1 what information the act of the filing yields today, the
2 purposes of giving you meaningful information for regulating
3 the market. The question of the particular vehicle,
4 whether, for example, you need a 214, you have the right,
5 even if you don't require a 214, to require different types
6 of information as part of the licensing application.
7 So I don't think that we should equate the two.
8 And the point I'm just making is that the information you
9 were gathering at the time of licensing is important
10 information for the Commission's ability to monitor and
11 assess the market. And it should be careful about losing
12 that information.
13 That is separate from the question of whether or
14 not you insist on a 214 for everybody involved.
15 MR. MULETA: Rebecca, I think I concur with Peter.
16 This is John Muleta at PSINet. I'm not knowledgeable on
17 the econ-speak, but I think what we're also seeking is
18 transparency. I mean, I think that it's very important to
19 have transparency, especially when you have very large
20 systems with very big owners that could tend to dominate the
21 proceedings.
22 So everybody, I think, should be after
23 transparency, if we could get it. I think the test for us,
24 from PSI's point of view, is what do you plan to do with the
25 capacity? If you plan to terminate it and use it in the

1 U.S., you should be a licensee or at least should be
2 acknowledged as part of the licensing procedure. What form
3 it takes, you know, or not, it's up to the Commission to
4 decide what's efficient. But we want transparency as much
5 as possible in these systems, at least today.
6 MS. ARBOGAST: One thing that I'd just throw out
7 for people to think about is if we separated it out and
8 received, required certain information upfront on the
9 application and don't require 214, that's the second stage
10 of the transfer, and that's when, if you care about who's
11 owning it, you care about who comes in and succeeds in the
12 ownership. And so it's not just enough to get it the first
13 time and if you don't also track transfers.
14 Moving on to backhaul. I think I'd like to
15 separate this to backhaul in the U.S. and backhaul in
16 foreign countries, because one of the things that we've
17 heard from a lot of folks who have been in, talking to us
18 informally, is that they're having in some important markets
19 a terrible time getting backhaul and I'd like to start out
20 by talking about whether there's anything that you think we
21 ought to be doing, where the problems on backhaul in the
22 U.S. that we should be taking a look at, and if so, what
23 should we be doing? And then move to problems that there
24 may be in backhaul in other countries.
25 So, starting with the U.S., any comments?

1 MR. NAKAMURA: This is Kent Nakamura for Sprint.
2 As I think some of the people here know, Sprint has been
3 raising issues about backhaul in the U.S. for some time now.
4 We think the Commission has done a good job on some of
5 these things. We probably haven't told you enough about it.
6 I'll give you an example. In the AT&T
7 International non-dominance proceedings, one of the
8 commitments that AT&T agreed to as a condition of being
9 regulated as non-dominant, was to put out for public bid the
10 so-called terrestrial restoration network. And what that
11 network is is a land network that links all the cable
12 stations on the East Coast of the U.S. with the consortium
13 cable stations, so if one of them gets cut or goes out, you
14 can cut over. You know, on a hot standby, to a back up
15 cable.
16 Until the Commission got involved in this, this
17 provision of service was not there, not regulated. They'd
18 send a bill and we would pay it. But after AT&T put this
19 function out to bid, in Sprint's case, at least, we are
20 saving in excess of $1 million a year as a direct result of
21 doing, having that bid put out competitively. And that, we
22 think, is the kind of thing that the Commission can do,
23 should do, and is good at.
24 MS. ARBOGAST: Thank you.
25 MR. TALBOT: Could I just comment generally about

1 U.S. end issues here? If you look back over the past four
2 years, the Commission has now had four major proceedings
3 that have looked in great detail at market power issues on
4 the U.S. end of submarine cables, beginning in the AT&T non-
5 dominance proceeding that Kent referred to, to the AT&T BT
6 proceeding which has just concluded.
7 And the findings in those proceedings are
8 consistent and very clear, that no U.S. carrier has any
9 market power on the U.S. end of submarine cables. No U.S.
10 carrier has any market power over cable stations and
11 backhaul is competitive. And that the issues regarding
12 cable stations really raise contractual matters, not
13 competitive issues.
14 Those findings really resolve a lot of these
15 issues and really leave very little to be the subject of any
16 further proceeding.
17 MS. ARBOGAST: Thank you. Any other views?
18 MR. MULETA: I think from PSINet's point of view,
19 it's the whole inquiry has to go as to the design of the
20 system that you're approving at that point. For example, if
21 there's no commitment in the CMNA for, you know, just
22 readable or non-discriminatory access to backhaul facilities
23 that, again, would throw a signal about the market power
24 that's being exercised by the persons providing the backhaul
25 facilities.

