that you have to jump through are not helping anyone. Another issue the group should consider is how to preserve service for those without a choice, or for those that are underprivileged.

Mike O'Connor stated that on the back page of the report of the working group, the second bullet should be removed and should be included in the first bullet point.

Robert Eddy, Connections, stated that most people, if given a choice, want a governmental option closer to home, instead of dealing with an agency in Washington D.C. The differing regulatory requirements on different technologies (particularly VoIP) may lead to state regulators not regulating anyone if the state does not make changes. That is the reason for making changes.

Mike Nowick, MTA, commented that while he agreed with the working group's list of good things, one item overlooked is access to public rights-of-way (ROW). Everyone must have ROW access in order to deliver service. There should be a system in place for this type of access.

Robert Eddy, Connections, added that tower siting should also be considered.

Jeff Lueders, MACTA, responded that local regulatory authority overseeing access to the public ROWs is a value for local government as well.

Milda Hedblom asked whether Mike and Jeff were suggesting that the ROW should be regulated.

Mike Nowick, MTA, responded that there are statutes on ROW and those need to be brought forward in any new law. ROW was addressed in the last 5-7 years so it doesn't require much review, but is a fundamental part of telecommunications service.

Jeff Lueders, MACTA, stated that from a public safety standpoint, having local communities retain this information is the safest way to do it, plus the localities have all the maps.

Mike O'Connor stated that a regulatory environment must distinguish between the physical part of the network and an application running over the network. An application is hard to regulate, but the physical part is easier to regulate at the local level.

JoAnne Johnson, Frontier-Citizens, stated she did not have a problem with cities needing to maintain control of ROW or revenue from ROW. She would like to see statewide alignment on issues like how long parties negotiate or how high a fee can be set before the PUC steps in. This could be part of the dispute resolution role.

Milda Hedblom asked whether JoAnne Johnson saw a different set of tools for this role.

JoAnne Johnson, Frontier-Citizens, replied that Michigan is an example where state law sets a fee per foot, with the parties agreeing in 90 days or the state steps in and decides. Uniformity is needed.

Sen. Kelley stated that the legislature made a decision to subsidize landline service by not allowing cities to charge for ROW. The state supports USF, so we want lower costs. For tower siting, however, cities can charge the economic value of the ROW used. He recognized that in this instance, wireless and wireline service were not being treated the same, but the considerations between landline and wireless were different. He is not sure it can be reconciled.

Milda Hedblom redirected the discussion back to the state's role in telecommunications, and asked whether the agencies are serving the needs that exist now. She asked the group where the intervention point should be on the state structure.

Sen. Kelley stated that he agreed with Mike O'Connor that we need to have the ends clearly in mind. One end should be increasing investment in telecommunications in Minnesota by multiple providers. Promoting competition encourages investment by multiple players (wireline, wireless, VoIP, municipalities). Sen. Kelley stated he is open on how we reach these goals or ends; detariffing might be one of these means, we can ask what a new PUC would look like, and there may be others as well. He is indifferent to the approach or angle taken. However, he is sensitive to the fact that the legislative session starts in about 45 days. If we are going to do something and do it wisely, it almost means locking this group in a room. If the changes are large, they may not be achievable in 2005, but that does not mean we should not continue this process or limit its scope.

Jeff Lueders, MACTA, asked about a potential timeline; what if the federal telecom act is rewritten and half of what we have done is useless or doesn't fit with the federal outcome?

Sen. Kelley responded that if Minnesota's vision is clear, we can tell the federal government and our Congressional delegation what we need.

Todd Hartman, Robins, Kaplan, Miller & Ciresi, asked whether Minnesota can do this alone. For example, if a Vonage-like company is located outside the U.S., what can Minnesota do? The purpose of national regulation is consistency across states.

Sen. Kelley stated that he had two responses. First, states often follow the model started by another state. Second, states do work together, such as in a recent situation where states worked together on sales tax issues to achieve more congruence. Someone must create the vision.

Mike O'Connor reiterated that the items we look at should be measurable; that which gets measured gets done. The group should try to put some metrics into this. Once we have the metrics, we can look at the structure.

Dan Lipschultz, Moss & Barnett, asked Sen. Kelley whether we are talking about a framework that we can adopt or would Minnesota ask Congress or the FCC for more room to operate.

Sen. Kelley stated that first, we should design the ideal system, keeping in mind uniformity, then see what needs to be trimmed, then decide if advocacy of that type is needed.

Edward Garvey, Department of Commerce, stated that the tools we have to repair this problem may have been taken away. He commented that we have an urgency to build a lifeboat, and we need to determine what the lifeboat should look like: what should it do, what can it do, what would we like it to do and what must it do. We could place the state in the traditional consumer protection role. We can preserve TAP/TAM/911, interconnectivity and promote detariffing. While we should work across technologies,

we must also accept that there will be outliers and be tolerant of them. We should figure out a series of carrots and sticks to get most of the players in the zone.

Dan Lipschultz, Moss & Barnett, commented that the world is not static, so what type of boat do you build? For example, an AFOR is designed to work and change over time. The one thing that is constant is change.

Milda Hedblom asked what would the new regulatory construct look like? Would it include a guarantee of basic service plus consumer protection? Does anyone want to go beyond consumer protections?

Sen, Kelley answered that the regulation could include dispute resolution, wholesale transactions (not necessarily rates, but terms and conditions).

Robert Eddy, Connections, related that a tariff has two aspects: 1) rates; and 2) terms and conditions. A tariff is a contract that the state has negotiated with the company on behalf of the consumers. It may be more beneficial to retain tariffs for terms and conditions.

Sen. Kelley noted that we use contracts for insurance and there is argument to standardize.

Milda Hedblom summarized the discussions as including: maintaining a minimum service level, determining what the PUC or relevant regulatory agency should look like, determining what should be done to protect the consumer (detariffing, contracts), what would result from general detariffing, wholesale issues, and dispute resolution. There appears to be tasks for two workgroups.

Tony Mendoza, Memo Enterprises, stated that we should think about context and physical layers versus applications. The ship is sinking in terms of the application layer, but the physical layer still requires some regulation. He also stated that a lot of applications layer issues would go away if everyone had access to broadband. The question of access to broadband has to be addressed.

Mike Nowick, MTA, stated that one consideration is who should be subject to regulation by the PUC, and the PUC's role. Video and data providers have the ability to bring these services to the consumer just as telephone companies do.

Mike O'Connor added that Mike Nowick's comments relate to the scope of the mission.

Mike Nowick, MTA, asked whether all these service providers are willing to live under this regulatory regime. Fairness would dictate that they all be part of this regime. Taxation is another issue where each of these providers are treated differently.

Robert Eddy, Connections, stated that Mike Nowick's comments relate to the old question of whether the service or the technology should be regulated.

Dennis Fazio commented that the group has not defined what the “service” is. A new regulatory system in place should take into account the merging of distinct service (for example, the videophone). We should think of communication as the service.

Edward Garvey, Department of Commerce, stated that food regulation could be an analogy for telecommunications regulation: there are countless retail food providers, there is a set of state and federal regulations, there is a minimum set of standards with little or no barrier to entry. The touchstone in the telecommunications field is the use of telephone numbers; it separates certain services from others. If the service is using telephone numbers, it should be subject to minimum standards. Once we have determined this, we can get to the question of who is in the best position to achieve. The other question is what are the minimum standards.

Dennis Fazio replied that the food analogy makes sense; now that the technology has changed, we should reevaluate what we need regulation for.

Tony Mendoza, Memo Enterprises, added that another issue that belongs in the discussion is a flexible approach to regulation. This ensures the work done is not wasted if the federal government changes the rules.

Joy Gullikson stated that there are some basic agreements about what needs to be done, and that progress can be made on these issues.

Milda Hedblom asked for comments from the co-convenors.

Rep. Al Juhnke stated that his approach is through a rural filter; there is a need for a fair and reasonable price, and for broadband in order to level the playing field. Rural areas see special problems. For example, Morris, MN has a population of 5,000, with 2,000 college students; what happens to the local service provider when the students bring their cell phones instead of signing up for wireline service? Rep. Juhnke stated he still cannot get voicemail in his hometown. Rural technology is usually 3-5 years behind. While he does not want to stand in the way, Rep. Juhnke said the rural areas want to at least see it on their road so they know it is time to get out of the way.

Sen. Anderson stated she has been writing down more questions than answers. She agreed that we cannot continue to do things the way we have always done them. One universe is what the industry needs, and another is what Minnesota needs. She is still trying to understand where we are at as a state, particularly as far as what is working and what is not working. We also need to figure out what we need to do better. She is not hearing that prices are too high; does removing rate regulation ensure the same rates? Sen. Anderson would like more baseline information of where we are as a state.

Sen. Kelley stated that Minnesota needs to show the federal government that we are making progress and changing. Some federal legislation, such as the No Child Left Behind Act, may have been passed based upon some outdated assumptions of what states were doing. To move forward, we need to look for tools to make Minnesotans ,

everywhere better off. He is not sure it is telephone number based because we do not know if a telephone number will mean anything in 12 years. Twelve years ago who knew what a URL was? Sen. Kelley recognizes that we do need a transition period and that current state law isn't helping with that transition. We need a state law to aid the transition.

Milda Hedblom summarized by stating that what is best for the industry is not always best for Minnesota. She also asked where broadband fit into these considerations and gave the example of Iowa towns collaborating on broadband. She asked who would help carry this work forward.

