

COMMONWEALTH OF PENNSYLVANIA

PUBLIC UTILITY COMMISSION

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 :
AT&T Communications of PA, Inc. v. Verizon :
North, Inc./Verizon Pennsylvania, Inc. : Docket No.
 Verizon North's intrastate carrier access : C-20027195
 rates are unjust and unreasonable, and :
 seek an immediate reduction to no more :
 than the rates charged by Verizon :
 Pennsylvania. :
 :
 Initial Telephonic Hearing on Remand :
 :
 ----- x

DOCUMENT FOLDER

Pages 91-R through 130-R Hearing Room 3
 Commonwealth Keystone Building
 Harrisburg, Pennsylvania

Tuesday, July 19, 2005

Met, pursuant to notice, at 10:28 a.m.

BEFORE:

CYNTHIA WILLIAMS FORDHAM, Administrative Law Judge

APPEARANCES:

ROBERT V. ECKENROD, Esquire
 P. O. Box 3265
 Harrisburg, Pennsylvania 17105
 (For Office of Trial Staff)

SUZAN DeBUSK PAIVA, Esquire
 1717 Arch Street, 32-NW
 Philadelphia, Pennsylvania 19103
 (For Verizon Pennsylvania, Inc.
 and Verizon North, Inc.)

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Commonwealth Reporting Company, Inc.
 700 Lisburn Road
 Camp Hill, Pennsylvania 17011

(717) 761-7150

1-800-334-1063

ORIGINAL

APPEARANCES (Continued):

ALAN KOHLER, Esquire
Wolf, Block, Schorr & Solis-Cohen
212 Locust Street, Suite 300
Harrisburg, Pennsylvania 17101
(For AT&T Communications of Pennsylvania, Inc.)

JOHN F. POVILAITIS, Esquire
Ryan, Russell, Ogden & Seltzer, LLP
800 North Third Street
Suite 101
Harrisburg, Pennsylvania 17102-2025
(For Qwest Communications Corporation)

KRISTIN L. SMITH, Esquire
1801 California Street, Suite 4900
Denver, Colorado 80202
(For Qwest Communications Corporation)

MICHELLE PAINTER, Esquire
22001 Loudoun County Parkway
Ashburn, Virginia 20147
(For MCImetro Access Transmission Services, LLC)

REGINA L. MATZ, Esquire
Thomas, Thomas, Armstrong & Niesen
212 Locust Street, Suite 500
P. O. Box 9500
Harrisburg, Pennsylvania 17108-9500
(For the Rural Telephone Company Coalition)

PHILIP F. McCLELLAND, Esquire
JOEL CHESKIS, Esquire
555 Walnut Street
Forum Place, Fifth Floor
Harrisburg, Pennsylvania 17101-1923
(For Office of Consumer Advocate)

STEVEN C. GRAY, Esquire
300 North Second Street
Suite 1102, Commerce Building
Harrisburg, Pennsylvania 17101
(For Office of Small Business Advocate)

Commonwealth Reporting Company, Inc.

700 Lisburn Road
Camp Hill, Pennsylvania 17011

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WITNESS

DIRECT

CROSS

REDIRECT

RECROSS

(None.)

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FORM 1

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<u>NUMBER</u>	<u>FOR IDENTIFICATION</u>	<u>IN EVIDENCE</u>
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P R O C E E D I N G S

ADMINISTRATIVE LAW JUDGE CYNTHIA WILLIAMS FORDHAM:

This is the time and place for a hearing in the matter of AT&T Communications of Pennsylvania, Inc. versus Verizon Pennsylvania and Verizon North, Inc. at Docket No. C-20027195.

I would note that this is a remand proceeding. We'll give a brief history of the proceedings after we have entered the appearance of everyone.

At this time, I would indicate that I am Administrative Law Judge Cynthia Williams Fordham. I am in the Philadelphia office. This was originally scheduled for an in-person hearing in Harrisburg for today, July 19, 2005 and Wednesday, July 20, 2005. However, because the parties have indicated that there would be no cross-examination, we have changed it to a telephonic hearing.

I'd like to thank the parties for their cooperation in contacting each other to determine whether there would be cross-examination and letting us know by Friday so that Ms. Paiva and I did not have to travel to Harrisburg and some of the other parties who are not in the Harrisburg area. In addition, I'd like to thank Ms. Paiva for setting up the bridge today.

At this time, I would ask the parties starting with Ms. Paiva to enter their appearance.

1 MS. PAIVA: Suzan Paiva, P-A-I-V-A on behalf of
2 Verizon Pennsylvania, Inc. and Verizon North, Inc.

3 JUDGE FORDHAM: Would the parties in Harrisburg go
4 next?

5 MR. CHESKIS: Your Honor, this is Joel Cheskis with
6 the Office of Consumer Advocate and with me today is Philip
7 McClelland.

8 JUDGE FORDHAM: Thank you.

9 MR. ECKENROD: Good morning, Your Honor. This is
10 Robert Eckenrod on behalf of the Office of Trial Staff.

11 JUDGE FORDHAM: Thank you.

12 MR. POVILAITIS: Good morning, Your Honor. This is
13 John Povilaitis, entering an appearance for Qwest
14 Communications Corporation, and I believe Kristin Smith,
15 inside counsel for Qwest Communications Corporation, is also
16 on the line.

17 JUDGE FORDHAM: Yes. Thank you.

18 MR. KOHLER: Good morning, Your Honor. Alan Kohler
19 for AT&T.

20 JUDGE FORDHAM: Good morning. Thank you. Is there
21 anyone else there?

22 (No response.)

