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IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

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In re: : Chapter 11
: :
: Case No. 11-13188 (KJC)
OPEN RANGE COMMUNICATIONS :
INC., :
: :
Debtor :
----- :

Washington, D.C.

Wednesday, December 14, 2011

Interview Under Oath of:

JONATHAN S. ADELSTEIN

called for oral examination by counsel for the
Official Committee of Unsecured Creditors, pursuant
to agreement, at the law offices of Polsinelli
Shughart, 1152 15th Street, N.W., Suite 800,
Washington, D.C., before Leslie A. Todd, RPR/CSR, of
Capital Reporting Company, a Notary Public in and for
the District of Columbia, beginning at 1:45 p.m.,
when were present on behalf of the respective parties:

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<p style="text-align: right;">34</p> <p>1 Q Did you call anyone at the FCC? 2 A Not at that point, no, because there was 3 no decision made. 4 Q Did you at some point later call anyone 5 at the FCC about this issue? 6 A I later did. I think -- I don't remember 7 exactly when, but I did talk to people at the FCC at 8 some point, yes. 9 Q Who did you speak to? 10 A I spoke to Paul de Sa and Zac Katz. 11 Q What are their positions? 12 A Paul de Sa was -- oh, gosh, he's the head 13 of an office over there that -- strategy planning 14 office. I don't know the exact title of it. And Zac 15 Katz is a legal advisor to the chairman. 16 Q What were the substance of those 17 conversations? 18 MR. RANDOLPH: You may answer that 19 question to the extent that you don't get into 20 information that is predecisional and deliberative. 21 To the extent that you can answer it without talking 22 about those areas, you may, but those areas are</p>	<p style="text-align: right;">36</p> <p>1 process privilege on this question? 2 MR. BARTELS: Yes. 3 (A discussion was held off the 4 record.) 5 MR. RANDOLPH: You may answer that 6 question. 7 THE WITNESS: The substance of the letter 8 was that I was concerned that if Open Range 9 couldn't continue to operate in those frequencies 10 that it could result in their demise, which would 11 have a negative impact on our portfolio, and in turn 12 on our ability to make additional loans for rural 13 broadband. 14 BY MR. BARTELS: 15 Q That letter was to whom? 16 A To the chairman of the FCC, Julius 17 Genachowski. 18 Q Were you encouraging the FCC to 19 reconsider whatever adverse decisions they had made 20 to that point respecting Globalstar? 21 A You know, I would have to review the 22 letter to tell you exactly. I don't know -- you</p>
<p style="text-align: right;">35</p> <p>1 subject to the deliberative process privilege. 2 MR. BARTELS: And we don't recognize that 3 privilege with respect to that question, but... 4 THE WITNESS: Well, we discussed what the 5 prospects were for continued operation of Open Range 6 in its either current spectrum licenses or other 7 possible arrangements for its continued operation. 8 BY MR. BARTELS: 9 Q What was the time period of those 10 discussions? 11 A You know, I don't remember exactly when 12 we did it. I know I sent a letter to them at some 13 point in this process. I believe the letter was in 14 June of 2010. Is that right? I don't remember when 15 that letter was. But -- so it was around -- I 16 believe it was -- we didn't discuss anything until 17 after there were some adverse decisions made, I 18 believe. 19 Q And what was the substance of your 20 letter? 21 MR. RANDOLPH: May I have a moment with 22 him to talk about the scope of the deliberative</p>	<p style="text-align: right;">37</p> <p>1 don't have a copy of it? 2 Q Well, I don't have a copy of it here with 3 me today. 4 A Okay. I don't want to characterize it 5 without having a chance to review it. 6 Q I'm just asking for your recollection, if 7 you remember whether you were -- 8 A I can't remember if it -- 9 Q -- encouraging any action -- 10 A -- was reconsideration or positive action 11 going forward. I can't recall. 12 Q Was there any positive response from FCC 13 on that issue? 14 MR. RANDOLPH: Objection. Vague. 15 BY MR. BARTELS: 16 Q In other words, how did they respond to 17 your letter, the FCC? 18 A I was never given a formal response. 19 Q Did you get an informal response? 20 THE WITNESS: Do you have any concern 21 about that? 22 MR. RANDOLPH: That's a "yes" or "no"</p>

