DIRECT TESTIMONY

OF

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TELECOMMUNICATIONS DIVISION

ILLINOIS COMMERCE COMMISSION

Petition of Nexus Communications, Inc.

For Designation as an Eligible Telecommunications Carrier

Under 47 U.S.C. § 214(e)(2)

DOCKET NO. 06-0381

JULY 7, 2006

Introduction

Q. Please state your name and business address.

A. My name is Jeffrey H. Hoagg. My business address is 527 East Capitol Avenue, Springfield, Illinois 62701.

Q. By whom are you employed and in what capacity?

A. I am employed as the Principal Policy Advisor in the Telecommunications Division of the Illinois Commerce Commission

Q. Please briefly describe your educational background and work experience.

A. I graduated from Cornell University with a Master of Arts in Economics in 1986. I was admitted to doctoral candidacy at Cornell and completed all requirements for the Ph.D. in Economics other than completion of the dissertation. My major field of graduate study was Industrial Organization and Regulation.

I have held the positions of Telecommunications Tariffs and Rates Analyst, Telecommunications Policy Analyst, and Special Assistant to the Deputy Chair of the Commission at the New York Public Service Commission. I performed economic and policy analyses of industry and regulatory issues, and formulated recommendations for Commission members and other decision-makers.

In 1993 I became Special Advisor to Commissioner Barrett of the Federal Communications Commission. I provided analyses and policy recommendations on a wide range of telecommunications issues, and functioned as liaison with the offices of other Commissioners, the Chairman and the FCC's Common Carrier Bureau. I prepared testimony, speeches and presentations for delivery before Congress and various regulatory and industry groups, and drafted informal and formal documents for issuance by the Commissioner and his office.

I have been employed by the Illinois Commerce Commission in the Telecommunications Division from 2000 to the present. During this time, I have conducted analyses and provided policy recommendations on a wide range of telecommunications issues. I have provided testimony on behalf of Staff of the Illinois Commerce Commission in numerous docketed proceedings.

<u>**Overview and Summary**</u>

Q. What is the purpose of your testimony?

A. My testimony provides broad policy guidance and specific recommendations to the Commission concerning the application of Nexus

Communications, Inc. ("NEXUS") for eligible telecommunications carrier ("ETC") status in Illinois. I address appropriate requirements that should be met by NEXUS in order to qualify for ETC status. I also address the appropriate public interest analyses the Commission should undertake to evaluate NEXUS's ETC application.

Q. Please summarize your testimony.

A. I conclude the Commission should, in large measure, apply requirements similar to those set forth in the FCC's March 17, 2005 Report and Order in C.C Docket 96-45 ("ETC Order").[1] This order enumerates the requirements the FCC will apply to any application for ETC status that comes before it. The requirements of the ETC Order are "permissive" and are not binding upon this Commission in its evaluation of any application for ETC status. However, the FCC strongly encourages states to utilize the analyses and requirements contained in the ETC Order. Among other things, this would achieve a reasonable level of consistency in treatment of ETC applications across the nation. This argument, and others raised by the FCC in support of state utilization of its ETC Order requirements are, in my opinion, persuasive. In my opinion, the FCC requirements are, for the most part, appropriate and reasonable. Had the FCC not issued its ETC Order, I believe the Commission should have and would have determined to apply standards and requirements similar to those set forth

[1] Federal Communications Commission, Report and Order ("ETC Order"), CC Docket No. 96-45, FCC 05-46, Released March 17, 2005.

in the ETC Order. In addition to these requirements, I believe the Commission should require that the applicant demonstrate its willingness and ability to comply with all applicable ICC Code Parts (notably including applicable portions of Code Parts 730, 731, 732, 735 and 757) as a condition for ETC designation.

<u>Standards and Requirements for ETC Designation</u>

Q. What fundamental requirements are imposed directly upon ETCs by the federal Act?

A. These fundamental requirements are:

> A common carrier designated as an ETC must offer the services supported by the federal universal service mechanisms throughout the designated service area. The ETC must offer such services using either its own facilities or a combination of its own facilities and resale of another carrier's services. The ETC must also advertise the supported services and the associated charges throughout the service area for which designation is received, using media of general distribution. In addition, an ETC must advertise the availability of Lifeline and Link Up services in a manner reasonably designed to reach those likely to qualify for those services. [2]

In addition, the federal Act[3] requires that either the FCC or a state commission must determine that an ETC designation serves the public interest, convenience and necessity before granting ETC status.