23 JUDGE FORDHAM: Okay. Mr. Gray?

24 MR. GRAY: Good morning, Your Honor. Steve Gray for
25 the OSBA.

1 MS. MATZ: Your Honor, also by phone is Regina Matz
2 for the Rural Telephone Company Coalition.

3 JUDGE FORDHAM: Thank you. Ms. Painter?

4 MS. PAINTER: Michelle Painter for MCI.

5 JUDGE FORDHAM: And Ms. Smith has already been noted.
6 Is there anyone else on the line?

7 (No response.)

8 JUDGE FORDHAM: Okay. At this time, I'll give a
9 brief history of the proceeding on remand. On July 28,
10 2004, the Commission entered an opinion and order that
11 granted the joint petition for resolution of litigation.

12 That order permitted Verizon to reduce and
13 restructure its access charges by allowing them to file a
14 revenue neutral rate balancing filing in which the net
15 revenue reductions from access charge increases and
16 decreases would be offset with revenue increases in monthly
17 dial tone line rates for residential and business local
18 exchange customers.

19 The Commission required Verizon to provide notice to
20 all customers at least 30 days prior to the date of any rate
21 change and to file revised tariffs or tariff supplements to
22 become effective on one day's notice.

23 With regard to the remaining unresolved matters in
24 this proceeding, the Commission remanded those matters to
25 the Office of Administrative Law Judge.

1 The Commission reversed the Administrative Law
2 Judge's recommendation to close the case. The Commission
3 stated that the policy issues and other access charge
4 concerns that were raised by the IXCs in their exceptions
5 but which were not specifically resolved by a recommendation
6 by the ALJ in the instant proceeding were remanded to the
7 ALJ for further development of the record and the issuance
8 of a recommended decision.

9 Verizon filed a petition for reconsideration. By
10 order entered November 23, 2004, the Commission denied the
11 petition to reconsider remanding the case to the ALJ.

12 On November 22, 2004, AT&T Communications of
13 Pennsylvania, MCI Worldcom Communications, Inc. and Qwest
14 Communications Corp. filed a joint petition. By order
15 entered January 18, 2005, the Commission granted the joint
16 petition and denied it in part.

17 The Commission granted the joint petitioners' request
18 that the remand proceeding be conducted in an expedited
19 manner only to the extent that the Office of Administrative
20 Law Judge was able to do so. However, the Commission denied
21 the joint petitioners' request for retroactive rates to
22 January 1, 2005 if Verizon failed to comply by that date and
23 termination of the remand proceeding.

24 The OCA noted that there were significant
25 developments in the federal arena that could impact on the

1 remand proceeding.

2 The Commission indicated it was concerned about the
3 impact that the proposed ICF proposal, if it is ultimately
4 approved by the FCC, may have jurisdictionally on access
5 charge regulation in Pennsylvania, the ability to further
6 reduce or restructure interstate access charges and whether
7 any FCC action may lead to a double recovery by the LECs in
8 Pennsylvania in light of the remanded proceeding, and that
9 the FCC permits intrastate access charges to be offset by
10 increases to the federal SLC.

11 Consequently, the Commission directed the presiding
12 ALJ assigned to this case to expand the scope of the
13 proceeding with regard to any FCC activity concerning the
14 proposal submitted by the Intercarrier Compensation Forum on
15 October 5, 2004 and to address the impact that any FCC
16 action may have on the Commission's jurisdictional
17 responsibilities as well as its relationship to the final
18 recommended decision on access rates arising from this
19 remand proceeding, to the extent that the FCC issued a
20 decision prior to the issuance of the recommended decision
21 on remand in this proceeding.

22 In this matter, we have had two prehearing
23 conferences. The first was held on Thursday, February 17th.
24 The parties discussed many things including the issues,
25 witnesses and the FCC proceeding.

1 Since Sprint did not participate in the February 17,
2 2005 prehearing conference and/or the March 21, 2005
3 prehearing conference, it was designated as an inactive
4 party.

5 A further prehearing conference was held on March 21,
6 2005. At that time, we set the procedural schedule in this
7 matter.

8 Subsequently, we have had a number of motions and
9 there was a motion that was addressed by prehearing order
10 dated May 10, 2005. There are some outstanding motions.
11 There was one Verizon motion to strike legal argument, and
12 that was addressed in an e-mail that was sent to me, but I
13 will let Ms. Paiva put that on the record.

14 There was an AT&T request for AT&T supplemental
15 response to Verizon Interrogatory I-8(b) to be admitted. I
16 will let Mr. Kohler refer to that.

17 There is a motion outstanding, a motion to strike
18 testimony. That motion was filed by Qwest and it was to
19 strike some testimony of Verizon, some testimony of OCA's
20 witness and the entire direct testimony of OTS's witness,
21 and I've asked for oral argument on that.

22 In addition, we have all of the testimony from the
23 parties to be entered into the record, so we can do the
24 testimony first. Just give me one second.

25 (Pause.)

1 JUDGE FORDHAM: Ms. Paiva?

2 MR. CHESKIS: Your Honor, this is Joel Cheskis with
3 the Office of Consumer Advocate. Before we move on to the
4 testimony, I just also wanted to note as a preliminary
5 matter that the OCA would like judicial notice taken of the
6 ICF filing made before the FCC dated October 5th.

7 JUDGE FORDHAM: Okay, thank you. I will address that
8 afterwards. Thank you for reminding me of that.

9 MR. CHESKIS: Thank you.

10 JUDGE FORDHAM: Ms. Paiva?

11 MS. PAIVA: Verizon has three pieces of testimony to
12 admit in this matter. The first one is Verizon Statement
13 1.0 Remand, the direct testimony of James J. Kane, K-A-N-E,
14 dated June 8, 2005. There is a proprietary version and a
15 public version, and the court reporter should have had
16 delivered two copies of a public version and a proprietary
17 version.

