

The Commission met on **Friday, October 7, 2005**, with Chair Koppendrayer and Commissioners Johnson, Nickolai, Pugh, and Reha present.

**Comment [COMMENT1]:** Minutes by Carol Casebolt. 12 motions were made.

The following matters were taken up by the Commission.

**P-5643, 426/CI-04-1790**

**In the Matter of a Commission Investigation of Issues Governed by *Minnesota Statutes, Section 216A.036***

Chair Koppendrayer moved to find that Former Commissioner Scott violated Minn. Stat. § 216A.036 (a) by accepting employment with Integra.

The motion passed 4-1. Commissioner Pugh voted no.

Chair Koppendrayer moved to find that Integra violated Minn. Stat. § 216A.036 (b) by employing Former Commissioner Scott.

The motion passed 4-1. Commissioner Pugh voted no.

Commissioner Pugh moved to find that Former Commissioner Scott's ex parte request for reimbursement of travel expenses, in excess of \$700, constitutes the solicitation of a thing of monetary value from a public utility, telephone company, or party, that exceeds nominal value in violation of Minnesota Rules 7845.0700, subp. 1.

The motion passed 5-0.

Commissioner Pugh moved to find that Former Commissioner Scott accepted \$706.23 from Integra; the payment equals the amount Former Commissioner Scott expended on transportation, meals, and lodging while visiting Integra on May 4, 2004. The acceptance of the payment violates Minnesota Rules 7845.0700, subp. 1. The payment received by Former Commissioner Scott constitutes income as contemplated under the statute and rules. Even though the compensation may not be taxable under federal law, it constitutes "any income" and therefore violates Minn. Stat. § 216A.035 (a) and Minnesota Rules.

The motion passed 5-0.

Commissioner Nickolai moved to find that Former Commissioner Scott violated Minnesota Rules 7845.0800, subp. 2, by failing to disclose employment communications.

The motion passed 3-2. Commissioners Johnson and Pugh voted no.

Commissioner Pugh moved to find that Former Commissioner Scott violated Minnesota Rules 7845.0400 by engaging in employment communications with Integra and accepting employment with Integra, for the reasons set forth below:

a. Former Commissioner Scott initiated the conversation with Integra for the purpose of obtaining employment with the company. His position as Commissioner yielded tremendous benefits in his employment search, including, direct telephone access to the company president, an invitation to interview for a job that did not exist, and an expense paid trip to Oregon.

b. Integra and Scott-Rice were parties to several actions pending before the commission at the time in question. Commissioner Scott voted on at least one matter regarding these companies. There is no allegation that the decision was controversial.

c. It is not likely that a commissioner could remain independent and impartial while making decisions affecting a future employer.

d. Former Commissioner Scott's conduct diminishes the public confidence in the integrity of the Public Utilities Commission. The public - Minnesota ratepayers - view the commission as its strongest defense against potentially harmful conduct or pricing by the utility industry. Public confidence in that line of defense would be eroded if the independence of the commission was not strongly protected.

The motion carried 5-0.

Commissioner Pugh moved to find that Former Commissioner Scott violated Minnesota Rules 7845.0300 by engaging in employment communications and accepting employment with Integra because the conduct of Former Commissioner Scott clearly creates the appearance of a conflict between private interests and official duties.

The motion passed 5-0.

Commissioner Nickolai moved to set \$2500 as the proposed penalty for Former Commissioner Scott's violation of Minn. Stat. § 216A.036 (a).

The motion passed 5-0.

Commissioner Nickolai moved to assess no penalty against Integra for its violation of Minn. Stat. § 216A.036 (b) but to clarify that to the extent permissible by law, all charges related to the investigation carried out in this case will be assessed to Integra.

The motion passed 5-0.

Commissioner Nickolai moved to make the findings of rule violations set forth above and to indicate that the Commission has no enforcement authority under statutes and rules other than Minn. Stat. § 216A.036 because existing enforcement authority applies only to sitting Commissioners.