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[2] <u>ETC Order</u>, par. 17

[3] Section 214 falls under the Communications Act of 1934 ("34 Act"). Section 254 of the 1996 Telecommunications Act ("96 Act") amended the Communication Act's prior directives

Q. What standards should be applied by the Commission to determine if granting NEXUS's ETC application is in the public interest?

A. These standards may be determined broadly at the discretion of the Commission, consistent with Section 214(e) of the federal Telecommunications Act, and all other applicable state and federal law. I recommend that the Commission utilize the basic requirements and analyses of the FCC's ETC Order as a "minimum baseline" from which to conduct the Commission's own analyses. Moreover, I recommend that the Commission require ETC applicants to demonstrate both willingness and ability to comply with all applicable Commission Code Parts as a condition for ETC designation.

Q. Why do you recommend that the Commission utilize ETC Order requirements as an appropriate "baseline" to apply to new ETC applicants?

A. I believe the analytical framework and requirements contained in the ETC Order reflect an appropriate balancing of key competing considerations and interests. Speaking generally, it balances the potential benefits to consumers of additional competitive entry with protections and requirements intended to ensure consumers benefit directly from that entry and use of USF support to promote that entry.

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regarding ETC designation. Consequently, Staff will refer to both the 96 Act and the 34 Act as the "federal Act".

There are two overarching reasons to impose upon new ETC applicants obligations identical or similar to those imposed by the FCC. The first is to achieve better “targeting” of universal service support. The ETC Order requirements will help ensure that universal service support flows to uses that will directly benefit consumers. In my opinion, this is the essence of the FCC’s “five year plan” requirement, which is intended to ensure that universal service support received by a newly designated ETC is used to upgrade, improve, extend and/or operate facilities in ways that will directly benefit customers. I consider such a five-year USF spending plan an essential “bedrock” requirement for ETC designation for any new entrant.

A second compelling rationale is that these requirements will help ensure that customers (particularly in rural areas) continue to have appropriate protections reflecting their circumstances, even as increased competitive entry is facilitated through new ETC designations. It is virtually axiomatic that competitive entry into the serving territories of existing ILECs will financially weaken these incumbent carriers to some (unknown) extent.
This is a largely unavoidable corollary to receipt of USF support by new entrants, since such funding will facilitate new entrants’ efforts to win customers from incumbent ILECs. Thus, increased competitive entry ultimately is accompanied by some danger that over time, some incumbent carriers (particularly rural carriers) may not be able to fully

maintain their traditional provider of last resort (POLR) status.[4] Among other things, the Commission thus should ensure that new entrant ETCs are reasonably well positioned to step into the role of POLR. ETC obligations should be formulated, at least in part, to assist the newly designated ETC to generally prepare to undertake POLR obligations if needed in the future. I believe this is a fundamental objective of several obligations contained in the FCC's ETC Order. This Commission's ETC requirements also should be designed to advance this basic objective.

Q. In your opinion, is the FCC's ETC Order consistent with the intent of the federal Act with respect to new entrant ETC designations?

A. Yes. I believe this is illustrated by requirements contained in Section 241(e) of the Act:

> A State commission shall permit an ETC to relinquish its designation as such a carrier in any area served by more than one ETC. Any ETC that seeks to relinquish its ETC designation for an area served by more than one ETC shall give advance notice to the State commission of such relinquishment. Prior to permitting a telecommunications carrier designated as an ETC to cease providing universal service in an area served by more than one ETC, the State commission shall require the remaining ETC or ETCs to ensure that all customers served by the relinquishing carrier will continue to be served, and shall require sufficient notice to the remaining ETC or ETCs to permit the purchase or construction of adequate facilities by any remaining ETC. The state commission shall establish a time, not to exceed one year after the State commission approves such relinquishment under this paragraph, within which such purchase or construction shall be completed.[5]

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[4] In contrast to larger incumbent carriers, rural incumbent carriers generally have fewer resources and revenue streams to draw upon to offset such customer losses.

