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UNDERSEA CABLE PUBLIC FORUM )

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P R O C E E D I N G S

3:05 p.m.

MS. ARBOGAST: We're going to get started, because we've got a lot to cover today and I think Don Abelson is on his way down and had a few opening remarks. Do we know how quickly?

I think we'll start and let him come in and add his thoughts once we get going. Why don't we start by identifying the people who are at the table from the FCC and then I'll make some preliminary remarks about how we're going to proceed today.

Rebecca Arbogast, Chief of the Telecommunications Division at the International Bureau at the FCC.

MS. RUFF: I'm Jackie Ruff. I'm Senior Legal Advisor in the Telecommunications Division.

MR. DEGRABA: Patrick Degraba, Deputy Chief of Commerce with the FCC.

MR. BLALOCK: Breck Blalock, Chief of the Policy and Facilities Branch.

MS. NIGHTINGALE: Liz Nightingale, attorney in the Telecom Division. There are FCC people who are back here.

MR. NAKAZALA: Benji Nakazala, legal advisor with

1 the Wireless Communications Division.

2 MR. URETSKY: Marc Uretsky, International Bureau.

3 MS. KIMENICHI: Helen Kimenichi, International  
4 Bureau, Telecom Division.

5 MR. WEBBING: Doug Webbing, chief economist in the  
6 International Bureau.

7 MS. SIMON: Marilyn Simon, International Bureau.

8 MS. ARBOGAST: We also have with us today Ken  
9 Shagren and Cathy Wasluski from the Commerce Department,  
10 from MTIA. I don't think anybody is here -- I don't  
11 recognize anybody here from the State Department or from DOJ  
12 -- oh, okay, great. USGS said they were going to follow  
13 this in the press.

14 (Laughter.)

15 MS. ARBOGAST: So I think that's the government.  
16 Obviously, there are too many people here to go through and  
17 identify yourselves individually, but what I would ask is  
18 that before people speak, they identify themselves and who  
19 they're representing.

20 We are here today as another piece of the process  
21 that we've been going through, largely following the JUS  
22 application that I think a lot of you know about that was

1 filed with us this last year and that we issued the order on  
2 this summer.

3 We had been, even before that, thinking about ways  
4 that we might try to reform, regularize and improve our  
5 regulation of undersea cables. And the JUS proceeding added  
6 another overlay of competitive issues that had been filed in  
7 that proceeding. And the Commission -- here is Mr. Abelson  
8 -- the Commission, in that proceeding, announced that it was  
9 going to look at those issues more closely in a further  
10 proceeding. This is part of our preparation to get the  
11 information we need to make recommendations to the  
12 Commission for that further proceeding.

13 You should feel free to --

14 MR. ABELSON: Go ahead.

15 MS. ARBOGAST: Submarine cables, I think, for a  
16 long time have been a fairly neglected area of regulation,  
17 in part because historically it was pretty standard. And  
18 what's happened, I think, in very recent times is the  
19 regulation has become more standard, creating more questions  
20 for us about how we should do things on a going forward  
21 basis.

22 And the market itself has become much more

1 critical, because it is, the demand has been skyrocketing,  
2 because that is a primary piece of the international  
3 Internet backbone. And so it's become increasingly  
4 important because the Internet has become more important.

5 The Commission's policies, of course, are to try  
6 to promote competition in telecommunications and that is the  
7 overriding policy that guides us in making recommendations  
8 to the Commission, and that obviously guides the Commission  
9 in making its decisions.

10 The purpose of today's forum is to give the wider  
11 public an opportunity to give us their views on a variety of  
12 issues that are raised by our regulation of undersea cables.

13 What I would like to do is give a couple of cautions before  
14 we start on what we hope to get out of this and what we hope  
15 not to get out of this.

16 What we really want is for folks to feel free to  
17 use this as an opportunity to say new ideas. It's not going  
18 to be useful for us for you all to recite to us how you  
19 interpret our precedent, because we're not viewing this as  
20 something that requires us, unless our precedent was right,  
21 requires us to follow our precedent. The point of this  
22 proceeding is to try to decide how we should do things going

1 forward. And so please be forward-looking in your comments  
2 to us.

3 I also have to say these magic words. The purpose  
4 of this meeting is not to come to any conclusions or reach  
5 any consensus. What I also am hoping we don't do today, and  
6 it's not the purpose of the meeting, and I'll try to move us  
7 along if anybody tries to raise it, is discuss any  
8 proceedings that are currently before the Commission. This  
9 is not the purpose to rehash anything that's on recon. That  
10 would subject this proceeding to our ex-parte rules, and  
11 that's neither the purpose of this proceeding nor do we want  
12 to make the subject ex-parte rules. So please keep your  
13 comments restricted to things that would not require us to  
14 file ex-parte. If you do violate that, be sure you file an  
15 ex-parte with us.

16 (Laughter.)

17 MS. ARBOGAST: We changed the format a little bit  
18 from how we put out the public notice, initially we had  
19 invited people to come in and make prepared statements.  
20 After we thought about it, we realized that we don't think  
21 you all and we don't think we would find that as useful as  
22 if we just framed some questions and gave you all the

1 opportunity to comment.

2           So for those of you who had given us  
3 presentations, don't feel like your client's money was  
4 wasted in paying you to do that. We are going to use those  
5 in our deliberations and we're going to pay very close  
6 attention to them. If people want to get them from each  
7 other, you're free to ask each other, but they're not going  
8 to be made publicly available to us at this point.

9           Also, as you see from the public notice, we are  
10 hoping to discuss a wide variety of issues today. Some of  
11 them don't have anything to do with competition square, in  
12 the sense that they aren't competitive issues that were  
13 raised, for example, the JUS proceeding within consortia  
14 ownership or any of those other issues.

15           What we would encourage people to do, we have an  
16 allotted period of time to discuss some of those issues. We  
17 have been meeting informally with a variety of companies on  
18 an individual basis and we found those meetings, as I say,  
19 very helpful. We found some of them very helpful. We would  
20 encourage you all to continue to meet informally with us,  
21 because that's an opportunity for the staff to get in more  
22 in-depth discussion on some of these competition issues and



1 other issues, more in-depth than we can do today.

2           So we will still have a period of time, probably  
3 over the next three weeks, I would say, that we would  
4 encourage people, if they have things that they would like  
5 to follow up on, or some thoughts that would take more than  
6 15 minutes, to set up meetings with us.

7           Another change from on our format from the one  
8 that we had issued, the public notices, we're not going to  
9 videotape this, we're going to do a transcript. So just be  
10 advised that anything you say today will appear on the  
11 transcript. The purpose was to try to make this open to  
12 people who are outside the Beltway, so that people can get a  
13 record of what happened today and it's a good resource for  
14 us.

15           The question process will have an agenda that I  
16 think you all should have gotten when you came in, is that  
17 right? Nod yes, no? Okay. We're going to follow that and  
18 we have an allotted amount of time for each of the general  
19 areas.

20           Liz Nightingale is going to be the sergeant at  
21 arms and keep us moving. And what I'd like to ask people to  
22 do is, I'd really like to encourage the people who are not

1 up at the table who have something to say not to feel  
2 chilled because you're sitting back there, but to step up  
3 and say something. Obviously, again, identify yourself and  
4 who you are representing.

5           One final preliminary request is, when I had  
6 learned of the process of going through this issue, I think  
7 sometimes the conversations that we're having with the  
8 public and with each other get confused because the term  
9 "private" cable has come to, I think, have two different  
10 meanings. One is as opposed to, one is a regulatory  
11 meaning, so it's as opposed to the common carriers'  
12 regulatory categorization. The other is an ownership term,  
13 so it's opposed to consortia ownership.

14           When we have conversations and people use private,  
15 it sometimes muddies the analytic waters, because the  
16 regulatory characterization and the ownership need not, and  
17 obviously have become not, identical. So instead of using  
18 private, could you use non-common carrier or non-consortia,  
19 so that we know whether you're talking about ownership or  
20 whether you're talking about regulatory status?

21           MR. ABELSON: The only two cents I add is to  
22 reassert the importance that the International Bureau places

1 on this activity, this investigation, this look-see about  
2 submarine cable policy and a commitment to keep going if it  
3 turns out that we believe it would be something -- after  
4 this conversation and our private conversations -- something  
5 that would be of value. We should know within a short  
6 period of time what we will be doing next, and look forward  
7 to the conversation today.

8 MS. ARBOGAST: All right, why don't we start? We  
9 have, we might need to abbreviate these a bit. We're  
10 supposed to, I think, be concluded by five o'clock. Let's  
11 start with the first topic, which is streamlining and  
12 simplifying the Commission's cable landing license  
13 application and review process.

14 What we were hoping to do was give you all an  
15 opportunity to tell us how we can do things better from,  
16 primarily, a process standpoint. Are there questions that  
17 we're asking in our application process that nobody even  
18 remembers why we're asking them anymore or they don't need  
19 to be asked anymore? Are there ways that we can speed up  
20 our review of the applications? Is there any way that we  
21 can make life easier for you, as applicants, and so I throw  
22 that open to commentators.

1 Great.

2 MR. ABELSON: We did everything perfect.

3 MR. NAKAMURA: I'm Kent Nakamura from Sprint.

4 Having filed a couple of these cable applications on behalf  
5 of some joint clients recently, I was wondering if the  
6 Bureau would entertain the thought of an auto-grant for some  
7 of these if they're complete, you know, they're on a post  
8 and they don't raise any unusual issues in the same way that  
9 we do the auto-grant for a lot of these 214s?

10 MS. ARBOGAST: What do you mean when you say auto-  
11 grant?

12 MR. NAKAMURA: They go on public notice and if no  
13 one opposes it within a certain amount of time or if there  
14 are no problems that the staff identifies independently,  
15 that the license would be considered granted after the  
16 passage of 30 days or 45 days or whatever the Bureau feels  
17 is appropriate.

18 MS. ARBOGAST: My understanding is that, you know,  
19 this, I imagine, was something that was considered and  
20 rejected in the past, if for no other reason than the fact  
21 that we're not operating under our regular organic statute  
22 here, but under the Cable Act. And I think that before we

1 would seriously entertain that, we would need to consult  
2 with the State Department. Because right now, I'm delegated  
3 authority that contemplates that there needs to be approval  
4 granted by the State Department.

5 MR. MULETA: Now that you mention the State  
6 Department --

7 MS. ARBOGAST: Could you identify yourself?

8 MR. MULETA: Oh, I thought everybody knew. Just  
9 kidding, John Muleta from PSINet. Now that you mention the  
10 State Department, I think working with the State Department  
11 to establish some sort of procedural, some time lines as to  
12 when the responses would come out, would be a helpful thing.  
13 Just a thought that, now that you brought it out.

14 MS. ARBOGAST: Nothing else? All right. The next  
15 -- I am, I guess, taking away from this that people don't  
16 have huge problems with this, with the time that we're  
17 taking on these and how we're asking you to provide us  
18 information and the sorts of information we're asking you to  
19 provide. And so if people later have thoughts that they  
20 would like to give us outside this forum, you know, you're  
21 of course welcome to do so.

22 MR. MULETA: Rebecca, I think if I can just, I

1 mean, you know, we're afraid to misstate the obvious, but I  
2 think some of us here would probably feel that time is of  
3 the essence when you're dealing with these projects and the  
4 faster you can make a decision, regardless of whatever the  
5 filing burdens are, the happier we are, since most of us are  
6 committing a significant amount of capital. So to be held  
7 up for a few months is significant, from our perspective,  
8 especially when most other -- especially when you do an  
9 apples to apple comparison over other cable systems that  
10 have been granted and you don't see any sort of obvious  
11 faults.

12           So that's something to keep in mind, but it sounds  
13 so obvious that I think some of us just don't want to repeat  
14 it.

15           MS. ARBOGAST: Thanks.

16           MS. GINSBURG: This is Mindy Ginsburg with Via-  
17 Tel. I would echo what John said and also endorse the  
18 Sprint proposal. I think whenever possible putting these  
19 applications on streamline would be very helpful and would  
20 improve the predictability of when they'd be granted.

21           Maybe one area to think about for streamlining  
22 could be as with ISR, where the Commission has found a route

1 to be highly competitive or competitive, automatically put  
2 the relevant application on streamlining.

3           Just one smaller issue on these applications. I  
4 think there may still be a requirement that companies  
5 disclose interlocking directorates and that, for large, for  
6 cables with a lot of companies on them, that can be a fairly  
7 lengthy undertaking. So maybe you can form that rule to  
8 the, I think the Common Carrier Bureau's new interlocking  
9 directorate rule, which just requires whether it's foreign,  
10 a foreign affiliate or a foreign, interlocking directorate,  
11 rather. That may be something worth thinking about.

12           MS. ARBOGAST: Okay, thanks. Let's move on to the  
13 next category of issues, which is the common carrier versus  
14 non-common carrier distinction. Obviously, that's one that  
15 has become fuzzy over time and as we've been meeting  
16 informally with some of you, we've heard different views.  
17 Some people say that we've essentially eroded the  
18 distinction. Others -- and think that the distinction could  
19 be completely abolished. Others find that a distinction  
20 that has, still has a place in a regulatory scheme  
21 primarily, or at least in one area where there is a lack of  
22 competition of facilities, competition on a route, there's a

1 suggestion that we should maintain it there. And so I throw  
2 the question out broadly. In particular, I'd be interested  
3 in hearing, I guess, answers or responses to two issues.