Mike Nowick agreed to convene a working group on consumer protection issues, with Tony Mendoza, Amy Brendmoen, the Department of Commerce, and Dennis Fazio participating. Kevin O'Grady was asked if he planned to participate and he stated he will check.

Mike O'Connor agreed to convene a working group on the role of the PUC. Dennis Fazio, JoAnne Johnson, Joy Gullikson, the Department of Commerce and Mike Martin agreed to participate.

The meeting ended at 12:10 p.m.

TISP Forum
Wednesday, December 1, 2004

Attendees:

John Unger, XO Communications
Amy Brendmoen, OAG-RUD
Cort Holton, Verizon Wireless
Robert Eddy, Connections (Sherburne County Rural Telephone Co.)
Carol Wirsbinski, Integra
Mike Nowick, MTA
Andy Schriener, Qwest
JoAnn Hanson, Qwest
Sean Simpson, Midwest Wireless
Jim Beutelspacher, DPS-911
Ron Whitehead, DPS-911
Tony Mendoza, Memo Enterprises
Jeff Lueders, MACTA
Dan Lipschultz, Moss & Barnett
Todd Hartman, Robins, Kaplan, Miller & Ciresi (Time Warner)
Mike Martin, Minnesota Cable Communications Association
Dennis Fazio
Mike O'Connor
Bob Eleff, Research Department—MN House of Representatives
Diane Wells, Minnesota Dept. of Commerce
Michelle Rebholz, Minnesota Dept. of Commerce
Scott Bohler, Frontier Communications
Randy Young, Minnesota Association for Rural Telecommunications (MART)
Mike Ahern, Dorsey & Whitney, LLP
Peter Coyle, Larkin, Hoffman (representing T-Mobile)
Jim Erickson
Keith Weigel, AARP
Cress Gackle, Seren Innovations
Jerry Knickerbocker, MTA
Ann Higgins, League of Minnesota Cities
Mike Bull, Minnesota Department of Commerce
Dave Seykora, Charter
Brian Fahey, House Committee Administrator, GOP Caucus
Rep. Al Juhnke (co-convenor)
Sen. Ellen Anderson, (co-convenor)
Edward Garvey, Deputy Commissioner-MN Dept. of Commerce (co-convenor)
Sen. Steve Kelley (co-convenor)
Rep. Torrey Westrom (co-convenor)
Sen. David Gaither (co-convenor)

Milda Hedblom, facilitator

The meeting began at 10:10 am.

Milda Hedblom, facilitator, opened the meeting by inviting comments from the co-convenors.

Sen. Ellen Anderson stated that at the last meeting there had been discussion on the different approaches to telecommunications regulation, such as Senator Kelley's view on Minnesota innovating instead of waiting for the federal government to act. Another view was to wait to change because of the concern that states would largely be preempted. She wished to clarify that she did not know what the answers were, but believed that attention could be focused on innovation, as long as there was a note of caution while looking at potentially new regulatory structures.

Edward Garvey, Minnesota Department of Commerce, thanked the attendees for taking the time and effort to participate in this process.

Sen. David Gaither stated that the timing of last year's initiatives was not optimal, and that he was pleased to see so many participants here and working on these issues when the timing was more appropriate.

Milda Hedblom, facilitator, asked for comments from the full group. No comments. Milda turned the discussion to the reports from the two working groups and thanked the groups for working on their respective issues.

Mike Nowick, MTA, convened the working group on consumer protection/detariffing. He stated that the group met twice, and presented the report of the working group. (Report is available separately.)

Mike Nowick, MTA, also noted his belief that the general concern of the work group was that the industry has changed greatly and the laws are not adequate for where the industry is at today.

Milda Hedblom asked that if the laws aren't adequate for the industry at this time, could the group later talk about what the changed or new laws should look like. She would like to turn to questions from the co-convenors first.

Sen. Anderson stated that this was a good starting point for questions she had about the report. Her four questions were: 1) would there be more administrative responsibilities for carriers if they had to work with the PUC as they currently do or if they had to spend their time drafting contracts; 2) given the recent wireless legislation on contracts, would a wireline carrier using contracts be able to change the terms of the contract after the consumer has signed it and is this issue included in any of the nine elements listed; 3) on the funding options discussed by the group, are the states restricted by Congress from taxing ISPs and similar internet-related businesses; and 4) if 911/TAP/TAM were funded

through general appropriations, does anyone have a suggestion as to which taxes to raise to cover these programs.

Todd Hartman, Robins, Kaplan, asked that if wireline carriers move from tariffs to contracts, do the companies move to dealing with private causes of action or do the carriers stay in their regulatory enforcement environment. The current regulatory environment may be safer than being subject to private causes of action such as class actions.

Mike Nowick, MTA, stated that the group did not address dispute resolution issues. In replying to Sen. Anderson's first question, the small telephone companies would be concerned that there could be more time and resources spent on contracts, if contracts were the regulatory structure.

Dan Lipschultz, Moss & Barnett, stated that many business end users do have private causes of action even though they are served under tariffs because these end users also sign contracts.

Tony Mendoza, Memo Enterprises, agreed with Dan, but stated that the problem is the carrier still retains the defense of the filed rate doctrine, which trumps any contract the end user has signed. There are issues with having a foot in each world that need to be addressed.

Robert Eddy, Connections, stated that business users are more sophisticated, so they are more naturally suited to enter into contracts.

Jim Beutelspacher, DPS-911, asked whether the working group talked about whether these contracts would be public documents, or private.

Mike Nowick, MTA, stated that the group did not address whether the contracts would be public.

Edward Garvey, MDOC, asked Mike Martin whether cable operators operate in a contract-based environment.

Mike Martin, Minnesota Cable Communications Association, stated that they did.

Edward Garvey, MDOC, reiterated that residential consumers do operate under contracts.

Todd Hartman, Robins Kaplan, stated that although cable operators use contracts with their consumers, cable operators still operate under basic rate regulation at the federal level. Most local units of government require cable operators to file their contracts and the cable companies get sued all the time.

Cress Gackle, Seren Innovations, stated that business consumers of cable operators usually receive service through written contracts, while an implied contract is usually in place for residential consumers.

Amy Brendmoen, OAG-RUD, asked what an implied contract was.

Cress Gackle, Seren Innovations, replied that the consumer could leave service at any time. Some residential consumers have a written contract whereby they receive a discount if they agree to keep the cable service for a specific period of time.

Mike Nowick, MTA, noted that when he received his most recent cable bill, which also included a notice of rate increase, he also received a statement of terms and conditions, and asked whether that statement was always sent out with the bill.

Todd Hartman, Robins Kaplan, replied that any time there was a rate change, consumers received the statement of terms and conditions and that the statement of terms and conditions was also provided at least annually.

Amy Brendmoen, OAG-RUD, replied to Sen. Anderson's second question. When the working group discussed the potential elements of contracts, they tried to avoid a contract of adhesion, and tried to develop contract elements that would protect the consumer.

Sen Anderson asked whether consent by both parties would be required in such a contract.

Amy Brendmoen, OAG-RUD, replied that the consumer would have to opt in to the contract or contract changes.

Sean Simpson, Midwest Wireless, asked whether the group addressed the wireless legislation (2151).

Amy Brendmoen, OAG-RUD, replied that the group did not.

Jerry Knickerbocker, MTA, agreed with Amy. He also addressed Jim Beutelspacher's question about the privacy of these contracts by asking whether privacy issues have been resolved with respect to cable contracts. He also stated that the working group did not address privacy issues in detail, but offered that it could be the subject of a future meeting.

Amy Brendmoen, RUD-OAG, stated that the working group did bring up privacy but did not give it its own category; privacy could be included in the context of service quality.

JoAnn Hanson, Qwest, confirmed that the group discussed privacy.

Cort Holton, Verizon, stated that the idea of a wireless contract being a contract of adhesion is incorrect. In wireless contracts, there is a meeting of the minds; it is also incorrect to assume that a contract with options in it is bad for the consumer.

Milda Hedblom asked for clarity on that point.

Cort Holton, Verizon, replied that there are different contract structures: rigid contracts versus fluid contracts. A contract for real property is often a rigid contract; but we should not assume that a rigid contract always helps consumers, especially in a competitive industry.

Tony Mendoza, Memo Enterprises, responded to Robert Eddy (Connections). He stated that there were three categories in the working group's report, separated by different levels of feasibility. Everyone in the group might agree that business services could be detariffed, but there was not a consensus on detariffing residential services, and on wholesale services, no one disagreed that wholesale contracts should be filed. His second point was that he would have liked to include in the elements of contracts section that all terms and conditions should be included in the contract. He has seen interexchange carriers (IXCs) post their terms and conditions on their website pursuant to federal detariffing, not include these terms in the contract, and modify these terms regularly without notice to the consumer.

Milda Hedblom stated that this appears to be a concern similar to the concerns that led to the passage of the wireless legislation last year. Milda then redirected the discussion by asking if anyone had a comment on Sen. Anderson's question regarding whether states could tax ISPs and other internet-related services.

Mike Nowick, MTA, did not have a specific response on taxation but stated that VoIP, as service over the internet, would not be subject to state taxes. The working group therefore did not see options 2 and 3 under funding to be viable options. If the state wants to continue to have good 911 service and communications services, a reliable revenue source is needed. Once VoIP migration takes place, it will happen fast, and the resulting impact on funding could be significant.