18 The only thing, I would note that the material that
19 appears on page 18, lines 1 through 12 of Verizon Statement
20 1.0 Remand is the subject of Qwest's motion to strike.

21 The second Verizon testimony is Verizon Statement 1.1
22 Remand, and that is the rebuttal testimony of James J. Kane
23 and Ann A. Dean, D-E-A-N, dated June 29, 2005, and there is
24 a proprietary version and a public version.

25 The third piece of Verizon testimony is Statement No.

1 1.2 Remand, the surrebuttal testimony of James J. Kane and
2 Ann A. Dean, dated July 11, 2005, and there is a public
3 version and a proprietary version.

4 And Verizon would move for the admission of these
5 three pieces of testimony into the record upon the parties'
6 stipulation to waive cross of these witnesses.

7 JUDGE FORDHAM: Now, with respect to the information
8 that is the subject of Qwest's motion, I will make a ruling
9 on that, but with the exception of that, are there any
10 objections to the admission of Verizon Statement 1.0 on
11 Remand, Statement 1.1 on Remand, Statement 1.2 on Remand?

12 (No response.)

13 JUDGE FORDHAM: Hearing none, the statements are
14 admitted without objection.

15 (Whereupon, the documents were
16 marked as Verizon Statements Nos.
17 1.0 Remand, 1.1 Remand and 1.2
18 Remand for identification and
19 received in evidence.)

20 JUDGE FORDHAM: Mr. Kohler?

21 MR. KOHLER: Good morning, Your Honor. I also have
22 three pieces of testimony to move into the record. All
23 three pieces are panel testimony of two AT&T witnesses, Dr.
24 Oyefusi and Mr. Nurse.

25 The first one is the direct testimony which is marked

1 as AT&T Statement 1-R. One correction to that testimony,
2 Your Honor. When we served it -- it has two exhibits to it,
3 OAO Remand Exhibit 1 and OAO Remand Exhibit 2. When we
4 served it, Exhibit 1 was under Tab 2 and Exhibit 2 was under
5 Tab 1. So the copies that we're entering into the record
6 and giving to the court reporter have that straightened out,
7 so the exhibit numbers match the tabs.

8 JUDGE FORDHAM: Thank you for noting that.

9 MR. KOHLER: And so that's the direct testimony.
10 There is also rebuttal testimony which is marked as AT&T
11 Statement 1.1-R and surrebuttal testimony marked as AT&T
12 Statement 1.2-R and associated exhibits. And those three
13 pieces of testimony, we would move into the record pursuant
14 to stipulation.

15 JUDGE FORDHAM: Are there any objections?

16 MR. KOHLER: We have provided copies to the court
17 reporter, both public and proprietary versions, Your Honor.

18 JUDGE FORDHAM: Thank you very much.

19 If there is no objection, AT&T Statement 1-R with
20 exhibits, AT&T Statement 1.1-R, AT&T Statement 1.2-R with
21 exhibits are admitted, both the public and proprietary
22 versions.

23 (Whereupon, the documents were
24 marked as AT&T Statements Nos.
25 1-R, 1.1-R and 1.2-R for

1 identification and received in
2 evidence.)

3 JUDGE FORDHAM: And with respect to Verizon's, I also
4 should note both the public and proprietary versions are
5 admitted.

6 MS. PAIVA: Your Honor, one other clarification on
7 exhibits. I didn't specifically mention them, but there are
8 exhibits to 1.0 Remand and 1.1 Remand. 1.2 Remand does not
9 have exhibits.

10 JUDGE FORDHAM: Okay. We would then note in addition
11 that Verizon Statement 1.0 on Remand has exhibits. 1.1 on
12 Remand also has exhibits. 1.2 on Remand does not have
13 exhibits, so the exhibits attached to 1.0 on Remand and 1.1
14 on Remand are also admitted.

15 Mr. Gray?

16 MR. GRAY: Thank you, Your Honor, Steve Gray for the
17 OSBA. Your Honor, we have two documents. The first is the
18 direct testimony of Allen G. Buckalew that I would ask be
19 marked for identification as OSBA Statement No. 1 (remand),
20 and the second document is the rebuttal testimony of Allen
21 G. Buckalew, which we ask be marked OSBA Statement No. 2
22 (remand).

23 Both documents are marked proprietary and we have or
24 are about to deliver copies to Ona Lester as you suggested.
25 And we only have proprietary versions. We do not have

1 non-proprietary versions. So we ask that these two
2 documents be moved into the record as agreed by the parties.

3 JUDGE FORDHAM: Thank you. Any objections?

4 (No response.)

5 JUDGE FORDHAM: Hearing none, OSBA Statement 1 on
6 Remand Proprietary and OSBA Statement 2 Remand Proprietary
7 are so marked and admitted into the record. It is noted
8 that there are no public versions of that document.

9 (Whereupon, the documents were
10 marked as OSBA Statements Nos.
11 1 (remand) and 2 (remand) for
12 identification and received in
13 evidence.)

14 MR. GRAY: Thank you, Your Honor.

15 JUDGE FORDHAM: You're welcome.

16 Mr. Eckenrod?

17 MR. ECKENROD: Thank you, Your Honor. The Office of
18 Trial Staff also has three pieces of testimony it would like
19 to mark for identification in this proceeding, the first
20 being OTS Statement No. 1-SD, which is the supplemental
21 direct testimony of Joseph Kubas and the accompanying
22 exhibit to that which is Exhibit No. 1-SD. There is both a
23 public and proprietary version of that testimony and the
24 accompanying exhibit.