4 One is, should there be a distinction and second,  
5 what should follow from that distinction?

6 MR. TALBOT: Jim Talbot from AT&T. We think that  
7 the Commission --

8 MS. ARBOGAST: Can you speak up a little?

9 MR. TALBOT: We think the Commission's existing  
10 distinctions do have merit. Otherwise, you could end up  
11 with a situation where the only cable on a route potentially  
12 could be a private cable. Currently, the Commission looks  
13 at whether or not the cable is going to be a bottleneck  
14 facility. If it is, it's automatically subject to common  
15 carrier regulation. If it's not, and there's an application  
16 for a private cable, provided you're not going to hold out  
17 to everybody indifferently, then you can become a private  
18 cable. We see no reason to move away from that threshold  
19 task.

20 MR. COWHEY: Peter Cowhey, representing Global  
21 Crossing. I guess I would just make a couple of  
22 observations here. The first is, it's not clear that the



1 common carrier rules, at least as they're used by the  
2 International Bureau, have a range of remedies that are  
3 often valuable as safeguards, particularly in this context.

4           They may, but it's not clear that they really  
5 speak to the issues that have emerged in the various  
6 proceedings about cable licenses, such as chronic capacity  
7 problems and market power issues.

8           But the second point, I really think, is that the  
9 one issue about the common carrier rule that the  
10 Commission's noted in the past is the Section 202  
11 prohibition on unreasonable discrimination. And certainly  
12 from the viewpoint of Global Crossing, a number of Global  
13 Crossing's customers find that to be an important issue. So  
14 whatever is done generically about this, I think the 202  
15 measure is an interesting one. It has something that seems  
16 to be of greater pertinence than many of the other common  
17 carrier safeguards. And that's not a judgment about how to  
18 use it or, you know, in the end, how you would balance it.  
19 But I just note that it seems to me to stand out among the  
20 remedies suggested by the common carrier.

21           MR. NAKAMURA: Kent Nakamura from Sprint. Just  
22 looking at the Submarine Cable Landing Act, it doesn't

1 distinguish between common carriers and private carriers and  
2 probably one of the reasons for that is historic. It goes  
3 back to even at least the U.S. and I think the only people  
4 who don't do things and who applied for these things were  
5 the common carriers. There were no entrepreneurs or  
6 anything like that.

7           It was not until, oh, I think it was the mid-1980s  
8 when the first private, private cable, the PTAP, went in.  
9 And at that point, I think the link between the landing  
10 license and the 214, which, you know, that all has gone  
11 together, was broken. You didn't get anymore private cables  
12 for a number of years after that. But I think, you know,  
13 you're starting to see more and more of them now, so that,  
14 you know, the two halves begin to diverge. And now they can  
15 stand independently, one from the other.

16           MS. ARBOGAST: And does that seem right? Is that  
17 diversion, do you think, a healthy one?

18           MR. NAKAMURA: It seems to me that as long as you  
19 can regulate the people who are putting the service over the  
20 facility or if you can turn the facility itself into a  
21 common carrier, which, being the old -- versus FCC court  
22 case, they can do, strike the significant danger.

1 MS. ARBOGAST: John?

2 MR. MULETA: I'll wait until you ask the question  
3 again.

4 MS. ARBOGAST: No, go ahead.

5 MR. MULETA: Okay, our view is to look at the  
6 marketplace first and then decide what rules would apply,  
7 especially in these circumstances. You know, that's what we  
8 think.

9 In, you know, in areas where there's stiff  
10 competition, there's no real need to place common carrier  
11 regulations on the carriers. But the competition, or let  
12 the players decide what regulatory environment they want to  
13 play in. And I think, though, in thin routes, where there  
14 is lack of facilities development for whatever reason, and  
15 you know, our desire would be to make sure that we don't  
16 create, you know, captive players, because of the enormous  
17 amount of capital that's required to develop these things.  
18 And what essentially happens is, somebody is able to capture  
19 a monopoly for a duration. It could only be for a few  
20 years, but it could also be for a lengthy time period. And  
21 in those instances, I think some sort of intervention to  
22 make sure that the facilities are available on a non-

1 discriminatory basis would be a good approach.

2           What we would like for the Commission to do is  
3 decide these on a case-by-case basis. There is no, you  
4 know, general rule that you can sort of throw out there and  
5 capture all of the instances of how the marketplace  
6 develops.

7           MS. ARBOGAST: Of course, what we've typically  
8 looked at is the test of whether or not there is alternative  
9 capacity on a route and that seems, did that seem like the  
10 right test, to you?

11           MR. MULETA: I think it is. I think you, in my,  
12 again, I think you have to look at perspective. You know,  
13 you have to look at the individual circumstances of what's  
14 taking place on a particular route. You know, the fact that  
15 there is some amount of capacity, alternative capacity  
16 available, might not be a significant factor if that  
17 capacity can be outpaced, you know, 100-fold by the new  
18 capacity that's coming in, you know.

19           So those are the kinds of comparisons that you  
20 have to look at. Again, what we don't want is for the  
21 marketplace to be, you know, to be constrained artificially  
22 just because of, you know, the fact that there is a thin

1 route, you know. It's a vicious circle that we see in our  
2 business. You know, if you have a route and then lots of  
3 traffic will go to it and you know, you want to make that  
4 affordable for American companies and I think that's the  
5 intent here of the Commission's regulations is to grow and  
6 the business of American companies and these particular  
7 route and how we can facilitate that. Giving somebody an  
8 absolute monopoly for a couple of years doesn't make any  
9 sense to me, but, you know, I'm also a former Commissioner  
10 person, so my thinking might be skewed in that way.

11 MR. VALLS: I think I'd like to add to that. My  
12 name is Juan Carlos Valls from Facilicom. And what I'd like  
13 to say is that on thin routes you do have alternative  
14 technologies, such as satellite services that can assure  
15 that you can have access to thin routes at reasonable  
16 prices. So that I think that my company's position would be  
17 that as little regulation as possible would be what we would  
18 look at, and to encourage competition in general. So we  
19 don't only have a cable issue, but we do have alternative  
20 technologies we can deal with.

21 MS. ARBOGAST: Okay.

22 MS. MURRAY: Karen Murray with MCI World Com. On

1 a side point here, if you do decide to maintain that  
2 distinction, we would recommend that you get rid of the 214,  
3 the requirement that for common carrier facilities you need  
4 to file a 214 for that facility. We think it's unnecessary  
5 and carriers that are common carriers should be getting 214s  
6 separately. There's no need for an additional 214 for that  
7 particular facility.

8 I know in the past the Commission has looked at  
9 this and decided that to maintain that requirement because  
10 there's a fee differential between non-common carrier  
11 facilities and common carrier facilities. And the 214  
12 actually makes the fees more equal. But we'd recommend that  
13 the Commission look at changing that fee structure in order  
14 to get rid of the 214 requirement.

15 MS. ARBOGAST: And you probably remember that at  
16 the last order we talked about making a proposal for a  
17 legislative amendment, which is what it would take.

18 MS. MURRAY: Right, and is the Bureau planning to  
19 do that, to make a proposal?

20 MS. ARBOGAST: I knew someone was going to ask me  
21 that question. We need to check with the legislative folks  
22 and find out if that's been done.

1 MS. MURRAY: Okay.

2 MR. MULETA: Just if I could add, Facilicom's  
3 point is noted and I think what we seek is a full comparison  
4 of the technologies. On certain routes, the availability of  
5 alternative technologies might not be sufficient, so it has  
6 to be a full inquiry into whether the available capacity on  
7 different technologies is equal and for what purposes that's  
8 being used. You know, if you use it for voice, it was one  
9 thing. If you use it for data, it's another.

10 MS. ARBOGAST: And presumably, that's the sort of  
11 inquiry I'm assuming people would accept would not be done  
12 on a grant stamp 214. You would need to be getting public  
13 comment on that. But I think your point may be worth us  
14 thinking about, that we could do it like we do with IRS,  
15 which is declare at one time that a particular route is  
16 competitive.

17 Somebody mentioned to me in one of the informal  
18 meetings that we'd had, questioned the whole approach of  
19 looking at whether an applicant who seeks to provide service  
20 to private carriers should be able to do that if they were  
21 the first cable coming in. And the argument was, if you  
22 haven't had anybody else providing service on that route,

1 why wouldn't you welcome anybody who's providing service?  
2 Wouldn't someone providing service on a private basis be  
3 better than nobody, with the assumption being that if we  
4 forced them to do it on a common-carriage basis, they might  
5 not go forward and do that. And I just wondered if there  
6 were any reactions from this group on that point?

7 MR. MULETA: John Muleta from PSI. I'll react to  
8 it. I'm very reactive today, but I think the dynamics from  
9 our point of view is that it doesn't mean demand is not out  
10 there. It might be the ability, it might be the ability to  
11 construct the system. You know, for example, pick a very  
12 thin route, let's say the Polynesian Islands and the U.S. I  
13 mean, you know, the fact of building a cable system out  
14 there might be an expensive proposition and if allowed,  
15 people might be able to take an equity position. It's  
16 something we would talk about later, I know, in this  
17 discussion.

18 But that very few parties could, by themselves,  
19 build a facility of that magnitude or that sort. It doesn't  
20 mean you should not allow the system to be built or that you  
21 shouldn't allow it as a private cable. I think what we're  
22 asking is, you should make an inquiry as to what is the



1 systemic problem that's prohibiting this sort of development  
2 to take place? So we're not foreclosing a Commission  
3 decision as to whether it should be private or non-private,  
4 whatever. I think all we're saying is those are the sort of  
5 particular situations you ought to make an inquiry about as  
6 opposed to granting everything as a blanket license or  
7 something like that.

8 MR. TALBOT: I think our concern would be that  
9 private cables, by their very nature, are unregulated,  
10 required to discriminate, and that that could be a very  
11 dangerous precedent when you're creating what you describe  
12 as a bottleneck facility. I mean, that really is the  
13 foundation of most regulation of utilities. And if there is  
14 no competition on the route, the obligation to hold oneself  
15 out indifferently would appear to be a fundamental  
16 requirement.

17 MR. MULETA: I think we want to distinguish  
18 between AT&T's statements and ours. From PSINet's point of  
19 view, you should have the inquiry. We're not making any  
20 suggestions as to what the outcome should be. We think the  
21 Commission on an informed basis should decide whether this  
22 is any, this one particular instance should be regulated in

1 one fashion or another. And the warning signs for us are a  
2 thin route where the capital markets are speaking about  
3 something, so, you know, maybe there's an inherent  
4 advantage, for example, as to the landing license on the  
5 other side is what's giving the party an advantage. You  
6 know, there are certain things that would reduce the sort of  
7 barriers to entering a particular market, and the Commission  
8 should investigate those and see if there are barriers that  
9 should be put down.

10 But we're not suggesting that the Commission make  
11 any particular decision. We just suggest that those are the  
12 symptoms that you ought to be aware of.

13 MR. COWHEY: Peter Cowhey. The one point I'd just  
14 make is that the common carrier issue is not just about thin  
15 routes. The Commission has expressed a concern about  
16 traffic beyond a U.S. to a foreign landing party, that is,  
17 to a third market, and it's used the common carrier rules to  
18 some extent to try to discuss that issue of beyond traffic.

19 And, again, without trying to take any judgment  
20 about that, the point I just want to make is that the  
21 Commission used that particular tool in the common carrier  
22 arsenal to address that and it's something the Commission, I

1 know, is going to have in front of it in the future, because  
2 there are a number of U.S. carriers who worry about traffic  
3 in other parts of the world, moving traffic outside of,  
4 let's say, to the U.S. and back. And so I just think that  
5 that's something you need to think about.

6 MS. ARBOGAST: On a more specific question, if  
7 there were a situation where an undersea cable was going to  
8 be regulated as common carrier, either because they came  
9 forward and applied on that basis or because we found that  
10 there was a need on that particular route to have them  
11 provide service on a common carrier basis, what do you think  
12 we should do in terms of the question of whether every owner  
13 on that undersea cable, should every owner on that undersea  
14 cable also have a 214 authorization? Or could you, should  
15 we allow companies to come in, for example, an Internet  
16 service provider that was only doing data, didn't need a 214  
17 from us, would they be required to get a 214 because they  
18 are one of the owners and licensees of a cable that's being  
19 operated as a common carrier cable? If you have any further  
20 comments, come back to us.

21 One last general question, to repeat a question on  
22 the private carrier, common carrier distinction. Would

1 anybody have anything to add to my question of what  
2 obligations should flow from being designated as a common  
3 carrier? What conditions should we impose? What should we  
4 be looking at? How should you be operating differently if  
5 you are a common carrier as opposed to a private carrier?

6           Hearing nothing, I will move on to the next  
7 category of questions, issues, which is looking at a fairly  
8 precise question, which is of the owners of an undersea  
9 cable, which of those should be required to file as  
10 applicants and thereby become a licensee? Should it be  
11 every owner, no matter how small their ownership, no matter  
12 how they, themselves, are providing business that becomes an  
13 applicant? And thereby becomes a licensee and thereby is  
14 required to come file if they want to transfer, just to  
15 spell out what the real world implications are on that.

16           MR. NAKAMURA: Kent Nakamura from Sprint. I'll  
17 take a shot at that one. In looking at the Landing Act, it  
18 requires a license to land the submarine cable. It's not  
19 the ownership that has to be licensed. It seems that the  
20 entity or entities who are actually landing the cable are  
21 the ones who have to obtain the license.

22           Now, I don't know that much about the private

1 cables, private, private cables, if you will. But on the  
2 consortium cables, if you look at many of these construction  
3 maintenance agreements, you will see that the terminal party  
4 or the owner of the landing station owns not only the  
5 landing station, but all the way down to what they call the  
6 beach joint, which is where the cable comes out of the  
7 water.