1 From our point of view, we spend a significant
2 amount of time as a contractual matter getting those things
3 down on paper, as an enforceable right that we have in a
4 cable system. Currently in the system that we're involved,
5 we have not seen a problem on the backhaul side. But that
6 doesn't mean it won't rear its ugly head, but it's just
7 something that the Commission ought to be aware of, and
8 review as it reviews its application, to be looking at for
9 certain things, like are there two separate parties who are
10 providing the backhaul or is it a single entity at all
11 points? You know, that makes a difference about the market
12 power that they're exercising over that particular cable
13 system.
14 MS. ARBOGAST: Do you or anybody else have any
15 thoughts on what we should do? We look at this and we find
16 something, we find that the CMNA doesn't allow collocation
17 in the U.S. or we find that there's only one backhaul
18 provider that's allowed. Should we do anything?
19 MR. MULETA: I think from our perspective, that's
20 when you should ask, start asking questions and, you know,
21 that's when the inquiry goes into, for example, is this a
22 thin route or is it a very competitive route? If it's
23 competitive, then I would have lesser concerns about there
24 being a problem. You know, people are willing to take on
25 contractual risks, even though it's apparent on its face

1 that there are, you know, systemic design issues and that's
2 fine, you know. That's a risk they're willing to take. But
3 if it happens to be a thin route, and maybe this is how
4 people are exhibiting their market power, you know, we ought
5 to be worried. As a matter of policy, as a business -- as a
6 business issue, you know, we'll deal with that separately.
7 But as a Commission reviewing it as a potential action,
8 those are evidences of a systemic problem that might take
9 place.
10 MR. COWHEY: I have no wish to relitigate various
11 matters about cable landing licenses of the past. I do
12 think the fact that we're here today indicates that the
13 Commission felt that investigation of these matters
14 suggested that there were competition problems in the market
15 that still required further understanding and analysis and
16 possible action.
17 Having said that, as a prelude to saying that I
18 don't think the past decisions have disposed of these
19 questions, there are just two points I want to make. The
20 first is that an undue emphasis on backhaul overlooks the
21 fact that, at least in my judgment, it is the totality of
22 the control over the various inputs to the provision of
23 international transport services that have to be looked at,
24 not just one segment such as backhaul. Although certainly
25 backhaul is one of the worst problems in the marketplace.

1 The second point I would make is that as you
2 rightly said, you would expect that all other things being
3 equal, that the U.S. market is better than foreign markets
4 in regards to this input to the market, comparatively. It
5 does not say that the U.S. market operates perfectly, to say
6 that it is better. Then the question becomes in regards to
7 the foreign market backhaul, which performs worse, in
8 general, than the U.S. market, what measures would best
9 address that? And I think that one of the very difficult
10 problems for the Commission is the one that it perennially
11 faces when it tries to undertake regulatory intervention in
12 foreign markets in order to insure competition.
13 It is that these measures are often hard to
14 monitor compliance with, hard to enforce, and even to the
15 extent that the Commission both has the means and the will
16 to do so, there are ramifications politically that make this
17 as an ongoing task, difficult for this Commission to
18 maintain.
19 So while the Commission is not helpless, this is a
20 very messy job. And if it is difficult to maintain
21 conditions about the availability of critical infrastructure
22 in the United States and the local exchange market, it is
23 even more difficult to do so in foreign markets.
24 So it's for that reason that Global Crossing, at
25 least, thinks that the backhaul problem should be viewed as

1 part of the package of the inputs to production and the
2 Commission should be looking for a method of encouraging
3 competition that will be less intrusive in terms of day-to-
4 day intervention in the marketplace of foreign countries
5 while still providing the right incentives. We'll get to
6 that later, I have a feeling, but that's simply the point I
7 want to make about backhaul.
8 MR. NAKAMURA: Kent Nakamura from Sprint. I
9 wanted to echo a lot of Peter's thoughts because I took a
10 look at the legislative history of the Landing Act. And
11 there was a very interesting quote from Senator Kellogg who
12 introduce the bill, and I thought it was worth repeating.
13 He said, "Let me give the senator an illustration. The
14 first thing that occurred to the committee was that we
15 should make a general rule that no cable should land in the
16 United States which connected with a cable having a monopoly
17 in a foreign country. It immediately was seen in some cases
18 that it not only would operate against American interests,
19 but would be impossible to comply with at all, because a
20 monopoly to the foreign country was neither under the
21 control of the American country, who were the American
22 government, and we found in several cases where it was
23 necessary either to grant such landing licenses or deprive
24 ourselves of cable facilities." Not a new problem.
25 MS. ARBOGAST: Kerry?