Milda Hedblom asked the group to discuss how fast this migration could take place, and how big of an impact it will be.

Todd Hartman, Robins Kaplan, stated that while this is an issue, the state should not overreact. Not all VoIP providers use the internet. The FCC based its preemption of VoIP not on its use of the internet, but by finding VoIP to be an interstate service. In addition, the FCC has not decided whether these VoIP providers should pay into state funds like 911/TAP/TAM, just that the decision will be made at the federal level. Finally, some VoIP providers voluntarily pay into these funds.

Sen. Gaither asked whether VoIP will be the primary way to provide and receive service, or will it augment existing service.

Robert Eddy, Connections, stated that the migration to VoIP will eventually be 100%.

Sen. Gaither asked how fast the migration would be.

Robert Eddy, Connections, replied that it would depend on federal and state actions. Migration could occur naturally based on the economics, because VoIP can be provided at a lower cost, or could occur artificially, because of differing regulatory structures on different types of service.

Sen Gaither asked for a possible timeline on migration.

Robert Eddy, Connections, responded that it would be less than 10 years.

Sen. Anderson asked whether other attendees agreed with that timeline.

Jerry Knickerbocker, MTA, stated that the migration could be completed within 2-3 years. There is a need to protect business customers, which is the telephone company's primary source of revenue. VoIP providers will first pursue business customers, starting with the metropolitan area, and then move outward to the freestanding centers in the rural areas. LECs will be forced to move to VoIP to keep customers. The primary benefit of VoIP is cost, both to the carrier and to the customer.

Milda Hedblom asked whether Qwest agreed.

JoAnn Hanson, Qwest, stated that she agreed with the short timeline, and that VoIP is less expensive to provision. People are moving to it and it provides better functionality. Customers do want 911, however, and ultimately, they will see that VoIP can offer full 911 location functionality.

Milda Hedblom asked JoAnn whether she saw the potential timeline for migration to VoIP as closer to 10 years or 2-3 years.

JoAnn Hanson, Qwest, replied that it would take 5 years or less.

John Unger, XO Communications, stated that on the carrier side, there would be rapid migration to VoIP at the core infrastructure level, because of the cost. On the consumer side, migration would be slower because customers will change when they retool their communications systems. Consumers will want extra features before switching, so overall, it would be 10 years before we see a 100% migration. In 2-3 years, perhaps 30% of customers may have migrated to VoIP. But in 2-3 years, carriers will be 70% VoIP.

Jim Beutelspacher, DPS-911, stated that by some estimates, the number of consumers on VoIP will double every year. There is serious concern about the level of 911 funding that will be avoided at the consumer level.

Sen. Anderson asked whether the lower cost of providing VoIP was due to lower taxes, or are the avoidance of tax payments just a small part of the lower cost of VoIP.

Jim Beutelspacher, DPS-911, replied that taxes were just a small component of the lower cost of VoIP.

Todd Hartman, Robins Kaplan, agreed. The bigger cost savings are in items like soft switches.

Tony Mendoza, Memo Enterprises, added that on the residential side, consumers need broadband first, and not everyone has broadband so it would more likely be 10 years. He agreed with John Unger (XO Communications) that there are costs for customers to change to VoIP, so adoption will cycle with the customers upgrade of their telecommunications systems.

Sen. Gaither commented that the rate of change to VoIP is clearly on the increase, and for legislative purposes, this is the right time to act.

Dennis Fazio pointed out that the PSTN is necessary for VoIP to work; there is no other national structure in place that VoIP could use. Second, it is not necessarily safe to place a business's voice service over the internet; the internet is vulnerable to disruption and denial of service attacks that would then shut down a phone system. Until those structural problems are solved, the PSTN still plays a key role in VoIP.

Milda Hedblom asked whether Dennis was primarily thinking of business customers.

Dennis Fazio replied that he was primarily thinking of businesses, but even residential customers will consider these reliability issues before choosing phone service that totally rides on their DSL.

John Unger, XO Communications, stated that business customers will not accept phone service over the internet for the reasons Dennis stated. Carriers today are building private networks for VoIP. The initial phase of traffic migration will be quick, but that migration will only represent a small portion of customers; those first customers that migrate will be using more because it is cheaper, instead of using the same amount as before and spending less.

Edward Garvey, MDOC, stated that he had read a story about a tower placed on the Empire State Building for the purposes of WiMAX being a back-up communications system for a business whose primary service was through Verizon's landline service.

Robert Eddy, Connections, agreed with Dennis Fazio about the lack of standards and the lack of an overall network other than the PSTN. The PSTN was designed to meet the many requirements placed on it. However, this industry is adept at reading the signals from the public and the government, and the federal government is signaling that 911 is

not important. If it was, the FCC would have already required VoIP providers to provide 911.

Jim Beutelspacher, DPS-911, responded that the important point then is that providers should be required to disclose their lack of 911 functionality or compliance.

Robert Eddy, Connections, stated that if 911 and other social programs were considered to be important, they would have been funded.

Jim Beutelspacher, DPS-911, replied that the FCC has not dealt with some of these issues yet, but the fact that the FCC has not acted yet does not mean they won't impose some of these requirements in the future. Wireless service was in place for 10 years before the FCC dealt with wireless 911. Hopefully, the FCC will not wait 10 years before addressing VoIP 911.

John Unger, XO, stated that on the 911 issue, too much regulation at first may stifle growth; 911 requirements could be added later, when it would be easier for VoIP providers to make these adaptations.

Sen. Anderson stated that from the state perspective, 911 and other social programs are important.

Representative Westrom was introduced to the group.

Rep. Juhnke stated he was glad there were now two representatives of rural Minnesota at the meeting. On the idea from the working group that all business lines may be deregulated, what is the impact? Is it price deregulation? Service quality deregulation? What does it mean for cherry-picking; how can an ILEC keep costs low for residential consumers if a competitor can cherry-pick? Contracts as a vehicle for providing service may be coming, but are consumers then all treated the same? A contract locks a consumer in; does the existence of contracts create winners and losers? There is a need to look at this from a rural perspective.

Rep Juhnke also stated that a per-number charge is probably the most desirable funding option. However, the group should consider border towns, where out-of-state telephone numbers can be obtained. Would these numbers pay into the state 911 fund? There is a concern about locational 911. Rep. Juhnke stated that as a policymaker, he can foresee occurrences that highlight the public risk of locational 911 not being available.

Milda Hedblom directed the discussion of the per-number charge to Edward Garvey.

Edward Garvey, MDOC, stated that there is a need to acknowledge that no funding structure will capture 100% of the players; there will always be some slippage. In theory, the per-number charge will work; it is geographically based. If designed correctly, the state would be collecting the same money, but in a different way. As more telephone numbers are released, the per-number charge could be decreased. There is no competitive disadvantage to this type of charge.

Tony Mendoza, Memo Enterprises, asked whether the per-number charge would be assessed on both unassigned and assigned numbers, or just assigned numbers.

Edward Garvey, MDOC, responded that it is an issue that needs to be worked out. This may be an issue that the PUC can decide. Currently, 911 and other fees are paid on an honor basis; if a carrier pays fewer 911 fees, for example, their payment is presumed to be accurate.

Milda asked if there were any other independent matters to be addressed.

Edward Garvey, MDOC, also stated that he appreciated the change of the name of the working group from detariffing to consumer protection.

Sen. Gaither commented that change is here to stay, and the state cannot sit still. There is sort of a chicken and egg argument: is the regulatory environment driving the marketplace or is the marketplace driving the regulatory environment. There is a need to be engaged; the change can be difficult or painful, but we still need to act. We are already behind the curve as it is.

Milda Hedblom directed the discussion toward Mike Nowick and the working group report.

Mike Nowick, MTA, reported that the working group also discussed what the elements of a contract should be, but didn't get into specifics; the group could consider this issue in more detail if needed.

Robert Eddy, Connections, asked whether anyone is precluded from getting service if wireline telephone service moved from tariffs to contracts. For example, some people are not authorized to execute contracts, such as minors.

Dan Lipschultz, Moss & Barnett, stated that there are some individuals that cannot enter into contracts and it may be an issue that should be explored for a specific answer.

Tony Mendoza, Memo Enterprises, asked for confirmation that wireless carriers already deal with this issue. For minors that have cellphones, there must be a guarantee from a parent.

Sean Simpson, Midwest Wireless, confirmed that the wireless industry has worked on this issue.

Rep. Westrom had some observations on the concept of contract-based phone service; where do rural communities come into play? Does a universal service concept still need to be addressed? Will rural communities and farms get adequate and needed services. For example, rural residents do not get many of the attractive wireless packages that metro residents can receive. There are some more attractive wireless packages now being

offered to rural residents, but many people in his district are still frustrated. How do we make sure this isn't a cherry-picked society?

Milda Hedblom asked if there was discussion of rural issues by the group.

Mike Nowick, MTA, referred to the funding issues addressed by the group; universal service was previously on the report but taken out, because it was a different issue than the issue of contracts versus tariffs.

Edward Garvey, MDOC, stated that universal service is beyond the scope of consumer protection issues addressed by the group and was a more appropriate fit for the second work group.

Milda Hedblom replied that although universal service may be outside the working group's scope, this question has been raised; how would these changes impact rural areas? This is a question that cannot be left out.