25 The second piece we would have marked for

1 identification is OTS Statement No. 1-Supp.R, which is the
2 supplemental rebuttal testimony of Joseph Kubas, and the
3 accompanying exhibit. And it appears that the testimony
4 itself is proprietary, however the exhibit is not
5 proprietary.

6 And the last testimony we would have marked for
7 identification is OTS Statement No. 1-Supp.SR, which is the
8 supplemental surrebuttal testimony of Joseph Kubas, and
9 there's no exhibit to that. We would move for the admission
10 of those documents into the record.

11 (Whereupon, the documents were
12 marked as OTS Statements Nos.
13 1-SD, 1-Supp.R and 1-Supp.SR
14 and OTS Exhibit No. 1-SD and
15 1-Supp.R for identification.)

16 JUDGE FORDHAM: I would note that OTS Statement No.
17 1-SD is the subject of Qwest's motion, therefore I will make
18 a decision on that matter subject to hearing oral argument
19 on that. With respect to OTS Statement 1-Supp.R which is
20 proprietary and the exhibit which is not proprietary, and
21 OTS Statement No. 1-Supp.SR without any exhibits, are there
22 any objections to the admission?

23 (No response.)

24 JUDGE FORDHAM: Hearing none, those two documents and
25 the exhibit for Statement 1-Supp.R are admitted.

1 (Whereupon, the documents marked
2 as OTS Statements Nos. 1-Supp.R
3 and 1-Supp.SR and OTS Exhibit
4 1-Supp.R were received in
5 evidence.)

6 MR. ECKENROD: Thank you, Your Honor.

7 JUDGE FORDHAM: You're welcome.

8 Mr. Cheskis?

9 MR. CHESKIS: Thank you, Your Honor. Good morning
10 again. This is Joel Cheskis for the Office of Consumer
11 Advocate. We do have three pieces of testimony that we
12 would like to move into the record, all from OCA Witness Dr.
13 Robert Loube.

14 I will note that in the versions that we had
15 circulated to the parties throughout the course of this
16 proceeding, they were not separately marked at the top right
17 corner of the front cover as to what statement numbers they
18 are, so I would ask the parties' indulgence to mark these
19 statements as they see fit.

20 The first piece of testimony is the direct testimony
21 of Dr. Robert Loube. It's dated June 8, 2005 and I'd like
22 that to be marked OCA Statement 1-R. It consists of 46
23 pages as well as Exhibits RL-1 to RL-6. There is both a
24 public and proprietary version of it.

25 The second document is the rebuttal testimony of Dr.

1 Robert Loube. I'd like it to be marked OCA Statement 1R-R.
2 It is dated June 29, 2005. It consists of 13 pages and OCA
3 Exhibits RL-1R and RL-2R, and again it also is in both
4 proprietary and public format.

5 And finally, Your Honor, I'd also like to mark and
6 have admitted into the record the surrebuttal testimony of
7 Dr. Robert Loube. It's dated July 11, 2005. I'd like it to
8 be marked OCA Statement 1R-S. It is also 13 pages and it
9 has no exhibits.

10 The OCA moves for admission of these three statements
11 in both their proprietary and non-proprietary versions into
12 the record. The parties have agreed to admit these
13 statements without cross, subject to Qwest's outstanding
14 motion to strike portions of Dr. Loube's direct testimony.

15 We have given the court reporter two copies of
16 each of these pieces of testimony for inclusion into the
17 official record.

18 JUDGE FORDHAM: Thank you.

19 MR. CHESKIS: Thank you.

20 JUDGE FORDHAM: With respect to the portions that are
21 the subject of Qwest's motion, I will make a decision
22 regarding whether they will be admitted or not after hearing
23 oral argument. With respect to the other documents, they
24 will be marked as indicated.

25 (Whereupon, the documents were

1 marked as OCA Statements Nos.
2 1R, 1R-R and 1R-S for
3 identification.)

4 JUDGE FORDHAM: Then with respect to admission of the
5 documents, we have OCA Statement 1R, which is the direct
6 testimony with six exhibits, RL-1 through RL-6, public and
7 proprietary versions; OCA 1R-R, which is the rebuttal
8 testimony and two exhibits, RL-1 and RL-2; and the
9 surrebuttal testimony, OCA 1R-S without exhibits. Any
10 objections?

11 (No response.)

12 JUDGE FORDHAM: Hearing none, they are admitted.

13 (Whereupon, the documents marked
14 as OCA Statements Nos. 1R, 1R-R
15 and 1R-S were received in
16 evidence.)

17 MR. CHESKIS: Your Honor, would you like me to
18 discuss the document we'd like taken judicial notice of?

19 JUDGE FORDHAM: Yes, you may do so at this time.

20 MR. CHESKIS: Your Honor, in the course of agreeing
21 to waive cross and move testimony into the record, the OCA
22 had requested amongst the parties and the parties have
23 agreed that the filing of what's called the Intercarrier
24 Compensation Forum dated October 5, 2004 at FCC CC Docket
25 No. 01-92 be taken judicial notice of by Your Honor and the

1 rest of the parties.

2 The document is close to 200 pages long. We have
3 provided an electronic copy of the document to Your Honor as
4 well as the other parties, and I've also provided this
5 morning a link to the document on the FCC's website, and
6 again would just request that Your Honor take judicial
7 notice of this document.

