

ORIGINAL

COMMONWEALTH OF PENNSYLVANIA

PUBLIC UTILITY COMMISSION

DOCUMENT FOLDER

AT&T Communications of PA, Inc. v. Verizon North, Incorporated. Verizon North's Intrastate Carrier Access Rates are unjust and unreasonable, and seek an immediate reduction to no more than the rates charged by Verizon Pennsylvania.

Docket No. C-20027195
MJP
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Further Hearing.

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Pages 245 through 480

Hearing Room No. 2
Commonwealth Keystone Building
Harrisburg, Pennsylvania

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

Tuesday, August 26, 2003

Met, pursuant to adjournment, at 9:09 a.m.

BEFORE:

CYNTHIA WILLIAMS FORDHAM, Administrative Law Judge

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P R O C E E D I N G S

ADMINISTRATIVE LAW JUDGE CYNTHIA WILLIAMS FORDHAM:

1
2
3 Good morning. I'm Administrative Law Judge Cynthia Williams
4 Fordham and this is the time for a further hearing in the
5 matter of A&T Communications of Pennsylvania, Inc. versus
6 Verizon North, Incorporated and Verizon PA, Inc. at Docket
7 C-20027195. We had the initial hearing in this matter
8 yesterday. Today and tomorrow are scheduled. We are trying
9 to complete this today.

10 The first item on the agenda is to find out from Ms.
11 Jones whether she's going to have oral rejoinder today.

12 MS. JONES: Yes, Your Honor. I have spoken with
13 counsel for Verizon North and Verizon PA and told them that
14 we will not be having oral rejoinder.

15 JUDGE FORDHAM: Thank you. Therefore, we will
16 proceed with the witnesses as agreed upon by the parties.
17 We'll go with AT&T next.

18 MR. BARBER: Thank you, Your Honor. AT&T calls Mr.
19 Robert Kirchberger and Christopher Nurse.

20 JUDGE FORDHAM: Please raise your right hand.

21 Whereupon,

22 ROBERT J. KIRCHBERGER

23 and

24 E. CHRISTOPHER NURSE

25 having been duly sworn, testified as follows:

1 JUDGE FORDHAM: You may be seated.

2 Would you please state your name and business address
3 for the record, please?

4 WITNESS KIRCHBERGER: Robert J. Kirchberger, One AT&T
5 Way, Bedminster, New Jersey.

6 WITNESS NURSE: My name is E. Christopher Nurse. My
7 business address is 3033 Chain Bridge Road, Oakton,
8 Virginia.

9 JUDGE FORDHAM: Thank you.

10 Mr. Barber, you may proceed.

11 MR. BARBER: Thank you, Your Honor.

12 **DIRECT EXAMINATION**

13 BY MR. BARBER:

14 Q. Good morning, gentlemen. Do you have before you
15 a document entitled Rebuttal Testimony of Robert J.
16 Kirchberger and E. Christopher Nurse on Behalf of AT&T
17 Communications of Pennsylvania, LLC, identified as AT&T
18 Statement 1.0, dated July 18, 2003?

19 (Whereupon, the documents were
20 marked as AT&T Statement No. 1.0
21 and Exhibits K-N 1 through 8 for
22 identification.)

23 WITNESS KIRCHBERGER: Yes.

24 BY MR. BARBER:

25 Q. Is this a document that was prepared by you or

1 under your direct supervision?

2 A. (Kirchberger) Yes.

3 A. (Nurse) Yes.

4 Q. I would note it's a document that consists of 34
5 pages of written questions and answers and eight exhibits
6 labeled K-N Rebuttal Exhibits 1 through 8; is that correct?

7 A. (Nurse) Yes.

8 A. (Kirchberger) Yes.

9 Q. Do you have any additions, corrections,
10 deletions or other modifications to make to AT&T Statement
11 1.0?

12 A. (Kirchberger) Yes. We have two minor
13 corrections. On Page 5, line 5, the figure "0.623235"
14 should be changed to read "0.0623235." There was a zero
15 left out after the decimal point.

16 Then the second correction is on page 29, line 15.
17 Where it says "local exchange rates," that should read
18 "local switching rates to interstate levels."

19 Those are the only two corrections that I'm aware of
20 that need to be made in the testimony.

21 Q. Subject to those two corrections, if I were to
22 ask you the questions set forth in AT&T Statement 1.0, would
23 your answers remain the same?

24 A. (Kirchberger) Yes.

25 A. (Nurse) Yes.

1 Q. Turning to a second document, do you have before
2 you a document entitled the Surrebuttal Testimony of Robert
3 J. Kirchberger and E. Christopher Nurse, identified as AT&T
4 Statement 1.1, and dated August 4, 2003? Do you have that
5 before you?

6 (Whereupon, the document was
7 marked as AT&T Statement No. 1.1
8 for identification.)

9 WITNESS NURSE: Yes.

10 WITNESS KIRCHBERGER: Yes.

11 BY MR. BARBER:

12 Q. And that's a document that consists of 13 pages
13 of written questions and answers?

14 A. (Kirchberger) Yes.

15 Q. Do you have any additions, corrections or other
16 modifications to make to AT&T Statement 1.1?

17 A. (Kirchberger) No.

18 Q. That's a no?

19 A. (Kirchberger) No.

20 A. (Nurse) No.

21 Q. Given that, if I were to ask you the questions
22 set forth in AT&T Statement 1.1 today, would your answers
23 remain the same?

24 A. (Kirchberger) Yes.

25 A. (Nurse) Yes.

1 MR. BARBER: Your Honor, subject to that, I would
2 move for the admission of AT&T Statement 1.0 and AT&T
3 Statement 1.1 and make Mr. Nurse and Mr. Kirchberger
4 available for cross-examination.