The motion passed 5-0.

Commissioner Nickolai moved to change Finding 58 of the Findings of Fact submitted by Commissioner Pugh from

58. Scott-Rice elected to become a “small telephone company” pursuant to Minnesota Statutes, Section 237.773, subd. 2. Sasseville Letter [October 13, 2004] at page 2 [Tab S]; MPUC Docket No. P-426/AR-98-619.

to

58. As a “small telephone company” Scott-Rice elected to be regulated under the alternative form of regulation (AFOR), pursuant to Minnesota Statutes, Section 237.773, subd. 2. Sasseville Letter [October 13, 2004] at page 2 [Tab S]; MPUC Docket No. P-426/AR-98-619. The Commission is authorized to change the rates of companies operating pursuant to an AFOR under specified circumstances.

and that the Commission adopt findings of fact 1 through 61.7, as proposed by Commissioner Pugh, with the modification to finding 58 set forth above, except to the extent that those findings might be inconsistent with the Commission’s vote or with the rationale of the majority. Findings attached.

The motion passed 5-0.

**P-999/CI-05-1419**

**In the Matter of the Commission Inquiry Regarding Potential Proscribed Ex Parte Contacts Regarding Commissioner Scott**

Commission Nickolai moved that the Commission retain an independent investigator to develop the facts and submit a report as to whether there is reason to believe that Former Commissioner Scott, acting in his capacity as Commissioner, may have violated Minnesota law or rules in the course of his contacts with AT&T’s regulatory counsel, Mary Tribby, during the period between May 2002 and Former Commissioner Scott’s departure from the Commission.

The motion passed 5-0.

There being no further business, the meeting was adjourned.

**APPROVED BY THE COMMISSION: OCTOBER 13, 2005**

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**Burl W. Haar, Executive Secretary**

## **FINDINGS OF FACT**

### **Scott's Employment with the MPUC:**

1. Gregory Scott's employment with the Commission began on August 29, 1997. Email from Dr. Haar.
2. Scott's employment with the Commission terminated effective at the end of the day on May 18, 2004. MPUC Response to Information Request No. 1 [Tab T]; Scott Resignation Letter dated May 11, 2004 [Scott Depo Exh 23] [Tab GG].

### **Scott's Communications with Integra:**

3. The first communication between Scott and Dudley Slater, CEO of Integra occurred on April 8, 2004, at a "meet and greet" meeting requested by Integra and attended by Slater, Scott, Dan Lipschultz (an attorney with Moss & Barnett, P.A., Integra's outside regulatory counsel), Integra staff Chris Hickman, Bill Weiman of Integra the ILEC (Scott-Rice), and Commission Staff Analyst Kevin O'Grady. Integra's Response to Info. Req. No. 1 [Tab W, Exh A]; Slater Depo Exh 4 [Tab HH]. Former Commissioner Scott's Electronic Calendar for April 8, 2004 contains no meeting with Integra. Former Commissioner Scott's timesheet has no time allocated to a meeting. [Tab T]
4. Scott called Slater on April 13, 2004, "to see if there were any open employment positions with Integra." Integra's Response to Info Req. No. 1 [Tab W, Exh. A]; Scott Depo Exh 4 [Tab GG]. Scott said that "I enjoyed meeting [Slater] and that I wanted him to know that if there was ever a chance for us to work together, I'd be interested in doing that." Scott Depo at 60. Scott told Slater that Scott was willing to resign from the Commission prior to conclusion of his term at the end of the year, for the "right opportunity." Scott Depo at 62. On that date, Scott was aware that Integra the CLEC and/or Integra the ILEC (Scott-Rice) were either parties to or participants in proceedings before the Commission. Scott Depo TR: 30:25, 31:1-6 [Tab GG]. Scott "spent a few days looking at the law to make sure calling [Slater] wouldn't get me in trouble with the law and wouldn't get [Slater] and Integra in trouble, so I spent some time looking at the various statutes and rules." Scott Depo TR: 52:15-25, 53:1-23 [Tab GG]. Scott initiated the employment discussion, not Integra. Scott Depo TR: 78:6-15 [Tab GG]. Slater was "absolutely surprised to receive the call." Slater neither solicited the call nor did he expect it. Slater Depo TR: 53:2-20, 54:7-17 [Tab HH].
5. Scott emailed his resume to Slater on April 13, 2004. Scott Depo Exhs 4 & 13 [Tab GG].
6. On April 15, 2004, Scott, as a member of the Commission, voted on a matter, Docket No. P-999/CI-03-961, to which Integra was a party. Slater Depo Exh 32 [Tab GG].
7. Scott e-mailed his schedule to Slater on April 16, 2004. Scott Depo Exhs 4 & 14 [Tab GG].
8. Later on April 16, 2004, Slater called Scott in response to his email. Scott and Slater had a 14.3 minute phone conversation on April 16, 2004. According to Integra's Supplemental Response to Information Requests (Exhibit A), dated December 30, 2004 [Tab AA]:  
This was a strategic discussion about the future of Integra, how the Company planned to