1 MS. MURRAY: Kerry Murray from MCI World Com. I
2 will say I think the Commission's policies have served the
3 market quite well and the market is becoming more and more
4 competitive. There are more carriers that are building
5 cable landing stations and, for example, in U.S. cable,
6 we've got seven backhaul providers on the U.S. side, and
7 actually seven on the Japan side, which is completely
8 unprecedented. That means you've got seven carriers
9 competing for backhaul traffic.
10 And I don't know where you would draw the line
11 between consortium cables and non-consortium cables. I'd be
12 curious to hear about what Global Crossing does in terms of
13 making cable station access available and competitive
14 backhaul. I mean, I don't know how you make this
15 distinction between consortium and non-consortium cables and
16 how is it valid?
17 MR. MULETA: Before Peter is writing his notes,
18 I'll just make one point. One of the things that happened
19 on Japan U.S. was that there were parties that were not the
20 traditional carriers, that insisted very strongly that there
21 be a diversity in backhaul providers and minimum, especially
22 at the landing station side.
23 So this is something that the Commission ought to
24 encourage and ought to be taking a look at as they're
25 reviewing, if it has a chance to review these applications.

1 But I think what we want to make sure of is that this is
2 not something that people willingly did, but it was a matter
3 of the market dynamics and of certain, you know, carriers
4 insisting that's the way they're going to invest their
5 capital.
6 So what we want to do is not have the Commission
7 set rules that prevents that sort of behavior not to happen
8 again. I mean, so JUS is very unusual and we hope it
9 continues in that direction with other cable systems.
10 MS. ARBOGAST: Could you just restate the last
11 sentence again? You want the Commission to --
12 MR. MULETA: I mean, what we want is the
13 Commission to encourage people and I think this is about the
14 structural ownership issues. When you're financing a cable
15 system and essentially you're raising a lot of equity in the
16 marketplace. And what that allows various actors to do is
17 be able to exert the power of their capital in the way this
18 system is designed.
19 So, for example, if it's entirely a private cable,
20 what happens is the design is the design. You know,
21 whatever that person wants to insist on, whatever backhaul
22 they want to put in it, you're sort of captive to that
23 design. If it's a more public, let's say, more consortia-
24 like cable system and it is more open in terms of equity
25 investments, and so your dollars actually really count, then

1 you can insist on certain behaviors on the, for example, on
2 the side of the landing station providers. You know, that
3 they have backhaul providers that are competing, that they
4 have a couple of diverse or multiple diverse landing
5 stations. These are all, and that there be non-
6 discriminatory access to those facilities, okay.
7 And we can enforce those through contractual
8 terms. So that's something that the Commission has to keep
9 in mind as it looks through the structural ownership issues.
10 Is that behavior being allowed to take place? And we
11 should not set any rules in place that will prevent that
12 sort of activity from taking place.
13 MS. ARBOGAST: Thank you. Peter?
14 MR. COWHEY: I had a feeling you were looking at
15 me. Let's start with the question of how robustly
16 competitive is this market today in backhaul and in cable
17 landing stations? Again, without trying to relitigate past
18 proceedings here, I think that the point that I would simply
19 suggest that the International Bureau staff look at is the
20 current degree of concentration of ownership of cable
21 landing stations and a backhaul in the key, let's say,
22 European and Asian markets. And take a look at the
23 ownership by parties of those cable landing stations and of
24 backhaul, and see how much structural diversification there
25 really is.