8 JUDGE FORDHAM: Mr. Povilaitis, do you have anything
9 on this matter?

10 MR. POVILAITIS: I do, Your Honor. On behalf of
11 Qwest, I requested a clarification of the purpose of let's
12 say the admission and judicial notice of this ICF document,
13 and we received a clarification from OCA.

14 To the extent this document incorporates legal
15 argument which is not usually the subject of any kind of
16 notice, we received a clarification that the notice goes to
17 the fact of the argument having been filed with the FCC and
18 not the truth or persuasiveness or anything else of that
19 particular argument.

20 And it was with that clarification that Qwest
21 supported or did not object to the judicial notice of this
22 ICF document which Mr. Cheskis has thoroughly described.

23 JUDGE FORDHAM: Your Honor, this is Joel Cheskis. I
24 appreciate Mr. Povilaitis' clarification. I'm unaware of
25 any other concerns that other parties may have with regard

1 to this matter, and if there's anything further that you
2 need me to do, then I'd be more than happy to take care of
3 it. Thank you.

4 JUDGE FORDHAM: Are there any other concerns from any
5 other parties?

6 (No response.)

7 JUDGE FORDHAM: Hearing none, I do take judicial
8 notice of the ICF filing. I did print a copy off of the
9 document. Mr. Cheskis had indicated that he submitted a
10 copy in Adobe to each of the parties and has provided a link
11 to the website which also has the document. So I have taken
12 judicial notice of this document.

13 MR. CHESKIS: Thank you, Your Honor.

14 JUDGE FORDHAM: You're welcome.

15 Ms. Painter?

16 MS. PAINTER: Thank you, Your Honor. MCI has three
17 separate testimonies to admit to the record: direct
18 testimony of Michael D. Pelcovits -- there is both a
19 proprietary and a public version of this, and there are
20 three exhibits -- this has been marked MCI Statement 1.0
21 Remand; the rebuttal testimony of Michael D. Pelcovits, MCI
22 Statement 1.1 Remand; and the surrebuttal testimony of
23 Michael D. Pelcovits, MCI Statement 1.2 Remand, and there is
24 one attachment to the surrebuttal testimony. I would move
25 for the admission of these three pieces of testimony.

1 JUDGE FORDHAM: We have MCI Statement 1.0 Remand with
2 exhibits, 1.1 Remand and Statement 1.2 Remand with one
3 attachment, both public and proprietary versions. Are there
4 any objections?

5 (No response.)

6 JUDGE FORDHAM: Hearing none, they are so admitted.

7 (Whereupon, the documents were
8 marked as MCI Statements Nos. 1.0
9 Remand, 1.1 Remand and 1.2 Remand
10 for identification and received
11 in evidence.)

12 JUDGE FORDHAM: Mr. Povilaitis?

13 MR. POVILAITIS: Thank you, Your Honor. This
14 morning, Qwest has three pieces of testimony that it seeks
15 admission of into the record, one of which comes in
16 proprietary and non-proprietary form.

17 The first testimony on remand is that of Mr. Scott
18 McIntyre on behalf of Qwest dated June 8, 2005, and it's
19 identified as Remand Statement No. 1.0.

20 The second piece of testimony which comes in
21 proprietary and non-proprietary forms is the rebuttal
22 testimony on remand of Scott McIntyre dated June 29, 2005
23 and identified as Statement No. 2.0.

24 The third piece of testimony is the surrebuttal
25 testimony on remand of Scott McIntyre dated July 11, 2005

1 and it includes Exhibit 3.0 and it is marked as Statement
2 No. 3.0.

3 And it is with respect to these three pieces of
4 testimony and their associated attachment and exhibit that
5 Qwest requests admission into the record.

6 JUDGE FORDHAM: We have Qwest Remand Statement 1.0,
7 Statement 2.0 and Statement 3.0 with exhibits attached, the
8 first two in proprietary and non-proprietary versions, the
9 last is just a public version. Are there any objections to
10 the admission?

11 MR. POVILAITIS: Your Honor, one clarification. It
12 was only with respect to the second statement, the rebuttal
13 testimony, that there was a proprietary and non-proprietary
14 version.

15 JUDGE FORDHAM: Okay. Thank you for the correction.
16 So with respect to Remand Statement 1, it is noted that
17 there is just a non-proprietary version to that. Any
18 objections?

19 (No response.)

20 JUDGE FORDHAM: Hearing none, they are so admitted.

21 (Whereupon, the documents were
22 marked as Qwest Remand Statement
23 No. 1.0, Qwest Statement No. 2.0
24 and Qwest Statement No. 3.0 for
25 identification and received in

1 evidence.)

2 MR. POVILAITIS: Thank you, Your Honor.

3 JUDGE FORDHAM: You're welcome.

4 Have I omitted any party that has testimony to
5 provide?

6 (No response.)

7 JUDGE FORDHAM: At this time, I would ask Mr. Kohler
8 to address the AT&T supplemental response to Verizon
9 Interrogatory I-8.

10 MR. KOHLER: Yes, Your Honor. Pursuant to the
11 stipulation reached between the parties which I believe was
12 communicated to you by an e-mail from Ms. Paiva, it's been
13 agreed that the supplemental response to Verizon I-8 should
14 be included in the record in this proceeding.

15 I don't know how you want to mark it, but one way of
16 marking it would be, we've submitted six exhibits attached
17 to our testimony, OAO Remand Exhibit 1 through 6, and I
18 could mark this as OAO Remand Exhibit 7, if that's okay with
19 Your Honor.

20 JUDGE FORDHAM: That would be fine.

21 (Whereupon, the document was marked
22 AT&T OAO Remand Exhibit No. 7 for
23 identification.)