Milda Hedblom invited comments from the group on suggested priorities of agenda items. She also stated that the full report of the other working group would need to be addressed at the next TISP meeting. Some of the issues raised at this meeting that might need follow up were: 1) legal issues in future contracts; 2) basic contract principles; 3) privacy; 4) clarity of the impact of the change we're going through (how big, how fast, fiscal impact); 5) reliability; 6) universal service and rural service. She asked whether there were other issues not captured in her list.

Jeff Lueders, MACTA, stated that the working group has focused on ILECs and CLECs. With bundled services as the future, cable needs to be involved. The working group did not discuss Chapter 238, Minnesota Statutes, and what values local franchising authorities bring to the state.

Milda Hedblom summarized Jeff's comments and brought the concept of equal treatment of service providers back to the group.

Mike Nowick, MTA, stated that the concept relates back to the ICEDs (Information, Communications and Entertainment Delivery Systems) approach, and that Jeff's comments hit on the fact that different service providers providing the same service (e.g., voice) are regulated differently. Having a uniform system is an appropriate issue.

Edward Garvey, MDOC, stated that the consumer protection working group is working on a concrete set of questions, while the other working group (Regulatory Strategy) is not. The consumer protection group could add cable and wireless representatives and could come back with a recommendation. We also want those industries contributing to the public safety network and other social programs to be involved. If we want to be technology neutral, we need to work to a fundamental level and not the highest common denominator between providers and we want all providers to contribute to the public funds (TAP, TAM, 911).

Mike Martin, Minnesota Cable Communications Association, responded that representatives of the cable industry could participate in the working group.

Robert Eddy, Connections, stated that wireless providers have an interest in these issues based upon the recent state legislation, and the legislation could perhaps be a point of discussion; the contract system addressed at the working group could be technology-independent. He also noted that he considered Connections a wireless provider.

Amy Brendmoen, RUD-OAG, invited wireless providers to participate in the working group.

Sean Simpson, Midwest Wireless, offered to participate, indicating that he had been unavailable last week.

Tony Mendoza, Memo Enterprises, indicated he would play the devil's advocate and ask whether regulatory parity between technologies is in the best interest of the consumer? Technological parity ignores the fundamental characteristics of the market. Are we dealing with a competitive or non-competitive market, particularly in rural areas? Regulation will be driven to the lowest common denominator. Whether this is good for the consumer depends on whether there is competition in an area.

Edward Garvey, MDOC, stated that these are valid questions, and the litmus test at the end of the day is whether it works for the consumer. By participating in these groups, we can test the hypothesis of technology neutrality.

Milda Hedblom asked whether, in the next report, the consumer protection working group could list pro/con concerns, and more of the track of the discussion that led to the report; for example, what is good for industry versus what is good for consumers.

Todd Hartman, Robins, Kaplan, stated that it might be helpful to include an examination of the wholesale market or the importance of the wholesale market in the near term, which decides the underlying ability of competitors to operate. An effective or open wholesale market could relieve the need for certain consumer protection measures.

Dan Lipschultz, Moss & Barnett, stated that the regulatory strategy group is also looking at the wholesale market issue, but it is also appropriate for the consumer protection group to examine.

Robert Eddy, Connections, asked whether there was a structure between a tariff and a contract that carriers could use so they aren't sending home a 50 page document with every new subscriber.

Cress Gackle, Seren Innovations, stated that building upon customer service contract could be a possibility to consider.

Mike O'Connor stated that the conversations of the TISP group is provider/insider-centric, and the focus of the group should also be about educating consumers.

Milda Hedblom asked that as a consumer, what did Mike feel was not being attended to in the conversation.

Mike O'Connor stated that service levels are poor, regardless of the company providing service (ILEC, CLEC, IXC, Wireless). The process is not starting with the need of the consumer, but the needs of carriers.

Sen. Gaither stated that he disagreed. Consumers drive carriers' behaviors and actions.

Carol Wirsbinski, Integra, stated that she somewhat agreed with Mike O Connor; she would like to see this group address policies that give consumers choices. Small and medium businesses drive the economy. The consumer is smart, but needs choices, and the group needs to add this to the discussion.

Robert Eddy, Connections, added that you do need to make it easy for consumers. He asked about the idea of a master contract; you don't want consumers to have to consult an attorney just to obtain telephone service.

Keith Weigel, AARP, stated that while choice is good, consumers need guaranteed basic phone service. The concept of affordable, basic service could be added as a contract element. In some ways, this helps avoid cherry-picking that others have been concerned with.

Milda Hedblom stated that the first working group headed by Joy Gullikson had this value on their report; perhaps the consumer protection working group should re-examine this.

Ann Higgins, League of Minnesota Cities, stated that many institutional users of telecommunications services have participated in previous conversations about regulation. Should large users be represented here? Also, should the state's role include network protection?

Milda Hedblom stated that whatever the outcome may be of these groups, these institutional users should be consulted with.

Tony Mendoza, Memo Enterprises, in response to Mike O Connor's concerns, stated that there are representatives of interested parties other than the industry here, such as OAG, the DOC, legislators and himself.

Milda Hedblom stated that she appreciated the work that has been done and the additional work that will be done soon in the consumer protection working group, and looks forward to hearing the regulatory strategy working group's report at the next TISP meeting.

The group discussed the scheduling of a concluding TISP meeting and scheduled the meeting for Tuesday, December 14th at 1:00pm. (Note: this meeting date and time may change.)

The meeting concluded at 12:10pm.

TISP Forum
Wednesday, December 8, 2004

Attendees:

Andy Brewer, MMUA
JoAnne Johnson, Citizens-Frontier
Mike McDermott, Verizon Wireless
Kevin O'Grady, PUC
Carol Wirsbinski, Integra
Mike Nowick, MTA
Jerry Knickerbocker, MTA
Andy Schriener, Qwest
Sean Simpson, Midwest Wireless
Jim Beutelspacher, DPS-911
Ron Whitehead, DPS-911
Tony Mendoza, Memo Enterprises
Jeff Lueders, MACTA
Dan Lipschultz, Moss & Barnett
Dennis Fazio
Joy Gullikson, Onvoy
Jim Erickson
Bob Eleff, Research Department—MN House of Representatives
Scott Nelson, XO Communications
Rob Hachey, XO Communications
Randy Young, MART
Keith Weigel, AARP
Mike Ahern, Dorsey & Whitney
Lynette Slater, Dorsey & Whitney
John Fuller, Senate Counsel
Ann Higgins, League of Minnesota Cities
John Unger, XO Communications
Rex Knowles, XO Communications
Carrie Rice, HickoryTech
Bill VanderSluis, HickoryTech
Cress Gackle, Seren Innovations
Rich Wycawski, Seren Innovations
Drew Petersen, TDS
Victor Dobras, Sprint
Peter Coyle, Larkin Hoffman, representing T-Mobile
Diane Wells, Minnesota Dept. of Commerce
Michelle Rebholz, Minnesota Dept. of Commerce
Rep. Al Juhnke (co-convenor)
Sen. Ellen Anderson, (co-convenor)

Edward Garvey, Deputy Commissioner-MN Dept. of Commerce (co-convenor)
Jeanne Cochran, OAG-RUD (co-convenor)
Milda Hedblom, facilitator

The meeting began at 10:15 am.

Milda Hedblom, facilitator, advised the attendees that the final meeting would take place December 21, 2004 from 9:00-11:30 a.m. in Room 215 at the Humphrey Center. She thanked the regulatory strategy working group for their time and effort spent on the process. She introduced the report of the regulatory strategy working group, which had been distributed at the start of the meeting and asked the co-chairs of the working group (Dennis Fazio and JoAnn Johnson) to present the report.

Dennis Fazio reviewed the report with the attendees. (Report is available separately.)

JoAnn Johnson, Frontier-Citizens, noted that in the report, the working group recommended that the Minnesota Department of Commerce retain its charge to do basic regulatory analysis. The working group also recommended that consumer complaints be forwarded to the OAG, which would retain full control of consumer complaints. Both of these are continuations of good practices.

Milda Hedblom asked the co-convenors for their observations.

Rep. Juhnke asked that when discussing the basic principles of competition, when should government become one of those choices? Should government be allowed in to spur competition? What is government's role in the infrastructure. He cited the example of the government running public schools, with room for private schools to operate. It seems that in the metro area, more private schools have developed than in the rural areas.

Sen. Anderson stated that the report was very useful and she did not have specific comments at this time.

Jeanne Cochran, OAG-RUD, stated that she thought Dennis did a great job on the working group. The option of the OAG being the single agency for consumer complaints was not the OAG's idea. In addition, the OAG plays a role at the PUC beyond just handling consumer complaints, and her understanding was that the report was not attempting to change that role.

Edward Garvey, Department of Commerce, stated that telecommunications regulation is very complicated and the report, with its alternative frameworks with the pros and cons identified, was very helpful. The working group's efforts are appreciated.

Milda Hedblom, facilitator, asked Dennis and JoAnn whether either of them wanted to respond to Jeanne's comments.

JoAnn Johnson, Frontier-Citizens, stated that it was not the intent of the report to change the role of the OAG in being able to play a role at the PUC beyond handling consumer complaints.