manage regulatory affairs and whether a potential role for Scott would fit with such future plans. Scott advised Slater that his term as a Commissioner was coming to an end and that he would consider resigning from his role prior to the scheduled end of its term. We agreed that it made sense to have Scott come to Portland to discuss whether there might be a complimentary fit, and to meet the Company's key leadership. Slater Depo Exh 4 [Tab HH].

Scott advised Slater via email that he would be in Denver April 18-20. Scott Depo. Exhs 4 & 14 [Tab GG]. Slater felt that he was, on April 16, 2004, free to discuss with Scott the following subjects: (1) Integra's future; (2) how Integra planned to manage regulatory affairs; and (3) whether a potential role for Scott would fit in with such future plans. Slater Depo TR: 60:14-24 [Tab HH]. Scott said that he discussed the above topics to find out whether Scott's resume, background, experience and skills "fit with what Integra was looking for." Scott Depo at 66-67. Scott Depo. at 66. Slater invited Scott to come to Portland. Slater Depo. at 61-62. Scott expected Integra to pay for his trip to Portland. Scott Depo. at 73-74.

9. On April 17, 2004, Scott emailed his flight schedule and hotel arrangements to Slater regarding a May 4 interview at Integra's Portland, Oregon headquarters. Scott Depo. Exhs. 4 & 15 [Tab GG]. Scott wrote to Slater that renting a car might be more expensive than taking a shuttle, for instance, but said that the decision as to which form of ground transportation Scott should use was up to Slater: "I leave that to you. Just let me know." Scott Depo. Exh. 17 [Tab GG].

10. On April 19, 2004, Slater emailed Scott regarding Scott's schedule and plans for the May 4 interview in Oregon. Scott Depo Exhs 4 & 16 [Tab GG]. Slater suggested Scott rent a car to allow greater flexibility to see the area. Slater Depo. Exh. 16 [Tab GG].

11. On April 21, 2004, the Commission issued its written Order Resuming Evidentiary Proceeding in Docket P-999/CI-03-961. A proceeding to which Integra was a party.

12. On April 30, 2004, Scott and Slater exchanged emails regarding Scott's May 4 trip to Oregon. Scott Depo Exhs 4 & 17 [Tab GG].

13. On May 1, 2004, Scott and Slater exchanged emails regarding directions to Integra's office. Scott Depo Exh 4 [Tab GG].

14. On May 3, 2004, Integra composed and sent an email to affected Integra personnel setting forth ground rules and limitations governing the conduct of the upcoming Scott interviews. Slater Depo Exhs 4 & 18 [Tab HH].

15. On May 4, 2004, Integra vetted the May 3, 2004, email (Finding No. 14, above) with Lindquist & Vennum at 9:30 a.m., P.D.T., before commencement of the Scott interviews. Slater Depo Exh 4 [Tab HH].