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<p style="text-align: right;">38</p> <p>1 question. You may answer the question. 2 THE WITNESS: Yes. 3 BY MR. BARTELS: 4 Q What was the informal response? 5 MR. RANDOLPH: You may answer that 6 question to the extent that you don't get into 7 predecisional, deliberative information. 8 THE WITNESS: I don't know how much I can 9 say on that. 10 BY MR. BARTELS: 11 Q Who gave you the response? 12 A Zac and/or Paul. 13 Q And -- 14 MR. BARTELS: Lloyd, you are not going to 15 permit him to tell me what the FCC's response was to 16 his letter? 17 MR. RANDOLPH: The constraints that I 18 have asked for are those that are permitted by the 19 deliberative process privilege. And to the extent 20 that he can't reveal information without getting into 21 the deliberative process area, yes, we have a problem 22 with that.</p>	<p style="text-align: right;">40</p> <p>1 testimony isn't that it's privileged. It's your 2 objection that it's privileged. I'm asking you to 3 clarify that that's -- that that's the assertion. 4 MR. RANDOLPH: If the witness doesn't 5 have any recollection about the response, and after 6 all the response is oral, as I understand his 7 testimony, other than information that is 8 predecisional and deliberative, it is covered by the 9 deliberative process privilege as recognized in NLRB 10 versus Sears & Roebuck, 421 U.S. 321, and the Dow 11 Jones case in the D.C. Circuit, 917 F.2d 571. 12 MR. SILBERGLIED: Okay. We have your 13 point. We will reserve rights. 14 MR. BARTELS: And, Lloyd, whose decision 15 is this that we're talking about it's predecisional 16 to? 17 MR. RANDOLPH: Well, the United States is 18 a single entity, and the deliberative process 19 privilege covers both intraagency and also 20 interagency governmental decision making. That's 21 what the Supreme Court said in NLRB versus Sears & 22 Roebuck. So whether it's FCC's or RUS's doesn't</p>
<p style="text-align: right;">39</p> <p>1 But I don't know what was said. He's the 2 one with the recollection, and I think what he is 3 telling you is that everything he can recall about 4 that involves predecisional, deliberative information 5 about what the policy should be. 6 Is that a fair characterization of your 7 recollection? 8 THE WITNESS: Yes. 9 MR. BARTELS: Okay. We don't believe 10 that the privilege applies, but if you are 11 instructing him not to answer that, we will move on. 12 MR. SILBERGLIED: Can I just make a point 13 here? The letter itself was entered on the public 14 docket of the FCC. 15 MR. RANDOLPH: And that is why I allowed 16 him to answer the previous question. 17 MR. SILBERGLIED: So you are saying that 18 the response to the letter that was public docket is 19 now privileged? I just want to clarify -- 20 MR. RANDOLPH: That is the witness's 21 testimony. 22 MR. SILBERGLIED: Well, the witness's</p>	<p style="text-align: right;">41</p> <p>1 matter. 2 MR. BARTELS: Because the agencies are 3 one in the same in the sense that they are all the 4 United States of America. 5 MR. RANDOLPH: Correct. 6 BY MR. BARTELS: 7 Q So just to follow up, Mr. Adelstein, your 8 understanding is that the January 2009 loan agreement 9 was premised on -- the application and the granting 10 of that loan was premised on enforceable licenses 11 between Open Range and Globalstar, correct? 12 A Yes. 13 Q And the United States undertook due 14 diligence to make sure that those licenses were 15 valid, correct? 16 A Yes. 17 Q And then the United States -- did the 18 United States later take adverse action with respect 19 to those Globalstar FCC licenses? 20 A Well, that's open to interpretation. The 21 licenses were never suspended. They were always 22 provided a special temporary authority to operate.</p>

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<p style="text-align: right;">42</p> <p>1 So at no point in the process were -- at no point in 2 the process were those licenses ever taken away from 3 Globalstar -- from Open Range. So they were allowed 4 to continue to operate them until the day they 5 suspended operations. 6 Q What day did they suspend operations? 7 A Fairly recently. I think in the last -- 8 after their bankruptcy. 9 Q Do you know what year that was? Was that 10 this year? 11 A Yeah, it was this year. That was in the 12 last couple of months. More recently, in the last 13 month. 14 Q What adverse action, though, had the 15 United States taken with respect to -- earlier you 16 said that there was some adverse decisions that had 17 been made by the FCC related to Globalstar. As a 18 former commissioner of the FCC, I imagine that you 19 were familiar with or made yourself familiar with 20 what those adverse decisions were. 21 MR. RANDOLPH: Objection as to form. 22</p>	<p style="text-align: right;">44</p> <p>1 (Exhibit No. 87 was marked for 2 identification.) 3 BY MR. BARTELS: 4 Q Let me hand you what has been marked as 5 Exhibit 87. 6 And there actually appears to be two 7 letters attached. One dated September 10th, 2010, 8 from you, and there's also one attached that is an 9 exhibit that is from July 14th. 10 Can you identify this document? 11 A Yes. 12 Q What is it? 13 A It's a letter from me to the chairman, 14 and a letter from Ken Kuchno to Bill Beans, the CEO 15 of Open Range Communications. 16 Q And is this the letter you referred to 17 earlier where you had written to the chairman of the 18 FCC about the Globalstar issue? 19 A Yes. 20 Q Okay. And what were you requesting of 21 the chairman in this letter? 22 (Witness peruses document.)</p>
<p style="text-align: right;">43</p> <p>1 BY MR. BARTELS: 2 Q What were they? 3 MR. RANDOLPH: Is your question what did 4 he mean when he made a reference to adverse 5 decisions? 6 MR. BARTELS: Yes. 7 MR. RANDOLPH: That's a permissible 8 question. 9 THE WITNESS: Okay. Well, there was a 10 decision made by the FCC to suspend Globalstar's 11 ability to use their ancillary terrestrial spectrum 12 for the purposes that it was being used by Open Range 13 at the time or by any other -- any other lessee of 14 the entity. 15 So, nevertheless, I think the FCC granted 16 a special temporary authority. So the impact was not 17 one that was direct upon the operations of Open 18 Range. It was able to continue to operate unimpeded, 19 although it did cause some issues for them that they 20 had to pay attention to and had to do some work on in 21 order to make sure that they continued to have access 22 to that spectrum.</p>	<p style="text-align: right;">45</p> <p>1 A As I read the letter, we were providing 2 advice to the chairman of what our position would be 3 were the FCC to suspend the ability of Open Range to 4 have continued access to the ATC spectrum that was 5 licensed to Globalstar, Incorporated. 6 So we identified to him that it is the 7 view of RUS that if the Commission grants Open Range 8 full use of the ATC spectrum, we would continue to 9 provide financing. But without that commitment, the 10 business plan would no longer be feasible. So we 11 were letting him know that should they be suspended 12 that that -- that would be a decision that would 13 basically result in our eliminating access to 14 financing to Open Range. 15 Q Okay. And you did receive a response to 16 this letter but it was verbal, correct? 17 A Yes. 18 Q And who was that response from again? 19 A It was either Paul de Sa or Zac Katz. 20 Q And you are following the advice of your 21 counsel not to disclose the substance of that 22 communication?</p>