Jerry Knickerbocker, MTA, stated he was not sure he agreed with the rest of the working group on the role of the state agencies. Much of the information in this report is predicated on the tools the state has to work with. It is not clear that we should spend a lot of time reallocating agency duties until we know what we are being given to work with (rewrite of statutes, rewrite of the Telecom Act of 1996, etc.). Three agencies are too many; consumers and carriers need one-stop shopping. The working group never got into the details on these ideas, and rightly so. Some of these issues cannot be decided now.

Milda Hedblom, facilitator, noted that the purpose of the working group was to bring these points forward and to organize the thinking on these issues.

Dan Lipschultz, Moss & Barnett, agreed with Jerry that the agencies' roles cannot be divided until we know what states' duties will be. However, it is critical to divide certain functions, particularly adjudication and advocacy, into separate agencies as they are now. On the advocacy side, the Department is the broad advocate; the OAG's advocacy is focused on consumer issues. With the PUC also taking complaints through the Consumer Affairs Office (CAO), right now, there are almost three advocates for consumers when there should be only one.

Joy Gullikson, Onvoy, stated that the idea of regulating the physical layer is a huge issue. Does this mean structural separation for the affected companies? How would it be separated? The idea of structural separation has been raised previously, such as with Qwest, and it should not be taken lightly.

Bill VanderSluis, HickoryTech, stated that he agreed with Joy that regulating the physical layer is a significant issue. There are already limitations on facilities-based companies, and they are not physical, but economic. No one wants to pay for the physical network. It is often not an attractive business case to extend or build facilities. Is imposing regulations on the physical layer a good idea, given that there are already economic disincentives to build facilities?

JoAnn Johnson, Frontier-Citizens, clarified that all of these regulatory options are huge, not just the idea of regulating the physical layer. This option does not necessarily mean structural separation, or more regulation. The goal is to remove unnecessary regulation.

Dennis Fazio stated that structural separation refers to the idea that if a company provides the physical layer, it may not be able to provide upper services or applications. MCI currently has a paper out on this issue. It is expensive to build out facilities. But this regulatory option may be attractive to many because it deregulates the upper layers of service. The infrastructure is the most expensive part, with the lowest return.

Jim Beutelspacher, DPS-911, asked for clarification on the working group's proposed role of the PUC as it would relate to public safety. Would the PUC be regulating 911 issues, or administering the 911 program?

JoAnn Johnson, Frontier-Citizens, responded that 911 and public safety are part of the core fabric and so the PUC should have some oversight.

Tony Mendoza, Memo Enterprises, focused on the sentence in the working group's report that content is separate from transport. ("The content is no longer vertically integrated with the transport, and the transport is no longer vertically integrated with the physical network.") Where did the committee get this assumption from? For cable providers, this is not true. Can the working group clarify this?

John Unger, XO Communications, stated that Tony was correct for the cable side of the industry. For telecommunications services such as telephone service, this assumption would not necessarily be correct.

Dan Lipschultz, Moss & Barnett, stated that transport is part of the physical network from a telecommunications perspective.

Dennis Fazio responded that anything can be digitized into IP packets and those packets can be transported over many different means (wires, or radio waves, or many other mediums).

Keith Weigel, AARP, asked about another statement in the report stating that there were a number of providers competing in the broadband market. Is this really the case? Also, how can market forces reduce the need for consumer protection?

Dennis Fazio responded that if competition is present, then the carriers must provide good, reasonably priced service to keep their consumers. This assumes, however, that the customer has true choice and the ability to switch between providers easily.

Milda Hedblom, facilitator, asked whether consumer preference, and not just the presence of choice, should be factored in when reviewing these regulatory options. A consumer has to want to go to a competitor; the mere presence of a competitor may not be sufficient.

Jeff Lueders, MACTA, noted that for cable complaints, the regulatory model is that the consumer first calls the cable company, and then if they aren't satisfied the second call is to the municipality. This is an efficient system. Did the working group discuss handling of consumer complaints?

Dan Lipschultz, Moss & Barnett, responded that there was some discussion of consumer complaint handling. Having two different consumer complaint mechanisms works if distinct services are being provided, but when services converge, having different

mechanisms may not be workable. The group discussed the pros and cons of each mechanism.

JoAnn Johnson, Frontier-Citizens, stated that there was no intention by the working group to change the complaint structure for cable.

Jeanne Cochran, OAG, responded to Keith Weigel's comments. She did not believe that the assumption was that no consumer protections would be in place, even in the presence of competition. Also, one principle the working group agreed upon was to ensure basic service at an affordable cost.

Jim Erickson stated that he was writing a report focused on three issues: 1) what can happen in the regulation of telecommunications carriers; 2) what should happen; and 3) what will happen. He asked what level of priority the legislature would place on telecommunications issues this year given all the other matters that need to be addressed. He believes the best approach would be for the legislature to repeal Chapters 237 and 238 and starts over with telecommunications regulation from scratch.

Sen. Anderson stated that she had no clear answer to Jim Erickson's question. She is committed to the process; there is a need to update the statutes and do serious work, but we do not want to rush and make things worse. It will be difficult. Her opinion is that we should wait and see what this group comes up with. There may also be some voices that are not in the room that should be heard from. She is fully prepared to put in the time it takes to address these issues.

Rep. Juhnke stated that the House is much more reactionary, and the House has not seen anything yet to react to. It will take someone who is devoted to putting in a lot of time, effort, and political capital to get this done.

Edward Garvey, MDOC, stated that there are a lot of people in the room who feel that certain sets of issues are problematic and need to be addressed. He acknowledged that not everyone agrees on what the problems are. There are three ways to approach this: 1) we can push, pull, and tug in the current 237 world, and we will become enmeshed in a different set of problems (the Brier Rabbit analogy); 2) we can suspend our sense of reality to look at how to solve the problems (the "Christmas with the Kranks" analogy); or 3) we can skate to where the puck will be, not where it is or was (the Wayne Gretzky analogy). To answer Jim Erickson's question, it depends on whether we want to get to where the puck will be, or we want to list issues and resolve or we want to nibble away at the edges. Edward stated his preferred approach was to skate to where the puck will be.

Sen. Anderson stated that another analogy is all of us have agreed that the world is not flat anymore; it is round. We are all ready to sail around the world but we have different ideas about what is going to happen. This process is incredibly valuable. It is different from what happens in the committee process, and hopefully can lead to better results. She would like to keep working on this before going to the legislature.

Milda Hedblom, facilitator, asked Edward to think about how the varying regulatory schemes relate to his analogy.

Mike McDermott, Verizon Wireless, stated that regulations must have a basis in need. The first wireless call was made 20 years ago. Since 1993-1996, when regulations for wireless were established using a light regulatory touch, the industry and consumers have seen advancements in technology that are mind-boggling. Some examples of those advancements are wireless browsers, and the Blackberry. These advancements have been the result of a light regulatory touch. The Gretsky analogy is a good one, but it works only if everyone is well equipped; you don't put someone on the ice in tennis shoes. Minnesota should create an environment that continues to help carriers.

Mike Nowick, MTA, referred to the option in the report of using market forces as the regulator, and noted that regulatory parity between service providers was not mentioned. Regulatory parity is very important; was it discussed?

Milda Hedblom, facilitator, asked that Mike's question be held until we finished up the current discussion.

Dan Lipschultz, Moss & Barnett, had a question for Edward: is part of the policymaker role to not only skate to where the puck will be, but to decide where the puck should be?

Edward Garvey replied that with the jurisdiction of states narrowing (i.e. states are only one level of regulation), it may be more appropriate to determine regulatory purview.

JoAnn Johnson, Frontier-Citizens, explained that Illinois passed telecommunications legislation in 2001 that rewrote their telecom act. It passed because the general assembly put together a joint committee. There were long discussions with the representatives of the industry, the Attorney General's office, and consumers. The joint committee threw out the current laws and brought back what was needed. The process took a lot of effort, but did work.

Milda Hedblom noted that in 1989, there was a proposal put forth in Minnesota to convene a joint legislative committee.

Joy Gullikson, Onvoy, responded to Dan Lipschultz, by questioning how a policymaker could control where the puck was going to be and control the market so the puck ends up there?

Jim Beutelspacher, DPS-911, stated that in the hockey analogy, the reason Wayne Gretzky knows where the puck is going to be is because of regulation: all pucks are a standard size, the boards are similar, and the number of defenders on the ice is the same.

Mike McDermott, Verizon Wireless, stated that in the Illinois legislation, which is rewritten every five years, wireless was excluded from the process because Illinois

recognized that wireless service was competitive. He also noted that meetings are at 8:00 a.m. to get only the serious in attendance.

Jeanne Cochran, RUD-OAG, stated that to have a good hockey game, two well-equipped teams are needed. The problem is that wireless is equipped, but customers are not. Customers need to be equipped, too.

Jim Erickson returned to the idea of a repealer bill, and asked the group whether, in order to save the village, it needs to be destroyed first.

Cress Gackle, Seren Innovations, stated that as a provider of broadband services (telephone, cable, internet), he believes that providers of bundled services must be in the room, especially a competitive provider of these services, when decisions are made. Cable providers have little control over content; for example, content providers such as ESPN may decide their own channel placement, programming, and what they get paid.

Milda Hedblom, facilitator, asked Sen. Anderson to think about her analogy further. She turned the discussion to Mike Nowick's question about regulatory parity.

Dennis Fazio stated that the purpose of this exercise is because of the phenomenon of bundled services and/or the blurring of previously distinct services. The system worked fine when only one provider offered one type of service. There will not be such a thing as "telephone" service; it will be a combined service.