1 If, for example, you looked at the United States,
2 the United Kingdom, France, Germany and Japan, would the
3 Commission find a significant degree of control or cable
4 landing stations by a handful of parties? I would suggest
5 that the record would show that without dragging us through
6 all the specific numbers.
7 The second question that the Commission might ask
8 itself, to the extent that it decides to focus on this input
9 to production is whether or not the weights and prices
10 charged for backhaul, let's leave aside the U.S. market for
11 the moment, for informed markets for backhaul, are truly
12 competitively priced. And one has to recognize that the
13 amount of money involved in the pricing of backhaul is a
14 very significant revenue pool.
15 For example, if you took a look at a typical
16 modern cable, let's choose a random one, JUS, there are
17 about 2,500 STM1s on the cable. And the revenue pool off
18 those cables is potentially quite significant.
19 Again, without trying to estimate the precise size
20 of the revenue pool, if you were talking about revenue for
21 backhaul of, let's say, $1 million a year for STM1, that
22 would be a revenue pool of $2.5 billion per year. This is a
23 lot of money on a cable that for the transoceanic link only
24 costs $1.2 billion to build. It gives you some sense of the
25 magnitude of the pools of revenue involved.

1 Again, I'm not trying to actually get to the point
2 where we're relitigating the past. What I'm really trying
3 to do is lead to my final point, which is that I think on
4 the face of it, you would find that this market remains
5 significantly concentrated. Then the right question for the
6 Commission is, well, how do you think about this in terms of
7 competition? The point that at least Global Crossing has
8 been making is that the traditional consortium cables have a
9 combination of all ownership that have the ability to
10 coordinate and an incentive to coordinate their control of
11 inputs to production in such a way as to be able to exercise
12 market power.
13 It would be highly unusual in terms of the
14 Commission's traditional economic analysis to believe that
15 the newcomer entrant in the marketplace should be analyzed
16 within the same framework and has the same ability to
17 exercise market power. But those are the questions the
18 Commission should be asking itself.
19 MS. GINSBURG: Mindy Ginsburg with Via-Tel. A few
20 points, I think, for what Peter said and some of the other
21 comments we've heard. Via-Tel is usually described as a new
22 entrant, small carrier, maybe even the smallest carrier at
23 this table. I would urge in this whole process that when
24 you start to look at the aggregate market power on a cable,
25 you then take the next step of whether there's harm in the

1 market, as a result of the ownership structure. And it
2 seems to me on, certainly to us on the transatlantic route,
3 that with the incredible number of new entrants, not just
4 Via-Tel, but the incredible number of new carriers on cables
5 providing service in Europe, with the decline in prices on
6 the major routes, perhaps there isn't harm in this market.
7 And doing sweeping, conducting a sweeping examination of the
8 ownership issues may not be a productive endeavor.
9 And that brings me to a point that Jim made
10 earlier, which is remember to keep in mind the international
11 implications of anything the Commission does. Even the
12 simple asking of a question raises an expectation that the
13 Commission is going to regulate a market. And I cannot
14 overstate that. So I know who witnessed evidence of that is
15 the European Commission's Receipt Study, where they've said
16 they're going to watch what the FCC does closely and examine
17 whether they need to do some regulating, do additional
18 regulation and take steps that may affect the entrancability
19 to obtain market access there.
20 So I would urge you throughout this process to
21 think carefully and consider carefully that sometimes the
22 asking of a question is not merely the asking of a question,
23 but that bringing me back to Peter's point of, it is the
24 fact of ownership structures, the various models that exist
25 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
23 buy end-to-end capacity on cables. This means that U.S.
24 carriers are in foreign markets, looking for multiple cable
25 stations, competitive provision of backhaul. And that is a

1 very pro-competitive thing. It's consortium cables where
2 U.S. carriers are able to negotiate these arrangements with
3 foreign carriers. On private cables, U.S. carriers don't do
4 the negotiating. It's the private cable operator and, in
5 fact, those cables at the foreign end are frequently far
6 more restrictive than consortium cables.
7 One final point. Under the old Ecko test, we
8 didn't used to let foreign carriers with market power into
9 the U.S. market on their route, where they were closed at
10 the foreign end. That was how we dealt with foreign market
11 power problems. If you step back and think about what we're
12 doing here is, we're potentially limiting foreign market
13 access by non-dominant U.S. carriers, unaffiliated with any
14 carrier on the foreign end. This is a very perverse,
15 reverse kind of Ecko test, that would actually limit U.S.'s
16 carriers access to some of the most cost-effective
17 arrangements for getting their traffic into foreign
18 countries.
19 This is not what any of us intended, we believe
20 the USDR Commission intended, in encouraging us to open our
21 markets under the WTO agreement, and we think would actually
22 impede our ability to take advantage of the benefits, the
23 hard-won benefits we got through the WTO agreement.
24 MS. ARBOGAST: Could you just spell out your
25 thinking a little bit on how, what actions would make it