24 MR. KOHLER: Your Honor, just for the record, this is
25 actually a correction of data that was on the record in the

1 original phase of the proceeding, so that it's in that vein
2 that we offer it into the record.

3 JUDGE FORDHAM: Thank you.

4 MR. KOHLER: It also occurs to me, Your Honor, that
5 you probably don't -- while all the other parties have been
6 served with this response, you probably don't have a copy,
7 and I would propose to send you a copy as soon as I get back
8 to the office.

9 JUDGE FORDHAM: Thank you. And do you have a copy
10 for the court reporter?

11 MR. KOHLER: I have copies for the court reporter
12 here, Your Honor.

13 JUDGE FORDHAM: Okay. Thank you. Are there any
14 objections?

15 (No response.)

16 JUDGE FORDHAM: Hearing none, it is so admitted.

17 (Whereupon, the document marked as
18 AT&T OAO Remand Exhibit No. 7 was
19 received in evidence.)

20 JUDGE FORDHAM: Ms. Paiva, would you address
21 Verizon's motion to strike legal argument?

22 MS. PAIVA: Yes. As part of the agreement of the
23 parties to waive cross in this matter, Verizon has agreed to
24 withdraw its motion to strike legal argument from AT&T's
25 testimony which Verizon filed on July 11, 2005 with the

1 understanding that AT&T would not cite those portions of the
2 testimony as evidentiary matters but rather would make those
3 arguments as legal arguments in its brief.

4 JUDGE FORDHAM: Mr. Kohler, you are in agreement with
5 that?

6 MR. KOHLER: Yes, Your Honor.

7 JUDGE FORDHAM: Thank you. Are there any other
8 outstanding issues other than the motion from Qwest?

9 (No response.)

10 JUDGE FORDHAM: If not, then Mr. Povilaitis, would
11 you state your motion and then we can have responses from
12 first Verizon, then OCA and then OTS.

13 MR. POVILAITIS: Certainly, Your Honor. Thank you.

14 As Your Honor has stated, Qwest has submitted a
15 motion to strike portions of Verizon and OCA's testimony and
16 OTS's direct testimony in its entirety due to references to
17 IXC rates, particularly the request to require reductions in
18 IXC rates tied to access charge reform. This is otherwise
19 known as the flow-through argument.

20 There are two primary bases for Qwest's motion. We
21 don't think the flow-through issue is in this case, given
22 the direction that we've been given from the Commission on
23 the scope of the remand proceeding.

24 And secondly, we cannot help but identify for Your
25 Honor the fact that the Commission lacks authority to set

1 competitive IXC rates under the Public Utility Code.

2 Qwest's motion is very practical. It seeks to avoid
3 the need for the Commission, the ALJ and the parties to
4 brief and decide any issue related to the proper level of
5 IXC long distance rates.

6 We think the law is clear on this issue that there's
7 no role for the Commission relative to setting IXC
8 competitive rates or the flow-through given the clear
9 language of Section 3018(b)(1).

10 The testimony we seek to strike explores this issue
11 improperly, and we think it's an important issue and took
12 the time to bring it to Your Honor's attention because Qwest
13 believes it clouds what are the real issues in the case.

14 Now, with respect to the specifics of the testimony
15 we seek to strike, we would point out that OTS's testimony
16 appears to embrace the single-minded view that the only
17 possible benefit of access charge reform would be a
18 reduction in IXC rates. But this case is not about setting
19 IXC rates.

20 With respect to the Verizon testimony, Verizon claims
21 it's not seeking a flow-through condition, but its testimony
22 goes on to opine that access charge reform reductions go
23 directly to increase IXC profit levels.

24 This is a completely unsupported statement that is
25 probably factually unprovable and gets the Commission or

1 attempts to get the Commission into the issue of considering
2 what IXC rate levels ought to be.

3 OCA's testimony does not directly mention the flow-
4 through issue, but nevertheless it's critical of the level
5 of IXC rates and that is an issue not before the Commission
6 and, per my earlier remarks, we think it does confuse the
7 issue somewhat.

8 There's no evidence in the Commission orders issued
9 in this remand proceeding that IXC rate levels are at issue
10 in this case.

11 We note that, for example, the OCA answer to Qwest's
12 motion had to go to the pre-remand exceptions of the parties
13 to find references to IXC rates.

14 And moreover, the parties opposing Qwest's motion
15 claim that the scope of this remand proceeding is broad.
16 But there's no real evidence that that is true.

17 The Commission order directing the remand in July of
18 2004 doesn't mention any broad scope of issues. The
19 reconsideration order didn't mention any broad set of
20 issues. In fact, every time the Commission has described
21 what the issues are in this remand, it fails to mention
22 anything to do with IXC long distance rates.

23 So it is for these reasons that Qwest seeks to strike
24 those portions of testimony identified in its motion. Thank
25 you, Your Honor.

1 JUDGE FORDHAM: Thank you. Ms. Paiva?

2 MS. PAIVA: Yes, Your Honor. Thank you.

3 In response to Qwest's motion to strike, the evidence
4 that Qwest seeks to strike from these three pieces of
5 testimony go generally to the argument of whether the IXCs
6 have shown that consumers would benefit from the access
7 reductions that just happened or from the ones that they are
8 asking for here in Phase 2.

9 It goes to the issue of whether they have experienced
10 a benefit through rate reductions, but also more broadly as
11 to whether the IXCs have shown any consumer benefit at all.

12 And I would note that the IXCs themselves have opened
13 the door to rebuttal and to argument on this issue because,
14 as we cited on page three of Verizon's response to Qwest's
15 motion, for example, Qwest's own witness stated that delay
16 in further reducing access charges would deny the benefits
17 to consumers proffered by access reform.