[5] 47 USC, Section 214(e)(4).

In my opinion, this illustrates a basic precept of the federal Act concerning ETC status that is advanced by the FCC ETC Order. Accepting ETC designation is a weighty commitment. ETC designation is about more than simply receiving universal service funds if a carrier can show that it will provide rural customers with more choice in services. Section 214(e) effectively conveys the following message: once you're in, you can't simply opt out, as in a competitive market devoid of universal service support. Section 214(e) reflects the fact that receipt of USF support is accompanied by specific obligations, and regulators should ensure these obligations are fulfilled by an ETC.

Q. What fundamental obligations has the FCC determined are appropriate for ETCs?

A. The FCC determined that an ETC must demonstrate:

> (1) a commitment and ability to provide services, including providing service to all customers within its proposed service area; (2) how it will remain functional in emergency situations; (3) that it will satisfy consumer protection and service quality standards; (4) that it offers local usage comparable to that offered by the incumbent LEC; and (5) an understanding that it may be required to provide equal access if all other ETCs in the designated service area relinquish their designations pursuant to section 214(e)(4) of the Act.[6]

[6] ETC Order, par. 20.

Q. Briefly summarize how the FCC requires ETCs to satisfy these general obligations.

A. The ETC must satisfy the first item:

> (1) by providing services to all requesting customers within its designated service area; and (2) by submitting a formal network improvement plan that demonstrates how universal service funds will be used to improve coverage, signal strength, or capacity that would not otherwise occur absent the receipt of high-cost support.[7]

The ETC must satisfy the second item by showing:

> it has a reasonable amount of back-up power to ensure functionality without an external power source, is able to reroute traffic around damaged facilities, and is capable of managing traffic spikes resulting from emergency situations.[8]

With respect to the third item, the ETC must:

> make a specific commitment to objective measures to protect consumers…. In addition, an ETC applicant, as described *infra*, must report information on consumer complaints per 1,000 handsets or lines on an annual basis. [9]

Concerning the fourth item, the ETC must:

> demonstrate that it offers a local usage plan comparable to the one offered by the incumbent LEC in the service areas for which the applicant seeks designation.[10]

For the final item, the ETC must acknowledge it may be required:

> to provide equal access to long distance carriers in their designated service area in the event that no other ETC is providing equal access within the service area.[11]

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7 ETC Order, at par. 21.
8 Id. at par. 25.
9 Id. at par. 28.
10 Id. at par. 32.
11 Id. at par 35.

Q. Please briefly summarize the FCC's "five-year service quality improvement" plan.

A. The FCC requires that an ETC applicant submit the following as a condition for ETC designation:

> a five-year plan describing with specificity its proposed improvements or upgrades to the applicant's network on a wire center-by-wire center basis throughout its designated service area. The five-year plan must demonstrate in detail how high-cost support will be used for service improvements that would not occur absent receipt of such support. This showing must include: (1) how signal quality, coverage, or capacity will improve due to the receipt of high-cost support throughout the area for which the ETC seeks designation; (2) the projected start date and completion date for each improvement and the estimated amount of investment for each project that is funded by high-cost support; (3) the specific geographic areas where the improvements will be made; and (4) the estimated population that will be served as a result of the improvements.[12]

Q. Please provide your overall assessment of this requirement.

A. In my view, such a plan is a vital component of any new ETC application. I recommend that the Commission reject any new ETC application that does not contain a sufficiently <u>detailed</u> and <u>verifiable</u> multi-year USF support spending plan. I think it is appropriate to describe this requirement more generally as a "multi-year USF spending" plan, since the nature and contents of such a plan will differ depending upon whether the ETC uses its own facilities to provide service, or leases network facilities from another provider. In the latter case, the plan generally would not involve physical investment in the applicant's own network facilities.

In my opinion, the Commission must understand how the applicant would utilize any and all USF support funding received in order to determine whether granting an application for ETC status would be in the public interest. The Commission must be able to ascertain that USF support will be utilized in a manner that directly benefits customers. Only a ***detailed*** and ***verifiable*** spending plan that: (1) accounts for the expenditure of all USF support projected to be received; and (2) permits adequate tracking and confirmation of such spending (through annual reports filed by the ETC) would adequately serve this important purpose. I believe such a plan should be on record and part of an applicant's commitments prior to any decision by the ICC to grant an ETC application.