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<p style="text-align: right;">46</p> <p>1 A Yes. 2 MR. RANDOLPH: Let me just clarify. 3 If there was an FCC decision made, you 4 can talk about what the FCC decision was in response 5 to your letter. 6 The privilege attaches to matters that 7 are predecisional and that reflect deliberations 8 about what policy should be. So if Mr. Katzenstein 9 or Mr. De Sa said to you, Administrator, we have 10 decided the following, then you can reveal that 11 information. 12 THE WITNESS: Well, the decision was made 13 by the FCC to provide for -- special temporary 14 authority for Open Range to continue to use those 15 licenses. 16 BY MR. BARTELS: 17 Q Was that the response that you received 18 from -- 19 A It was -- yeah, it was along those lines 20 because they were deliberating getting towards that 21 process. Ultimately, that was the conclusion of the 22 FCC.</p>	<p style="text-align: right;">48</p> <p>1 Q Do you know who he was representing? 2 A I believe he was representing Open Range. 3 Q Who is Dallas Tonsager? 4 A Tonsager. 5 Q Tonsager. 6 A He is the Undersecretary of Agriculture 7 for rural development. 8 Q Lindsay Daschle? 9 A Lindsay Daschle is a senior advisor to 10 the Secretary of Agriculture -- 11 Q Who is the Secretary of -- 12 A -- Tom Vilsack. 13 Q Is she also Tom Daschle's daughter? 14 A She is. 15 Q And who is Charlie Stenholm? 16 A Charlie Stenholm is a member of the board 17 of Open Range and also a former member of Congress 18 from Texas. 19 Q And in this Mr. Beans is -- before this 20 gets forwarded, Mr. Beans is sending you and some 21 others and Paul -- and what is Paul's last name? 22 A It's de Sa.</p>
<p style="text-align: right;">47</p> <p>1 Now, I don't know if it was in response 2 to our letter or whether that was what they were 3 going to decide in any event, but their conclusion 4 was to continue to allow them to operate in those 5 markets in which they were already operating. 6 (Exhibit No. 88 was marked for 7 identification.) 8 BY MR. BARTELS: 9 Q Let me hand you what's been marked as 10 Exhibit 88. 11 Can you identify this document? 12 A Yes. 13 Q Okay. Please identify it for the record. 14 A It looks like it's an e-mail from 15 Marshall Matz to some officials at the USDA, 16 forwarding a copy of an e-mail from Bill Beans to me 17 indicating their plans based on FCC decisions. 18 Q Who is Marshall Matz? 19 A Marshall Matz is a lawyer in town, at a 20 law firm downtown. 21 Q Is he a lobbyist? 22 A Yes.</p>	<p style="text-align: right;">49</p> <p>1 Q And, again, what is his position? 2 A He was the head of a strategic planning 3 office at the FC7C. I think he still is. 4 Q And he's sending this to you at RUS and 5 to Paul at FCC, and saying: "After a great deal of 6 internal discussion, I'm writing to unfortunately 7 notify you both that Open Range will be closing down 8 based on the FCC decision to issue only a 60-day 9 STA," and then he continues on. 10 At the bottom he says: "Paul - We are 11 not sure how this FCC decision is in the public good, 12 and I doubt rural America will see it that way." 13 And this is after your letter to the 14 chairman of the FCC? 15 A Uh-huh. 16 Q Is that correct? 17 A Yes. 18 Q Did you speak with Mr. Adelstein (sic) 19 about his statement here that he was going to close 20 down operations of Open Range? 21 MR. RANDOLPH: He is Mr. Adelstein. 22 MR. BARTELS: I'm sorry. Of course.</p>