8           So that being the case, I think there's very good  
9 argument to be made that it is only the terminal party who  
10 is landing the cable. They're the only ones who are landing  
11 the cable. They're the ones who have to obtain the landing  
12 license.

13           MS. ARBOGAST: Any contrary views?

14           MR. MULETA: John Muleta from PSINet. I think our  
15 thoughts on that is that if you have anything to do with  
16 control or operation of the system, then you have to be a  
17 licensee. I think that's a distinction that we like to  
18 bring it in. I think I wouldn't simply look at the CNMA,  
19 but I would also look at, you know, what the role of the  
20 licensee is in determining -- or the role of the particular  
21 entity is in determining whether they should be a licensee  
22 or not. So I don't think we have a disagreement. Maybe I'm

1 a little less granular about it.

2 MR. COWHEY: Peter Cowhey. I think that there are  
3 two different issues posed here. The first is an  
4 informational issue for the purposes of the tools of the  
5 regulator. To some extent, it's at that licensing moment  
6 that you get a lot of the key market information that is  
7 relevant to judging the nature of concentration of market  
8 power and the rest.

9 This is just simply a factual problem. You may be  
10 able to separate it somehow from this particular way of  
11 gathering the information, but right now, this is where you  
12 get a lot of the key ownership information that is vital to  
13 doing market analysis of the economics of the market.

14 The second point I'd just make is that it may well  
15 be that for the purposes of regulating the market to promote  
16 competition, that the right thing to do is to focus on, as  
17 Kent suggested, the cable landing parties as the most  
18 significant parties on the cable. But that's separate from  
19 the issue of how do you get the types of information about  
20 the combinations of ownership on the cable that are also  
21 important to your economic analysis?

22 MR. TALBOT: Just a comment, that the Commission

1 has never required that every owner be a licensee and that  
2 if it was to go in that direction, this would greatly  
3 increase the burden of what are already very burdensome  
4 applications.

5           The key thing, and ownership information, though,  
6 is supplied, so the Commission certainly knows who all the  
7 owners of the systems are. The key thing really is whether  
8 or not the Commission has jurisdiction over some parties at  
9 the USN, so that it has jurisdiction over the cable. And  
10 that is exactly what it's getting now. So we really see no  
11 reason to change existing practices.

12           MS. ARBOGAST: When you're saying that we have not  
13 required it and it would be a substantial increase in the  
14 burden, are you saying that there have been U.S. owners that  
15 have not been coming in and filing as an applicant or  
16 foreign, on the foreign side, that they have not been coming  
17 in and filing? Because I think it's the latter.

18           MR. TALBOT: We believe it's the latter.

19           MS. ARBOGAST: Okay, take the question as we're  
20 keeping on the U.S. side of it, what would your answer be?

21           MR. TALBOT: I don't think we'd change that  
22 response.

1 MS. ARBOGAST: Any other comments?

2 MR. NAKAMURA: Kent Nakamura from Sprint. I  
3 actually had this discussion with the Bureau when we were  
4 trying to figure out how to file the Tab 14 application.  
5 And at first, the indication was that the Bureau wanted  
6 everybody on the thing. But that didn't seem to make a lot  
7 of sense, because I don't know how to get a certification  
8 out of Cypress Telecom or Ross Telecom or some of these  
9 people who own, you know, one tiny circuit on these things.

10 Then, after discussing that further with the  
11 Bureau, they indicated that it would probably make sense to  
12 get certifications and applications from every one who was  
13 also a U.S. carrier, and that seemed to make sense, some  
14 sense.

15 MS. ARBOGAST: Every 214 holder.

16 MR. NAKAMURA: Yes, yes.

17 MS. ARBOGAST: Why does that make sense?

18 MR. NAKAMURA: The Commission, I don't think,  
19 would have jurisdiction over some of these owners just as  
20 owners. I mean, they don't provide service, they don't have  
21 anything except own, you know, interest in the there own  
22 plant. But when you have people who hold 214s, then they're



1 subject to the Commission's jurisdiction.

2 So that, it seemed to me, rational and at least  
3 one way to look at this thing. Another way might be, as I  
4 said, to look at it from the standpoint of who's landing  
5 these things and offer --

6 MS. ARBOGAST: Would your position be that if  
7 you're landing it and you're not a 214 holder, that we don't  
8 have jurisdiction?

9 MR. NAKAMURA: If you're landing it, you have to  
10 get a landing license, no matter who you are.

11 MR. MULETA: Rebecca, this is John Muleta. I  
12 think the question is, what do you plan to do with the  
13 capacity once it gets to the U.S.? If you plan to use it in  
14 the U.S., instead of -- there are situations where you might  
15 use the capacity from the landing station to interconnect to  
16 another cable, to go into another place, where you're  
17 really, let's say, where you're really not terminating in  
18 the U.S., per se.

19 What you're doing is trying to get, for example,  
20 you take a cable and you want to go to Mexico. And you  
21 simply just need to land it on the seashore. I think in  
22 that case, that capacity is not really being terminated for

1 use in the U.S., which means that that carrier should  
2 probably not be burdened with having to become a 214  
3 licensee, simply for getting to the shore to interconnect in  
4 another capacity to another cable, to go to another  
5 location.

6 If, however, that capacity is being terminated at  
7 the seashore for the purpose of being used within the U.S.,  
8 then I believe they have to become a 214 and subject to the  
9 U.S. laws.

10 So what I would be concerned with is that the U.S.  
11 extends it to the former situation I described. The U.S.  
12 asserts its jurisdiction over carriers that are simply  
13 terminating in the U.S. just to interconnect. That would  
14 cause an issue for us overseas, where it would allow other  
15 countries to assert jurisdiction over us, where we're simply  
16 using that for transit services. All we want to do is, you  
17 know, get to Hong Kong so we can get to Singapore and those  
18 are the circumstances.

19 You know, we don't want to be subject to very  
20 burdensome rules on the other end, simply because we've now  
21 changed how the U.S. treats capacity that's transiting at a  
22 landing station.

1           MR. NAKAMURA: This is Kent Nakamura from Sprint.

2       We would concur with what John sent and point out that the  
3       definition of foreign communication originate or terminate  
4       in the United States, at least since 1987, as I recall. The  
5       Commission said we don't regulate traffic that neither  
6       originates nor terminates in the U.S. but just goes on  
7       through to somewhere else.

8           MS. RUFF: I had a follow up question for the  
9       conversation that is going on between Kent and John. The  
10      model seems to be that if you have U.S. entities landing  
11      owners, etc., and putting aside the sort of scenario where  
12      you're just coming through, really, to get to someplace  
13      else, that then those entities should be licensees.

14           But, Kent, you used the term carrier, and I'm  
15      wondering if there's a possible scenario where one of those  
16      entities is not a 214 carrier. It's, for example, a very  
17      large ISP that is not a 214 entity, and if so, how does that  
18      factor in?

19           MR. NAKAMURA: I am aware of situations where you  
20      have, in fact, large carriers, capacity or at least cables.

21      But they're not providing communication services, so they  
22      take the position that they don't have to get any license.

1 MS. RUFF: Okay, so that's a possible argument  
2 there, that they would not have to be a licensee, even  
3 though they might be a large owner? Okay.

4 (Pause.)

5 MS. ARBOGAST: Could I just follow up with Mr.  
6 Talbot and just ask a question? I understood you to say  
7 that it would not be reasonable, there's no policy that's  
8 served by requiring every owner to be a licensee and that  
9 you would say that that's true even if we were just talking  
10 about the American side of this.

11 Should we have any rule at all as to who should  
12 have to come in and be an applicant, you know, a licensee,  
13 or should we leave it entirely up to the parties to decide  
14 who they, of all their owners, who they want to file?

15 MR. TALBOT: We think we should leave that largely  
16 to the parties. In fact, the major parties usually do file,  
17 but that gives you jurisdiction over the system, which is,  
18 we think, all you need.

19 MS. ARBOGAST: Because in practice, I think we've  
20 also seen many of the very minor parties file and I wondered  
21 if you all are doing that because you think you have to or  
22 because you just want to?

1           MR. COWHEY:  Again, I want to emphasize that I  
2 think you would be best served to separate the question of  
3 what information the act of the filing yields today, the  
4 purposes of giving you meaningful information for regulating  
5 the market.  The question of the particular vehicle,  
6 whether, for example, you need a 214, you have the right,  
7 even if you don't require a 214, to require different types  
8 of information as part of the licensing application.

9           So I don't think that we should equate the two.  
10 And the point I'm just making is that the information you  
11 were gathering at the time of licensing is important  
12 information for the Commission's ability to monitor and  
13 assess the market.  And it should be careful about losing  
14 that information.

15           That is separate from the question of whether or  
16 not you insist on a 214 for everybody involved.

17           MR. MULETA:  Rebecca, I think I concur with Peter.  
18 This is John Muleta at PSINet.  I'm not knowledgeable on  
19 the econ-speak, but I think what we're also seeking is  
20 transparency.  I mean, I think that it's very important to  
21 have transparency, especially when you have very large  
22 systems with very big owners that could tend to dominate the

1 proceedings.

2           So everybody, I think, should be after  
3 transparency, if we could get it. I think the test for us,  
4 from PSI's point of view, is what do you plan to do with the  
5 capacity? If you plan to terminate it and use it in the  
6 U.S., you should be a licensee or at least should be  
7 acknowledged as part of the licensing procedure. What form  
8 it takes, you know, or not, it's up to the Commission to  
9 decide what's efficient. But we want transparency as much  
10 as possible in these systems, at least today.

11           MS. ARBOGAST: One thing that I'd just throw out  
12 for people to think about is if we separated it out and  
13 received, required certain information upfront on the  
14 application and don't require 214, that's the second stage  
15 of the transfer, and that's when, if you care about who's  
16 owning it, you care about who comes in and succeeds in the  
17 ownership. And so it's not just enough to get it the first  
18 time and if you don't also track transfers.

19           Moving on to backhaul. I think I'd like to  
20 separate this to backhaul in the U.S. and backhaul in  
21 foreign countries, because one of the things that we've  
22 heard from a lot of folks who have been in, talking to us

1 informally, is that they're having in some important markets  
2 a terrible time getting backhaul and I'd like to start out  
3 by talking about whether there's anything that you think we  
4 ought to be doing, where the problems on backhaul in the  
5 U.S. that we should be taking a look at, and if so, what  
6 should we be doing? And then move to problems that there  
7 may be in backhaul in other countries.

8           So, starting with the U.S., any comments?

9           MR. NAKAMURA: This is Kent Nakamura for Sprint.  
10 As I think some of the people here know, Sprint has been  
11 raising issues about backhaul in the U.S. for some time now.

12 We think the Commission has done a good job on some of  
13 these things. We probably haven't told you enough about it.

14           I'll give you an example. In the AT&T  
15 International non-dominance proceedings, one of the  
16 commitments that AT&T agreed to as a condition of being  
17 regulated as non-dominant, was to put out for public bid the  
18 so-called terrestrial restoration network. And what that  
19 network is is a land network that links all the cable  
20 stations on the East Coast of the U.S. with the consortium  
21 cable stations, so if one of them gets cut or goes out, you  
22 can cut over. You know, on a hot standby, to a back up

1 cable.

2           Until the Commission got involved in this, this  
3 provision of service was not there, not regulated. They'd  
4 send a bill and we would pay it. But after AT&T put this  
5 function out to bid, in Sprint's case, at least, we are  
6 saving in excess of \$1 million a year as a direct result of  
7 doing, having that bid put out competitively. And that, we  
8 think, is the kind of thing that the Commission can do,  
9 should do, and is good at.

10           MS. ARBOGAST: Thank you.

11           MR. TALBOT: Could I just comment generally about  
12 U.S. end issues here? If you look back over the past four  
13 years, the Commission has now had four major proceedings  
14 that have looked in great detail at market power issues on  
15 the U.S. end of submarine cables, beginning in the AT&T non-  
16 dominance proceeding that Kent referred to, to the AT&T BT  
17 proceeding which has just concluded.

18           And the findings in those proceedings are  
19 consistent and very clear, that no U.S. carrier has any  
20 market power on the U.S. end of submarine cables. No U.S.  
21 carrier has any market power over cable stations and  
22 backhaul is competitive. And that the issues regarding



1 cable stations really raise contractual matters, not  
2 competitive issues.

3 Those findings really resolve a lot of these  
4 issues and really leave very little to be the subject of any  
5 further proceeding.

6 MS. ARBOGAST: Thank you. Any other views?

7 MR. MULETA: I think from PSINet's point of view,  
8 it's the whole inquiry has to go as to the design of the  
9 system that you're approving at that point. For example, if  
10 there's no commitment in the CMNA for, you know, just  
11 readable or non-discriminatory access to backhaul facilities  
12 that, again, would throw a signal about the market power  
13 that's being exercised by the persons providing the backhaul  
14 facilities.

15 From our point of view, we spend a significant  
16 amount of time as a contractual matter getting those things  
17 down on paper, as an enforceable right that we have in a  
18 cable system. Currently in the system that we're involved,  
19 we have not seen a problem on the backhaul side. But that  
20 doesn't mean it won't rear its ugly head, but it's just  
21 something that the Commission ought to be aware of, and  
22 review as it reviews its application, to be looking at for

1 certain things, like are there two separate parties who are  
2 providing the backhaul or is it a single entity at all  
3 points? You know, that makes a difference about the market  
4 power that they're exercising over that particular cable  
5 system.