18 So of course, it is fair game for the Commission to
19 consider evidence regarding the benefits or lack of benefits
20 to consumers.

21 Similarly, MCI contended that competition in the long
22 distance market would force each carrier to reduce its toll
23 rates to reflect cost reductions from the access reductions.
24 So it's not necessarily a question of the Commission
25 ordering IXCs to flow through these access reductions in

1 their rates and Verizon is not asking the Commission to do
2 that, but it's more a question of the argument that the
3 other parties have made that market forces will naturally
4 make these rates become lower if you lower access charges
5 without the Commission necessarily having to tell them what
6 their rates should be. Arguments have been made, and so we
7 are entitled to put in evidence to rebut those arguments.

8 Generally, the purpose of striking testimony from the
9 record would be to avoid additional procedures, additional
10 testimony or discovery or something of that nature that
11 would complicate the proceeding on the argument that that
12 whole line of questioning is not relevant.

13 In this case, the record now is complete. The
14 parties have agreed to waive cross. All the testimony is
15 here before the Commission. Qwest is just seeking to strike
16 certain portions of the testimony that we have already
17 prepared here. We see no reason to do that.

18 The Commission should be allowed to consider all the
19 evidence that's before it, to make its decision on the full
20 record, and the Commission has the discretion to give weight
21 to that evidence as it sees fit.

22 But it's not proper to actually strike that evidence
23 from the record and not even allow the Commission to
24 consider whether or not the IXCs have demonstrated consumer
25 benefit from the rate changes that they are asking for.

1 Just one final point on this issue. This whole
2 argument flows from the erroneous premise that is in Qwest's
3 motion and in some of the IXC's testimony that the
4 Commission has already basically predetermined that in Phase
5 2 there should be access reductions and that the scope of
6 the issues before you in this remand is quite limited.
7 But that actually is not supported by the Commission's
8 orders in this matter.

9 If the Commission wanted to just have further access
10 reductions and it was only a question of calculating the
11 amount, the Commission could have done that itself. It did
12 not. It remanded to you for further development of the
13 record, the exact words, and for consideration of the merits
14 of all the parties' positions on this issue.

15 So Verizon believes the Commission has left it open
16 to you in Phase 2, especially in light of the other order
17 that expanded this to include the federal, the impact of the
18 federal case, that the Commission has left it open to you to
19 decide that perhaps no further access reductions are
20 warranted at this time and that perhaps we need to wait for
21 the outcome of the federal case before we consider the next
22 step in access reduction.

23 And the testimony that demonstrates that there's no
24 immediate consumer benefit to be had from rushing to have
25 access reductions and rate rebalancing right now is

1 completely relevant to your determination of whether we need
2 to do something right now or whether it would be more
3 prudent to wait.

4 So in sum, I don't think that the PUC expected you to
5 make your remand decision sort of in a vacuum. The PUC
6 expected you to consider the benefits and detriments to all
7 constituencies that would be affected by this rate
8 rebalancing.

9 Impact on end user customers is one of the issues
10 that go to the benefits and detriments, whether the impact
11 is through changes in their rates that result from this or
12 lack of changes in the rates or the fact that -- some of the
13 testimony addresses the fact that some of the IXCs had
14 actually raised their rates or raised some of their charges
15 that they put onto the bill that are not actually rates but
16 surcharges, right around the same time that the rebalancing
17 occurred.

18 All of this testimony is relevant to seeing the whole
19 picture of who is benefiting and who is not benefiting from
20 what has just been done and what is proposing to be done
21 here.

22 So in summary, you should deny Qwest's motion to
23 strike and you should allow all of this testimony into the
24 record and give it the weight that it's due when you make
25 your decision.

1 JUDGE FORDHAM: Thank you. Mr. Cheskis?

2 MR. CHESKIS: Thank you, Your Honor.

3 I'd actually like to pick up a little bit where Ms.
4 Paiva left off and just characterize this motion as a
5 disagreement in the scope of this proceeding.

6 It seems that Qwest has characterized this proceeding
7 not as a matter of whether or how there will be access
8 reductions, but when there will be access reductions.

9 And they've criticized us for not finding support in
10 the Commission's statement to the contrary, but I think it's
11 in fact Qwest that has not provided any cite to the
12 Commission's order that in fact further access reductions
13 have been preordained.

14 To the contrary, we have provided cites in our motion
15 to the PUC's order that does indicate that issues include
16 but are not limited to, etcetera, or that each of the
17 parties' positions on the various issues should be addressed
18 in this remanded proceeding.

19 But again, it does not seem that Qwest has provided a
20 clear and concise cite to the Commission's July 28th order
21 that in fact further access reductions are what the
22 Commission seeks out of this proceeding.

23 As Mr. Povilaitis clarified in his argument this
24 morning, the OCA's testimony does not mention the word
25 "flow-through" once that Qwest seeks to strike.

1 In their one paragraph of their argument in their
2 motion, they seek to strike more than four pages of Dr.
3 Loube's direct testimony, but again I think that the flow-
4 through provisions that Qwest is relying on to strike our
5 testimony is a little bit unfounded and certainly outweighed
6 by the overall benefits and public interest analysis that
7 this Commission should be taking in this proceeding to see
8 in fact, again, not when access reductions should be
9 implemented, but, you know, we believe the question of
10 whether or how -- or more so whether those access reductions
11 should take place.

12 And that's exactly what Dr. Loube's testimony goes to
13 that Qwest now seeks to strike. Whether or not further
14 access reductions should take place is not a new issue in
15 this proceeding, but is in fact at the heart of this case
16 and directly related to whether such access reductions will
17 have produced reductions that may benefit consumers.