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<p style="text-align: right;">66</p> <p>1 A That would be another possible 2 alternative business plan that would -- that would be 3 comparably effective. In other words, what we needed 4 if they weren't going to allow them to operate 5 according to the plan that had been approved in 6 document No. 1, then we needed to have them have 7 authority from the FCC to operate in a way that would 8 be comparable. What we mean by "comparable" was 9 sufficient to provide enough revenue to pay back the 10 loan. 11 Q Well, I mean as a former commissioner of 12 the FCC, is -- does the FCC concern itself with the 13 business plans of those involved in FCC licenses? 14 MR. RANDOLPH: Objection. Compound. 15 But if you understand the question, you 16 may answer it. 17 THE WITNESS: Let me answer it from the 18 perspective of RUS. I meant comparably effective 19 business plan from our perspective, not theirs. In 20 other words, they -- what we were saying here was if 21 whatever you approve provides Open Range the 22 opportunity to make enough money to pay us back, then</p>	<p style="text-align: right;">68</p> <p>1 A This is an e-mail from Paul de Sa to me 2 responding to an e-mail from me. 3 Q Okay. And what are you -- 4 MR. RANDOLPH: Before we go further with 5 this, it does seem to me to be within the 6 deliberative process privilege, and I invoke the 7 right of the United States to claw this document back 8 pursuant to the clawback and protective order 9 connected with investigating certain possible claims 10 of the estate entered by the court on November 28th, 11 2011. 12 MR. BARTELS: All right. I don't have a 13 copy of that agreement with me. What are the 14 procedures for the clawback? Does it provide for 15 immediate clawback or is there an objection period? 16 MR. RANDOLPH: Yes, it provides -- why 17 don't we -- at the next break, I will be happy to 18 share this with you and you can look at it, rather 19 than taking time on this now. And -- but in a 20 nutshell, this provides that initial notice of 21 clawback may be made orally on the record in the 22 witness interview, and it is subject to the proviso</p>
<p style="text-align: right;">67</p> <p>1 we will be able to continue to provide financing. 2 BY MR. BARTELS: 3 Q And then subsequently you had a meeting 4 with or you spoke with Paul de Sa -- is that your 5 recollection -- about this issue? 6 A At some point I did meet with him, yes. 7 Q And did you have any follow-up 8 communications with him? 9 A We did speak from time to time. Yes. 10 Q Okay. 11 MR. BARTELS: Lloyd, I'm going to mark 12 this for the record, and I fully expect that you may 13 object, although we will not agree, but I want to 14 bring that to your attention. 15 (Exhibit Nos. 90 and 91 were marked 16 for identification.) 17 BY MR. BARTELS: 18 Q I'm handing you what has been marked as 19 Exhibit 91. 20 Do you recognize this communication? 21 A Yes. 22 Q Can you identify it for the record?</p>	<p style="text-align: right;">69</p> <p>1 that I give you a written notice that I'm clawing it 2 back, and I will do that. 3 MR. BARTELS: What is your position on 4 our obligation right now to hand back these copies? 5 MR. RANDOLPH: Well -- 6 MR. BARTELS: Because what my -- 7 MR. RANDOLPH: -- unless you -- 8 MR. BARTELS: If you are going to 9 instruct him not to answer, what I would like -- if 10 that's what you are going to do, not that I agree 11 with it, I intend to move on, and then we can address 12 this later. 13 I -- otherwise, we're going to have to -- 14 if you are going to demand that these copies be 15 handed to you now, we're going to have an issue with 16 that. But I would simply -- I'm going to ask him a 17 question. If you are going to instruct him not to 18 answer, you will do that. And then we will just move 19 on. 20 MR. RANDOLPH: Right. I have to keep a 21 copy. If you want to challenge the clawback, you 22 have to file a motion. And you are not under any</p>