6 MS. ARBOGAST: Do you or anybody else have any  
7 thoughts on what we should do? We look at this and we find  
8 something, we find that the CMNA doesn't allow collocation  
9 in the U.S. or we find that there's only one backhaul  
10 provider that's allowed. Should we do anything?

11 MR. MULETA: I think from our perspective, that's  
12 when you should ask, start asking questions and, you know,  
13 that's when the inquiry goes into, for example, is this a  
14 thin route or is it a very competitive route? If it's  
15 competitive, then I would have lesser concerns about there  
16 being a problem. You know, people are willing to take on  
17 contractual risks, even though it's apparent on its face  
18 that there are, you know, systemic design issues and that's  
19 fine, you know. That's a risk they're willing to take. But  
20 if it happens to be a thin route, and maybe this is how  
21 people are exhibiting their market power, you know, we ought  
22 to be worried. As a matter of policy, as a business -- as a

1 business issue, you know, we'll deal with that separately.  
2 But as a Commission reviewing it as a potential action,  
3 those are evidences of a systemic problem that might take  
4 place.

5 MR. COWHEY: I have no wish to relitigate various  
6 matters about cable landing licenses of the past. I do  
7 think the fact that we're here today indicates that the  
8 Commission felt that investigation of these matters  
9 suggested that there were competition problems in the market  
10 that still required further understanding and analysis and  
11 possible action.

12 Having said that, as a prelude to saying that I  
13 don't think the past decisions have disposed of these  
14 questions, there are just two points I want to make. The  
15 first is that an undue emphasis on backhaul overlooks the  
16 fact that, at least in my judgment, it is the totality of  
17 the control over the various inputs to the provision of  
18 international transport services that have to be looked at,  
19 not just one segment such as backhaul. Although certainly  
20 backhaul is one of the worst problems in the marketplace.

21 The second point I would make is that as you  
22 rightly said, you would expect that all other things being

1 equal, that the U.S. market is better than foreign markets  
2 in regards to this input to the market, comparatively. It  
3 does not say that the U.S. market operates perfectly, to say  
4 that it is better. Then the question becomes in regards to  
5 the foreign market backhaul, which performs worse, in  
6 general, than the U.S. market, what measures would best  
7 address that? And I think that one of the very difficult  
8 problems for the Commission is the one that it perennially  
9 faces when it tries to undertake regulatory intervention in  
10 foreign markets in order to insure competition.

11           It is that these measures are often hard to  
12 monitor compliance with, hard to enforce, and even to the  
13 extent that the Commission both has the means and the will  
14 to do so, there are ramifications politically that make this  
15 as an ongoing task, difficult for this Commission to  
16 maintain.

17           So while the Commission is not helpless, this is a  
18 very messy job. And if it is difficult to maintain  
19 conditions about the availability of critical infrastructure  
20 in the United States and the local exchange market, it is  
21 even more difficult to do so in foreign markets.

22           So it's for that reason that Global Crossing, at

1 least, thinks that the backhaul problem should be viewed as  
2 part of the package of the inputs to production and the  
3 Commission should be looking for a method of encouraging  
4 competition that will be less intrusive in terms of day-to-  
5 day intervention in the marketplace of foreign countries  
6 while still providing the right incentives. We'll get to  
7 that later, I have a feeling, but that's simply the point I  
8 want to make about backhaul.

9 MR. NAKAMURA: Kent Nakamura from Sprint. I  
10 wanted to echo a lot of Peter's thoughts because I took a  
11 look at the legislative history of the Landing Act. And  
12 there was a very interesting quote from Senator Kellogg who  
13 introduced the bill, and I thought it was worth repeating.  
14 He said, "Let me give the senator an illustration. The  
15 first thing that occurred to the committee was that we  
16 should make a general rule that no cable should land in the  
17 United States which connected with a cable having a monopoly  
18 in a foreign country. It immediately was seen in some cases  
19 that it not only would operate against American interests,  
20 but would be impossible to comply with at all, because a  
21 monopoly to the foreign country was neither under the  
22 control of the American country, who were the American

1 government, and we found in several cases where it was  
2 necessary either to grant such landing licenses or deprive  
3 ourselves of cable facilities." Not a new problem.

4 MS. ARBOGAST: Kerry?

5 MS. MURRAY: Kerry Murray from MCI World Com. I  
6 will say I think the Commission's policies have served the  
7 market quite well and the market is becoming more and more  
8 competitive. There are more carriers that are building  
9 cable landing stations and, for example, in U.S. cable,  
10 we've got seven backhaul providers on the U.S. side, and  
11 actually seven on the Japan side, which is completely  
12 unprecedented. That means you've got seven carriers  
13 competing for backhaul traffic.

14 And I don't know where you would draw the line  
15 between consortium cables and non-consortium cables. I'd be  
16 curious to hear about what Global Crossing does in terms of  
17 making cable station access available and competitive  
18 backhaul. I mean, I don't know how you make this  
19 distinction between consortium and non-consortium cables and  
20 how is it valid?

21 MR. MULETA: Before Peter is writing his notes,  
22 I'll just make one point. One of the things that happened

1 on Japan U.S. was that there were parties that were not the  
2 traditional carriers, that insisted very strongly that there  
3 be a diversity in backhaul providers and minimum, especially  
4 at the landing station side.

5           So this is something that the Commission ought to  
6 encourage and ought to be taking a look at as they're  
7 reviewing, if it has a chance to review these applications.

8       But I think what we want to make sure of is that this is  
9 not something that people willingly did, but it was a matter  
10 of the market dynamics and of certain, you know, carriers  
11 insisting that's the way they're going to invest their  
12 capital.

13           So what we want to do is not have the Commission  
14 set rules that prevents that sort of behavior not to happen  
15 again. I mean, so JUS is very unusual and we hope it  
16 continues in that direction with other cable systems.

17           MS. ARBOGAST: Could you just restate the last  
18 sentence again? You want the Commission to --

19           MR. MULETA: I mean, what we want is the  
20 Commission to encourage people and I think this is about the  
21 structural ownership issues. When you're financing a cable  
22 system and essentially you're raising a lot of equity in the

1 marketplace. And what that allows various actors to do is  
2 be able to exert the power of their capital in the way this  
3 system is designed.

4           So, for example, if it's entirely a private cable,  
5 what happens is the design is the design. You know,  
6 whatever that person wants to insist on, whatever backhaul  
7 they want to put in it, you're sort of captive to that  
8 design. If it's a more public, let's say, more consortia-  
9 like cable system and it is more open in terms of equity  
10 investments, and so your dollars actually really count, then  
11 you can insist on certain behaviors on the, for example, on  
12 the side of the landing station providers. You know, that  
13 they have backhaul providers that are competing, that they  
14 have a couple of diverse or multiple diverse landing  
15 stations. These are all, and that there be non-  
16 discriminatory access to those facilities, okay.

17           And we can enforce those through contractual  
18 terms. So that's something that the Commission has to keep  
19 in mind as it looks through the structural ownership issues.

20       Is that behavior being allowed to take place? And we  
21 should not set any rules in place that will prevent that  
22 sort of activity from taking place.



1 MS. ARBOGAST: Thank you. Peter?

2 MR. COWHEY: I had a feeling you were looking at  
3 me. Let's start with the question of how robustly  
4 competitive is this market today in backhaul and in cable  
5 landing stations? Again, without trying to relitigate past  
6 proceedings here, I think that the point that I would simply  
7 suggest that the International Bureau staff look at is the  
8 current degree of concentration of ownership of cable  
9 landing stations and a backhaul in the key, let's say,  
10 European and Asian markets. And take a look at the  
11 ownership by parties of those cable landing stations and of  
12 backhaul, and see how much structural diversification there  
13 really is.

14 If, for example, you looked at the United States,  
15 the United Kingdom, France, Germany and Japan, would the  
16 Commission find a significant degree of control or cable  
17 landing stations by a handful of parties? I would suggest  
18 that the record would show that without dragging us through  
19 all the specific numbers.

20 The second question that the Commission might ask  
21 itself, to the extent that it decides to focus on this input  
22 to production is whether or not the weights and prices

1 charged for backhaul, let's leave aside the U.S. market for  
2 the moment, for informed markets for backhaul, are truly  
3 competitively priced. And one has to recognize that the  
4 amount of money involved in the pricing of backhaul is a  
5 very significant revenue pool.

6 For example, if you took a look at a typical  
7 modern cable, let's choose a random one, JUS, there are  
8 about 2,500 STMs on the cable. And the revenue pool off  
9 those cables is potentially quite significant.

10 Again, without trying to estimate the precise size  
11 of the revenue pool, if you were talking about revenue for  
12 backhaul of, let's say, \$1 million a year for STM, that  
13 would be a revenue pool of \$2.5 billion per year. This is a  
14 lot of money on a cable that for the transoceanic link only  
15 costs \$1.2 billion to build. It gives you some sense of the  
16 magnitude of the pools of revenue involved.

17 Again, I'm not trying to actually get to the point  
18 where we're relitigating the past. What I'm really trying  
19 to do is lead to my final point, which is that I think on  
20 the face of it, you would find that this market remains  
21 significantly concentrated. Then the right question for the  
22 Commission is, well, how do you think about this in terms of

1 competition? The point that at least Global Crossing has  
2 been making is that the traditional consortium cables have a  
3 combination of all ownership that have the ability to  
4 coordinate and an incentive to coordinate their control of  
5 inputs to production in such a way as to be able to exercise  
6 market power.

7           It would be highly unusual in terms of the  
8 Commission's traditional economic analysis to believe that  
9 the newcomer entrant in the marketplace should be analyzed  
10 within the same framework and has the same ability to  
11 exercise market power. But those are the questions the  
12 Commission should be asking itself.

13           MS. GINSBURG: Mindy Ginsburg with Via-Tel. A few  
14 points, I think, for what Peter said and some of the other  
15 comments we've heard. Via-Tel is usually described as a new  
16 entrant, small carrier, maybe even the smallest carrier at  
17 this table. I would urge in this whole process that when  
18 you start to look at the aggregate market power on a cable,  
19 you then take the next step of whether there's harm in the  
20 market, as a result of the ownership structure. And it  
21 seems to me on, certainly to us on the transatlantic route,  
22 that with the incredible number of new entrants, not just

1 Via-Tel, but the incredible number of new carriers on cables  
2 providing service in Europe, with the decline in prices on  
3 the major routes, perhaps there isn't harm in this market.  
4 And doing sweeping, conducting a sweeping examination of the  
5 ownership issues may not be a productive endeavor.

6           And that brings me to a point that Jim made  
7 earlier, which is remember to keep in mind the international  
8 implications of anything the Commission does. Even the  
9 simple asking of a question raises an expectation that the  
10 Commission is going to regulate a market. And I cannot  
11 overstate that. So I know who witnessed evidence of that is  
12 the European Commission's Receipt Study, where they've said  
13 they're going to watch what the FCC does closely and examine  
14 whether they need to do some regulating, do additional  
15 regulation and take steps that may affect the entrancability  
16 to obtain market access there.

17           So I would urge you throughout this process to  
18 think carefully and consider carefully that sometimes the  
19 asking of a question is not merely the asking of a question,  
20 but that bringing me back to Peter's point of, it is the  
21 fact of ownership structures, the various models that exist  
22 today on undersea cables, we're seeing a lot of change. It

1 isn't, there's no longer just the large carriers on cables.

2 You have Global Crossing, you have companies like Via-Tel  
3 on Global Crossing as well as the JUS cable.

4 So, again, asking to focus on what's the harm that  
5 we're seeing before we sort of leap into a broad examination  
6 of whether the fact of multiple owners on a cable causes a  
7 problem.

8 MR. TALBOT: Jim Talbot of AT&T. Just a couple of  
9 points. You know, the Commission has been dealing with  
10 market power issues in international telecommunications for  
11 50, 60 years now. And has a no special concessions rule  
12 that we think deals very effectively with the kind of issues  
13 that Global Crossing has raised in the past. The Commission  
14 placed prime reliance on this in the Japan U.S. proceeding  
15 and we think that is the way to go forward.

16 Regarding arrangements with foreign, non-dominant  
17 carriers, in the traffic area, you've reached the conclusion  
18 that that can largely be left to the marketplace and we  
19 think that is the right way to look at it.

20 Arrangements on cables are also changing. One  
21 reason why all of this is coming up is that the practice for  
22 the past two or three years has been for U.S. carriers to

1 buy end-to-end capacity on cables. This means that U.S.  
2 carriers are in foreign markets, looking for multiple cable  
3 stations, competitive provision of backhaul. And that is a  
4 very pro-competitive thing. It's consortium cables where  
5 U.S. carriers are able to negotiate these arrangements with  
6 foreign carriers. On private cables, U.S. carriers don't do  
7 the negotiating. It's the private cable operator and, in  
8 fact, those cables at the foreign end are frequently far  
9 more restrictive than consortium cables.

10           One final point. Under the old Ecko test, we  
11 didn't used to let foreign carriers with market power into  
12 the U.S. market on their route, where they were closed at  
13 the foreign end. That was how we dealt with foreign market  
14 power problems. If you step back and think about what we're  
15 doing here is, we're potentially limiting foreign market  
16 access by non-dominant U.S. carriers, unaffiliated with any  
17 carrier on the foreign end. This is a very perverse,  
18 reverse kind of Ecko test, that would actually limit U.S.'s  
19 carriers access to some of the most cost-effective  
20 arrangements for getting their traffic into foreign  
21 countries.