5 JUDGE FORDHAM: Thank you.

6 Verizon.

7 MS. PAIVA: Yes, Your Honor.

8 JUDGE FORDHAM: Ms. Paiva.

9 **CROSS-EXAMINATION**

10 BY MS. PAIVA:

11 Q. Good morning, Mr. Kirchberger, Mr. Nurse.

12 A. (Kirchberger) Good morning.

13 A. (Nurse) Morning.

14 Q. I have a few questions for you. On page 4 of
15 your testimony, starting at the bottom --

16 A. (Nurse) I'm sorry; can you speak up a little
17 bit? It's hard to hear with of the air-conditioning.

18 Q. Can you hear me better now?

19 A. (Nurse) Yes.

20 A. (Kirchberger) Yes.

21 Q. On page 4 at the bottom, you --

22 MR. BARBER: Of the direct?

23 BY MS. PAIVA:

24 Q. Of the direct -- or the rebuttal, the first
25 piece. It's actually the rebuttal.

1 At the bottom of the page you discuss AT&T's cost of
2 access in Verizon Pennsylvania territory. That would be the
3 former Bell Atlantic territory; correct?

4 A. (Nurse) You're down at line 20?

5 Q. Yeah; line 20.

6 A. (Nurse) Right.

7 Q. And you state that each end of the call costs
8 approximately (Proprietary number deleted) cents per minute;
9 correct?

10 A. (Nurse) Yes.

11 Q. And you have the exact figure on line 20.

12 By "each end of the call," you mean like one end of
13 the call is where a customer, say a Verizon local customer
14 who has AT&T long distance, picks up the phone to place a
15 long distance call, AT&T pays access on that end of the
16 call; correct?

17 A. (Nurse) Right. That would be the originating
18 end of the call, and then likewise, on the terminating end
19 of the call, assuming that the terminating customer was a
20 Verizon local exchange customer.

21 Q. So the other end of the call is the terminating
22 end based on you pay access to the local exchange company
23 that serves the customer who receives the call?

24 A. (Nurse) Yes.

25 Q. Now, the (Proprietary number deleted) cents that

1 you discuss there on line 20 of page 4, it's a figure that
2 you calculated taking into account all of the access rate
3 elements that exist, the local switching, the transport and
4 the carrier charge; correct?

5 A. (Nurse) I have to go back to the work papers
6 for that, but you have to take assumptions about transport,
7 mileages, plus the switching charges and the other charges
8 and usage amounts per month to get average per minute rates;
9 yes.

10 Q. Right. So you convert all those charges into an
11 approximate per minute charge?

12 A. (Nurse) Yes.

13 Q. Just so there's no confusion in the record,
14 yesterday we had talked about a local switching charge,
15 which for Verizon Pennsylvania today is .9 of a cent, and
16 which, under the OCA/Verizon proposal, would be reduced to
17 .69 of a cent. The local switching is one rate element and
18 it's part of what you used to calculate the **(Proprietary**
19 **number deleted)** cents; correct?

20 A. (Nurse) Yes. It's the biggest traffic
21 sensitive component.

22 Q. Now, moving on to the top of page 5, you discuss
23 the fact that if both ends of the call were in Verizon
24 Pennsylvania territory, that being that the customer who
25 places the call is in Verizon Pennsylvania territory and the

1 customer who receives the call is also in Verizon
2 Pennsylvania territory, then AT&T's cost of access would be
3 3.5 cents, which is basically the (Proprietary number
4 deleted) times 2; right?

5 A. (Nurse) Yes. I don't mean to quibble, but just
6 to clarify, "Verizon territory" is a little bit a historical
7 term that I'm comfortable with, but just so the record is
8 clear, that would mean a customer whose local exchange
9 service is purchased from Verizon, because --

10 Q. Right. That's a good clarification.

11 A. (Nurse) -- my UNE-P customers or other
12 customers would be in Verizon territory, because my
13 territory is now overlapping with yours.

14 Q. Right. And also, when you're saying the 3.5
15 cents, you're talking about the former Bell Atlantic, a
16 customer whose local service is given by the former Bell
17 Atlantic?

18 A. (Nurse) Yes.

19 Q. Now, also on page 5, a little bit farther down
20 -- in fact, that's where you made the correction -- on lines
21 4 and 5, you talk about the cost of access in Verizon North
22 territory, which is the former GTE territory; correct?

23 A. (Nurse) Yes.

24 Q. And the cost of access is higher in Verizon
25 North territory, and you say it's about 6.2 cents per minute

1 for each end of the call; correct?

2 A. (Nurse) Yes, primarily driven by the high
3 carrier charge.

4 Q. So the cost of access in Verizon North's
5 territory seems to be about three-and-a-half times higher
6 than the cost of access in Verizon PA's territory; correct?

7 A. (Nurse) Just for clarification, the cost there
8 is the cost to me.

9 Q. Exactly.

10 A. (Nurse) And my cost is your price, not
11 necessarily your cost.

12 Q. Right.

13 A. (Nurse) But the cost to me is higher.

14 Q. Now, have you reviewed and also, I don't know if
15 you have it in front of you, the Berry/Wirl surrebuttal
16 testimony, Exhibit DMB-1? And I have some extra copies if
17 you don't have it.

18 A. (Nurse) Yes, I have.

19 Q. I just want to -- once you get it.

20 A. (Nurse) It will just take me a minute to get
21 there.

22 (Pause.)

23 A. (Nurse) Actually, maybe you can get a copy for
24 Mr. Kirchberger while I'm looking mine up.

25 MS. PAIVA: Your Honor, do you have a copy handy?

1 Would you like one?

2 JUDGE FORDHAM: Thank you.

3 BY MS. PAIVA:

4 Q. I'll give you a moment to look at the document.
5 Just let me know when you're ready.

6 (Pause.)

7 A. (Nurse) I'm there. DMB Exhibit-1?

8 Q. Yes.

9 A. (Nurse) Yes.

10 Q. I just thought it might be a little helpful to
11 the record to try to tie the numbers together. If you look
12 at DMB Exhibit 1, and look at the table, the last line there
13 says "Combined Rate Per Minute." Do you see that?

14 A. (Nurse) Yes, the last line at the bottom of the
15 chart, the combined rate per minute.

16 Q. Now, the first column after that is "Current
17 Verizon PA," that would be current for the former Bell
18 Atlantic, and it's currently (**Proprietary number deleted**)
19 cents per minutes; correct?

20 JUDGE FORDHAM: Ms. Paiva, this is proprietary?

21 MS. PAIVA: Oh, I'm sorry; yes -- although,
22 actually --

23 WITNESS NURSE: That table is bracketed by
24 "proprietary."

25 MR. BARBER: Would the rates be -- maybe we could go

1 off the record.