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<p style="text-align: right;">70</p> <p>1 obligation to delete or destroy a document described 2 in a notice and covered by a timely motion unless and 3 until the court determines such document to be -- or 4 ESI to be privileged or protected. So I'll -- 5 MR. BARTELS: Well, let me ask my 6 question and then we will go from there. 7 MR. RANDOLPH: Okay. Yeah. 8 BY MR. BARTELS: 9 Q What was the substance of your 10 communication to Mr. de Sa? 11 MR. RANDOLPH: To the extent that you can 12 answer that question without revealing predecisional, 13 deliberative information about what the government's 14 policy should be, you may do so. But if the 15 information or your answer would reveal 16 predecisional, deliberative information, I instruct 17 you not to answer that question. 18 THE WITNESS: On the advice of counsel, I 19 can't respond to that. 20 MR. BARTELS: Are you going to instruct 21 him not to answer with respect to any questions about 22 this document, Lloyd?</p>	<p style="text-align: right;">72</p> <p>1 MR. BARTELS: Okay. We don't agree with 2 the objection, but we will move on. 3 You can set that aside. 4 BY MR. BARTELS: 5 Q Let me hand you what's been marked as 6 Exhibit 90. 7 MR. SALZBERG: Todd, this exhibit was 8 Exhibit 91? 9 MR. BARTELS: Yes. 10 MR. SALZBERG: And now we're going back 11 to 90? 12 MR. BARTELS: Yes. That's because I 13 premarked 90 before I -- 14 MR. SALZBERG: Okay. Fine. 15 MR. BARTELS: For the record, Mark, 16 thanks for bringing that to my attention on the 17 record. 18 BY MR. BARTELS: 19 Q Do you recognize this e-mail string? 20 MR. RANDOLPH: Do you have a copy for me? 21 MR. BARTELS: I do. 22 THE WITNESS: Yes.</p>
<p style="text-align: right;">71</p> <p>1 MR. RANDOLPH: No. 2 BY MR. BARTELS: 3 Q Okay. There's a reference in Exhibit 91 4 to the Harbinger folks. Do you see that? 5 A Uh-huh. 6 Q Is that a "yes"? 7 A Yes, I see that. 8 Q Did you understand that the Harbinger 9 folks were investors or potential investors in 10 LightSquared? 11 A Yes. 12 Q All right. Were you suggesting to the 13 FCC that they permit some type of an alternative 14 business plan of Open Range related to 15 LightSquared? 16 MR. RANDOLPH: I object to the question 17 to the extent that it seeks predecisional, 18 deliberative information. 19 You can answer that question only to the 20 extent that you are not revealing predecisional, 21 deliberative information. 22 THE WITNESS: Again, I can't answer that.</p>	<p style="text-align: right;">73</p> <p>1 BY MR. BARTELS: 2 Q And it's initially an e-mail from Lindsay 3 Daschle to you and Chris McLean of February 2nd, 4 2011? 5 A Uh-huh, yes. 6 Q Who is Chris McLean? 7 A He is an advisor to me, senior advisor. 8 Q And in here she's just saying initially, 9 I hope we can get together for our regular bimonthly 10 meeting, and then she has the agenda and on there is 11 the Open Range status. 12 A Yes. 13 Q Do you remember having a meeting with 14 her? 15 A We have regular meetings, so -- 16 regularly scheduled meetings to update her on various 17 issues. 18 Q Okay. Do you communicate directly with 19 Tom Vilsack or did you communicate directly with Tom 20 Vilsack about Open Range during this time period? 21 A Generally, I just speak through Lindsay 22 Daschle, who advises him in turn. I don't recall if</p>

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86	<p>1 so it would have involved Villano and Kuchno and 2 probably others such as Newby and Claffey. 3 Q Did you look at the information that Open 4 Range provided that Mr. Kuchno's referring to? 5 A I looked at a summary of that, yes. I 6 didn't look at the entire document. I didn't have 7 the document loaded on my computer. 8 Q Did someone within RUS prepare the 9 summary for you, or was there an executive summary to 10 this projection prepared by Open Range? 11 A I can't recall if it was a summary from 12 their documents or if it was abstracted by Ken and 13 his team. I don't remember. I know I looked at a 14 summary of it. 15 Q What is your recollection as to what that 16 summary provided? 17 A My recollection is that there was a 18 negative cash balance that it did not -- it was not a 19 sustainable business plan in the sense that without 20 additional equity there was a point at which they 21 were dipping down, and then later they showed 22 profitability based on certain projections of</p>	88	<p>1 capital loans against a project that is showing -- 2 that doesn't have the working capital to provide for 3 operations. 4 BY MR. BARTELS: 5 Q Was there a discussion in these meetings 6 about the cause of the cash flow problems at Open 7 Range? 8 A Yes. 9 Q What were those discussions? 10 A Well, the main issue was lack of 11 subscribers, that they weren't getting -- they 12 weren't meeting their targets in terms of the number 13 of subscribers that they had anticipated. They were 14 showing higher levels of churn than were anticipated, 15 and that was the biggest issue. I mean, for a 16 company like this that drives revenue was getting 17 subscribers that are paying customers, and they were 18 getting customers that either weren't paying or there 19 weren't enough of them. 20 Q Well, did RUS identify the cause of 21 failure to meet the subscriber projections? 22 A We discussed the issues. I mean, we</p>
87	<p>1 revenue. 2 Q And so was there a concern expressed 3 during these meetings about the lack of equity 4 infusion as part of the proposed new plan? 5 A Yes. 6 Q And did RUS come to any conclusion as to 7 the amount of equity needed should the 153 plan be 8 approved? 9 MR. RANDOLPH: You can answer that 10 question to the extent you do not need to get into 11 predecisional, deliberative information. For 12 example, if you can talk about positions that you may 13 have taken with outsiders, that would be something 14 that you can testify about. 15 THE WITNESS: Let me speak more 16 generally. Generally, we required a business plan 17 that doesn't run into a negative cash position. I 18 mean, generally we wouldn't approve a business model 19 that showed that there was a lack of cash to cover 20 ongoing operations. 21 RUS does not finance operations. We 22 finance capital investments. And so we won't put</p>	89	<p>1 didn't know for sure what the reasons were. I mean, 2 it would seem to be a lack of proper marketing would 3 be one. Another possibility is quality of service 4 issues they were experiencing. And the very nature 5 of the service itself. 6 Q Well, what was your understanding as to 7 what the service problems were? 8 A They provided throughput of about 1.5 9 megabits per second when it was operating well, and 10 in communities with competitive alternatives, there 11 were sometimes competitive alternatives that were 12 providing higher, faster broadband service. And that 13 would be difficult to compete against given the 14 inherent limitations of their service. 15 Q Do you remember any other service issues 16 that were discussed during your meetings with RUS 17 staff? 18 A There were some interference issues that 19 were being experienced against broadcast auxiliary 20 services, which required them to shut down some of 21 their operations. 22 Q Do you know the cause of that particular</p>