18 Qwest may not agree with the positions that Dr. Loube
19 states in his direct testimony, but that certainly doesn't
20 mean that those positions are not relevant to this matter.

21 And as Mr. Povilaitis also indicated this morning,
22 the IXCs themselves have also raised the issue of long
23 distance rates both in the initial proceeding as well as in
24 their own remanded testimony and we've provided some cites
25 in our answer to Qwest's motion to where the IXCs and

1 particularly Qwest have in their own exceptions and in
2 direct testimony have spoken about the long distance rates
3 which is an issue we think they have a right to discuss, and
4 we're merely presenting our positions in response to that.

5 Again, I just think that this is an issue that
6 relates to the scope of the proceeding. We do believe that
7 there is support in the Commission's July 28th order that
8 would allow for the presentation of Dr. Loube's testimony
9 that Qwest now seeks to strike, yet on the other hand there
10 really is no support in that order that adopts the Qwest
11 interpretation of so narrowly limiting the scope of this
12 remanded proceeding.

13 If there are any other issues, I'd be more than happy
14 to respond to them, but I think that's my position at this
15 point.

16 JUDGE FORDHAM: Thank you. Mr. Eckenrod?

17 MR. ECKENROD: Thank you. Good morning, Your Honor.
18 To start off, I just would want to echo the arguments of
19 both Verizon and the OCA and adopt those as well, and just
20 build upon them maybe a little bit with regard to the OTS.

21 To address Qwest's two arguments here that the
22 Commission, number one, that the Commission remand order was
23 not broad enough and was somehow limited in scope, and that
24 the Commission does not have the authority to require flow-
25 through of access charges, rather, the proper issue in this

1 proceeding is the propriety of access charge reductions and
2 the significant policy issues surrounding this inquiry as
3 indicated in the July 28, 2004 Commission order.

4 Indeed, as this proceeding initially related to
5 access charge parity, it would appear that the Commission
6 expanded the scope of the proceeding instead of limiting it.

7 As indicated by Verizon and OCA, further access
8 charge reductions are not preordained and, as a basic policy
9 matter, the propriety of further access charge reform, that
10 is whether further access charge reductions are necessary or
11 even proper, must be discussed in the context of whether any
12 benefits or harm were realized by ratepayers, the IXCs or
13 even Verizon.

14 As OTS is the only party to this proceeding that has
15 the statutory obligation to protect the interest of all
16 parties, including the customers, I think that Mr. Kubas'
17 testimony is a reflection of this mandate and it would note
18 that Mr. Kubas has examined whether any benefits have been
19 realized by those customers.

20 Beyond that, I think his testimony is completely
21 relevant to the proceeding and I would just argue that his
22 testimony should be admitted and Qwest's motion be denied.

23 JUDGE FORDHAM: Mr. Povilaitis, do you have a
24 response?

25 MR. POVILAITIS: Just a short comment, Your Honor.

1 The point has been argued that Qwest has no
2 references in its filing to support its argument that the
3 scope of the remand is narrow and does not include the kind
4 of IXC rate issues that have been raised.

5 In fact, we did quote from the Commission's order,
6 and as I indicated in my opening argument as to what the
7 scope of issues are in this case, the Commission, and I'll
8 quote again, "a recommendation of the next steps for access
9 reform, a recommendation on whether access charges should be
10 reduced to cost, and a recommendation on the elimination of
11 the carrier charge."

12 In addition, the Commission mentioned the
13 intercarrier compensation proceeding that the parties are to
14 address as well.

15 If the parties opposing Qwest's motion are displaying
16 anxiety as to whether or not an access charge reform
17 reduction is a foregone conclusion, looking at these orders,
18 I would have that concern, too, if I were opposing that
19 position.

20 But clearly there is substantial information in the
21 Commission's orders indicating what the scope of issues are
22 in this case to support Qwest's motion to strike. It
23 clearly has nothing to do with the flow-through or
24 adjustments of IXC rates, and to the extent the testimony
25 suggests otherwise, we think it should be stricken. Thank

1 you.

2 JUDGE FORDHAM: Thank you. As I indicated, I will
3 make a decision. I will make that decision in writing on or
4 before this Friday. I would note that the record officially
5 is scheduled to close on Thursday, July 21st.

6 We have, with respect to all of the documents that
7 will be entered with the exception of the items that are the
8 subject of this motion, admitted those documents into the
9 record.

10 The main briefs are due on August 17th, therefore as
11 I indicated, I will make a decision on whether this document
12 or this testimony will be a part of the record or not by
13 this Friday, the 22nd. So I will send it by e-mail to
14 everyone so that you will have the information by this
15 Friday.

16 Is there anything further that we need to discuss
17 with respect to testimony or any other outstanding matters?

18 (No response.)

19 JUDGE FORDHAM: If not, I'd like to thank the parties
20 for their cooperation and for your participation. I know we
21 have gone through this for a number of years and most of the
22 telephone cases have been around for a while. We will try
23 to make sure that this gets out in an expedited way in
24 accordance with the parties' desires. Thank you very much.

25

1 (Whereupon, at 11:20 a.m., the proceedings were
2 concluded.)

3 C E R T I F I C A T E

4 I hereby certify, as the stenographic reporter, that
5 the foregoing proceedings were taken stenographically by me
6 and thereafter reduced to typewriting by me or under my
7 direction, and that this transcript is a true and accurate
8 record to the best of my ability.

9
10 COMMONWEALTH REPORTING COMPANY, INC.

11 By: John A. Kelly

12 John A. Kelly,
13 Certified Verbatim Reporter

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