22           This is not what any of us intended, we believe

1 the USDR Commission intended, in encouraging us to open our  
2 markets under the WTO agreement, and we think would actually  
3 impede our ability to take advantage of the benefits, the  
4 hard-won benefits we got through the WTO agreement.

5 MS. ARBOGAST: Could you just spell out your  
6 thinking a little bit on how, what actions would make it  
7 harder for U.S. non-dominant carriers to enter the foreign  
8 market?

9 MR. TALBOT: Well, it appears that the direction  
10 that Peter's comments would push you would be in looking  
11 critically at foreign-end arrangements for things like  
12 backhaul and cable station access and conditioning or  
13 denying applications, based on how competitive they are.  
14 That basically is pushing you in a kind of reverse Ecko  
15 position, where you're limiting U.S. carrier's ability to go  
16 on cables that offer them the most cost-effective means to  
17 get their traffic into foreign markets, even though they  
18 have no market power in the U.S., no market power on the  
19 route, and no affiliation with any carrier with market power  
20 at the foreign end.

21 MS. ARBOGAST: I think John had something, then I  
22 assume Peter?

1           MR. COWHEY: Thank you, John. If only the  
2 Redskins had such an effective defense. There are several  
3 things I think that were just said by Mindy and Jim that I  
4 think are worth thinking about very carefully.

5           The first is the question of changes in the  
6 marketplace and the implications of any decision by the FCC  
7 to undertake a further action in this area, for either  
8 promoting or retarding changes in the marketplace. The  
9 second point is the point about whether there are  
10 differences in the world among different routes and  
11 different parts of the world market. And the third question  
12 is whether or not the FCC, if it undertakes further action,  
13 should focus on trying to micromanage the foreign end of a  
14 U.S.-originating and terminating cable. Let me speak to  
15 each of those very briefly.

16           First, as to the implications of the FCC deciding  
17 to undertake further action, I think that Global Crossing  
18 would agree that we are in a world where there are winds of  
19 change. There are currents that are opening possibilities.

20           But it is equally true that there are significant profits  
21 and incentives for resisting speedy change in the  
22 marketplace, and where we are is in a balance between these



1 two sets of forces.

2           Now, any economist at the Commission would tell  
3 you that you should always look forward and then look back  
4 in good strategic analysis. And essentially, if the major  
5 players in the marketplace with market power believe that  
6 going forward there is significant Commission scrutiny,  
7 attention and seriousness, as might be indicated, for  
8 example, by undertaking an MPRM, they will start to  
9 recognize that the winds of change are winning. That the  
10 status quo is less viable.

11           If, on the other hand, they look forward and see a  
12 world in which the Commission has said that it is concerned,  
13 but not going to undertake meaningful action, there is a  
14 greater temptation to see if you can show off the status quo  
15 to slow down change in the marketplace.

16           Now the way in which Commission action would be  
17 read depends on what the Commission does in an MPRM. For  
18 example, the European union study did say that it would look  
19 carefully in the future at what the FCC was doing. The same  
20 study noted that it was costing more to build out  
21 terrestrial networks in Europe than it takes to build an  
22 undersea cable between the United States and Europe, and it

1 noted, curiously enough, that individual carriers are  
2 willing to do this in terrestrial Europe, but you seem to  
3 still have consortia dominating the building of  
4 international cables.

5           So it's not clear that the European union would  
6 read an action by the FCC that really was designed to deal  
7 with the structural problem of competition in an adverse  
8 way.

9           Now the second point, the difference in routes.  
10 Indeed, I think that everyone here can agree that there is  
11 some variation among regional routes. I certainly heard  
12 agreement that thin routes were different than high traffic  
13 routes. But I believe that there is also a significant  
14 difference between some very selective high traffic routes  
15 and most high traffic routes. There are a few places in the  
16 world where there is more advanced competition, mainly in  
17 the North Atlantic, than in the rest of the world. And an  
18 FCC proceeding should be able to deal with that distinction.

19           The final point is the question of should the FCC  
20 introduce some sort of a perverse, reverse effective  
21 competitive opportunities test that leads it to deny foreign  
22 carrier entry in the U.S. or micromanage foreign markets.

1 You know, we completely agree with this point. The FCC  
2 shouldn't be engaged in micromanaging the foreign market.  
3 That is not the same as the notion that the FCC should stand  
4 pat or do nothing. There are other alternatives available  
5 for FCC action, and that's where I hope we turn to later.

6 MR. MULETA: I think PSINet would like to add one  
7 thing to this discussion which is, if you can eliminate the  
8 notion of half circuits, that would really help. Because  
9 that's one of the fictions that causes an imbalance in the  
10 marketplace. If a foreign carrier has no interest in  
11 terminating capacity into the U.S., then they can sort of  
12 avoid coming under the purview of competitive rule, you  
13 know. I'm assuming that the U.S. has good competitive  
14 rules. But, you know, if they can have a half-circuit  
15 mechanism that allows them to say that's your problem on the  
16 U.S. side, you guys deal with it, we'll keep our markets  
17 closed off.

18 Our preference, as noted by AT&T and you see a lot  
19 of American carriers, we want to go whole hog, we want to  
20 buy the whole piece, and we want to force the foreign  
21 carriers to open up their markets, okay. And interestingly  
22 enough, people who are in the Internet business, know that

1 the U.S. is a very important market to the foreign carriers.

2 So that is what's forcing a lot of change in the  
3 marketplace.

4 So the fact is the U.S. is where everybody wants  
5 to get to on the Internet, for whatever reasons, is causing  
6 people to want to buy the whole circuits and keep them, you  
7 know, keep the inputs to themselves. And if we can force  
8 the foreign carriers to act that way, that will force their  
9 governments and their sort of closed systems to open up  
10 their markets for competitive backhaul landing station  
11 access.

12 Our belief, our experience, tells us that Japan,  
13 okay, is beginning to change in that sort of way. We see  
14 other markets where we don't see that happening and we sense  
15 it's because people are allowed to keep with the half  
16 circuit fiction that goes on. So, in particular, one that  
17 I'd like to bring up in a public forum is Hong Kong, just to  
18 be noted, okay.

19 MS. ARBOGAST: What I'd like to do is I've just  
20 been passed a note that says we're, I think, out of time on  
21 this topic. This topic, predictably, has sort of slopped  
22 over into the next one, which is ownership structure. What

1 I'd like to do before moving into discussing more some of  
2 the economic issues of the ownership structure that are  
3 keyed up for the next one, is take that comment and move off  
4 of it to talk about problems that folks are having in  
5 foreign markets and ideas that you have of things that we  
6 can do, either in the context of this sort of proceeding, or  
7 any other forum that we have for action that would help do  
8 things like eliminate the half circuit model or open up  
9 backhaul cable landing competition in general in the foreign  
10 markets.

11 What could we do to eliminate the half circuits?

12 MR. MULETA: I think as a condition of granting  
13 the license, you can ask people that they have full capacity  
14 on it, that they have to own it end to end. There are  
15 commercial ways that you can get rid of -- I mean, if a  
16 company, for one reason or another would prefer only to have  
17 a half circuit, there are commercial ways of dealing with  
18 that. So I don't think it's a barrier for doing business.  
19 But it certainly, this would send a signal towards opening  
20 up the other side of the market. That's when we really see  
21 where the problem is from PSINet's point of view, is on the  
22 foreign side on backhaul. And things that cannot be dealt

1 with on a contractual manner.

2           You know, when you have a regulation that says,  
3 oh, you have to be a national carrier to terminate the  
4 capacity in that carrier, and then you have ownerless  
5 conditions for becoming a licensed carrier, a Type 1,  
6 whatever. That creates a huge barrier for succeeding in  
7 that marketplace, for opening a backhaul and landing station  
8 access.

9           MR. NAKAMURA: Kent Nakamura from Sprint. I'm not  
10 sure what kind of problems that John is referring to, which  
11 I think are very real problems, are really, you know, the  
12 problems of the cable systems. Tom McInerney is here. He  
13 can correct me if I'm wrong. But I think the way most of  
14 these modern consortium cables are organized is that you  
15 have new points. You know, it's like money. You buy, with  
16 the new points, you buy halves, you buy wholes on these  
17 things. You spend it any way you want. You can buy it on  
18 particular segments. I think that's right, isn't it, Tom,  
19 you can put it wherever you want to terminate it? I mean,  
20 once you get to the other side, you may have a problem with  
21 the kinds of things that John was talking about, but I'm not  
22 sure that it's a problem of the cable systems' organization,

1 per se.

2 MR. MULETA: If I can just make a comment towards  
3 that, I mean, I think what we were trying to answer is the  
4 question of where do you have problems with backhaul and  
5 landing stations? And what we see is where the players have  
6 no incentive to be in a competitive market. That causes a  
7 problem.

8 You know, if you have one of the landing station  
9 parties that simply refuses to play on both sides of the  
10 market and they say, well, you know, we'll just buy our own  
11 half circuit, whatever, and that's the only thing we need  
12 out of this, whether they do it through the new process, you  
13 know, however they get to it, as long as they have no  
14 incentive to be in a competitive market, that creates a  
15 problem. That's what we're trying to push for, and that's  
16 something that the FCC can help.

17 I'm just throwing out one concept, that maybe  
18 there could be a better way of doing it.

19 MS. ARBOGAST: Any thoughts or comments on  
20 problems people are having on the foreign end and things  
21 that we can do to help?

22 MS. GINSBURG: Mindy Ginsburg. What was done,

1 frankly, in the JUS cable was very helpful. The discussion  
2 and examination of the agreement that ended up clarifying  
3 the availability of backhaul was incredibly helpful to small  
4 carriers. And as Kerry noted earlier, you know, we see  
5 seven backhaul options on the Japan side. That's great. So  
6 we would endorse continued more of a case by case  
7 examination of issues like that.

8 MS. ARBOGAST: Even though I have the scars to  
9 show for that. Any other thoughts?

10 MR. NAKAMURA: Kent Nakamura from Sprint, again.  
11 My understanding and again I'd ask Tom to confirm this is  
12 that the three landing stations owned by separate owners in  
13 Japan and the two landing stations in the U.S. were set up  
14 only for the application, never showed up at the Commission.

15 I mean, the Commission shouldn't, at least from what my  
16 internal clients are telling me, is that the Commission  
17 shouldn't underestimate the power of that competition is  
18 bringing, even to the world of submarine cable systems.

19 I think on China U.S., the Commission encouraged  
20 the applicants to reopen the cable systems through the  
21 initial parties, but really, that wasn't driven as much by  
22 the Commission as it was by, you know, commercial



1 imperatives. We saw that they weren't getting the business  
2 and that if they didn't sell off this capacity, they'd be  
3 stuck with it, paying the operations and maintenance for 25  
4 years while Japan U.S., which was, you know, eight times  
5 bigger and much, much cheaper was coming along right behind  
6 it. So the competitive process is very, very important and  
7 should not be underestimated.

8           The other thing that Sprint, at least, is afraid  
9 of is that if the Commission gets into the role of trying to  
10 extract concessions from foreign countries in exchange for  
11 allowing the cable landing license, in addition to the, you  
12 know, legal problems with the WTO agreement and what have  
13 you, our business here is that, you know, these foreign  
14 carriers are going to say you are too hard to do business  
15 and we don't want to do business with you anymore. We'll  
16 land the cable in Canada or we'll land it in Mexico and  
17 we'll just bring it over terrestrial facilities, so that we  
18 don't have to deal with, you know, these difficult problems  
19 anymore.

20           And then if that happens, the danger ends up, the  
21 U.S. carriers will be excluded potentially as initial  
22 parties on some of these cables. And if you can't get in as

1 an initial party, a lot of times, you know, you don't get  
2 the best pricing on these things. You have to come in later  
3 and pay more, in which case the Commission would end up  
4 raising prices for the U.S. carriers and, ultimately, for  
5 the consumers.

6 MS. ARBOGAST: Any other comments?

7 MR. MC INERNEY: Tom McInerney from AT&T. I just  
8 want to support what Kent just suggested. I think the  
9 current environment right now is one that allows what I  
10 consider to be a non-dominant U.S. market right now, not  
11 dominated by any one carrier, to be very competitive in the  
12 open market.

13 I think that the negative side of that would be  
14 that very much in that position, we can't have a situation  
15 where temporary delays or significant delays occur with a  
16 questioning nature of the Commission. The Commission should  
17 make decisions, in my mind, very, very quickly. And the  
18 complication with that is that we have a world that changes  
19 very, very quickly and is a little misleading in its data.

20 The example that I'll highlight for this is, I'll  
21 go back, I know we're not doing any pleadings here, but  
22 since we've brought it up a number of times right now, Peter

1 has, we'll look at the marketplace in the Trans-Pacific.  
2 What we had to do in Trans-Pacific was compare a 400 gigabit  
3 cable that was announced to an 80 gigabit cable that was  
4 announced. Now even in the meetings, we knew that they were  
5 both technology equivalent, but yet, we were challenged why  
6 we weren't moving to 640 with the 400 gigabit, instead of  
7 looking at the 640 for the 80 gigabit, okay.

8           The complication with that was that the foreign  
9 end just couldn't understand the direction competitively  
10 when a larger cable with more competition was being put into  
11 the marketplace, okay. So the understanding of the  
12 environment in the foreign end was very difficult, okay.  
13 Likewise, the leveraging that we were doing already, and  
14 John mentions the truth -- I mean, it was very much a U.S.  
15 battle into the foreign end. We had already moved to three  
16 landing points, much more competitive than the current offer  
17 from PC-1 on a competitive basis for backhaul. So they just  
18 couldn't understand our definition of competition.