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<p style="text-align: right;">110</p> <p>1 arrived at. They had -- I don't want to speculate on 2 what they determined in terms of insolvency, and, you 3 know, insolvency is something that different people 4 can look at differently. You know, it's -- it's -- 5 they had cash. So -- and they were operating, and in 6 fact they continued to operate subsequent to this 7 without any further advances from us for some period. 8 So, clearly, depending on how you define "insolvency" 9 and depending on how they define it, they in fact 10 were able to operate subsequent to this. 11 Q But did RUS consider -- did you consider 12 terminating the loan agreement at this time based 13 upon this information? 14 A It was something that did occur to us, 15 yes. 16 Q And why was the decision made not to do 17 that? 18 A We were continuing to work through the 19 business plan, and we preferred to let the decision 20 be theirs as to if they wanted to declare bankruptcy. 21 We weren't, as I said, certain whether or not this 22 was a -- something that they truly intended to do,</p>	<p style="text-align: right;">112</p> <p>1 had -- we had looked at their plan going forward, and 2 it showed that there was a time when they did run a 3 negative cash balance. It wasn't at this point, so 4 I'm not -- I would have to speculate. I don't know 5 for sure whether they did. 6 Q Whether RUS did? 7 A Right. I mean I presume that we would 8 have and we should have, and I think we did, but, you 9 know -- 10 Q But you can't say that RUS did, as you 11 sit here today, undertake that investigation? 12 A I'm not a hundred percent certain, but I 13 think we did. 14 (Exhibit No. 100 was marked for 15 identification.) 16 BY MR. BARTELS: 17 Q Let me hand you what has been marked as 18 Exhibit 100. 19 In any event, RUS did not terminate the 20 agreement and later provided advances, correct? 21 A Correct. 22 Q Do you recognize Exhibit 100?</p>
<p style="text-align: right;">111</p> <p>1 and based on the numbers that we had, as I recall, 2 they did have the ability to continue to operate 3 based on financials as we saw them, and they in fact 4 did continue to operate without any further advances 5 for some period from RUS subsequent to our letter 6 suspending advances. 7 Q Did you request that your staff evaluate 8 the Open Range financials to determine whether they 9 were -- Open Range was insolvent? 10 MR. RANDOLPH: To the extent you can 11 answer that question without revealing predecisional, 12 deliberative information, you may do so. 13 THE WITNESS: That was part of our 14 deliberative process. 15 BY MR. BARTELS: 16 Q So you are refusing to answer? 17 A Based on advice of counsel, I'm not going 18 to get into deliberative process. 19 Q Well, let me ask you this: Did someone 20 at RUS evaluate Open Range's insolvency at that time? 21 A We were doing regular evaluation of their 22 financials based on their business plan. I mean we</p>	<p style="text-align: right;">113</p> <p>1 A Let me read it. 2 (Witness peruses document.) 3 A Yeah, it looks like Marshall sent a copy 4 of this to me. 5 Q And he sent -- Marshall Matz, the 6 lobbyist for Open Range; is that correct? 7 A Yes. 8 Q Or one of them? 9 A Yes. 10 Q -- sent an e-mail to Krysta Harden? 11 A Yes. 12 Q Who is Krysta Harden? 13 A Krysta Harden is the chief of staff of 14 the USDA. At the time, actually, she may have been 15 the assistant secretary for Legislative Affairs. She 16 subsequently became chief of staff. At this point I 17 think she was -- gosh, I -- 18 THE WITNESS: Do you know when she became 19 chief of staff? 20 BY MR. BARTELS: 21 Q Well, in any event -- 22 A So I think she might have been chief of</p>