2 MS. PAIVA: Yes, let's go off the record for a
3 minute.

4 JUDGE FORDHAM: Okay. We're off the record.

5 (Discussion off the record.)

6 JUDGE FORDHAM: We're back on the record.

7 This part of the record is proprietary.

8 (Whereupon, the following pages 262 through 265 were
9 designated proprietary and were sealed and bound
10 separately.)

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1 JUDGE FORDHAM: We're off the proprietary record now,
2 back on the public record.

3 MS. PAIVA: Now I'm going to mark two exhibits and
4 hand them out. These would be -- we marked some Verizon
5 exhibits yesterday, so I think we did Verizon 1 and 2
6 yesterday?

7 JUDGE FORDHAM: Yes.

8 MR. BARBER: They weren't cross-examination exhibits.

9 MS. PAIVA: How would you do it? Would you prefer to
10 just go consecutively with Verizon and start with number 3,
11 or do you want these to be cross exhibits and go back
12 and start from --

13 JUDGE FORDHAM: We can do them as cross exhibits.

14 MS. PAIVA: So then this would be Cross Exhibit No.
15 1.

16 JUDGE FORDHAM: One; right.

17 MS. PAIVA: Actually, these will be 1 and 2.

18 JUDGE FORDHAM: They shall be so marked.

19 (Pause.)

20 WITNESS NURSE: Ms. Conover, do you have a second
21 one? Do you have two of those?

22 (Pause.)

23 MS. PAIVA: Are we ready?

24 JUDGE FORDHAM: Yes.

25 MS. PAIVA: I've asked to have marked two exhibits.

1 The first one would be marked as Verizon Cross Exhibit 1,
2 and Verizon Cross Exhibit 1 is a one-page document, a print-
3 out from AT&T's web site entitled "In-State Connection Fee,"
4 and then in small letters, "in-state connection fee for
5 Pennsylvania."

6 JUDGE FORDHAM: It shall be so marked.

7 (Whereupon, the document was marked
8 as Verizon Cross-Examination Exhibit
9 No. 1 for identification.)

10 MS. PAIVA: And the second document I asked to have
11 marked Verizon Cross-Examination 2. This is a page from
12 AT&T's Pennsylvania tariff, Pa. P.U.C. No. 22. It's Section
13 1, Original Sheet 58, and it has to do with the in-state
14 connection fee. It's a one-page document.

15 JUDGE FORDHAM: It shall be so marked.

16 (Whereupon, the document was marked
17 as Verizon Cross-Examination Exhibit
18 No. 2 for identification.)

19 BY MS. PAIVA:

20 Q. I'm not sure which one of you this question is
21 for, but AT&T charges an in-state connection fee in
22 Pennsylvania; correct?

23 A. (Kirchberger) That is correct.

24 Q. If you would look at Cross-Examination Exhibit
25 1, this is from AT&T's web site. I'm just going to read you

1 the description of what it says here and you tell me if this
2 is what the in-state connection fee is. It says, "AT&T is
3 charged by your local telephone company in Pennsylvania to
4 carry your AT&T in-state long distance and local toll calls
5 over its lines. In order to help recover these costs, AT&T
6 will begin to include in your monthly bill a \$1.95 In-State
7 Connection Fee. The fee applies to customers subscribed to
8 AT&T for residential long distance or local toll service,"
9 and then there's some more description.

10 Is that an accurate description of the in-state
11 connection fee?

12 A. (Kirchberger) That is the accurate description
13 of the in-state connection fee. They were filed and put in
14 place to recognize that the intrastate access charges are
15 significantly in excess of cost and much, much higher than
16 the interstate access charges; and this is a pricing and
17 marketing mechanism that AT&T has to recognize that.

18 Q. So if I understate what you just said, the
19 in-state connection fee really is targeted to recover only
20 costs related to the intrastate access charges, it does not
21 have any connection with the interstate access charges?

22 A. (Kirchberger) Could you repeat your question?
23 I could not hear. I mean, I could not determine whether you
24 said intrastate or interstate, so --

25 Q. I'll repeat it. The connection fee that we just

1 discussed, it's designed to recover costs for AT&T that have
2 to do with intrastate access charges and it does not have
3 anything to do with interstate access charges?

4 A. (Kirchberger) We filed it in-state to reflect
5 the higher cost of intrastate access charges. It was not
6 filed in the interstate tariff where interstate access
7 charges are -- you know, that is the jurisdiction to handle
8 that.

9 A. (Nurse) But I wouldn't say it doesn't have
10 anything to do with interstate charges, in that it's driving
11 at the distinction between the two charges.

12 Q. So the intent of it is to represent the
13 additional cost to AT&T that it pays for intrastate access
14 charges over what it pays for interstate?

15 A. (Kirchberger) It's reflecting that the
16 intrastate access charges are, in our consideration, bloated
17 compared to the interstate access charges. This proceeding
18 here is an opportunity for this Court and this Commission to
19 make a great step forward in moving intrastate access
20 charges much closer to cost, and removing the implicit
21 subsidy, and, through your actions, through the Verizon
22 testimony, to move it into an explicit charge, which would
23 be your rate balancing. So we hope that the outcome of this
24 action and this hearing, this docket, would remove a lot of
25 the bloat and the implicit subsidy in intrastate access

1 charges. That's going to cause us to reexamine what we do
2 with our pricing, because the interexchange market is a
3 very, very competitive market, especially since now Verizon
4 has entered it as well. So in our reexamination of our
5 rates in this competitive market, we will take a look at the
6 in-state connection fee as well as our regular rates and
7 make a correct marketing and corporate decision as to what's
8 the best way to handle that.

9 Q. So are you saying if the outcome of this case is
10 a reduction in Verizon's access charges, that AT&T would
11 reduce its in-state connection fee, or that it might not
12 reduce its in-state connection fee?