19           They clearly didn't understand the foreign markets  
20 of looking at what the definition of the carrier ownership  
21 was. At the time they were both filed as private, so  
22 clearly that wasn't a definition they even understood. So

1 it's really the effect on the marketplace that we have to  
2 take a look at.

3           One other thing. Things are changing and one of  
4 the comments I want to make right now is that we really do  
5 need to look at where these marketplaces will be going.  
6 Many times, the filings that are associated many of these  
7 cables are filed at a very low level, not including and  
8 incorporating the upgrade. So if you look at a filing,  
9 Trans-Atlantic, originally, in a private cable environment,  
10 it might look like the equivalent of the Trans-Atlantic  
11 capacity when it's first originally filed. But the  
12 Commission isn't told where that capacity might go and it  
13 isn't told what the level of upgrade is capable of doing.

14           So we also have to watch the timing of the data  
15 that is coming into the Commission on market power, etc.  
16 And the complication I have right now is that the foreign  
17 end many times understands that and knows that technology  
18 and can't understand the logic behind the Commission's  
19 conclusion. They think that there will be more capacity,  
20 therefore, more competition, and clearly, in many cases,  
21 they see more participants as more competition. Thank you.

22           MR. COWHEY: I don't think it would be appropriate

1 to get into an argument about the amount of capacity and how  
2 these things are measured at the moment. The point I simply  
3 want to make is that there's something ironic to some of the  
4 conversation here. The irony is the following, that many of  
5 the long distance carriers in the United States would tell  
6 you, rightly, in my judgment, that it is not sufficient to  
7 say that there are winds of change in the local exchange  
8 market.

9           They would say, instead, that there are structural  
10 reasons and capability why local, incumbent local exchange  
11 carriers will exercise market power in a way that will slow  
12 the evolution of competition and improvement in consumer  
13 benefits.

14           Similarly here, we have the beginnings of some  
15 competition in the marketplace, much like MSF and Teleport  
16 in the 1980s. But we have something that is far short of a  
17 robustly competitive market. And we still have a common  
18 practice of the largest carriers in the market combining  
19 into common cables, in which there is an ability and an  
20 incentive to exercise market power. So that there is  
21 change, no doubt, but to conclude from that that there is  
22 sufficient change that meets the goals of the Commission, I

1 doubt.

2 MR. NAKAMURA: If I could, Kent Nakamura from  
3 Sprint. First, I think the situations are distinguishable.  
4 Of course, the ILEC industry is one over which the  
5 Commission has full jurisdiction because of the '96 Telecom  
6 Act. And second, when responding to Peter's second point,  
7 speaking only for Sprint -- maybe they're not one of the  
8 largest carriers -- but our incentive, our desire, is to  
9 obtain high quality facilities at the lowest possible cost  
10 and that's it.

11 I was talking to an internal client, asking about  
12 this. He said we're agnostic. He said if it helps our  
13 bottom line to buy capacity on a private cable, we'll do it.  
14 We own a lot of NECI one and --

15 MS. ARBOGAST: I think we're moving into a  
16 different topic and I'd like to stay for a minute on --  
17 we'll get to that, but I'd like to stay for a minute on any  
18 other comments that people have about what could be done  
19 legitimately and effectively by us to respond to the  
20 problem.

21 Frankly, we've heard from virtually every one of  
22 you who have come in and talked to us, which is problems of

1 getting into the foreign market and having competition on  
2 that foreign end. So, can we just stay on that for a minute  
3 and then we'll switch to the other competition issues? I'd  
4 just like to ask if people have any other thoughts on the  
5 issue of what we can do?

6 MR. COWHEY: Rebecca, you can tell me if this  
7 moves into the other topic you want to avoid. But the point  
8 I'd just make is that there is an assumption that you have  
9 to micromanage the foreign market in order to address the  
10 competition problem, that is, you have to impose a continued  
11 condition, like JUS or even greater and stronger measures of  
12 intervention in the foreign market, and I don't believe that  
13 assumption should be made.

14 MR. MULETA: PSINet would like for you, the  
15 Commission, to take decisive action in marketplaces where  
16 we're not allowed to own whole circuits. That is affecting  
17 our business. We are aware of certain international  
18 carriers that are wanting to keep the half circuit regime  
19 and apply it to new products or new services, such as data.  
20 We think that's a mistake and we ask the Commission to act  
21 decisively in that area, because that's a fiction that does  
22 not allow the benefits of competition to come to the various

1 players.

2 MS. ARBOGAST: I take it you're not in favor of  
3 the argument that we should apply the counting rate regime  
4 to the Internet backhaul?

5 MR. MULETA: My chairman has efficacies that he  
6 uses with that counting regime, so we'd like for you to get  
7 rid of that, as well.

8 MS. ARBOGAST: Any other comments about the  
9 problems folks are having on the foreign half of this?

10 MR. NAKAMURA: Question for you. Some of these  
11 things I thought had been addressed by the WTO and is the  
12 Commission talking to some of these foreign regulators?

13 MS. ARBOGAST: Oh, we do all the time. Yeah, we  
14 do and all the time, yes. But, it's usually -- we talk to  
15 them, that sort of action that I think is very important.  
16 We'll continue to do it. It's an educational process. It  
17 is talking to them about why it is at the end of the day  
18 fundamentally in their own interest to liberalize and open  
19 up their markets to competition.

20 Just this month we've met with Singapore. We're  
21 going to be meeting with Hong Kong. We had a video  
22 conference talking about competitive safeguards with Japan



1 that was scheduled for tonight, but that will be postponed.

2 We had bilats in Europe. I know you know, many of you  
3 know, that we've been working extensively with the German  
4 regulator on this, the Italian regulator. I mean, that is a  
5 big piece of what we do and we continue to do it, and we  
6 will continue to do it. We're very committed to that.

7 Good question and I guess I assumed that everybody  
8 in this room knew those efforts that we had been taking,  
9 that we continue to take with our counterparts in other  
10 countries. And I was asking whether there were any other  
11 vehicles that we might appropriately use in addition to  
12 that, which is, as I said, work that we do that we will  
13 continue to do.

14 MR. TALBOT: And just to, I guess, point out the  
15 obvious that, of course, the underlying problem in many  
16 markets that although the WTO agreement on basic telecom was  
17 a good one as far as it went, there are still many countries  
18 out there that are non-liberalized. And it's certainly our  
19 hope that in the next round, there will be some focus on  
20 telecom that will get more countries opening up and we'll  
21 have more accelerated commitments by those that have opened  
22 up.

1 MS. ARBOGAST: And we, of course, completely agree  
2 with that. I think that where we have focused our efforts  
3 is on recognizing that no matter how good that agreement  
4 was, if implementation is less than vigorous, the agreement  
5 that's done at the end of the day isn't going to do much but  
6 open up our market. And so that's why we've been working  
7 very, very aggressively. And many of the regulators come to  
8 us and seek our help in trying to figure out how to put in  
9 competitive safeguards. So I think that we have been  
10 focused very much on implementation, helping other countries  
11 implement.

12 All right, we're going to move to structural  
13 ownership. I think Pat a couple of questions. We're coming  
14 into the middle of a conversation that's been going on that  
15 I interrupted a bit to get us back on track. But let's go  
16 back to the issues of whether there are certain ownership  
17 structures that raise competitive problems.

18 MR. DEGRABA: I think a start way of putting it is  
19 to note that in the domestic markets we have in the U.S.  
20 probably seven or eight independently owned small business  
21 networks and a lot of providers who don't own any of the  
22 networks were able to then buy capacity on these independent

1 networks, that can also independently increase capacity.

2           If you'll look Trans Pacific, you see a very  
3 different structure. You see sort of everybody or virtually  
4 everybody who wants to go across the Pacific all owning one  
5 network that then expands capacity, sort of as one unit,  
6 rather than a lot of independent capacity owners that can  
7 expand capacity unilaterally. So there's two questions.

8           The first is, why should undersea cable look so  
9 much more different than domestic terrestrial cable? And  
10 the second one is, should we be worried about it?

11           MR. MULETA: Can I go?

12           MR. DEGRABA: Sure.

13           MR. MULETA: I think the ownership issue recently  
14 has become one of financing, not of -- I mean, it's really  
15 driven by financing and where the demand of new services,  
16 such as the Internet are taking various players.

17           We don't think, for example, what happened in the  
18 Pacific is, from our understanding of in the marketplace,  
19 there was a period, a time lag, between the delivery of new  
20 capacity and where the market was heading. So things became  
21 very tight and people looked out and forecasted the capacity  
22 they needed and joined various systems, because there wasn't

1 time to wait to design it yourself and build the third or  
2 fourth or fifth cable system.

3           There is a lot of issue that people were trying to  
4 determine. For example, is it easier to outsource project  
5 management of a construction of a cable, even if you have  
6 the capital? Is it cheaper to pull your capital to build a  
7 system than it is to go on it by yourself? What sort of  
8 risks are you willing to take? Should you let somebody  
9 build it and then take resale rights as you describe the  
10 U.S. to be?

11           So I think various players made their decisions.  
12 And as it happens, given the situation in the marketplace at  
13 the time the decisions had to be made, the one that seemed  
14 the best optimization of risk of capital was the one to join  
15 a consortium type of cable. Because it gave you both the  
16 benefits and -- the benefits of equity participation, which  
17 is that it allows you to have some control, some say over  
18 the capacity of being built and designed. And second of  
19 all, it provided you a better price, because you could  
20 negotiate -- well, let me step back a minute. Because you  
21 were providing capital, you could design the system in a way  
22 that allows you to have competition on the backhaul side,

1 which, in effect, lowers your unit cost for the system.

2           So there's a whole bunch of factors that came  
3 together as to why certain parties made decisions in the  
4 Pacific. So I think our answer is that the ownership issue  
5 is really one of capital today, how fast you can assemble  
6 it, how much risk you're willing to take for your equity,  
7 for your capital contribution. And I don't think we should  
8 foreclose consortium types of bills, because it is a  
9 response of the marketplace to share risk. And I think  
10 that's what's taking place today.

11           MR. DEGRABA: Peter seems to be antsy here.

12           MS. MURRAY: This will just take a second. I  
13 think you need to look at the fact that in Asia, there  
14 really aren't that many markets that are open. You have  
15 Japan, Australia, but when you look at the Atlantic Russian  
16 region, you've got basically all of Europe is open, compared  
17 to Asia. And so you've got a lot more cables, you've got a  
18 dozen or more cables on that route, current and proposed.

19           And Asia, we hope will look more like that, the  
20 Asia Pacific region, we hope will look more like that in the  
21 future, but there's a high amount of risk in the Pacific  
22 Ocean region right now, because, you know there are very few

1 markets that are open. And to require carriers to put out  
2 \$1.2 billion for one route, it seems to be a little  
3 excessive.

4 I don't know that we would personally be willing  
5 to take that risk. We're not primarily in the business of  
6 building cables, unlike Global Crossing.

7 MR. DEGRABA: Let me suggest one thing before I  
8 move on to Peter, and that is, there are various kinds of  
9 risks back when I was in business school we learned. One of  
10 them is the market demand might not show up to meet the  
11 capacity you decide to build. With the forecasts of the  
12 demand that's growing, that's probably not a huge risk in  
13 this market. Of course, it's not my money out there, so  
14 maybe I'm wrong.

15 The second thing, you just don't know what your  
16 competitors are going to do, but if they decide to extend  
17 their capacity, well, you're not spending yours, that might  
18 be a problem. The first kind of risk we're sort of happy to  
19 see protected against. The second kind of risk, if you tell  
20 me that I joined the cable in order to sort of guard against  
21 the second kind of risk, for public policy reasons, we may  
22 not sort of be all that happy with that kind of answer.

1           You know, \$1.2 billion sounds like a lot and maybe  
2 it is and maybe it's not. I'd be sort of more interested in  
3 over the course of time, to sort of look more deeply into  
4 what other kinds of risks that are being assuaged by having  
5 every single carrier be a part owner on the same facility.

6           MR. MULETA: I think the problem I'm having is not  
7 every carrier, at least in the Pacific, on the inquiry in  
8 the Pacific, not every carrier decided to join the  
9 consortium. What happened was that one carrier, one  
10 potential player, decided to build their own. Which is  
11 great, that's what we want competition to do, take the risk.

12          The risk is that everybody else might want to also build  
13 their own system, and they might build it by participating  
14 in a consortium kind of cable. That is the risk that, you  
15 know, that's the risk people were taking when they decided  
16 to build the system.

17           And what we don't want to happen is for the  
18 Commission to step in and say, well, it's wrong for you to  
19 share risk where you find it appropriate. Again, there's no  
20 collusion, the parties are not trying to carve up the  
21 market, all those kind of fears are addressed and are taking  
22 place. I think it's great to have somebody take all the

1 risk and for another players to take parts of the risk,  
2 okay, where their capital allows them to take the risk.

3           So I think what we want is both kind of systems to  
4 take place, okay, so long as it doesn't foreclose from  
5 either system taking from ours. So I think from our point  
6 of view, the second risk we say that there is a, you know,  
7 your competitors might increase your capacity and you'd be  
8 left. That's a real risk in our business, because that  
9 means you're dead. If you don't have capacity on business,  
10 you're dead. So that is something, a significant risk, that  
11 we try and offset.

12           I think you're asking the question in a different  
13 manner, but from our point of view, that's a real risk of  
14 being locked out of a marketplace because there's no  
15 available capacity. Okay, because the demand is always  
16 there, we just can't get the capacity.