16. On July 7, 2004, Slater left a voice mail message for Chairman Koppendrayner in which he said: "..... we obtained [Sasseville's May 4, 2004, opinion letter] prior to any dialog [between Integra and Scott]." Slater Depo Exh 29 [Tab HH] (emphasis added). Slater met with Scott on April 8, talked on the phone with Scott on April 13 and 16, and exchanged emails with Scott on April 13, 16, 17, 19, 30 and May 1. Slater Depo TR: 10:3-19 [Tab HH].

17. Sasseville's May 4, 2004, letter [Tab H] states in part as follows (at page 2): "The proposed employment interview of a sitting PUC Commissioner implicates several Minnesota statutes and administrative rules."

18. On May 4, 2004, Scott interviewed Integra's key leadership at Integra's Portland, Oregon offices from 11:30 a.m. to 5:00 p.m. Slater Depo Exh 4 [Tab HH]. The Portland visit was Slater's idea. Scott Depo TR: 72:13-17 [Tab GG]; Slater Depo TR: 64:17-18 [Tab HH]. According to Integra's Supplemental Response to Information Requests (Exhibit A), dated December 30, 2004:

These discussions focused on the future of the Company, how it planned to manage regulatory affairs, including resource/personnel needs, potential scope of work and the experience and qualifications of Scott in the context of these personnel needs.

19. On May 6, 2004, Scott and Slater exchanged emails regarding an itemization and reimbursement of Scott's interview expenses (\$706.23). Scott Depo Exh 20 [Tab GG]. The expenses included expenses for airfare, lodging, meals, a rental car as well as gasoline used to drive to Vancouver, Washington, and parking at the Minneapolis/St. Paul airport. Id. On May 6, 2004, Integra issued Check No. 170722, in the amount of \$706.23, to Scott. "GL Acct 5012" [General Ledger Account] is "Recruiting;" Department 092 is "Administration: Human Resources."

20. On May 7, 2004, Scott and Slater spoke twice on the phone, once for one-half minute and once for 29.3 minutes. Scott Depo Exh 4 [Tab GG]. According to Integra's Supplemental Response to Information Requests (Exhibit A), dated December 30, 2004 [Tab AA]:

Dudley does not recall the first phone call. The second phone call was a follow up to his conversations with people at Integra about their interests in Mr. Scott and further steps to be taken. There was a general discussion of "cultural issues" meaning discussion of Integra's philosophy and how it worked. There was a discussion of how Greg Scott felt about Integra's team orientation and his belief that he could fit in well and could provide assistance. Greg recalls that a fair amount of time was [spent] discussing what it was like living in Portland, specifically, and in Oregon generally. He spoke about this topic with each person with whom he interviewed.

21. On May 9, 2004, Scott advised Slater of his plan to resign from the MPUC on May 10, 2004, most likely effective at the end of the day on Friday, May 14, 2004. Scott Depo Exhs 4 & 21 [Tab GG].

22. Integra believes that Scott notified the MPUC of his resignation on May 10, 2004.

Slater Depo Exh 4 [Tab HH]. Scott's resignation letter to Governor Pawlenty is dated May 11, 2004, effective at the end of the day on May 18, 2004. Scott Depo Exh 23 [Tab GG]. The resignation letter is composed of only two sentences, "Please accept my resignation from the Public Utilities Commission effective at the end of the day on May 18, 2004. Thank you." On May 10, 2004, Scott gave oral notice of his resignation to Dr. Haar and Chairman Koppendray. Scott maintains that he "had never hidden the fact I was talking to Integra. I mean it was generally known throughout the Commission that I was talking to Integra." Scott Depo TR:109:17-25, 110:1-25, 111:1-25, 112:1-15, 115:1-25, 116:1-11 [Tab GG]. Scott never notified the Commission that he was discussing future employment with Integra. Moreover, in response to information request number 4 to the Commission, Dr. Haar states, "It appears that no one at the Commission knew of his plans to work for Integra until very close to his last day on the job." [Tab T].