13 A. (Kirchberger) I just want to repeat what I just
14 said. AT&T has to react to competition in the market. We
15 will do what we need to do to remain competitive in the
16 market. If that means changing our rates, bundles, et
17 cetera, and the in-state connection fee is one of those
18 rates, then we will have to take a look at it. I am not
19 going to sit here and say specifically the exact rate
20 changes and the level of those rate changes that we may or
21 may not make to react to a competitive market without
22 knowing what the ultimate reduction in access would be. But
23 yes, in-state connection fee is one of our charges, and we
24 would have to look at all of our charges that we have out
25 there and make the correct corporate and marketing decision,

1 but I can't do that from the stand here.

2 A. (Nurse) I would add that it's an imperfect
3 mechanism. You know, the problem when you're an IXC is that
4 you don't control the terminating access, and the in-state
5 connection fee is an imperfect mechanism to try to get back
6 at some of the issues like a very high carrier charge and
7 traffic sensitive rates substantially above cost. Our
8 problem is that our competitors may not have a similar fee
9 that the customer sees on his long distance bill, and by
10 switching long distance carriers, he can avoid the AT&T
11 in-state connection fee, so, in a sense, it can drive some
12 customers away, which is not good for business, because
13 customers are getting wrong price signals. We're getting
14 access charges way above cost. Those have to be reflected
15 in retail toll rates. The movement that you've seen in the
16 interstate jurisdiction is to reduce the traffic sensitive
17 rates and increase the SLC so that the customer doesn't see
18 these charges on his IXC bills, but instead sees these types
19 of fees on his local bill.

20 Q. Going back to what Mr. Kirchberger said in
21 response to the question, once AT&T has all the information
22 and weighs its options and determines what would best allow
23 it to respond to the competitive market, it's possible then
24 that even if Verizon reduces its access charges, AT&T will
25 not reduce its in-state connection fee; correct?

1 A. (Kirchberger) Anything is possible in a
2 competitive market, but competitive market forces are going
3 to send us signals that we're going to have to react to. As
4 I said before, we have broad ranges of rates and offers, and
5 when our underlying costs are reduced and every other IXC in
6 this state will have those same reduced costs, if we don't
7 react, our competitors will, and then we're going to be kind
8 of standing in the dust. So the key is, it's a very
9 competitive market. We will make the appropriate pricing
10 changes in order to react to a change in our underlying
11 costs.

12 Q. I just want to ask you a mundane question before
13 I forget. Could you take a look at Cross-Examination
14 Exhibit 2, which is the tariff page? Could you just
15 authenticate it for me and verify that this is, in fact, the
16 tariff page that AT&T filed with the Pennsylvania Commission
17 to document the in-state connection fee?

18 A. (Kirchberger) Although this is the first time
19 I've actually looked at a tariff page for the in-state
20 connection fee in Pennsylvania, this appears to look like
21 the intrastate tariff; and so I would say, subject to check
22 and verification, yes, I agree.

23 Q. And the page says that the billing of a charge
24 would commence March 1, 2003. Do you know if it's currently
25 being billed in Pennsylvania?

1 A. (Kirchberger) I have no knowledge that it is
2 not being billed.

3 Q. Just so that I understand how it works,
4 basically, an AT&T long distance or toll customer pays \$1.95
5 per line, per month; correct?

6 A. (Nurse) Yes, but obviously there's the caveat
7 on the third line down that the charge is applied if a
8 customer has \$1.00 or more of AT&T billable charges on their
9 bill.

10 Q. Right.

11 A. (Nurse) That's important, because if there were
12 a month where you made no phone calls or one minute, your
13 bill might be 25 cents or zero. It's not going to look very
14 good to a customer to open up a bill and see a fee for no
15 usage.

16 Q. Right.

17 A. (Nurse) But that would be only as incorrect as
18 our getting a carrier charge in a month where we have no
19 usage. So the problem is we're forced to mirror through the
20 bad price signals we get in the wholesale access market, and
21 it distorts the retail market.

22 Q. But assuming that a customer is using his or her
23 phone and has more than \$1.00 worth of AT&T charges per
24 month, you charge the customer \$1.95 per month, per line,
25 and Verizon charges you a carrier charge of 63 cents per

1 line, per month, Verizon PA?

2 A. (Nurse) In Verizon PA, they charge us a carrier
3 charge of 63 cents. They put the support in the carrier
4 charge, they put other support into the traffic sensitive
5 rates, including the transport and switching.

6 Q. Just also so I understand how the \$1.95 charge
7 works, it's the same charge regardless of whether an AT&T
8 customer is in Verizon PA territory or Sprint or Altel, I
9 mean, it's the same charge for the whole state of
10 Pennsylvania; correct?

11 A. (Kirchberger) Yes.

12 Q. Now, if you know, AT&T also --

13 A. (Nurse) We're required to have statewide rates.

14 Q. Right.

15 AT&T also charges the in-state connection fee in
16 other states, doesn't it?

17 A. (Nurse) In some other states, yes.

18 A. (Kirchberger) Certain other states it does,
19 yes.

20 Q. And the amount of the fee is not always the
21 same; it's not always \$1.95. Some states it might be 55
22 cents or \$1.35 or something; correct?

23 A. (Nurse) I know other states where it's \$1.95.

24 A. (Kirchberger) Yeah. My only knowledge is of
25 the other states where it's \$1.95. There may be variations

1 in other states, but I am not personally aware of them.

2 MS. PAIVA: Actually, I'm going to mark another
3 exhibit then.

4 (Pause.)

5 MS. PAIVA: For the record, I've asked to be marked
6 as Verizon Cross Exhibit 3 a packet of print-outs from
7 AT&T's web site, which are basically the same as the print-
8 out that we marked as Exhibit 1. Exhibit 1 was the print-
9 out for Pennsylvania. This packet that we've marked as
10 Verizon Exhibit 3 has the same information for a number of
11 other states. I just wanted to ask the witnesses to see if
12 it refreshes their recollection regarding the amount of the
13 in-state connection fee in the other states.

14 JUDGE FORDHAM: It may be so marked.

15 (Whereupon, the document was marked
16 as Verizon Cross-Examination Exhibit
17 No. 3 for identification.)

18 WITNESS NURSE: It doesn't refresh my recollection in
19 the other states that they didn't have it, but yes, the fee
20 varies in various states as the AT&T home page shows.