17           MS. MURRAY: I think, Pat, you should be a lot  
18 more concerned if there are resale restrictions, but in the  
19 particular consortium cable on Japan U.S., there were no  
20 resale restrictions. You have 45 carriers that are free to  
21 resale capacity and compete against each other that way.  
22 And I'm not sure that the competitive cable market has, I



1 think they may have resale restrictions.

2           So, you know, I think that's quite pro-  
3 competitive.

4           MR. DEGRABA: Peter?

5           MR. COWHEY: Well, I think, Pat, you've made the  
6 right point, which is there's exploding demand and there is  
7 no difficulty in financing a \$1.2 billion venture nowadays.  
8 You take out a non-recourse loan to do this and it is a  
9 risk for a company, but it is a perfectly viable financial  
10 project.

11           So, clearly, these consortia are not existing  
12 because there is no way to finance cables except with a  
13 consortium. It is true that companies and carriers will  
14 vary in their preferences about different types of financial  
15 risks for different purposes, and that's why a competitive  
16 marketplace offering lots of alternatives is what you want,  
17 so that people can take different alternatives.

18           Now the right question, I think, to ask is, does  
19 an FCC effort to try to further enhance competition in  
20 infrastructure in the international cable transport market  
21 require an end to all consortium arrangements? In our view,  
22 it does not. What it does require, just as in many forms of

1 competition rules, is a limit on certain types of  
2 combinations in the marketplace, not an end to all  
3 consortium relationships. So that there should be maximum  
4 flexibility while having selective intervention to limit  
5 particularly overly excessive combinations of market power.

6 MR. VALLS: I think I'd like to add a little bit  
7 of private sector reality from a smaller company. \$1.2  
8 billion is a lot of money and it's very difficult to get  
9 that kind of money in any marketplace to finance a cable  
10 system.

11 I also would like to add that, in our particular  
12 case, we participate in cable consortiums and we also  
13 purchase from private providers of cable. And we really  
14 like to have the choice to be able to do both cases, so that  
15 we would inspire the Commission to do anything necessary to  
16 keep our choices open.

17 MS. ARBOGAST: Can I follow up with just a  
18 question which is, assuming, you know, that we agree that it  
19 is desirable to allow folks to have the choice of how  
20 they're going to do their ownership structure, whether  
21 they're going to spread the risk, is there anything we  
22 should do to guard against the possibility, or is it even a

1 real possibility that the folks, say you've got A, B and C  
2 carriers that are on the consortia carrier, on the foreign  
3 end, you've got someone who's either a monopolist or a  
4 dominant carrier. Should we worry about the fact that the  
5 other carriers that are not on that consortia might be  
6 discriminated against by the folks who have the ability to  
7 discriminate in the foreign market? Should we be worried?  
8 If we should be worried, is there anything we can do?

9 MR. MULETA: Can you say the hypothetical? I was  
10 just trying to understand the hypothetical. Could you  
11 restate it?

12 MS. ARBOGAST: Well, you might just have said the  
13 hypothetical. You have five companies that are U.S.  
14 companies that have decided to become members of a  
15 consortia, and you've got five others that did not, for  
16 whatever reason.

17 On the far end of the consortia, you've got folks,  
18 you have companies that if they're not monopolists, they  
19 have very important market power and the ability to  
20 discriminate. Should we be worried that they may  
21 discriminate against companies that are not part of their  
22 partners on the cable?

1           MR. MULETA: Oh, some sort of collusive behavior  
2 between the people that are in the consortium about how they  
3 allow access to the facilities on the other end, on the  
4 foreign end?

5           MS. ARBOGAST: That discrimination in terms of the  
6 ability to interconnect, once you get to the foreign end,  
7 either of those others.

8           MR. MULETA: From PSINet's point of view, that is  
9 a real risk of all of this, is power that's exerted on the  
10 foreign end. Cause, you know, if you guys can't influence  
11 that, you know, that is a real risk. But I don't think it's  
12 necessarily a behavior of the U.S. carriers that are part of  
13 the consortium. It's not an obvious conclusion for me to  
14 say that the U.S. carriers are sort of, you know, pushing  
15 for this sort of behavior to take place.

16           And part of your investigation ought to be, you  
17 know, what does the arrangement allow for, does it allow for  
18 resale rights? Does it allow for competitive access to  
19 backhaul facilities, all those kind of things? Because what  
20 the consortium members might actually be doing is opening up  
21 the market for those who, for one reason or another, could  
22 not participate because they didn't have the capital, for

1 example, to participate in this \$1.2 billion or \$1.5 billion  
2 bill.

3 So it's not an obvious conclusion that there's bad  
4 behavior on the U.S. carrier's point of view.

5 MR. VALLS: I think I would also like to add, in  
6 our particular case, where we are a carrier's carrier, we're  
7 typically negotiating agreements with operating companies at  
8 foreign ends, a lot of times it's easier for us to be able  
9 to negotiate an agreement if we already participate in a  
10 consortium. For example, we participate in the FLI  
11 consortium today, so it's sometimes easier for us to go into  
12 a country and say we're participants in a consortium and so  
13 that we can work with you easily, because the facility is  
14 already alive in your country.

15 And we know that in those cases, for example, into  
16 Egypt and into India, it's unlikely that we're going to  
17 overcome the monopoly power of the foreign partner for a  
18 long time to come. So participating in a consortium does  
19 give us, it gets us a certain perimeter when we walk into a  
20 country, to be able to negotiate an agreement with that  
21 foreign country.

22 I also like the fact that when we are

1 participating in a consortium, as you mentioned before, we  
2 are basically buying credit that I could spend to develop a  
3 circuit into Egypt or develop a circuit into India or  
4 develop a circuit into Thailand, which allows me to  
5 negotiate with three entities with the possibility of  
6 reaching an agreement with one entity, and then using my  
7 credits to go into that country where I have had a  
8 successful negotiation. Because any of you who have tried  
9 to negotiate with foreign entities know that it's a very  
10 tricky situation.

11 So that I do believe in that sense, the consortium  
12 cables provide us with, it provides us with a flexible  
13 mechanism to be able to enter into several markets when  
14 you're dealing from a carrier's carrier point of view.

15 MS. ARBOGAST: Thank you.

16 MR. TALBOT: Jim Talbot with AT&T. I'd just like  
17 to go back to Pat's earlier question for a moment. As Ken  
18 mentioned earlier, U.S. carriers need low cost capacity.  
19 We're competing in a highly competitive upstream market, and  
20 what we need from our consortium cables is the lowest cost  
21 capacity we can get.

22 And the consortium cables provide this. And the

1 reason they do so is that unlike private cables, consortium  
2 cables are not profit making. They allow all carriers to  
3 take equity positions without the huge risk exposure that  
4 you have if you build your own cable. The risks are greater  
5 on undersea facilities. The Commission has recognized this  
6 in its endorsement of consortium cables for some 35 years.

7           Unlike terrestrial cables, you can't build and use  
8 consortium undersea cables on an incremental basis. You  
9 can't turn them on until you've fully built. Once they're  
10 built, there's very limited things you can do to reflect  
11 latest technological developments. There was a huge  
12 technology risk. All capacity can become outdated very,  
13 very quickly. Per SDM costs as a result of changing  
14 technology have come down from well over \$50 million back in  
15 the late 80s to \$10 million to just a few years ago with TAT  
16 12, 13. When TAT 14 is turned up for service in 2001, the  
17 per SDM are going to be something like \$400,000. You've got  
18 to plan your investments extremely carefully, to make sure  
19 that you can take advantage of the lowest cost capacity to  
20 provide the services, the low-cost services that your  
21 customers require.

22           Global Crossing is well aware of this. They told

1 the FCC in '98 that, in fact, there were very substantial  
2 barriers to entry on building undersea. And it's those kind  
3 of realities that have formed the Commission policies for  
4 many years.

5 MR. DEGRABA: I would throw out one last question,  
6 I guess, at least for this part, to kind of push the  
7 analysis one step forward and don't expect an answer today,  
8 but perhaps in the future, which is, there are compelling  
9 stories about why consortium cable, in general, are good and  
10 sort of I understand them. But I guess the piece that's  
11 missing is, and this is sort of the symbol of my earlier,  
12 perhaps, economist question. There's nothing that I've  
13 heard so far -- maybe the answer is out there and I'll get  
14 it later -- about why there just needs to be one consortium  
15 cable of 480. All the stories I've heard today are  
16 consistent with two consortium cables of 240 each.

17 So that's at least one piece of the analysis that  
18 I think is still missing. If you want to make a compelling  
19 affirmative case for a single cable with a large number, and  
20 the vast majority of the carriers on it, as opposed to a few  
21 independently owned consortia.

22 MR. MULETA: This is John Muleta. I think what



1 we're trying to describe is that this is a very dynamic  
2 marketplace in which in the Pacific, for example, what  
3 happened was that there was a very, very narrow window in  
4 which people had to make a decision. It was either build or  
5 not build. There was one alternative that was announced,  
6 and people were coming up and saying, let's build another  
7 one.

8           And what happened was that a lot of players said,  
9 this is a good way of diversifying our capital. They didn't  
10 foreclose buying on the private cable. All they said was,  
11 this would be a good way of getting, of diversifying our  
12 capital. And if, you know, System A comes in first, we'll  
13 buy in System A if it's priced right. And if System B comes  
14 in and if it's priced right, we'll use that. You know, in  
15 essence, you make that capital commitment.

16           So I don't think there's been any discussion that  
17 it should only be a single cable, a single consortium. It  
18 can be multiple consortiums. But the question is,  
19 assembling the consortium takes time. You know, this is a  
20 lot of negotiations that have to go on. People have to  
21 negotiate among themselves, among multiple parties. So when  
22 you have a narrow window, it happens that only one was built

1 in that instance, and only one consortium and another cable  
2 system, which was a private cable. Okay, so what it gave  
3 was two alternatives into the marketplace. Okay, that's the  
4 important thing to note in that instance.

5           If you look across the Atlantic, there are  
6 consortium cables. They are not called consortium cables.  
7 There are, for example, there is at least one that has been  
8 announced which sounds like a consortium cable, but it's  
9 under the guise of several partners working for a joint  
10 venture. Okay, so it's not clear as to whether it's a  
11 consortium or not. There are other cables that are being  
12 designed the same way, and then there is a public consortium  
13 like TAT 14 in which, you know, it's declared itself as a  
14 consortium.

15           So I don't think your statement that we've been  
16 talking about one or nothing is true. The one thing that  
17 I'd like to note is, in any instance where you have a  
18 consortium, the key thing to keep in mind is that there  
19 should be transparency. Okay, that is one of the things  
20 that the Commission should strive for, the information is  
21 public, that people are aware that who the parties are and  
22 sort of what are the deals that are being struck, just so

1 that the Commission can have an indication about what's  
2 going on in the marketplace.

3 MR. DEGRABA: Thank you.

4 MS. ARBOGAST: Yeah, one more comment on this  
5 topic then we've got two other topics that I want to leave  
6 some time for and we've just about run out of time.

7 MR. COWHEY: My points will be appropriately  
8 brief. The first is, this question of requiring a  
9 consortium to handle risk is one that I would hope at this  
10 point should be a dead question, in the sense that we have  
11 evidence already that the marketplace will finance non-  
12 consortium arrangements to lay full capacity undersea  
13 cables, number one.

14 Number two, the problem for undersea cables is not  
15 substantially different from global satellite systems, where  
16 they have to have the system up before you turn on the  
17 services in full, but you have the ability to finance those  
18 systems, as well. Whether they succeed or fail in the  
19 marketplace is a separate question.

20 The third point I want to make is that the notion  
21 that we need a public utility model here both goes back to  
22 the false notion that public utilities are the best way to

1 build out capacity, competitively and in a technologically  
2 innovative way. And also speaks, carries forward the myth  
3 that these consortium were offered at cost. For example, on  
4 backhaul, they were not offered at cost traditionally. And  
5 I might note that AT&T was always a landing party on these  
6 cables. I'm thus able to make the margins that came from  
7 non-competitively priced backhaul.

8 But the real point I want to conclude with is  
9 that, in fact, much of the discussion here is really about  
10 two points. One, that the Commission should have a clear  
11 set of guidelines to the marketplace on an aid priority  
12 basis about what is likely to be permissible or not. It is  
13 possible to negotiate a joint venture in a timely, efficient  
14 way to share costs among parties if they knew what types of  
15 joint ventures are acceptable.

16 And that leads to the final point which is the  
17 Commission should be focusing on what constitutes an overly  
18 inclusive joint venture to build a cable and defining that  
19 clearly for the marketplace so the marketplace knows how to  
20 deal with that. They can build joint venture, club cables,  
21 consortium cables, but not overly inclusive ones.

22 MS. ARBOGAST: Wait, wait, if we keep on, we'll be

1 here all night and ten seconds, ten seconds, then we're  
2 going to move onto the next thing.

3 MR. MULETA: Okay, ten seconds. Beware of inputs  
4 into the cable construction, so the manufacturers and those  
5 parties actually exert a great deal of influence into the  
6 availability of cable systems, so people that have control  
7 over inputs are people you should be taking a look at, as  
8 well. Not necessarily asserting jurisdiction, but just  
9 taking a look at.

10 MR. TALBOT: There is significant competition in  
11 the undersea cable market. There's a huge amount of  
12 capacity going in, both public and private. In fact, we've  
13 had the leading builder say to us that 80 percent of new  
14 capacity is now private. There is no evidence of any  
15 competitive harm to private cables. The Commission really  
16 should not proceed without facts and I'd submit we've really  
17 seen no facts today that provide a basis for launching a  
18 proceeding to look at policies that have worked well for  
19 years and continue to work extremely well in giving U.S.  
20 carriers a choice of different arrangements to meet the  
21 needs for cheap capacity for their customers.