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114	<p>1 staff by this point. 2 Q To Tom Vilsack? 3 A Yes. 4 Q And he is saying: "Krysta, good to see 5 you yesterday. The Secretary was excellent with BIO 6 and beyond description with SNA." He goes on and 7 says: "USDA is at a critical crossroads on broadband 8 with Open Range (OR). OR represents both your 9 largest loan and your greatest opportunity to reach 10 the President's goal. Last Monday, there was an 11 excellent meeting with Jonathan/RUS and Open Range." 12 And then he goes on to say at the end: 13 "My take is that the parties are dangerously close to 14 a significant, high-visibility failure. JP Morgan 15 Chase has put in approximately \$100 million and is 16 prepared to put up more," and then this gets 17 forwarded to you by Marshall. 18 Did you speak with Marshall Matz about 19 this e-mail after he sent it to you? 20 A I do not believe I did. 21 Q Did you feel pressured to -- to continue 22 to advance funds --</p>	116	<p>1 A I don't know why he sent it to her gmail 2 account as opposed to her business account, because 3 he sent it to, from the appearance of this, to Dallas 4 at his USDA account, so he wasn't attempting to evade 5 government accounts. And, clearly, he then sent it 6 to me on my government account, so... 7 Q He wasn't doing what? Attempting to -- 8 A Evade putting this on a government 9 record, because he sent it to other government e-mail 10 accounts, including mine. As a result, it's now been 11 produced for you. 12 Q I see that. Thank you. 13 (Exhibit No. 101 was marked for 14 identification.) 15 BY MR. BARTELS: 16 Q Let me hand you what's been marked as 17 Exhibit 101. 18 A Thank you. 19 Q Do you recognize this as an e-mail from 20 Mr. Kuchno to you of March 17th, and he's forwarding 21 you an article, "Open Range Finds Favor with the FCC, 22 LightSquared"?</p>
115	<p>1 A I did not -- 2 Q -- as a result of e-mails like this? 3 A I did not feel pressure as a result of 4 this. 5 Q Did you speak with Mr. Matz after you 6 received this? 7 A Not that I recall. 8 Q Did you speak with Krysta Harden? 9 A At some point I did speak with her about 10 the overall issue, yes. 11 Q And what did she tell you about whether 12 the RUS should resume advances? 13 MR. RANDOLPH: To the extent you can 14 answer that question without revealing predecisional, 15 deliberative information, you may do so. 16 THE WITNESS: I believe it was all 17 deliberative leading up to the decision. 18 BY MR. BARTELS: 19 Q So you are refusing to answer? 20 A Yes, based on the advice of counsel. 21 Q Do you know why he is sending that to 22 Krysta's gmail account?</p>	117	<p>1 A Yes. 2 Q Do you remember in -- very quickly what 3 this was about, in a nutshell? 4 A I have to read it to -- give me one 5 moment here. 6 (Witness peruses document.) 7 A Yes. 8 Q Okay. And can you tell me the substance 9 of that event that you are being forwarded the new 10 story on? 11 A Yes. As I recall, it was an agreement 12 between Open Range and LightSquared. In principle, 13 it wasn't actually a contractual agreement, as I 14 recall, but sort of a -- I don't know how you 15 describe it -- sort of an MOU between the two that 16 they were going to try to work together, but it 17 wasn't a binding contract. 18 (Exhibit No. 102 was marked for 19 identification.) 20 BY MR. BARTELS: 21 Q Let me hand you what's been marked as 22 Exhibit No. 102.</p>

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<p style="text-align: right;">118</p> <p>1 (Witness peruses document.) 2 Q And I don't believe you are copied on 3 this. I marked this primarily to have this in the 4 record, and I want to raise this issue with Lloyd. 5 The last -- this is an e-mail chain that 6 ends April 25th, 2011, which is four days before the 7 amendment to the loan agreement and equity commitment 8 letter. 9 And at the end of this, it's an e-mail 10 from Marshall Matz to Krysta Harden, the chief of 11 staff, to Mr. Vilsack, and he is saying: "Krysta, 12 Open Range has its back against the wall. They must 13 close with RUS but there has been no movement. I 14 hate to bring this to you, but there is too much risk 15 for USDA and Open Range not to give you up-to-date 16 information. Appreciate anything you can do. 17 Marsh." 18 MR. BARTELS: And then this appears to be 19 redacted. Lloyd, I simply ask you if you can -- I 20 assume this is -- what's the basis for this 21 redaction? 22 MR. RANDOLPH: As you know, we have</p>	<p style="text-align: right;">120</p> <p>1 the Open Range loan that was signed, I believe, on 2 April 29th, 2011? 3 A That was largely delegated to our general 4 counsel. 5 Q Let me ask you to look at Exhibit 69. 6 Go ahead and pull out 70 and 65 as well 7 if you would, please. 8 MR. RANDOLPH: So 65, 69, and 70? 9 MR. BARTELS: Yes. 10 MR. RANDOLPH: I had put these back in 11 order and was less than completely successful. I 12 will have to dig for 65. 13 MR. BARTELS: 65 is -- we don't need it. 14 We can do without it. 15 BY MR. BARTELS: 16 Q Do you recognize Exhibit 69 as the 17 amendment to the Loan and Security Agreement that you 18 signed? 19 A Yes. 20 Q And did you participate in negotiating 21 this agreement? 22 A Not substantially.</p>
<p style="text-align: right;">119</p> <p>1 produced a number of documents to you. I have 2 reviewed many of them. I do not have perfect recall. 3 I think you are correct that the top part of the page 4 numbered RUS017-003179 has been redacted. That's 5 pretty evident as you can see, and I simply don't 6 recall the communications that were subsequent to the 7 e-mail of Mr. Matz to Ms. Harden. 8 I suspect that I would need to check, but 9 they were forwarded with some comments that were 10 subject to either attorney-client or deliberative 11 process privilege. And so if that's -- I suspect 12 that's the reason. But it's based on surmise and not 13 a specific memory of the thousands upon thousands of 14 documents that I reviewed before producing them to 15 you. 16 MR. BARTELS: And from what I've seen, I 17 believe -- that's the largest redaction that I've 18 seen in the materials that you produced. I would ask 19 for a log outlining the basis for that privilege. 20 MR. RANDOLPH: We can take that up. 21 BY MR. BARTELS: 22 Q Did you participate in the amendment to</p>	<p style="text-align: right;">121</p> <p>1 Q What do you understand is the reason that 2 this amendment was entered into? 3 A The purpose of this was to codify changes 4 in the business plan in the contract that was between 5 us and Open Range to take into account several 6 things. One of those things was to -- it's a 7 separate agreement in Exhibit 70, I believe, between 8 OEP and Open Range, and OEP and us, regarding 9 additional equity infusion. And also giving us 10 additional ability to be bought out of the loan 11 should we not agree with the new business plan that 12 was being agreed to. 13 So there was an exit strategy, if you 14 will, for us that was negotiated by our general 15 counsel's office in the event that -- as this moved 16 forward, presumably successfully with the additional 17 equity infusion, that there would be a way of having 18 our portion of the loan bought out. 19 Q Bought out by whom? 20 A I believe it was by OEP. If you give me 21 a minute, I will give you these. 22 Q Let's go ahead and strike that question.</p>