23. On May 11, 2004, Lisa Hillyer (Integra's Vice President for Human Resources) emailed Slater about a "Draft of Offer Letter," stating: "I inserted various data points (i.e. hire date, base salary) and will plan to modify, as needed, based upon your discussions with Greg." Slater Depo Exhs 4 & 24 [Tab HH].

24. On May 11, 2004, Scott met for one hour with Carol Wirsbinski, who is responsible for Integra's Minnesota operations. According to Integra's Supplemental Response to Information Requests (Exhibit A), dated December 30, 2004 [Scott Depo Exh 4] [Tab GG]:

This discussion was an extension of the May 4th interviews. As head of Minnesota and North Dakota operations, Carol was interested in how Greg would determine which pieces of regulatory information which crossed his desk would be important to her as a business operator. He let her know he would decipher the important from the unimportant and only bring the key issues to her attention. Carol also questioned his commitment to an Oregon move in light of his family connection to Minnesota and learned that Greg's wife was a gardener. Previous travel had led her to express a desire to be located in the Pacific Northwest.

25. On May 12, 2004, Deborah Harwood provided Slater with a memorandum regarding the separation of legal and regulatory functions that will be transferred to Greg Scott, based on their conversation the previous day. Scott Depo. Exh. 25 [Tab GG]. The memorandum was faxed to Scott on May 17, 2004.

26. On May 12, 2004, Scott and Slater spoke twice via cell phone, each call lasting two minutes. Scott Depo Exh 4 [Tab GG]. According to Integra's Supplemental Response to Information Requests (Exhibit A), dated December 30, 2004: "Mr. Slater does not recall what was discussed during these discussions, but presumes they were follow up to Greg Scott's meeting with Carol Wirsbinski."

27. On May 13, 2004, Slater emailed Hillyer regarding the "draft of offer letter" of employment for Scott, stating: "Thanks. I do not plan to provide him a draft until after his final day as a Commissioner on May 18." Slater Depo Exhs 4 & 24 [Tab HH].

28. On May 17, 2004, Slater faxed to Scott the memorandum prepared by Harwood, see Finding 25, regarding "Transfer of All Regulatory Activity to Greg Scott." Slater Depo Exh 25 [Tab HH]. The fax transmittal sheet's subject reference is "Scope of job." The memo contains a "list of regulatory functions which will be assumed by Greg Scott and his department."
29. On May 17, 2004, Scott and Slater spoke for five minutes on the phone. Scott Depo Exh 4 [Tab GG]. According to Integra's Supplemental Response to Information Requests (Exhibit A), dated December 30, 2004: "In this conversation Slater was informed by Scott that Scott's term as a Commissioner would officially end on May 18th (at the adjournment of that day's Commission meeting)." Slater Depo TR: 94-95:14-18 [Tab HH]. Scott agreed to accept the responsibilities articulated in the Harwood memorandum referenced in Findings 25 and 28. Slater Depo. at 100-101 [Tab HH].
30. May 18, 2004: the effective date, at the end of the day, of Scott's resignation from the MPUC. Scott Depo Exh 23 [Tab GG]. Commission response to information request #2 indicates that Scott was compensated as a Commission employee through May 18, 2004. Scott's timesheet for May 18, 2004 shows 8 hours on that date. [Tab T]
31. On May 18, 2004, Scott and Slater spoke for 20.7 minutes on the phone, discussing prospective compensation terms. Scott Depo Exh 4 [Tab GG]; Integra's Response to Info. Req. No. 4. This call was made from Slater to Scott at his office phone at the Commission. [Tab W] According to Integra's Supplemental Response to Information Requests (Exhibit A), dated December 30, 2004: "In this conversation Slater confirmed that Scott's resignation was effective and then Scott and Slater discussed terms of compensation." Scott and Slater agreed to all terms of employment. Slater Depo. at 104 [Tab HH]. Both Scott and Slater maintain that Scott's Integra compensation was not discussed prior to May 18, 2004. Scott Depo TR: 126:22-25, 127:1-4 [Tab GG]; Slater Depo TR: 95:2-25 [Tab HH].
32. On May 19, 2004, Slater sent a memo to Hillyer regarding the drafting of the Scott offer of employment letter. Slater Depo Exhs 4 & 27 [Tab HH].
33. On May 21, 2004, Slater faxed Integra's employment offer to Scott. Integra's Response to Info. Req. No. 5 [Tab W]; Scott Depo. Exh. 24 [Tab GG]; Slater Depo Exh 24 [Tab HH].
34. Slater testified that he and Scott negotiated the terms of Scott's employment agreement between May 18 and 20, 2004, and that the terms and conditions thereof were not discussed before May 18. Slater Depo TR: 94:3-25, 95:1-25, 96:1-6 [Tab HH].
35. On May 21, 2004, Scott accepted Integra's written employment offer. Integra's Response to Info. Req. No. 6 [Tab W]; Scott Depo Exh 24 [Tab GG].
36. Scott spoke to a committee of the Minnesota State Bar Association on June 2, 2004, at which time he announced that he was taking a job with Integra. MPUC's Supplemental Responses to Information Requests [Former Commissioner Scott's Electronic Calendar for Wednesday, June 2, 2004] [Tab T]; Scott Depo TR: 11:12-25, 12:1-25 [Tab GG].
37. On June 16, 2004, Scott commenced his employment with Integra as Vice President of Regulatory Affairs. Integra's Response to Info. Req. No. 7 [Tab W]; Scott Depo Exh 4 [Tab GG].