Q. Would you recommend any departure from or modification of this requirement as you have described it?

A. In my view, a specific limited departure is warranted in the case of an applicant whose requested ETC serving territory would qualify it to receive *no* "high cost" USF support, but *only* "low income" USF support. This would occur when the applicant's requested ETC serving territory is the territory of an incumbent LEC that itself receives *only* "low income" USF support (and no "high cost" USF support). In this circumstance the ETC applicant would be eligible to receive only funds to support provision of subsidized rates for qualified Lifeline and Linkup customers. The

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[12] ETC Order, par. 23.

requirements of an acceptable spending plan could then be readily and directly achieved. This follows from the fact that "low income" USF support reimburses an ETC only for the amount of the Lifeline and/or Linkup subsidization actually provided, on a per-qualified customer basis. Thus, provided accurate accounting is maintained, the requisite use of USF support to directly benefit customers is easily verifiable. In such a case, I believe the ETC applicant could satisfy the multi-year spending plan requirement by certifying the following:

> i) that all "low income" USF funding received would be used to support subsidized rates for Lifeline and LinkUp customers;
>
> ii) that the applicant would timely notify the ICC (within 3 weeks) of any future change that would render the applicant eligible to receive USF "high cost" support;
>
> iii) that in the event of any such future change, the applicant would timely file (within 6 weeks) a revised 5 year spending plan to account for appropriate use of all "high cost" USF support received.

I would recommend that under such circumstances the failure of an ETC to meet these criteria, or the failure to satisfy any other applicable requirement, result in the revocation of ETC designation (upon proper notice and hearing).

Q. Please briefly describe the FCC's ETC reporting obligations.

A. All ETCs currently must certify annually that universal service support is used for its intended purposes. The FCC also requires the following annual filings:

(1) progress reports on the ETC's five-year service quality improvement plan, including maps detailing progress towards meeting its plan targets, an explanation of how much universal service support was received and how the support was used to improve signal quality, coverage, or capacity; and an explanation regarding any network improvement targets that have not been fulfilled. The information should be submitted at the wire center level;

(2) detailed information on any outage lasting at least 30 minutes, for any service area in which an ETC is designated for any facilities it owns, operates, leases, or otherwise utilizes that potentially affect at least ten percent of the end users served in a designated service area, or that potentially affect a 911 special facility (as defined in subsection (e) of section 4.5 of the *Outage Reporting Order*). An outage is defined as a significant degradation in the ability of an end user to establish and maintain a channel of communications as a result of failure or degradation in the performance of a communications provider's network. Specifically, the ETC's annual report must include: (1) the date and time of onset of the outage; (2) a brief description of the outage and its resolution; (3) the particular services affected; (4) the geographic areas affected by the outage; (5) steps taken to prevent a similar situation in the future; and (6) the number of customers affected;

(3) the number of requests for service from potential customers within its service areas that were unfulfilled for the past year. The ETC must also detail how it attempted to provide service to those potential customers;

(4) the number of complaints per 1,000 handsets or lines;

(5) certification that the ETC is complying with applicable service quality standards and consumer protection rules, *e.g.*, the CTIA Consumer Code for Wireless Service;

(6) certification that the ETC is able to function in emergency situations;

(7) certification that the ETC is offering a local usage plan comparable to that offered by the incumbent LEC in the relevant service areas; and

(8) certification that the carrier acknowledges that the Commission may require it to provide equal access to long

> distance carriers in the event that no other eligible telecommunications carrier is providing equal access within the service area.[13]

Q. Do you recommend that this Commission impose these reporting requirements upon new ETC applicants?

A. Yes. I believe these requirements would help ensure a newly designated ETC continues to appropriately discharge its obligations over time. However, I would recommend one minor modification. In the case of an ETC receiving solely “low income” support, reporting on the multi-year USF spending plan could be significantly simplified, consisting of identification of the support amount received, and appropriate details concerning the amounts utilized to provide subsidized services to Lifeline and Linkup eligible customers.