Milda Hedblom noted that Mike's comments related to whether regulatory parity should be the goal during the transition.

Vic Dobras, Sprint, pointed out that Vonage, for example, can provide voice, video, and data. The federal judge decided that Vonage could not be regulated. The logical conclusion, then, is to deregulate other providers because otherwise there are barriers in place that these providers cannot overcome.

Joy Gullikson, Onvoy, asked JoAnn Johnson a question: could she see the possibility of the process that occurred in Illinois and the process occurring now in Minnesota to be meshed together?

JoAnn Johnson, Frontier-Citizens, stated that there was some synergy. If one regulatory scheme becomes more attractive than another, that is your partial target. She does not see a contradiction between what this group has done and policymakers implementing ideas.

Milda Hedblom asked JoAnn Johnson whether she could respond to Mike Nowick's question related to regulatory parity.

JoAnn Johnson, Frontier-Citizens, replied that regulatory parity was not a discussion in Illinois. Wireless was not subject to the requirements that were passed. There was some discussion on regulating based upon the size of the company.

Tony Mendoza, Memo Enterprises, stated that technological or regulatory parity should not be the model; wireless carriers are regulated more lightly because competition is ensured in that industry. You have to look at market power. In wholesale markets, CLECs wouldn't want Qwest deregulated. Rural areas have far less competition than a downtown office building. It is irrelevant to say the driver should be regulatory parity.

JoAnn Johnson, Frontier Citizens, stated that the Illinois example occurred four years ago, and if that process occurred today, the results may be different.

Drew Petersen, TDS, stated that the Illinois process in 2001 was an exceptionally highlighted one. Illinois was one of the most competitive states in the country. As a result of the process, enormous investment followed, and stimulated job creation. Fast forward to 2003, when there was a change of party leadership, governor, and legislators. Illinois changed SBC's wholesale rates, and the result was a contraction of competition, with companies exiting the residential market. When states make public policy decisions that change at a moment's notice, it makes investors skittish.

Milda Hedblom, facilitator, summarized Drew's comment by stating that even if Minnesota created a new framework, the follow up public policy decisions can have significant impacts.

Drew Petersen, TDS, responded that businesses need predictability.

JoAnn Johnson, Frontier-Citizens, stated that there was no suggestion in the report that wholesale regulation should go away. It is implied that wholesale and dispute resolution structures are retained. Illinois is a different climate and the wholesale rate change that happened in Illinois would not occur in Minnesota in the same way.

Jerry Knickerbocker, MTA, stated that perhaps the working group could direct the discussion to the five different regulatory mechanisms/schemes.

Milda Hedblom, facilitator, opened the discussion to the remaining regulatory schemes not yet discussed (options 2-5).

Tony Mendoza, Memo Enterprises, asked for an explanation on option #4; why regulate the consumer?

Dennis Fazio stated that the option to regulate the customer is used in other industries.

JoAnn Johnson, Frontier-Citizens, stated that an example was the PBX legislation passed last year, where businesses who buy a PBX must ensure that they meet certain 911 requirements.

Dan Lipschultz, Moss & Barnett, stated that option #4 could be intended to be used in coordination with option #5. There could be an obligation on business customers to use a carrier with the "Seal of Approval."

Cress Gackle, Seren Innovations, stated that level playing field statutes should be an issue for consideration.

Rex Knowles, XO Communications, stated that for option #3, competitive zones could be divided into residential and business markets, not just geographical locations.

Joy Gullikson, Onvoy, asked whether option #3 could be irrelevant if option #2 was used.

JoAnn Johnson, Frontier-Citizens, stated that option #3 would not necessarily be irrelevant; for example, if enough competition existed under #3, perhaps regulation could be relaxed under option #2.

Jeff Lueders, MACTA, asked about the sentence in the report at the top of page 5: "If a provider had certification, that would obviate their requirements under existing regulation (Chapters 237 and 238)."

Dennis Fazio stated that the idea is if a carrier met the requirements for the Seal of Approval, the carrier may not be subject to other requirements.

Jeff Lueders, MACTA, stated that unless he saw a list of the requirements for a company to earn the Seal of Approval and everyone had a chance to agree with that list, he had concerns about that option.

Jeanne Cochran, RUD-OAG, clarified that the report was just for discussion purposes only. It does not necessarily represent the views of all or any individual.

Milda Hedblom, facilitator, asked for other comments, and received none. She moved to the issue Jerry Knickerbocker raised on discussing the basic principles, and asked Jerry for thoughts.

Jerry Knickerbocker, MTA stated it would be helpful to further discuss these principles.

Milda Hedblom, facilitator, noted that the first working group also worked on these types of issues. She also asked the attendees whether any of them wanted to amend or add to the list, and to state those items now.

Vic Dobras, Sprint, stated that for principle #1, the more the definition of "essential" or "universal" service was expanded, the more the market was distorted. Policymakers can build trouble if they decide where the market should go.

Keith Weigel, AARP, asked for clarification of Vic's point, and after receiving clarification, stated that he disagreed.

Sean Simpson, Midwest Wireless, asked for clarification on the statement under principle #2 that service be reliable, particularly as it applied to wireless. Would this principle include service quality standards, or other issues like privacy?

JoAnn Johnson, Frontier-Citizens, clarified that the report was just discussing the status quo, the interconnection of and to the PSTN as we know it today. The report was not intended to suggest that every wireless service must work in every square inch of the country.

Rex Knowles, XO Communications, stated that customer segmentation should be taken into account on principles #2 and #3, not just geography.

Jeff Lueders, MACTA, stated that on principle #4, the most effective mechanisms could be at the local level, in addition to the state.

Jeanne Cochran, RUD-OAG, stated that she thought service quality needed to be on the table. She did not want to give the impression that service quality was not discussed in the working group.

Milda Hedblom turned to the co-convenors for their comments.

Edward Garvey, MDOC, noted that it took centuries to prove that the world was round; people previously assumed the world was flat, but never tested that theory. This illusion of knowledge becomes paralyzing. We know where the puck is going; federal jurisdiction is taking away states' ability to do things that they could before. There is a declining ability to fund TAM, TAP, and 911, to get voicemail to Kandiyohi County. The puck is not going in the direction of continuing regulation; we know that. So, we need to sort out these issues. What we need to be doing today is providing a new regulatory world. There are principles we need to protect, and this is helpful for us to think through. We will have to recognize that we need to test our theory. That is why the dialogue in this process is useful.

Jeanne Cochran, RUD-OAG, stated that there is no turning back; we have no control over some things. This process is useful to figure out where we want to go.

Sen. Anderson agreed and asked that the dialogue keep moving forward.

Rep. Juhnke stated that we need to think about next steps. This may not get accomplished this year, but we should continue working. We should look at a legislative time frame as part of the next steps.

Milda Hedblom, facilitator, asked whether a standalone initiative on detariffing/consumer protection would be appropriate this session, or should that initiative be part of a bigger approach.

Rep. Juhnke stated that the two were not necessarily mutually exclusive.

Milda Hedblom, facilitator, reminded the group that the final meeting is on December 21st, from 9:00-11:30am. She also asked that if any attendees have further comments, they could send them to Milda or the appropriate committee chair in a timely manner.

Mike Nowick, MTA, noted that his group will be meeting to discuss contract principles.

Jim Erickson suggested that the group have another meeting in January; it might be useful to have a discussion with those who introduce legislation.

Milda Hedblom stated that they did have in mind a joint legislative hearing in early February.

The meeting concluded at 12:15 p.m.

Comments submitted after meeting:

Andy Schriener, Qwest, commented that the TISP forum should focus on retail markets. Wholesale issues, such as access and rates, are under the jurisdiction of the FCC. In addition, the concept of structural separation was not raised in the working group's report, so it should not be an issue raised in the final report. If it is mentioned in the report, the report should also point out that structural separation is controversial and has not been adopted by any legislative or regulatory body.

TISP Forum

Tuesday, December 21, 2004

Attendees:

JoAnne Johnson, Citizens-Frontier
Kevin O'Grady, PUC
Jerry Knickerbocker, MTA
Andy Schriner, Qwest
Joan Peterson, Qwest
Sean Simpson, Midwest Wireless
Jim Beutelspacher, DPS-911
Ron Whitehead, DPS-911
Jeff Lueders, MACTA
Dan Lipschultz, Moss & Barnett
Dennis Fazio
Jim Erickson
Don Jorovsky, Jobs, Energy and Community Development Committee
Randy Young, MART
Keith Weigel, AARP
Ann Higgins, League of Minnesota Cities
John Unger, XO Communications
Cress Gackle, Seren Innovations
Rich Wycawski, Seren Innovations
Carol Wirsbinski, Integra Telecom
Nancy Silesky, representing Verizon
Peter Coyle, Larkin Hoffman, representing T-Mobile
Mike Martin, MCCA
Amy Brendmoen, OAG-RUD
Todd Hartman, Robins, Kaplan, Miller & Ciresi
Jack Ries, Department of Administration
Steve Downer, MMUA
John Fuller, Senate Counsel
Mike O'Connor
Mike Ahern, Dorsey & Whitney
Diane Wells, Minnesota Dept. of Commerce
Michelle Rebholz, Minnesota Dept. of Commerce
Sen. Steve Kelley (co-convenor)
Sen. Ellen Anderson, (co-convenor)
Edward Garvey, Deputy Commissioner-MN Dept. of Commerce (co-convenor)
Jeanne Cochran, OAG-RUD (co-convenor)
Milda Hedblom, facilitator

The meeting began at 9:20 a.m.