1 harder for U.S. non-dominant carriers to enter the foreign
2 market?
3 MR. TALBOT: Well, it appears that the direction
4 that Peter's comments would push you would be in looking
5 critically at foreign-end arrangements for things like
6 backhaul and cable station access and conditioning or
7 denying applications, based on how competitive they are.
8 That basically is pushing you in a kind of reverse Ecko
9 position, where you're limiting U.S. carrier's ability to go
10 on cables that offer them the most cost-effective means to
11 get their traffic into foreign markets, even though they
12 have no market power in the U.S., no market power on the
13 route, and no affiliation with any carrier with market power
14 at the foreign end.
15 MS. ARBOGAST: I think John had something, then I
16 assume Peter?
17 MR. COWHEY: Thank you, John. If only the
18 Redskins had such an effective defense. There are several
19 things I think that were just said by Mindy and Jim that I
20 think are worth thinking about very carefully.
21 The first is the question of changes in the
22 marketplace and the implications of any decision by the FCC
23 to undertake a further action in this area, for either
24 promoting or retarding changes in the marketplace. The
25 second point is the point about whether there are

1 differences in the world among different routes and
2 different parts of the world market. And the third question
3 is whether or not the FCC, if it undertakes further action,
4 should focus on trying to micromanage the foreign end of a
5 U.S.-originating and terminating cable. Let me speak to
6 each of those very briefly.
7 First, as to the implications of the FCC deciding
8 to undertake further action, I think that Global Crossing
9 would agree that we are in a world where there are winds of
10 change. There are currents that are opening possibilities.
11 But it is equally true that there are significant profits
12 and incentives for resisting speedy change in the
13 marketplace, and where we are is in a balance between these
14 two sets of forces.
15 Now, any economist at the Commission would tell
16 you that you should always look forward and then look back
17 in good strategic analysis. And essentially, if the major
18 players in the marketplace with market power believe that
19 going forward there is significant Commission scrutiny,
20 attention and seriousness, as might be indicated, for
21 example, by undertaking an MPRM, they will start to
22 recognize that the winds of change are winning. That the
23 status quo is less viable.
24 If, on the other hand, they look forward and see a
25 world in which the Commission has said that it is concerned,

1 but not going to undertake meaningful action, there is a
2 greater temptation to see if you can show off the status quo
3 to slow down change in the marketplace.
4 Now the way in which Commission action would be
5 read depends on what the Commission does in an MPRM. For
6 example, the European union study did say that it would look
7 carefully in the future at what the FCC was doing. The same
8 study noted that it was costing more to build out
9 terrestrial networks in Europe than it takes to build an
10 undersea cable between the United States and Europe, and it
11 noted, curiously enough, that individual carriers are
12 willing to do this in terrestrial Europe, but you seem to
13 still have consortia dominating the building of
14 international cables.
15 So it's not clear that the European union would
16 read an action by the FCC that really was designed to deal
17 with the structural problem of competition in an adverse
18 way.
19 Now the second point, the difference in routes.
20 Indeed, I think that everyone here can agree that there is
21 some variation among regional routes. I certainly heard
22 agreement that thin routes were different than high traffic
23 routes. But I believe that there is also a significant
24 difference between some very selective high traffic routes
25 and most high traffic routes. There are a few places in the

1 world where there is more advanced competition, mainly in
2 the North Atlantic, than in the rest of the world. And an
3 FCC proceeding should be able to deal with that distinction.
4 The final point is the question of should the FCC
5 introduce some sort of a perverse, reverse effective
6 competitive opportunities test that leads it to deny foreign
7 carrier entry in the U.S. or micromanage foreign markets.
8 You know, we completely agree with this point. The FCC
9 shouldn't be engaged in micromanaging the foreign market.
10 That is not the same as the notion that the FCC should stand
11 pat or do nothing. There are other alternatives available
12 for FCC action, and that's where I hope we turn to later.
13 MR. MULETA: I think PSINet would like to add one
14 thing to this discussion which is, if you can eliminate the
15 notion of half circuits, that would really help. Because
16 that's one of the fictions that causes an imbalance in the
17 marketplace. If a foreign carrier has no interest in
18 terminating capacity into the U.S., then they can sort of
19 avoid coming under the purview of competitive rule, you
20 know. I'm assuming that the U.S. has good competitive
21 rules. But, you know, if they can have a half-circuit
22 mechanism that allows them to say that's your problem on the
23 U.S. side, you guys deal with it, we'll keep our markets
24 closed off.
25 Our preference, as noted by AT&T and you see a lot