21 BY MS. PAIVA:

22 Q. Do you have any reason to believe that what's
23 reflected in the AT&T home page would not be correct?

24 A. (Kirchberger) No. I accept these as print
25 screen copies of the AT&T web site, and I also accept the

1 fact that the numbers and the fees are different in various
2 states.

3 Q. I'm going to move on to a different subject now.
4 I'm done with these exhibits.

5 A. (Nurse) I just note that the Virginia fee isn't
6 in effect yet.

7 Q. Oh, it's not in effect yet? Some of the print-
8 outs have a date where they say the fee will take effect on
9 such-and-such a date; right?

10 A. (Nurse) Yes.

11 Q. Now I want to go back to your rebuttal
12 testimony, the first piece of testimony, to page 17.

13 MR. BARBER: Page 17?

14 MS. PAIVA: Seventeen.

15 BY MS. PAIVA:

16 Q. Let me know when you're there.

17 A. (Nurse) It looks like there's a lot of
18 proprietary numbers on this page.

19 Q. I'm not actually going to say the numbers, so
20 let's try not to say them. I just have a general question.

21 Are you ready?

22 A. (Nurse) Yes.

23 Q. On page 17, you have a table, we're not going to
24 say the numbers, but generally depicting the fact that for
25 Verizon PA, the intrastate access minutes of use have been

1 declining; correct?

2 A. (Nurse) Rapidly.

3 Q. Did you investigate whether there has been any
4 increase in Verizon PA's interstate minutes of use over the
5 same time period?

6 A. (Nurse) No, because we're talking about
7 intrastate access rates here.

8 Q. Now, turning to page 18, line 1 -- and again,
9 it's a proprietary number, so let's not say the number --
10 you talk about Verizon PA's minutes exchanged with wireless
11 carriers, and you state that they have increased, and you
12 give a proprietary figure; correct?

13 A. (Nurse) An enormous proprietary figure.

14 Q. That figure does not distinguish whether the
15 wireless calls were local calls, interstate calls,
16 intrastate calls, it just gives a lump figure; correct?

17 A. (Nurse) Well, that's a good point that you
18 bring up, because what would be a local call or a toll call
19 for an intrastate carrier is not analogous to what would be
20 a local or a toll call for a wireline carrier, because the
21 wireless carriers have enormous MTA, metropolitan trading
22 area-wide, local call terminations. As we put in our
23 Exhibit No. 1, those calling areas that would be long
24 distance access termination for us would be a local call
25 termination for a wireless carrier.

1 Q. Nonetheless, in the figure that you gave, some
2 of those calls are what would be local calls; if the
3 customer had picked up its wireline phone to make the call,
4 it would have been a local call?

5 A. (Nurse) Yes, but I don't think you can put
6 forward the proposition that people are buying wireless
7 service and the surge in wireless usage that you're seeing,
8 the enormous surge that you're seeing here constitutes local
9 calling and people are using their cell phones for long
10 distance, because all the marketing -- I can guarantee you,
11 I can pick up the paper today or yesterday and there will be
12 a half-page ad from Verizon talking about Verizon wireless
13 and free long distance or regional long distance. A major
14 advantage that wireless carriers have is that they do not
15 pay access charges, they pay cost-based local call
16 termination for calls that we have to pay access rates for,
17 and the volumes shifting from the regulated intrastate
18 access charges moving over to FCC-regulated local call
19 termination charges, you see those two costs driving
20 artificially an arbitrage opportunity, and the market is
21 reflecting that, because you don't see IXCs with big, free
22 LD packages, you see wireless carriers with big, LD
23 packages, including Verizon.

24 Q. Despite all of that, people do still use their
25 cell phones to make local calls, and your number does not

1 break out what portion of the number reflects local calls;
2 correct?

3 A. (Nurse) Yes, and my concern is that you have an
4 artificial attraction to wireless service that's distorting
5 the market and is inefficient, because people may be picking
6 up more wireless service because of the distortions in the
7 long distance pricing that you can get over the wireless
8 service; and then because they already have the wireless
9 service, or they have a second or a third wireless phone in
10 their family, they then are also doing local calling over it
11 as well. So the distortions of access affect the wireless
12 market to the detriment of IXC's.

13 Q. I actually have a question for you about
14 everything -- something that was in everything you just
15 said. In all of that, you're talking about call termination
16 rates, basically, reciprocal compensation; correct?

17 A. (Nurse) Yes. Cost-based rates in the
18 neighborhood of a fifth of a cent a minute.

19 Q. And reciprocal compensation rates are required
20 by law to be set at cost, as you just said, under the TELRIC
21 methodology; correct?

22 A. (Nurse) Yes.

23 Q. And reciprocal compensation rates don't contain
24 any subsidies to support universal service, do they?

25 A. (Nurse) No, nor should they, because universal

1 service should be supported through explicit mechanisms,
2 which the FCC has also established, and which the state
3 Commission here has established. That's all we're saying,
4 not that Verizon should eat this money or it should come out
5 of their hide or something, but that the implicit support in
6 access should continue to be moved, as we started in the
7 Global, and should be moved out of the access rates and then
8 put into an explicit mechanism, as the Commission has
9 directed, and then the long distance market will get cost-
10 based rates and competition there will be on merit, and then
11 competition between IXCs and cell carriers will be based on
12 merit and efficiency, not on regulatory arbitrage.

13 Q. You might actually then agree with me on the
14 next question. The wireless carrier is paying this
15 reciprocal compensation for call termination, and meanwhile,
16 the wireless customer, the end user, is paying a charge to
17 have a wireless phone. Now, there's been some discussion
18 here that, you know, that the weighted average rate for
19 Verizon for wireline local service is in the neighborhood of
20 \$13.00.

21 A. (Nurse) I'm sorry; the --

22 Q. The weighted average residential rate for a
23 wireline, --

24 MR. BARBER: Local exchange.

25 Q. -- local service, local exchange service, is in

1 the neighborhood of \$13.00?

2 A. (Nurse) Yeah, \$13.00 and change; and that's not
3 including the subscribe line charge and things like that,
4 but yes.

5 Q. A wireless customer buys the right to use his or
6 her wireless phone and pays a fee. Generally, the fees for
7 wireless service, even just local packages, are much higher,
8 in the neighborhood of \$30.00 or more; correct?