Milda Hedblom, facilitator, opened the meeting and directed the focus to the report of the consumer protection/detariffing working group; the report has been supplemented by including the questions from the larger group and responding to those questions.

Jerry Knickerbocker, MTA, reviewed the report with the attendees on behalf of Mike Nowick, who was unable to attend the meeting. (Report is available separately.) He stated that the working group looked at how the questions of the attendees from the previous meeting fit in with the focus of the group, and whether the questions could be answered at this point. Some questions could not be answered because first, there needs to be a decision on how much deregulation would occur. He clarified that the working group was not deciding how to deregulate. He also noted that the working group concluded that no matter the level of deregulation, there should be some basic service offering available that includes a local line, plus 911 and long distance. He further clarified that cherry picking already legally occurs with competitors. Dispute resolution may depend upon the level of deregulation and whether it was for business only or residential and business service. He also pointed out that if telephone service was deregulated, business customers would no longer support residential customers, and urban customers would no longer support rural. On contract principles, the imposition of some contract principles may depend on whether the customer is residential or business. On the question of whether fluid or rigid contracts are more beneficial for customers, he stated that the issue needs to be revisited.

Amy Brendmoen, OAG-RUD, presented further information on the contract principles. (Handout is available separately.) She stated that the group agreed that consumers need to know the terms and conditions of contracts, and wanted to clarify some of the questions other people, such as Sen. Anderson, had raised at the December 1, 2004 meeting. She also stated that two items should be included that were not reflected on the handout: the issue of possibly restricting third party billing in some situations, and including the company's contact information. She also stated that the conventional idea of a contract did not necessarily need to be the model; the idea of a one-page "checklist" may be another idea to consider. The concept of "less is more" is also valuable in striving for a short, one-page contract.

Milda Hedblom asked whether the one-page concept was similar to an issue Robert Eddy raised at the December 1, 2004 meeting.

Amy Brendmoen, OAG-RUD, stated that her idea was to simplify.

Sen. Kelley stated that he attended an arbitration where a contract was the subject of a dispute. The contract in that arbitration was kept short because the contract incorporated the laws by reference, instead of restating the laws. If there was a clear set of telecommunications laws outlining the obligations of each party, this concept could be applied to the telecom industry.

Milda Hedblom asked the other co-convenors for comments. No additional comments. Milda then opened the floor to comments from other attendees.

Robert Eddy, Connections, asked whether the contract principles were formulated with current state regulation in mind, or with a federalized system, like the type VOIP will be subject to? A federalized system could result in a telephone contract looking much like a standard credit card contract, for example.

Amy Brendmoen, OAG-RUD, stated that the working group was not trying to fit either regulatory model; the group looked at what was beneficial for consumers, and balanced it with removing overly burdensome requirements for carriers.

Jerry Knickerbocker, MTA, stated that the six (6) points listed on the contract principles handout would likely be in any contract, not just telecommunications. Again, the exact contract principles to be used would depend upon whether the customer is business or residential. But whether VOIP service or a regulated service, we would still be dealing with these standard contract principles.

Mike O'Connor asked whether there should be a preamble, a statement of what the group is trying to accomplish at the beginning of the report. Otherwise, it is hard to know the goal towards which the group is trying to move.

Jerry Knickerbocker, MTA, stated that the preamble would be useful if we all agreed that detariffing should occur.

Dan Lipschultz, Moss & Barnett, stated that on the idea of a one-page contract, it would be difficult to get all the necessary items on one page. He agreed that it would be helpful to incorporate by reference the laws that applied. Currently, telecommunications contracts generally incorporate the tariff by reference, which leads to customer complaints. It would be helpful to identify what needs to be in a contract and what could be referenced.

Edward Garvey, MDOC, stated it was useful to go through this exercise, because as a state, Minnesota will always have jurisdiction at the consumer provider interface level, regardless of the industry. The group does not necessarily need a preamble saying that detariffing should occur, but it could state that tariffs are a much smaller portion of the market. The contract relationship is a very helpful construct to understand the evolution going on around us in the telecommunications industry. Just thinking about this in a contract setting is helpful.

Milda Hedblom responded to the concern that Mike O'Connor raised. One reason the conversation proceeded in the direction it did, was by looking at consumer protection and detariffing, the group could explore the world that might be created if interested parties reached agreement. What's still outside the scope of the working group is the level and kind of deregulation. Future conversations on those topics will be the harder part.

Milda turned to the regulatory strategy working group report and introduced the co-chairs, JoAnne Johnson and Dennis Fazio.

Dennis Fazio stated that the working group was asked to consider two additional items that had been raised by the larger group at its December 8, 2004 meeting and to submit additional information in its report. (Report is available separately.) The first item was whether regulation of wholesale services was a part of the group's report. He stated it was not the intention of the working group to make wholesale issues a part of the report. Dennis added that until there is more open access, government oversight is needed, however, these issues are being addressed at different levels. The second item was the role of government as a provider of telecommunications services, which was an issue raised by Rep. Juhnke at the December 8, 2004 meeting. Dennis stated that in some situations, if it is not viable for a private provider to offer service, it may be useful for government to step in at the physical level and to treat it as a public utility. Stranded investments may also become an issue if municipalities offer the physical layer. The working group also agreed that government should continue to participate in issues of public safety, such as 911, and that role should not change.

JoAnne Johnson, Frontier-Citizens, stated that she wanted the large group to understand that the working group was not thinking of the wholesale market, with the one exception of the regulatory option where only the physical layer is regulated.

Dennis Fazio stated the League of Minnesota Cities did provide the additional comment that for municipalities looking to provide telecom services, public-private partnerships may be valuable.

Steve Downer, MMUA, addressed the group on the issue of municipalities providing telecommunications services. First, municipalities already have the option in Minnesota of offering telecom services, so it is not an issue of giving municipalities that option, but preserving that option. The working group's discussion of stranded investment is odd, given that many municipalities who start providing telecom services do so when the private carrier chooses not to make services available; once the city begins providing services, the private carrier generally invests more in order to compete. In addition, this should not be seen as government providing telecommunications services but a community wanting to provide the service for themselves when others won't.

Milda Hedblom asked for comments from co-convenors. No comments. She then asked for additional comments from the attendees.

Jerry Knickerbocker, MTA, stated that there are different ideas about the roles of government and what services it should provide. One approach would be giving municipalities carte blanche ability to provide anything; another would be allowing municipalities to provide the service if no one else is. If it does not make economic sense for a private company to provide it, why would it make economic sense for government to provide it, unless it was subsidized?

Robert Eddy, Connections, responded that if the state moves to an environment of no rate regulation, many of these issues would go away. It may not make economic sense to provide certain services at statewide averaged rates, but it may make sense if the service can be offered at a different rate.

Sen. Kelley stated that it is helpful to talk about these issues away from the Capitol. One thing that makes Minnesota different is that there is no monolithic solution to solve these problems in Minnesota. In some other states, like New Jersey, the RBOC serves 90% of the lines, so it is easier to find a "one size fits all" solution. The trick is figuring out the rules going forward here. Deaveraging is one issue; another is the cost differences with new technologies, like broadband. Perhaps more customers will accept these new technologies, and then private providers can enter the market using these new technologies. However, to respond to Jerry's comments, the economic return issue isn't about whether it is economical for the community to receive services; it is about whether the provider is in a position to provide those services. Some providers may have debt to think about and would not want to provide those services that the municipality may be able to. So in some cases it may be appropriate for municipalities to enter the market.

Milda Hedblom stated that Joy Gullikson, Onvoy, made a similar point in a previous meeting, on whether local service as we know it may go away when current providers move to VOIP.

Steve Downer, MMUA, stated that Sen. Kelley hit on an issue for municipalities: if services are not provided by the current carrier, when will they be? There was legislative testimony in the past year by local telephone companies that they provide some services solely because businesses have requested the service, and have not looked at whether providing the service is economical. Municipalities that provide telecom services have much in common with local telephone companies. Local government needs to ensure their local businesses have the services they need to thrive.

Robert Eddy, Connections, stated that during the MEANS (now Onvoy) proceeding at the Public Utilities Commission, the cost of the building to house MEANs was less than the cost of the bill for the proceeding before the PUC. We don't need another exercise like that.

JoAnne Johnson, Frontier-Citizens, responded to Steve Downer. She stated there is a need to acknowledge the differences between small rural LECs and the other three (3) larger telephone companies in Minnesota (Qwest, Sprint, Frontier-Citizens). As we move forward in this discussion, we should not be using the statements by the small LECs against the larger three companies, which are in a different position.

Sen. Kelley asked whether the terms of the municipality's entry into telecom make a difference. For example, if a city provides the physical layer and applications, but other application providers can also get access, does that change the view on municipalities offering service? It would put municipalities in the same place that some telephone companies are currently in.

Todd Hartman, Robins Kaplan, addressed the philosophy behind the discussion and report of the regulatory strategy working group. Philosophically, if you are facing increased competition, there should be less regulation. Facilities-based competition is probably the most effective type of competition. But some of the items in the report would discourage facilities-based competition. For example, one municipality in Michigan decided to own all of the fiber in the city. A client wanted to build fiber, but the city stated that it could not build unless the city owned the fiber and made the fiber open to access by others.