1 of American carriers, we want to go whole hog, we want to
2 buy the whole piece, and we want to force the foreign
3 carriers to open up their markets, okay. And interestingly
4 enough, people who are in the Internet business, know that
5 the U.S. is a very important market to the foreign carriers.
6 So that is what's forcing a lot of change in the
7 marketplace.
8 So the fact is the U.S. is where everybody wants
9 to get to on the Internet, for whatever reasons, is causing
10 people to want to buy the whole circuits and keep them, you
11 know, keep the inputs to themselves. And if we can force
12 the foreign carriers to act that way, that will force their
13 governments and their sort of closed systems to open up
14 their markets for competitive backhaul landing station
15 access.
16 Our belief, our experience, tells us that Japan,
17 okay, is beginning to change in that sort of way. We see
18 other markets where we don't see that happening and we sense
19 it's because people are allowed to keep with the half
20 circuit fiction that goes on. So, in particular, one that
21 I'd like to bring up in a public forum is Hong Kong, just to
22 be noted, okay.
23 MS. ARBOGAST: What I'd like to do is I've just
24 been passed a note that says we're, I think, out of time on
25 this topic. This topic, predictably, has sort of slopped

1 over into the next one, which is ownership structure. What
2 I'd like to do before moving into discussing more some of
3 the economic issues of the ownership structure that are
4 keyed up for the next one, is take that comment and move off
5 of it to talk about problems that folks are having in
6 foreign markets and ideas that you have of things that we
7 can do, either in the context of this sort of proceeding, or
8 any other forum that we have for action that would help do
9 things like eliminate the half circuit model or open up
10 backhaul cable landing competition in general in the foreign
11 markets.
12 What could we do to eliminate the half circuits?
13 MR. MULETA: I think as a condition of granting
14 the license, you can ask people that they have full capacity
15 on it, that they have to own it end to end. There are
16 commercial ways that you can get rid of -- I mean, if a
17 company, for one reason or another would prefer only to have
18 a half circuit, there are commercial ways of dealing with
19 that. So I don't think it's a barrier for doing business.
20 But it certainly, this would send a signal towards opening
21 up the other side of the market. That's when we really see
22 where the problem is from PSINet's point of view, is on the
23 foreign side on backhaul. And things that cannot be dealt
24 with on a contractual manner.
25 You know, when you have a regulation that says,

1 oh, you have to be a national carrier to terminate the
2 capacity in that carrier, and then you have ownerless
3 conditions for becoming a licensed carrier, a Type 1,
4 whatever. That creates a huge barrier for succeeding in
5 that marketplace, for opening a backhaul and landing station
6 access.
7 MR. NAKAMURA: Kent Nakamura from Sprint. I'm not
8 sure what kind of problems that John is referring to, which
9 I think are very real problems, are really, you know, the
10 problems of the cable systems. Tom McInerney is here. He
11 can correct me if I'm wrong. But I think the way most of
12 these modern consortium cables are organized is that you
13 have new points. You know, it's like money. You buy, with
14 the new points, you buy halves, you buy wholes on these
15 things. You spend it any way you want. You can buy it on
16 particular segments. I think that's right, isn't it, Tom,
17 you can put it wherever you want to terminate it? I mean,
18 once you get to the other side, you may have a problem with
19 the kinds of things that John was talking about, but I'm not
20 sure that it's a problem of the cable systems' organization,
21 per se.
22 MR. MULETA: If I can just make a comment towards
23 that, I mean, I think what we were trying to answer is the
24 question of where do you have problems with backhaul and
25 landing stations? And what we see is where the players have

1 no incentive to be in a competitive market. That causes a
2 problem.
3 You know, if you have one of the landing station
4 parties that simply refuses to play on both sides of the
5 market and they say, well, you know, we'll just buy our own
6 half circuit, whatever, and that's the only thing we need
7 out of this, whether they do it through the new process, you
8 know, however they get to it, as long as they have no
9 incentive to be in a competitive market, that creates a
10 problem. That's what we're trying to push for, and that's
11 something that the FCC can help.
12 I'm just throwing out one concept, that maybe
13 there could be a better way of doing it.
14 MS. ARBOGAST: Any thoughts or comments on
15 problems people are having on the foreign end and things
16 that we can do to help?
17 MS. GINSBURG: Mindy Ginsburg. What was done,
18 frankly, in the JUS cable was very helpful. The discussion
19 and examination of the agreement that ended up clarifying
20 the availability of backhaul was incredibly helpful to small
21 carriers. And as Kerry noted earlier, you know, we see
22 seven backhaul options on the Japan side. That's great. So
23 we would endorse continued more of a case by case
24 examination of issues like that.
25 MS. ARBOGAST: Even though I have the scars to

1 show for that. Any other thoughts?