Q. The FCC found that if requirements of the ETC Order are met, a separate demonstration of adequate financial capabilities need not be a prerequisite for federal ETC designation. Do you agree with this finding for Illinois?

A. Yes. I believe the FCC’s decision not to impose such a requirement is well-reasoned. Examination of financial resources primarily would elucidate an ETC’s ongoing ability to provide services and meet its obligations as an ETC subsequent to grant of ETC status. I agree with the FCC conclusion that the “operational” and reporting requirements of

[13] ETC Order, par. 69.

the ETC Order provide effectively the same type of assurance regarding ongoing capabilities to satisfy ETC obligations.

I therefore recommend that the Commission consider requiring such financial analysis only if there is substantial question raised concerning the financial soundness of a particular applicant. Under such circumstances, a direct showing of financial adequacy could be appropriate as a condition for ETC designation.

Q. Do the requirements of the FCC's ETC Order apply to previously designated ETCs?

A. It appears the FCC may intend to apply many of these requirements to carriers that previously have been designated ETCs, including incumbent LECs.[14] This Commission has not yet examined whether any requirements applied to new ETC applicants should apply to existing ETCs. I believe the Commission has broad discretion in this regard. In any event, this question is not before the Commission in this docket, and need not be addressed in order for the Commission to rule fully on NEXUS's application for ETC status.

<u>Public Interest, Convenience and Necessity</u>

[14] ETC Order, par. 2.

Q. How does the FCC conduct its public interest analyses to determine whether an ETC application should be granted?

A. First, the burden to prove that ETC designation is in the public interest is placed solely and squarely upon the ETC applicant. Second, all specific requirements of the ETC Order must be satisfied for a "positive" public interest finding. Third, if the ETC applicant seeks designation below the study level area in the territory of a rural ILEC, a "cream-skimming analysis" must show that any existing cream skimming potential does not render ETC designation contrary to the public interest. Finally, the FCC conducts a (largely qualitative) cost-benefit analysis that includes the following:

> *Consumer Choice*: The Commission takes into account the benefits of increased consumer choice when conducting its public interest analysis. In particular, granting an ETC designation may serve the public interest by providing a choice of service offerings in rural and high-cost areas. The Commission has determined that, in light of the numerous factors it considers in its public interest analysis, the value of increased competition, by itself, is unlikely to satisfy the public interest test.
>
> *Advantages and Disadvantages of Particular Service Offering*: The Commission also considers the particular advantages and disadvantages of an ETC's service offering. For instance, the Commission has examined the benefits of mobility that wireless carriers provide in geographically isolated areas, the possibility that an ETC designation will allow customers to be subject to fewer toll charges, and the potential for customers to obtain services comparable to those provided in urban areas, such as voicemail, numeric paging, call forwarding, three-way calling, call waiting, and other premium services. The Commission also examines

> disadvantages such as dropped call rates and poor coverage.[15]

The public interest analysis may consider the impact of ETC designation upon the federal high cost fund. As with virtually all other aspects of the ETC Order, the FCC encourages states to conduct similar analyses. It notes, specifically with respect to the high cost universal service fund:

> [O]ne relevant factor in considering whether or not it is in the public interest to have additional ETCs designated in any area may be the level of per-line support provided to the area. If the per-line support level is high enough, the state may be justified in limiting the number of ETCs in that study area, because funding multiple ETCs in such areas could impose strains on the universal service fund.[16]

I recommend that the Commission proceed with its own public interest analyses broadly along the lines applied by the FCC. I also recommend that the Commission require appropriate compliance with all applicable Commission Administrative Code Parts as a condition for finding that a grant of ETC status is consistent with the public interest in Illinois.

NEXUS's Application for ETC Designation

Q. Has NEXUS demonstrated that it meets each of the requirements set forth in the federal Act and the FCC's ETC Order, as well as the Illinois-specific requirements you recommend herein?

[15] ETC Order, par. 44.
[16] ETC Order, par. 55.

A. NEXUS addressed some of the requirements for ETC status in its initial application, but did not address a number of the applicable and appropriate requirements. Notably, NEXUS has not addressed many of the reporting and provisioning requirements contained in the FCC's ETC Order. In my opinion, NEXUS clearly has the burden to adequately address and resolve <u>all</u> applicable requirements prior to a grant of ETC status.