38. Integra and Scott both maintain that, during the period April 8, 2004, to May 18, 2004:

- 38.1 Scott did not accept employment with Integra;
- 38.2 Scott did not receive compensation directly or indirectly from Integra;
- 38.3 Scott did not enter into a contractual relationship with Integra; and
- 38.4 Integra did not negotiate or offer to employ or compensate Scott.

Integra's Response to Info. Req. No. 4 [Tab W]; Scott Depo TR: 13:18-22 [Tab GG]; Slater Depo TR: 95:2-25 [Tab HH].

39. Beginning on May 18, 2004, and within one year thereof:

- 39.1 Integra negotiated with and offered to employ and compensate Scott; and
- 39.2 Scott accepted and began employment with Integra.

Slater Depo Exh 4 [Tab HH]. While the record strongly suggests that general employment discussions began as early as April 13, 2004, and became progressively more specific, there is no independently available and verifiable evidence to indicate that detailed employment negotiations – that included discussion of salary -- began earlier than May 18, 2004.

40. Information Request No. 13 to Integra [Tab R] asks:

Has Scott provided Integra, either formally or informally, with any advice, opinion, or input on any matter that was before the Commission while he was a member of the Commission in the twelve months preceding his departure from the Commission or since he left the Commission?

Integra's response [Tab W] states:

Integra believed and continues to believe that it complied with all Minnesota Statutes in hiring Scott; however, upon learning of a potential investigation by the MPUC, as a show of good faith, Integra created an Ethical Wall August 6, 2004 whereby all regulatory matters for the State of Minnesota (CLEC and SRT) are to be managed and directed by our General Counsel/Vice President, rather than by Mr. Scott. Mr. Scott has not participated in or provided any advice, opinion or input to Integra or SRT regarding Minnesota regulatory matters since the ethical wall was established. Prior to the implementation of the Ethical Wall, Mr. Scott does not remember any substantive interaction with SRT. Mr. Scott may have received copies of some generally distributed emails notices from SRT.

41. Information Request No. 14 to Integra [Tab R] states:

Provide a list of utility regulatory issues that Scott has been involved in since he became employed by Integra.