2 MR. NAKAMURA: Kent Nakamura from Sprint, again.
3 My understanding and again I'd ask Tom to confirm this is
4 that the three landing stations owned by separate owners in
5 Japan and the two landing stations in the U.S. were set up
6 only for the application, never showed up at the Commission.
7 I mean, the Commission shouldn't, at least from what my
8 internal clients are telling me, is that the Commission
9 shouldn't underestimate the power of that competition is
10 bringing, even to the world of submarine cable systems.

11 I think on China U.S., the Commission encouraged
12 the applicants to reopen the cable systems through the
13 initial parties, but really, that wasn't driven as much by
14 the Commission as it was by, you know, commercial
15 imperatives. We saw that they weren't getting the business
16 and that if they didn't sell off this capacity, they'd be
17 stuck with it, paying the operations and maintenance for 25
18 years while Japan U.S., which was, you know, eight times
19 bigger and much, much cheaper was coming along right behind
20 it. So the competitive process is very, very important and
21 should not be underestimated.

22 The other thing that Sprint, at least, is afraid
23 of is that if the Commission gets into the role of trying to
24 extract concessions from foreign countries in exchange for
25 allowing the cable landing license, in addition to the, you

1 know, legal problems with the WTO agreement and what have
2 you, our business here is that, you know, these foreign
3 carriers are going to say you are too hard to do business
4 and we don't want to do business with you anymore. We'll
5 land the cable in Canada or we'll land it in Mexico and
6 we'll just bring it over terrestrial facilities, so that we
7 don't have to deal with, you know, these difficult problems
8 anymore.
9 And then if that happens, the danger ends up, the
10 U.S. carriers will be excluded potentially as initial
11 parties on some of these cables. And if you can't get in as
12 an initial party, a lot of times, you know, you don't get
13 the best pricing on these things. You have to come in later
14 and pay more, in which case the Commission would end up
15 raising prices for the U.S. carriers and, ultimately, for
16 the consumers.
17 MS. ARBOGAST: Any other comments?
18 MR. MC INERNEY: Tom McInerney from AT&T. I just
19 want to support what Kent just suggested. I think the
20 current environment right now is one that allows what I
21 consider to be a non-dominant U.S. market right now, not
22 dominated by any one carrier, to be very competitive in the
23 open market.
24 I think that the negative side of that would be
25 that very much in that position, we can't have a situation

1 where temporary delays or significant delays occur with a
2 questioning nature of the Commission. The Commission should
3 make decisions, in my mind, very, very quickly. And the
4 complication with that is that we have a world that changes
5 very, very quickly and is a little misleading in its data.
6 The example that I'll highlight for this is, I'll
7 go back, I know we're not doing any pleadings here, but
8 since we've brought it up a number of times right now, Peter
9 has, we'll look at the marketplace in the Trans-Pacific.
10 What we had to do in Trans-Pacific was compare a 400 gigabit
11 cable that was announced to an 80 gigabit cable that was
12 announced. Now even in the meetings, we knew that they were
13 both technology equivalent, but yet, we were challenged why
14 we weren't moving to 640 with the 400 gigabit, instead of
15 looking at the 640 for the 80 gigabit, okay.
16 The complication with that was that the foreign
17 end just couldn't understand the direction competitively
18 when a larger cable with more competition was being put into
19 the marketplace, okay. So the understanding of the
20 environment in the foreign end was very difficult, okay.
21 Likewise, the leveraging that we were doing already, and
22 John mentions the truth -- I mean, it was very much a U.S.
23 battle into the foreign end. We had already moved to three
24 landing points, much more competitive than the current offer
25 from PC-1 on a competitive basis for backhaul. So they just

1 couldn't understand our definition of competition.

2 They clearly didn't understand the foreign markets

3 of looking at what the definition of the carrier ownership

4 was. At the time they were both filed as private, so

5 clearly that wasn't a definition they even understood. So

6 it's really the effect on the marketplace that we have to

7 take a look at.