Q. Please briefly summarize the ETC requirements initially addressed by NEXUS in its application for ETC status.

A. NEXUS avers the following in its application:

- NEXUS currently offers all of the supported services required to be offered by an ETC;
- NEXUS provides the required supported services through use of at least some of its own facilities;
- NEXUS will conform its advertising to Commission requirements (specifically those contained in Administrative Code Part 757);
- NEXUS is willing to provide written notification of universal service programs to directors of various governmental agencies within NEXUS's serving territory;
- NEXUS seeks ETC designation only in non-rural wire centers in the serving territory of AT&T Illinois, and does not seek designation in any wire centers designated as rural;
- NEXUS seeks receipt only of Lifeline and Link-Up ("low income") funding support, and does not seek so-called "high cost" funding support:
- NEXUS offers certification that it would timely notify the Commission of any future change rendering it eligible to receive "high cost" funding support,
- NEXUS offers certification that in the event it became eligible to receive "high cost" funding support, it would timely file a revised 5-year spending plan to account

> for appropriate use of all such high cost support received.

These aspects of NEXUS's application constitute what I would view as a "very good start" toward adequately addressing all requirements applicable to ETC applicants. Staff is willing to work informally with NEXUS to assist it in most expeditiously satisfying (through testimony and/or other future filings) all appropriate and applicable ETC requirements.

Q. Please provide your opinion concerning an appropriate "multi-year USF spending" plan for NEXUS.

A. Since NEXUS seeks ETC status only for AT&T's serving territory, if granted ETC status NEXUS would receive only "low income" (as opposed to "high cost") support. As previously discussed, I believe NEXUS could satisfy the multi-year spending plan requirement by certifying the following:

> i) that all "low income" USF funding received would be used to support subsidized rates for Lifeline and LinkUp customers;
>
> ii) that it would timely notify the ICC (within 2 weeks) of any future change that would render NEXUS eligible to receive USF "high cost" support;
>
> iii) that in the event of any such future change, it would timely file (within 6 weeks) a revised 5 year spending plan to account for appropriate use of all "high cost" USF support received.

NEXUS indicated in its application that it is willing to provide such certifications to the Commission. Thus, it appears that NEXUS is able to satisfy the multi-year spending plan requirement appropriate for recipients of “low income” USF support.

Q. Please summarize the most notable current deficiencies in the NEXUS ETC application.

A. The Nexus application does not address a number of the requirements outlined in my testimony above. For example, Nexus has not provided a description of its local usage plans, or described why it believes its plans are comparable to those of the incumbent. Nor has Nexus yet certified that it will provide service, upon reasonable request, to all requesting customers in its designated ETC service area. Nexus also has not demonstrated that it is able to remain functional in emergency situations.[17] Nexus must attest that it will offer equal access to long distance carriers to all its customers within the proposed ETC service area, or at minimum acknowledge that it may be required to do so in the future. Moreover, Nexus must satisfy all applicable reporting requirements (which include annually submitting to the ICC all required information concerning the following):

a. Any service outage lasting at least 30 minutes, for any service area in which NEXUS is designated an ETC, that potentially affects at least ten percent of NEXUS’s end users. Specifically the report will include: (1) the time and date of the onset of the outage; (2) a brief description of the outage and its resolution; (3) the particular services affected; (4) the geographic areas affected by

[17] Because Nexus provides service in the proposed ETC service territory via UNEs leased from the incumbent, Staff believes that its ability to remain functional in emergency situation will be equivalent to that of the incumbent carrier. However, it is Nexus’ burden to clearly demonstrate such capabilities on this record before the Commission.

the outage; (5) steps taken to prevent a similar situation in the future; and (6) the number of customers affected;

b. The number of requests for service from potential customers within our ETC service area that were unfulfilled for the past year. NEXUS will also detail how it attempted to provide service to those potential customers;

c. The number of complaints per 1000 handsets or lines;

d. Certification that NEXUS is complying with applicable service quality standards and consumer protection rules, including NEXUS's compliance with all rules set forth in the ICC Administrative Code Parts 730 and 735; and

e. The amount of USF funding received by NEXUS during the reporting period.

Q. Does this conclude your direct testimony?

A. Yes.