22 And particularly in launching any kind of

1 inquiring to rules, the just dependency of them would  
2 effectively chill consortium cables until the issue was  
3 resolved, thus helping -- meaning that U.S. carriers could  
4 lose critical planning windows, unable to pursue the  
5 consortium option, because they wouldn't know what the rules  
6 of the game would be going forward.

7 MS. ARBOGAST: Thanks. I just want to throw out  
8 one question that I don't even want comments on right now,  
9 because I want to move to the other topic. But one of the  
10 things that had been triggered on something that you had  
11 mentioned, Kerry, about that the resale, one of the things  
12 that we should look at are whether there are restrictions on  
13 the ability to resell at capacity.

14 The question I just have for folks, that you can  
15 get back to us later, is one of the things that we should  
16 also be looking at whether there are serious restrictions on  
17 a resale until the pool capacity is sold? And I'd just like  
18 people's thoughts on that, but not now.

19 We have two more topics to cover and I think we're  
20 going to need to give each about five minutes. The next one  
21 is, on a going forward basis, again, not looking at any past  
22 or pending proceedings that we have, but on a going forward

1 basis, are there any circumstances where we should be  
2 somehow wary of taking a close look at or otherwise  
3 constraining price differentials, especially volume  
4 discounts?

5 MR. NAKAMURA: This is Kent Nakamura from Sprint.  
6 My understanding from our business people about the  
7 submarine cable business is in some ways, it's sort of like  
8 building a big shopping mall. You need anchor tenants and  
9 you need it so that you can get the money to build the  
10 thing. And the anchor tenants, however, are also in a  
11 position to extract very good prices, just like Nordstrom's  
12 or Bloomingdale's, you know, you can be sure will pay  
13 cheaper rent than, you know, a small fast food place in a  
14 big shopping mall.

15 So volume discounts doesn't necessarily mean that  
16 there's a competitive problem.

17 MS. ARBOGAST: Is there a volume discount, is  
18 there an obscene volume discount as someone had once said in  
19 our meetings? Is there anything that would be so outrageous  
20 that we should take a look at it?

21 MR. MULETA: I think where I would be worried  
22 would be where essentially they're getting the capacity for

1 free.

2 (Laughter.)

3 MR. MULETA: And where there has been no -- you  
4 know you guys try to do that. No, but I think in essence  
5 where the upgrade rights would essentially reflect the total  
6 first that's available. I mean, in that instance, I think  
7 you'd be worried about, and that also, you have to add into  
8 it how much control do they have over the upgrade rights?  
9 Okay, as part of the VPA, if they get a right to upgrade it  
10 or they have the majority and if the ownership is structured  
11 not on, you know, percentage of capital, but let's say,  
12 percentage of capacity, you know, there are things that you  
13 can monkey around with to allow you to essentially have  
14 control over the system. That's really the driver for us to  
15 be very concerned as a private party to this is, if we see  
16 that the VPA is really structured as a way of giving all  
17 control to one or two -- one or a few players.

18 MS. ARBOGAST: Okay, any other comments on volume  
19 discounts?

20 MR. TALBOT: Without getting into the pending  
21 proceeding on that issue, just to point out that you have  
22 dealt with these issues on a case by case, you look at a



1 variety of factors. The one that Kent mentioned, the  
2 competitive nature of the route, and we think those rules  
3 are really adequate to deal with those issues.

4 MS. ARBOGAST: Okay, anything else?

5 MR. COWHEY: I think that if you look at the size  
6 of the differentials that exist in the market on pricing  
7 today, you might reasonably suspect that they reflect some  
8 elements of market power at work inside the pricing system  
9 and I suspect that that's what John was trying to point us  
10 to gently -- or not so gently, maybe.

11 But, in the long run, of course, an efficient  
12 market may have differences in pricing for different  
13 parties, and so it would be better if you had the market  
14 structurally competitive with multiple systems out there, so  
15 that the pricing differentials reflect more efficient  
16 economic incentives, rather than just simply market power.

17 MR. NAKAMURA: This is Kent Nakamura from Sprint.  
18 I am aware of at least one situation on these new cables  
19 where several carriers came together to combine their needs  
20 in order to get a better discount on the price was  
21 essentially arbitraging the price structure.

22 MR. MULETA: Any system, private or common

1 carrier, that disallows parties to, non-dominant players, to  
2 take advantage of discounts by, you know, sort of enjoying  
3 either joint venture partners or some other form, I think I  
4 would be very concerned with, as a public policy matter, you  
5 know. Allowing people to pool their capital to reduce their  
6 costs on either private or consortium cable, common carrier  
7 or non-common carrier cable, should not be outlawed, so long  
8 as it's within the, you know, anti-trust laws as their  
9 behavior.

10 MS. GINSBURG: If I may also add, the Commission  
11 recognized in the context of submarine cables the benefit of  
12 volume discounts in the Guam Philippines order just a year  
13 and a half ago, two years ago. So there are benefits, I  
14 think, and the Commission has recognized that.

15 MS. ARBOGAST: All right, let me move on to the  
16 next one, the last one, which is conditions. Any of you who  
17 have a license know that there are a set of conditions that  
18 we routinely impose on both private and common carrier  
19 licensees. And I would just like to give folks an  
20 opportunity to tell us which of those you think are no  
21 longer necessary, or maybe never were necessary, that we  
22 should consider doing away with? Are there any that you

1 think we should be considering adding on as routine  
2 conditions?

3 MR. NAKAMURA: From Sprint, Kent Nakamura, again.

4 A couple of them like the defense or the Secretary of the  
5 Army moving the cable. Maybe it made sense when there were  
6 very, very few cables so each one was really, really  
7 important strategically. I've been in this business a long  
8 time. I've never been aware of a situation where they  
9 ordered that the cable be moved. Maybe it's a good one to  
10 look at, ask the Defense Department.

11 The second one was, you know, the boilerplate  
12 about accepting the conditions in the license within 30  
13 days. I mean, why not just let them, if somebody doesn't  
14 like it, let them petition for reconsideration the same way  
15 they do from all Commission orders if you don't like it.

16 MS. ARBOGAST: Anything else?

17 MR. TALBOT: I think we concur with that. There's  
18 really no evidence that these conditions are really causing  
19 any problems in the market, and if applicants want to be  
20 relieved of standard conditions, they could request that,  
21 perhaps in their application, and other parties could  
22 comment.

1 MS. ARBOGAST: Okay, does anybody have a desire to  
2 say something on undersea cables in general that hasn't come  
3 up in the topics that we've covered today, within reason?

4 (Laughter.)

5 MR. MULETA: It has actually nothing to do -- we  
6 have prepared a statement that we would like to hand to the  
7 Commission and announce to whoever else wants a copy, we'll  
8 leave it here.

9 MS. ARBOGAST: Okay, thank you.

10 MR. NAKAMURA: I have a leave behind on some of  
11 the local and state permitting problems that are starting to  
12 show up. Just by way of example, the State of New Jersey  
13 was intimating to Sprint that maybe they wouldn't let us put  
14 in the segment of capable between Manasquan, New Jersey and  
15 Puckerton, because they wanted the thing to go on the land  
16 instead of, you know, undersea. It was our impression it  
17 was the Commission, not, you know, the New Jersey Department  
18 of Environment, who decided whether submarine cables were in  
19 the public interest.

20 MS. ARBOGAST: Let us know, now we're running out  
21 of time, but are those sorts of comments designed to ask us  
22 to somehow pre-empt, do something, get involved in this?

1 MR. NAKAMURA: Be aware of it.

2 MS. ARBOGAST: All right, okay. Anything else?

3 MR. COWHEY: Rebecca, I have a question on how  
4 you'd like to proceed. There is a point I want to make  
5 about what I think is the right approach for the Commission,  
6 which I don't think has come out here. But on the other  
7 hand, you may want to open this up to a question and ask for  
8 a last thought or so later on.

9 MS. ARBOGAST: Say what you have to say and let's  
10 give folks an opportunity to respond briefly to it. And  
11 then what I would like to do is either close up or give  
12 folks an opportunity to just address issues that haven't  
13 come up so far.

14 MR. COWHEY: What we've heard today is that a  
15 number of parties have suggested that there may still be  
16 problems in the market from their viewpoint. Clearly,  
17 Global Crossing believes that there is a significant problem  
18 with the performance of this market.

19 Without going into the details of what we think  
20 would be a good remedy, I would emphasize a couple of simple  
21 points about what the Commission's options are. The choice  
22 is not between the status quo and detailed micromanagement

1 of conditions in foreign countries. There is another  
2 alternative available to the Commission. That alternative  
3 would be to focus on ways of defining what constitutes an  
4 impermissibly broad ownership structure for consortium  
5 cable. That is, to set an ownership cap for a cable,  
6 similar to the types of spectrum caps that the Commission  
7 uses in the wireless market.

8 I would suggest that such a measure would focus  
9 upon the control of market power as measured by control of  
10 circuits and half circuits, of full circuits in the market,  
11 of the cable landing parties were the parties who, after  
12 all, do the planning of the cable systems and are the most  
13 influential players in the market.

14 And I would suggest that such a rule, if adopted,  
15 could allow also for the fact that we have heard parties  
16 express an observation that there are variations in the  
17 world market. For example, a limit on ownership  
18 combinations might be forborne for thin route markets and  
19 other measures used, in order to allow a balancing between  
20 the desire to get new capacity out there in the marketplace  
21 and, at the same time, still have some safeguards.

22 Similarly, such a rule might be forborne if the

1 relevant market was not a country-to-country market, like  
2 the U.S. to the U.K., but was, instead, a vigorous regional  
3 market, perhaps, such as the North Atlantic, where there is  
4 a cost effective hubbing mechanism. And thus, in that way,  
5 the Commission could both deal with variations in regional  
6 markets and at the same time have a clear guideline to the  
7 market about how it can put together consortium arrangements  
8 or purely private single investor arrangements.

9           So the one point I would like to be carried away  
10 from today is the choices, not between the status quo and  
11 overly intrusive intervention overseas, nor denying entry to  
12 foreign carriers to the U.S. market. There is a third way,  
13 well grounded in competition tradition and available to the  
14 Commission.

15           MS. ARBOGAST: Would anybody like to respond?

16           MS. MURRAY: Yes, if I could just say a word? We  
17 would oppose overly intrusive intervention in the U.S.  
18 domestic market when you're talking about non-dominant  
19 carriers. And I don't accept that the spectrum analogy,  
20 when you're talking about scarce resources. There may be a  
21 reason to have a cap there, but we're not talking about  
22 scarce resources here.

1           MR. NAKAMURA: I just wanted to paraphrase, to  
2 close something that Dan Campbell, whom some of you may  
3 know, who's in the submarine cable business with AT&T for  
4 many years, told me a couple of times. He said, a  
5 consortium is a great way to organize people to build a  
6 cable. He said in a competitive, in a market that's  
7 becoming competitive, it's not a good way to proceed. It's  
8 very slow, it's very cumbersome, just doesn't function very  
9 well in competitive markets.

10           He thinks that we may have seen the end of it and  
11 so far as Sprint is concerned, if the consortium cable  
12 doesn't change, can't change in response to developing  
13 competition worldwide, then it will die.

14           MS. ARBOGAST: Going, going --

15           MR. TALBOT: I'd just like to add a couple of  
16 points. The approach that we're hearing from Peter would  
17 raise costs to all carriers. I mean, the effect would be to  
18 limit the number of U.S. carriers that could go on any one  
19 consortium cable, leaving the choice, either you have to  
20 build on your own, thus expending much greater capital than  
21 you otherwise would, or purchase more expensive capacity  
22 from private operators like Global Crossing. The price is



1 two to five times cost, instead of the cost-basis level they  
2 put consortium's price level at.

3 The Commission cannot proceed without facts. And  
4 Global Crossing provides absolutely no basis for any  
5 departure from the well established basis on which the  
6 Commission has proceeded in this area case by case.

7 And just a more generic point at close. The  
8 Commission has done a tremendous amount in recent years to  
9 remove unnecessary regulation in the international market.  
10 With a foreign participation order, you no longer have the  
11 pervasive regulation of foreign entry into the U.S. market.

12 With the ISP order, you have removed a lot of regulation of  
13 U.S. carrier's traffic relationships with foreign dominant  
14 carriers, relying on things like competition in the foreign  
15 market and the no special concessions rule.

16 There is absolutely no reason to reverse course  
17 and go in totally the opposite direction to introduce much  
18 greater regulation of non-dominant U.S. carriers that have  
19 no affiliation with the foreign market power that Global  
20 Crossing has pointed to.

21 MS. ARBOGAST: Thank you. I'd like to close by  
22 thanking everybody for their long attention, for no break,

1 for many of the thoughtful comments that came through today.

2 I'd like to just repeat the invitation that if in the next  
3 short, relatively short period of time, two to three weeks,  
4 if people would like to come in and set up meetings with  
5 staff to talk about any of these issues or any other issues  
6 that you'd like us to consider, to please do so through Liz  
7 Nightingale. Do you want to give your phone number?

8 MS. NIGHTINGALE: Yes, 418-2352.

9 MS. ARBOGAST: And again, thank you, everyone.

10 (Whereupon, at 5:15 p.m., the hearing in the  
11 above-titled matter was concluded.)

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