8 One other thing. Things are changing and one of

9 the comments I want to make right now is that we really do

10 need to look at where these marketplaces will be going.

11 Many times, the filings that are associated many of these

12 cables are filed at a very low level, not including and

13 incorporating the upgrade. So if you look at a filing,

14 Trans-Atlantic, originally, in a private cable environment,

15 it might look like the equivalent of the Trans-Atlantic

16 capacity when it's first originally filed. But the

17 Commission isn't told where that capacity might go and it

18 isn't told what the level of upgrade is capable of doing.

19 So we also have to watch the timing of the data

20 that is coming into the Commission on market power, etc.

21 And the complication I have right now is that the foreign

22 end many times understands that and knows that technology

23 and can't understand the logic behind the Commission's

24 conclusion. They think that there will be more capacity,

25 therefore, more competition, and clearly, in many cases,

1 they see more participants as more competition. Thank you.

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

3 to get into an argument about the amount of capacity and how

4 these things are measured at the moment. The point I simply

5 want to make is that there's something ironic to some of the

6 conversation here. The irony is the following, that many of

7 the long distance carriers in the United States would tell

8 you, rightly, in my judgment, that it is not sufficient to

9 say that there are winds of change in the local exchange

10 market.

11 They would say, instead, that there are structural

12 reasons and capability why local, incumbent local exchange

13 carriers will exercise market power in a way that will slow

14 the evolution of competition and improvement in consumer

15 benefits.

16 Similarly here, we have the beginnings of some

17 competition in the marketplace, much like MSF and Teleport

18 in the 1980s. But we have something that is far short of a

19 robustly competitive market. And we still have a common

20 practice of the largest carriers in the market combining

21 into common cables, in which there is an ability and an

22 incentive to exercise market power. So that there is

23 change, no doubt, but to conclude from that that there is

24 sufficient change that meets the goals of the Commission, I

25 doubt.

1 MR. NAKAMURA: If I could, Kent Nakamura from
2 Sprint. First, I think the situations are distinguishable.
3 Of course, the ILEC industry is one over which the
4 Commission has full jurisdiction because of the '96 Telecom
5 Act. And second, when responding to Peter's second point,
6 speaking only for Sprint -- maybe they're not one of the
7 largest carriers -- but our incentive, our desire, is to
8 obtain high quality facilities at the lowest possible cost
9 and that's it.
10 I was talking to an internal client, asking about
11 this. He said we're agnostic. He said if it helps our
12 bottom line to buy capacity on a private cable, we'll do it.
13 We own a lot of NECI one and --
14 MS. ARBOGAST: I think we're moving into a
15 different topic and I'd like to stay for a minute on --
16 we'll get to that, but I'd like to stay for a minute on any
17 other comments that people have about what could be done
18 legitimately and effectively by us to respond to the
19 problem.
20 Frankly, we've heard from virtually every one of
21 you who have come in and talked to us, which is problems of
22 getting into the foreign market and having competition on
23 that foreign end. So, can we just stay on that for a minute
24 and then we'll switch to the other competition issues? I'd
25 just like to ask if people have any other thoughts on the

1 issue of what we can do?

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

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

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

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

1 MS. ARBOGAST: Any other comments about the
2 problems folks are having on the foreign half of this?
3 MR. NAKAMURA: Question for you. Some of these
4 things I thought had been addressed by the WTO and is the
5 Commission talking to some of these foreign regulators?
6 MS. ARBOGAST: Oh, we do all the time. Yeah,w we
7 do and all the time, yes. But, it's usually -- we talk to
8 them, that sort of action that I think is very important.
9 We'll continue to do it. It's an educational process. It
10 is talking to them about why it is at the end of the day
11 fundamentally in their own interest to liberalize and open
12 up their markets to competition.
13 Just this month we've met with Singapore. We're
14 going to be meeting with Hong Kong. We had a video
15 conference talking about competitive safeguards with Japan
16 that was scheduled for tonight, but that will be postponed.
17 We had bilats in Europe. I know you know, many of you
18 know, that we've been working extensively with the German
19 regulator on this, the Italian regulator. I mean, that is a
20 big piece of what we do and we continue to do it, and we
21 will continue to do it. We're very committed to that.
22 Good question and I guess I assumed that everybody
23 in this room knew those efforts that we had been taking,
24 that we continue to take with our counterparts in other
25 countries. And I was asking whether there were any other