9 A. (Nurse) Well, there's a whole panoply of
10 wireless pricing ranges, you know, depending on whether you
11 have a thousand minutes of long distance included with the
12 package or whether you're on the pre-paid, you know, very
13 low usage, essentially disposable phone plans, but wireless
14 service is less efficient than wireline service and it does
15 have a mobility value component, and so wireless pricing is
16 usually higher than wireline pricing.

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1 Q. The wireless carriers, probably based on some of
2 the same issues that Mr. Kirchberger discussed before
3 regarding what the market will bear and competitive
4 pressures, but the wireless carriers determine their own
5 pricing in a way that would cover their own costs of
6 providing wireless service; correct?

7 A. (Nurse) Well, in the long run, all companies
8 have to cover their costs. I think Mr. Seidenberg said the
9 wireless carriers should consolidate because there is too
10 much competition in the wire line business.

11 Q. You mean the wireless business?

12 A. (Nurse) In the wireless business. There has
13 already been too much consolidation in the wire line
14 business, but yes, and the pricing action that you saw was
15 as wireless calls got to be cheap, because they enjoyed an
16 artificial regulatory arbitrage advantage on the MTA-wide
17 local call termination. When your access rates are a fifth
18 of a cent a minute, you don't necessarily have to charge in
19 minute increments, and there is a certain benefit to
20 customers at that point of not getting a call for 2 cents.

21 I mean, who wants to get a bill that has pages and
22 pages of 1 cent, 2 cent, 3 cent charges? The numbers got
23 relatively low and the wireless carriers started to package
24 their -- rather than charge on a permanent basis, they tend
25 to charge in blocks, and it saved just huge amounts of

1 printing and a lot of clutter on customer bills.

2 I mean, the other big movement that you saw that is
3 similar here is you used to pay roaming charges on your
4 phone. You'd pay \$5.00 for a roaming fee. That hit the end
5 user when he was out of his home area, but he didn't have
6 any control over that fee. He didn't really know he was
7 going to get charged in advance.

8 Then the wireless carrier started to absorb that fee
9 and push that fee back on the terminating carriers, and that
10 was a good thing. So there has been good movement in the
11 wireless pricing arena, which makes their costs artificially
12 lower than in the wire line area.

13 Q. Mr. Nurse, I think you're going way beyond what
14 is necessary to answer my question. I didn't want to be
15 rude. It's very interesting, but would you just try to
16 answer the questions?

17 MR. BARBER: I think you might need to repeat the
18 question.

19 MS. PAIVA: At this point I think in there somewhere
20 was an answer. Anyway, we'll move to a different subject at
21 this point.

22 BY MS. PAIVA:

23 Q. Moving to page 21 of your rebuttal testimony, at
24 the bottom there you start talking about Verizon's Freedom
25 Package, which gives customers unlimited local calling,

1 unlimited intrastate toll calling and unlimited interstate
2 long distance and some other things for \$54.95 per month.

3 A. (Nurse) Yes.

4 Q. And on page 22, you conclude that the long
5 distance portion of the package is priced at \$15.00, because
6 Verizon offers a local basic package that is priced at
7 \$39.95. So, basically, the difference between the two is
8 \$15.00; correct?

9 A. (Nurse) Yes.

10 Q. Are you saying that the \$15.00 includes
11 intrastate toll and interstate long distance?

12 A. (Nurse) Except for the long distance component.

13 Q. I'm sorry. I didn't understand that last
14 answer.

15 A. (Nurse) Those are attached as exhibits.

16 MR. BARBER: Maybe I don't understand the question.
17 You're asking -- I mean, the testimony indicates that long
18 distance calling is anywhere in the United States and
19 Canada, just to confirm that.

20 MS. PAIVA: And by that, he means all long distance
21 calling in state and out of state?

22 MR. BARBER: Intrastate and interstate.

23 WITNESS NURSE: This would be in Exhibit 4. Freedom
24 is \$55.00, and that's long distance anywhere in the U.S. and
25 Canada. The local package is \$39.95, and you get unlimited

1 local and regional toll.

2 BY MS. PAIVA:

3 Q. That's actually where I was going. The regional
4 toll part of the long distance calling is actually included
5 in the \$39.95; correct?

6 A. (Nurse) Right, depending on what Verizon
7 defines as regional toll, but usually that's something like
8 that the next tier out from EAS. It may be interLATA toll,
9 but that may or may not include intrastate interLATA.

10 Q. So regional toll is generally a term that
11 describes some in-state long distance calling, but maybe not
12 all in-state long distance calling?

13 A. (Nurse) Right.

14 Q. So some in-state long distance calling is
15 included in the \$39.95?

16 A. (Nurse) Yes.

17 Q. You talk about the Verizon Freedom Package, but
18 have you reviewed the local service/long distance, unlimited
19 long distance packages that other local carriers offer in
20 Pennsylvania?

21 A. (Nurse) I mean, at various times I looked at
22 various packages, but I don't spend full time studying them,
23 which is what it would take, I think.

24 Q. I just want to mark a few exhibits here and show
25 them to you.

1 A. (Nurse) Okay.

2 Q. I'm going to try to do a few at a time just to
3 save time.

4 MR. BARBER: These are other carriers?

5 MS. PAIVA: Right.

6 (Pause.)

7 MS. PAIVA: If we're ready, I'll just describe these
8 documents for the record.

9 JUDGE FORDHAM: Yes.

10 MS. PAIVA: The first document that I've asked to be
11 marked Verizon Exhibit 4 is a printout from the MCI Web site
12 describing their The Neighborhood package.

13 JUDGE FORDHAM: It shall be so marked.

14 (Whereupon, the document was marked
15 as Verizon Cross-Examination Exhibit
16 No. 4 for identification.)

17 MS. PAIVA: And it's a two-page document. The
18 document that I've asked to be marked Verizon Exhibit 5 is a
19 printout from the Z-Tel Web site. It's a two-page document
20 describing Z-Tel's local service packages.

21 JUDGE FORDHAM: It shall be so marked.

22 (Whereupon, the document was marked
23 as Verizon Cross-Examination Exhibit
24 No. 5 for identification.)