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<p style="text-align: right;">146</p> <p>1 scopes, so, you know, we do hundreds of audits every 2 year, and it depends on the particular circumstances 3 of the company and what we're doing. You know, if 4 there is an issue, we will look at certain issues. 5 Whether it's one pledged account or whether it's a 6 broader audit depends on the circumstance of the 7 borrower. 8 Q Okay. What is your understanding as you 9 sit here as to the number of audits that were 10 conducted of Open Range by RUS field auditors? 11 A The one I can recall is the one that was 12 done at the end there, the one that you have 13 discussed. 14 Q And what is your understanding as to what 15 the subject matter of that audit was? 16 A I think the audit looked at -- as I 17 recall, we found a number of disallowances, some 18 \$20 million in disallowances that were -- things we 19 weren't going to reimburse for that were 20 inappropriately requested by Open Range. 21 Q Related to the pledged deposit account? 22 A I think so, yes.</p>	<p style="text-align: right;">148</p> <p>1 MR. RANDOLPH: Yes, and the witness was 2 here on time. 3 THE WITNESS: I was here on time. 4 MR. RANDOLPH: There was a lengthy 5 discussion taking place in the conference room. I'm 6 not suggesting I'm going to cut off right now. I 7 just want -- 8 MR. BARTELS: Right. Let me make my own 9 record as well. I mean, I thought this was -- these 10 interviews are being conducted hopefully in a spirit 11 of cooperation. 12 This witness has taken quite a bit of 13 time with documents, and I understand that. I'm not 14 asking for a bunch of additional time. There's a 15 couple of subject matters that I feel like I need to 16 cover. Quite frankly, I could spend two days with 17 this witness, and probably need to. So I would just 18 simply ask for a minor accommodation. 19 MR. RANDOLPH: I will endeavor to give 20 you the 15 minutes that Mr. Silberglied has noted we 21 were late in starting this interview, and it wasn't 22 the witness's fault that we were late in starting.</p>
<p style="text-align: right;">147</p> <p>1 Q After the meeting on September 22nd with 2 the FTI representatives where you heard this 3 information about the financial condition of Open 4 Range, what did you do with that information after 5 you left that meeting? 6 A We provided that information to the 7 Office of the Secretary -- Undersecretary immediately 8 thereafter. 9 Q And what feedback did you get from the 10 Office of the Secretary? 11 MR. RANDOLPH: Objection. That calls for 12 deliberative process information. 13 To the extent that you can answer that 14 question without revealing predecisional, 15 deliberative information, you may do so. 16 Counsel, I note for the record that 17 Verizon says that it's now 5:01, and that we agreed 18 we would conclude this interview at 5:00. So I think 19 you need to be thinking about how you are going to 20 wrap it up. 21 MR. SILBERGLIED: Just for the record, we 22 started 15 minutes late.</p>	<p style="text-align: right;">149</p> <p>1 There was a lengthy discussion taking place by 2 counsel for the committee and the debtor in another 3 conference, but notwithstanding that -- 4 MR. USATINE: Not to belabor the point, 5 but we were also 15 minutes late in concluding the 6 prior deposition due to having to deal with this 7 issue concerning the witness's availability. 8 MR. RANDOLPH: Okay. That's a fair 9 point. We were concerned about his health. 10 MR. BARTELS: I need to break for one 11 minute, and then I will use my -- 12 MR. RANDOLPH: Let's go off the record. 13 (Brief recess.) 14 (Pages 150 through 164 were 15 extracted from this transcript and 16 placed in a separate confidential 17 transcript.) 18 19 20 21 22</p>