Integra's response [Tab W] states:

Mr. Scott has not been involved in any Minnesota regulatory matters as described in Answer to question 12 [sic]. Mr. Scott is handling the regulatory matters for Integra for the states of Oregon, Washington, Utah and the Federal Communications Commission. The substantial majority of the work that Greg Scott has performed for Integra Telecom has been to direct and manage the Company's participation in FCC Docket No. 04-313 and Docket No. 01-338, relating to the development of final rules for unbundling network elements under Section 251 of the 96 Telecom Act. Additionally, Greg Scott has worked to build relationships with other industry participants and state regulatory and legislative personnel.

**Legal Opinion Letters:**

42. On April 26, 2004, Integra engaged Sasseville to provide a legal opinion regarding Scott's inquiry into employment opportunities at Integra. Slater Depo Exh 4 [Tab HH]; Tab G, Para. 2.

43. Between April 28 and May 4, 2004, Harwood and Sasseville communicated by telephone and email, exchanging factual and legal information regarding Sasseville's opinion letter. Slater Depo Exh 4 [Tab HH].

44. On May 3, 2004, Integra received Sasseville's preliminary draft opinion, advising Integra that Minnesota Statutes, Section 216A.036, did not apply to either Integra or Scott-Rice. (The draft opinion was not produced during this investigation.) Responding to the draft, Integra informed Sasseville that Integra was indirectly involved in two matters involving the Commission: (1) a proceeding in which the MTA was a party (Scott-Rice is a MTA member); and (2) the unbundled network element "appeal" in federal court. After considering those matters, and after revisiting the statute and rules, Sasseville advised Integra on May 3 that his opinion was not affected by the two matters. Slater Depo Exh 4 [Tab HH].

45. On May 3, 2004, Integra composed and distributed an email to affected Integra personnel, describing ground rules and limitations for the Scott interviews to be held on May 4. Slater Depo Exh 4 [Tab HH].

46. On May 4, 2004, at 9:30 a.m., P.D.T., before commencement of the Scott interviews in Portland, Integra vetted the May 3 email with Lindquist. Slater Depo Exh 4 [Tab HH]. Sasseville's opinion letter is dated May 4, 2004. Slater Depo Exh 31 [Tab HH].

47. On September 14, 2004, Kenneth E. Raschke Jr., Assistant Attorney General, wrote to Chairman Koppendrayer regarding the application of Minnesota Statutes, Section 216A.036, to this matter. Tab M.

48. On October 13, 2004, Sasseville wrote to Drawz, further developing his thesis set forth in his May 4, 2004, letter to Integra that Integra and Scott-Rice are not "subject to rate regulation by the

Commission." Tab S.

49. On November 17, 2004, Raschke wrote to Commissioner Ludeman, further expanding on his September 14, 2004, letter and concluding that, "The enumeration of 'price regulated services' and the procedures by which the PUC may establish rates certainly can be construed as rate regulation." Tab X. Raschke also noted that a small telephone company that elects AFOR is not subject to the rate-of-return regulations or earnings investigation provisions of Sections 237.075 or 237.081 (citing Section 237.773, subd.2).

50. On December 29, 2004, Sasseville wrote to Drawz in response to Raschke's November 17, 2004, letter. Tab V.

51. On December 30, 2004, Integra submitted a supplemental response to the October 13, 2004, Information Requests. See Tab Z.

52. On December 31, 2004, Integra submitted a slightly revised supplemental response to the October 13, 2004, Information Requests. See Tab AA.

53. On January 7, 2005, Mr. Kohnstamm wrote to Commissioner Ludeman, addressing several points in Mr. Sasseville's December 29, 2004, letter. See Tab BB.

54. On March 24, 2005, Ms. Anderson wrote to Drawz, enclosing the Department's "preliminary legal analysis of 'rate regulation' under Chapters 237 and 216A." See Tab FF.

55. On May 13, 2005, Sasseville wrote to Drawz in response to Anderson's March 24, 2005, letter. See Tab JJ.

**Other:**

56. As to CLEC operations, Integra is a "telecommunications carrier." Minnesota Statutes, Section 237.74, subd. 6, applies to its CLEC operations.