25 MS. PAIVA: The document that I ask to be marked as

1 Verizon Exhibit 6 is a one-page document. It's a printout
2 from the Full Service Network Web site, and it describes
3 Full Service Network's local calling packages.

4 JUDGE FORDHAM: It shall be so marked.

5 (Whereupon, the document was marked
6 as Verizon Cross-Examination Exhibit
7 No. 6 for identification.)

8 MS. PAIVA: And the document that I've asked to be
9 marked as Verizon Exhibit 7 is a printout from the Cavalier
10 Telephone Company Web site. It's a three-page document
11 describing Cavalier's local telephone packages.

12 JUDGE FORDHAM: It shall be so marked.

13 (Whereupon, the document was marked
14 as Verizon Cross-Examination Exhibit
15 No. 7 for identification.)

16 BY MS. PAIVA:

17 Q. Let's start with Verizon Exhibit 4. That's the
18 MCI, The Neighborhood printout. This indicates that MCI
19 offers a package in Pennsylvania called The Neighborhood
20 Complete that includes unlimited long distance, unlimited
21 local, and unlimited toll and some other features for \$49.99
22 per month; correct?

23 A. (Nurse) That's what the paper says. I mean,
24 I'm not standing here to authenticate MCI's charges or that
25 their Web site matches their tariff.

1 MR. BARBER: Your Honor, I would just note, I mean,
2 MCI is going to have a witness here in this case. The other
3 carriers aren't. I mean, other than confirming that the
4 papers they've been handed say what the papers say, none of
5 these witnesses are pricing experts on MCI. They haven't
6 provided any testimony on MCI or Z-Tel or Full Service
7 Network or Cavalier's pricing plans, so they're not going to
8 be able to do anything other than say, "The documents you've
9 handed me say what the documents say."

10 So to the extent that we're looking to move these
11 documents in through these gentlemen on the basis of some
12 general expertise they may have or the fact that they can
13 read the documents, I would certainly object.

14 MS. PAIVA: Well, actually, the question I was going
15 to ask him is not going to call for him to do all of that,
16 and if what Mr. Barber says is true, we may not need to move
17 for the documents to be entered, but I just wanted to ask
18 him basically if he looked into these plans when he made his
19 statements about Verizon's plans.

20 If the answer is no, the answer may be no.

21 MR. BARBER: I think you better go ahead and ask that
22 question, because I thought you may have already asked that
23 question.

24 JUDGE FORDHAM: She did, I believe, and I guess she
25 wanted to see whether they looked at these specific plans.

1 I'll allow that.

2 MR. BARBER: Okay.

3 JUDGE FORDHAM: But I'll wait to rule on your
4 objection.

5 MR. BARBER: Very well, Your Honor. Thank you.

6 BY MS. PAIVA:

7 Q. Mr. Nurse, I take it from your answer that you
8 did not investigate the availability of MCI's The
9 Neighborhood plan for \$49.99 a month when you made the
10 statements in your testimony about Verizon's plan?

11 A. (Nurse) No. I wouldn't agree with the
12 characterization in your question. When we made our
13 testimony and those statements, I'm familiar that these
14 UNE-P providers offer these types of services in these types
15 of sort of price points and various bundles.

16 They differ a little bit from package to package on
17 what they include, but they basically tend to cluster, and
18 that's not surprising. Being new entrants, they're price
19 takers in a competitive market. They have to take prices
20 from the market, and being the dominant provider in the
21 market, Verizon would tend to set the price in the market.
22 So that these packages line up with Verizon's packages is
23 completely to be expected.

24 Q. So if I understand what you just said, you were
25 aware that MCI offered packages that included unlimited long

1 distance and unlimited toll; just perhaps you might not have
2 been aware of the exact price?

3 A. (Nurse) No. I would say I was even aware of
4 the price. I mean, I see the ads for this as well, but I
5 note that these are very high end packages generally; I
6 mean, \$50.00 packages. At that point, you can include a lot
7 of access in a \$50.00 package.

8 Q. But the same customer who is interested in this
9 \$50.00 package would be the customer who be interested in
10 Verizon's \$54.00 package; correct?

11 A. (Nurse) I didn't say that the market was
12 completely, you know, under Communist collapse or completely
13 ineffective here. I just said the market is distorted by
14 the access rates and that these package prices actually -- I
15 mean, this kind of goes to our point. We largely agree with
16 what Verizon is saying.

17 I wouldn't expect these package prices necessarily to
18 move that much if, for example, Verizon Pennsylvania moved
19 their intrastate rates to their interstate rates, because
20 just as we've proposed for Verizon that it would be neutral
21 and that the price reductions on access could be made up on
22 local, if you then put local and long distance back together
23 in a package, they would be offsetting, and as it would be
24 revenue neutral for your company, it would be revenue
25 neutral presumably in these packages, accounting for a

1 little elasticity --

2 Q. I think you're going beyond my question again.

3 Let's move on to the next exhibit, Exhibit 5, which
4 is the Z-Tel package also for \$49.99 a month and also
5 including unlimited local long distance.

6 I want to ask you the same question. Did you
7 investigate the availability of Z-Tel's package at \$49.99 in
8 Pennsylvania when you made your statements about Verizon's
9 Freedom Package?

10 A. (Nurse) Yes. I'm familiar that Z-Tel is also a
11 UNE-P provider and that they have similar plans to the other
12 UNE-P providers and similar packages.

13 One advantage, of course, of these UNE-P providers is
14 that they avoid --

15 Q. I think you're going beyond my question again,
16 Mr. Nurse.

17 A. (Nurse) They avoid access on one end.

18 MS. PAIVA: Your Honor, could we try to ask him to
19 stop when he has answered the question and not go on with a
20 speech or we're going to be here all day?

21 JUDGE FORDHAM: Mr. Nurse, would you just answer the
22 question? Thank you.

23 BY MS. PAIVA:

24 Q. Mr. Nurse, moving on to Exhibit 6, which is the
25 Full Service Network list of plans, down at the bottom they

1 have listed a plan for \$49.95, including unlimited voice
2 calling anywhere in the USA, plus all of their local calling
3 features.

4 Did you investigate the availability of Full Service
5 Network's local package when you made your statements about
6 Verizon's Freedom Package?