It is okay to allow municipalities to participate if on the same footing as everyone else or if no one else will provide the service. However, frequently if a city comes into the market they don't allow anyone else in.

Milda Hedblom stated that the discussion in the regulatory strategy report prompted Todd's concerns. She asked Todd whether there were any other areas in the report that were of concern.

Todd Hartman, Robins Kaplan, responded that the FCC and other entities do not want to impose more obligations on facilities-based providers and want to encourage investment. The cable industry, for example, has invested \$95 billion in the past years to bring more services to consumers.

Milda Hedblom asked Todd and other attendees to think about whether there were other areas of the working group report that discourage facilities-based competition.

Jeff Lueders, MACTA, stated that he agreed with Sen. Kelley's comments on municipalities. However, the question is how municipalities fund their provision of telecom services. There needs to be a revenue stream to do that and funding has been cut. Cities are looking at ways to bring in competition more quickly.

Jim Erickson stated that we should think about where we want to go, and that is speed and access. This can be accomplished through fiber to the home, which is the gold standard, and has been accomplished in countries like Japan. If that is where we also want to go, we should discuss how to remove barriers to entry.

Jerry Knickerbocker, MTA, stated that we should not compare ourselves to other countries like Korea and Japan, because they have different systems and policies in place. In the U.S., systems are built with private capital.

Mike O'Connor stated that the discussion about regulating the physical layer versus applications is useful. Applications need less regulation. There is also the notion of who gets access to the physical structure. We should get to a new discussion about how to get to where we're going.

Sen. Anderson stated she had two questions. First, why would the provision of telecom services by municipalities lead to stranded investment?

JoAnne Johnson, Frontier-Citizens, responded that the issue is market power, and no entity has more market power than local government. For example, municipalities have bundled phone service with sewer and water services, and even electric. Telephone companies cannot match that bundle.

Sen. Anderson also questioned whether, even if all barriers are removed, there would be a plethora of services extended to all areas of the state, including rural areas.

Sen. Kelley stated that he agreed with Todd Hartman that the report should not discourage competition. We don't want to encourage competition over a single infrastructure. Wireless is already a facilities-based provider for many services. There are different ways to provide landline service (BPL, for example). There may be a distinction between urban and rural areas, however. We can be confident that facilities-based competition will occur in urban areas. In rural areas, however, there is a legitimate concern that there will not be any physical replacement for the copper wire to the home. From a Minnesota point of view, counties and not just cities may want to participate in providing telecom services, because of their role in townships. He's more worried about the people that live outside of Willmar than those that live within the city limits.

Milda Hedblom stated that she has spoken with groups about cable providers going beyond city limits and providing services to surrounding townships, because of demand. This is an example of the need driving the service.

Steve Downer, MMUA, discussed Sen. Kelley's original issue on whether cities can build facilities and let others use the facilities. What's the problem with cities building the facilities and working with someone else to provide the service.

Milda Hedblom redirected the discussion to a new subject. Two different time frames have arisen: first, the 2005 legislative session, and identifying issues that need to be addressed in this session, and second, a larger rewrite, presumably a different time frame. She asked the group which issues are critical enough to be addressed in the 2005 session, and stated that those issues can be highlighted in the report's executive summary. She first asked the co-convenors for their thoughts.

Sen. Kelley stated that he was interested in maintaining an environment where this conversation can occur without the usual pressures. He expects follow up on the 2004 bill; CLECs may pursue wholesale issues; entry in the cable field is expected to be an issue (Article 4 of the 2004 bill). He asked whether we could have a debate about those things, keeping in mind what is coming ahead. Sen. Kelley also noted that in 1989, he, Milda, Randy Young and others worked on a committee, which developed a report with a goal that each Minnesotan should have 45 MB service to their homes. It has been 15 years since that report. Having a conversation about a joint committee which would come up with a new regulatory framework is a worthwhile goal.

Jeanne Cochran, OAG-RUD, stated that she could not be specific about what issues are on the Attorney General's agenda, but thinks that this current process is a good one, and appreciates people working on this.

Milda Hedblom asked whether Jeanne could share her perspective on deregulatory issues.

Jeanne Cochran, OAG-RUD, responded that the report should reflect that it is a discussion of the group, not the co-convenors. The group, not necessarily the co-convenors, did the work. The report could also state that it has some regulatory frameworks for consideration. The fundamental issue is whether and to what extent deregulation should occur.

Edward Garvey, MDOC, stated that it was essential to keep having this discussion to keep the ideas flowing. It is helpful to have a catalyst to get legislators to look at these issues. Having a process like this in a safer environment is beneficial, because otherwise there would be issues that would not get resolved at the legislature. Whether we have the resource, time, and energy to continue this is just as big an issue as coming up with a solution out of this process. The Department sees the more immediate issues as ensuring 911/TAM/TAP funding, and a per number charge is a way to get the debate going. Also, the issue of contracts instead of tariffs—in particular, what they would look like, how the transition should be made—is an issue for consideration. Amy Brendmoen provided some good work on contract principles, and it would be useful to put something out for people to look at and debate.

Sen. Anderson stated this is a valuable process and would like to see it continued. She is hopeful that interested parties can reach agreement and identify common values. She prefers moving forward together, as opposed to the “push-pull” by different interests. In the immediate future, 911 is a concern; it should be available to everyone, but it is not clear that we should fix it outside of the broader context. She agreed with Sen. Kelley that we want a continuing process. A more formal structure could be set up, keeping everyone in the room engaged and perhaps getting more legislators involved.

Milda Hedblom opened the discussion to the attendees.

Robert Eddy, Connections, stated that in management there is a concept called Plan, Organize, Execute, Measure (POEM). In planning, Sen. Kelley referred to a 1989 report which recommended a certain size of service to the home. On the planning portion, we must determine what we want to do. Do we want a particular size of service to the home, or do we want to make sure voice, video, and data is available to people? Also, we do not want to get stuck on the “planning” phase of the project and never move to execution.

JoAnne Johnson, Frontier-Citizens, stated that in the immediate future she would like Article 4 to come back (competition of video service, and the right of competitors to designate their own service areas). This can be done without a discussion of the whole regulatory fabric. Competitive telephone companies were given this right and incumbents are not out of business. Also, 911 issues must be addressed soon.

Todd Hartman, Robins Kaplan, responded that the difference is that there is no USF fund for cable providers, like there is for telephone companies; so comparing the cable and telephone industries on this issue is not comparing apples to apples.

Cress Gackle, Seren Innovations, stated that if there was a level playing field statute, there would not be a need for USF for cable.

Jim Erickson stated that there is an immediate need to eliminate barriers to entry which could be accomplished by going section by section through the statutes.

Ron Whitehead, DPS-911, stated that there is a 911 fund deficit which needs to be addressed immediately.

Sen. Anderson asked Ron whether DPS will have a proposal to address this deficit.

Ron Whitehead, DPS-911, responded that the proposal will come out of the Governor's office.

Edward Garvey, MDOC, stated that there will be legislation on 911, issues from Qwest, OVS, wireless, municipal entry, regulatory costs, wholesale access and service quality or, in other words, lots of issues besides where the puck is and where we want it to be. Edward asked Sen. Anderson how much time telecommunications issues will have in front of the committee.

Sen. Anderson responded that there probably will be a telecommunications subcommittee this year to address some of these issues; however, it is not useful to have huge battles at the end of the committee deadline on issues that haven't yet been discussed. She prefers to give issues their due consideration. However, there are many issues for the committee's consideration this year so she is not making any promises.

Sen. Kelley noted that schools and libraries have been pushing the issue of how to maintain their broadband networks. There are a lot of funding issues threatening these services. With all the technology changes, is there a way to flip the traditional model and think of ways to package more services to schools and libraries without increased cost? This issue is related to the emerging voice and VOIP services which are less expensive to provide.

Milda Hedblom added that the issue also relates to the instability of the federal E-Rate program. The instability has left some schools in dire straits.

Jerry Knickerbocker, MTA, asked how Edward Garvey's tentative contracting legislation for the 2005 session can be implemented before the state deals with deregulation. In addition, on 911, there are three issues that need to be addressed soon: first, there is a 911 fund deficit, with past due bills that need to be paid (this is an issue which should immediately be addressed); second, the future of the 911 program needs to be looked at,

and there is a workgroup set up that may have some ideas for the 2006 session; and third, the impact of VOIP on 911. The current customer base paying into 911 will continue to decline because of VOIP. The FCC has three dockets open that deal with some of these issues, like 911, intercarrier compensation and VOIP. We may need answers from the FCC that we won't have during the 2005 session.

Edward Garvey, MDOC, responded that the two concepts he talked about (911/TAP/TAM per number charge and moving from tariffs to contracts) do not have to succeed this session. But people should be clear that the current regulatory system is pulling us under. If there is no hearing this year, that is okay; the Department and other agencies will continue to use the tools available to us until we are preempted. That is why this discussion is so valuable.

Milda Hedblom directed the group to the workgroup chairs meeting handout. The group's recommendation was that further discussion was necessary. Milda stated she will continue to work with the co-chairs of the work groups, and plans to bring the report of this group to a joint legislative session, or to the two appropriate committees, probably in mid-February. The presenters of the report would be the co-chairs of the working groups, and Milda would provide the overview.

Milda thanked the co-convenors, workgroup members, and all other participants in the process.

The meeting ended at 11:20 am.