57. Scott-Rice Telephone Company ("Scott-Rice"), an affiliated company of Integra, is an "independent telephone company." As of August 30, 2004, Scott-Rice had 21,684 access lines in Minnesota. Sasseville Letter [May 4, 2004] at pages 1 and 2 [Tab H]; Sasseville Letter [October 13, 2004] at page 1 [Tab S]; Minnesota Statutes, Section 237.01, subd. 3; Scott Depo TR: 28:5-16 [Tab GG].

58. As a "small telephone company" Scott-Rice elected to be regulated under the alternative form of regulation (AFOR), pursuant to Minnesota Statutes, Section 237.773, subd. 2. Sasseville Letter [October 13, 2004] at page 2 [Tab S]; MPUC Docket No. P-426/AR-98-619. The Commission is authorized to change the rates of companies operating pursuant to an AFOR under specified circumstances.

59. Scott-Rice is a member of the Minnesota Independent Coalition ("MIC"), a group of more than 80 independent local telephone companies that participate collectively in various Commission proceedings that have the potential to affect the interests of small rural telephone companies. The MIC is or has been a party

to over 40 Commission proceedings pending at some time between May 2003 and October 2004. Integra's Response to Info. Req. No. 24, Exh. E [Tab W].

60. Integra was, at all times relevant hereto, a member of the Minnesota Telecommunications Alliance (A/k/a the Minnesota Telephone Association). Scott Depo Exh 9 [Tab GG].

61. Integra and Scott-Rice were parties to and participants in various Commission proceedings:

61.1 Slater Depo Exh 7 is a list of proceedings compiled by DOC and is entitled: "Integra and/or Scott-Rice were parties to the following proceedings which were open during Greg Scott's employment negotiations with Integra."

61.2 Slater Depo Exh 8 is a list provided by Dr. Haar, the major headers of which are entitled: "Dockets where Integra (the CLEC) was/is a party;" "Policy Dockets Integra (the CLEC) Participated [in] as a Party;" "Policy Dockets Integra (the CLEC) Participated [in] as a Part of the CLEC Coalition;" "Dockets Where Integra (the ILEC) was a Party;" "Dockets Where Integra (the ILEC) as a Member of the Minnesota Independent Coalition, Was/Is a Party."

61.3 Slater Depo Exh 9 is a May 6, 2004, letter to Dr. Haar from Richard J. Johnson, Moss & Barnett, to which is attached Exhibit 1, entitled, "Minnesota Telephone Association Active Member ILECs." Integra Telecom is listed as a member.

61.4 Slater Depo Exh 10 is the Commission's April 21, 2004, "Order Resuming Evidentiary Proceeding" in Docket No. P999/CI-03-961. Integra Telecom of Minnesota, Inc., is listed on page 3 thereof as a party.

61.5 Slater Depo Exh 11 is an April 28, 2004, letter to Administrative Law Judges Mihalchick and Sheehy from Dan Lipschultz, Moss & Barnett, transmitting a Petition to Withdraw on behalf of Integra Telecom of Minnesota, Inc., in Docket No. P-999/CI-03-961.

61.6 Slater Depo Exh 12 is Integra Telecom's Responses to the Information Requests [see Tab W]. Information Request 24 states as follows:

In what proceedings pending before the Commission, now or during the twelve months ending with Scott's resignation from the Commission, is or has Integra or any of its affiliates been a party? Provide the docket number and the date the proceeding was opened (or closed, if completed).

Integra's Answer: "See Attached Exhibit E." Exhibit E is included in Slater Depo Exh 12. Integra's response identifies several cases in which Integra the CLEC as well as Integra the ILEC were parties to matters pending before the Commission during the time period of April 13, 2004 through May 18, 2004.

61.7 Scott was present and voted on telecommunications agenda items at the Commission's April 15, 2004, meeting, including a matter to which Integra was a party, Docket No. P-999/CI-03-961. Slater Depo Exh 32 [Tab HH].