7 A. (Nurse) It's generally available, a UNE-P
8 provider, Full Service Network has similar packages and
9 similar pricing.

10 Q. So you're generally familiar that Full Service
11 Network offers this kind of package in Pennsylvania?

12 A. (Nurse) Yes.

13 Q. And I'd ask you the same question about Exhibit
14 7, which is --

15 A. (Nurse) My answer would be the same.

16 Q. But just for the record, let's do the question
17 and answer.

18 A. (Nurse) For the record, my answer would be the
19 same.

20 Q. Cavalier's package, local calling plus unlimited
21 long distance, and I think you would find that on page 2 of
22 the exhibit in this case, their unlimited basic package for
23 \$49.95, unlimited local calling, unlimited domestic long
24 distance.

25 The same question. Did you investigate Cavalier's

1 package when you made your statements about Verizon's
2 Freedom Package?

3 A. (Nurse) Yes.

4 Q. And you're generally aware that Cavalier is a
5 provider that offers the same type of package in
6 Pennsylvania?

7 A. (Nurse) Yes, usually through UNE-L, but also
8 UNE-P.

9 MR. BARBER: You might have to explain the UNE-L
10 acronym. I'm not sure --

11 WITNESS NURSE: UNE loop.

12 MS. PAIVA: I was going to just move for the
13 admission of these things at the end.

14 MR. BARBER: Actually, in light of my witness'
15 testimony, I'm probably not going to have an objection.

16 MS. PAIVA: We suspected that.

17 JUDGE FORDHAM: They are so admitted.

18 (Whereupon, the documents marked as
19 Verizon Cross-Examination Exhibits
20 Nos. 4 through 7 were received in
21 evidence.)

22 BY MS. PAIVA:

23 Q. One last topic for you guys. AT&T offers local
24 service to business customers in Pennsylvania; correct?

25 A. (Kirchberger) Yes, they do.

1 Q. I think we kind of touched on this before.
2 Where the local service customer is AT&T's customer, if the
3 customer receives a long distance call, I guess AT&T would
4 be paid the access; correct?

5 A. (Nurse) Yes.

6 A. (Kirchberger) Yes. If an IXC delivers a long
7 distance call to an AT&T local customer, whether that be
8 served by an AT&T switch or through UNE-P, then AT&T would
9 collect the terminating access.

10 Q. I suspect that generally these AT&T customers
11 also have AT&T as their long distance carrier; right?

12 A. (Nurse) I think there is a high correlation.
13 It's not necessarily a requirement, but it can vary by
14 packages. I think some of the packages you have to buy
15 both, and I think on some it's ala carte.

16 Q. If, in the unlikely event, another long distance
17 carrier serves AT&T's local customer --

18 A. (Nurse) I couldn't agree with the premise that
19 it's unlikely.

20 Q. You think that just wouldn't happen?

21 A. (Nurse) Oh, it does happen.

22 Q. Okay. Then in the situation where it's an AT&T
23 local customer, but some other company serves that
24 customer's long distance service, then when that customer
25 places a long distance call, AT&T is paid the access;

1 correct?

2 A. (Nurse) Yes. For example, if the third largest
3 long distance company in the country, Verizon, were that
4 customer's long distance carrier, when Verizon -- or was
5 carrying that long distance call to that AT&T local
6 customer, when they terminated that call to us, AT&T, the
7 local company, would charge Verizon, the long distance
8 company, access.

9 Q. That's exactly what I was getting at. Actually,
10 that's helpful. Thanks.

11 AT&T has intrastate access charges itself then,
12 doesn't it?

13 A. (Nurse) Yes.

14 Q. Do you know whether those charges are tariffed?

15 A. (Nurse) Yes.

16 Q. So there is a tariff filed with the Pennsylvania
17 Commission documenting AT&T's intrastate access charges?

18 A. (Nurse) Yes.

19 MS. PAIVA: I'd like to mark one last exhibit. I
20 guess this one would be 8. For the record, the document
21 that I've asked to be marked as Verizon Cross Exhibit 8 is a
22 three-page document. It's actually excerpts from AT&T's
23 tariff PA PUC No. 17. It's the first page, Original Sheet
24 1, and then two other pages, Original Sheet 2 and First
25 Revised Sheet 23 cancelling Original Sheet 23.

1 JUDGE FORDHAM: It shall be so marked.

2 (Whereupon, the document was marked
3 as Verizon Cross-Examination Exhibit
4 No. 8 for identification.)

5 BY MS. PAIVA:

6 Q. Mr. Nurse, is this the Pennsylvania tariff
7 documenting AT&T's intrastate access charges? Or Mr.
8 Kirchberger, whichever.

9 A. (Nurse) It's pieces of it.

10 Q. Pieces of it. I do have the whole document
11 here. Do you need to see the whole document or is this good
12 enough?

13 A. (Nurse) I'll try to answer your question if it
14 relates to the piece, but I don't know what your question
15 is.

16 Q. My question is: turning to the third page,
17 Section 15.2 is entitled, "Switching Charges." Is this
18 AT&T's local switching charge for intrastate access?

19 A. (Nurse) Well, I don't have the other sections.
20 The concern I have is that Section 15 is titled, "The
21 Digital Link Service Plan," and so it would seem that 15.1
22 and 15.2 subtend under the digital link header. So it's the
23 switching charge for the digital link AT&T plan, which is
24 configured -- you know, there are UNE-P customers. There
25 are UNE-L customers. There are -- there may be a leftover

1 resale customer, and then digital link, which is provisioned
2 off T-1's.

3 Q. All right. I may pull out the rest of the
4 tariff if we have to, but let me ask you first for what kind
5 of customer would the charges in 15.2 here be relevant?

6 A. (Nurse) Digital link is a very large business
7 customer target product to customers who have their own PBXs
8 and have a T-1 or typically multiple T-1's from the customer
9 prem directly to the --

10 MR. BARBER: You can't speak in jargon. Customer
11 premise?

12 WITNESS NURSE: I'm sorry. It would be a very large
13 customer, usually national customers, and there would be
14 usually an access facility purchased out of the IXC's long
15 distance access tariff, federal tariff, a T-1, a 24-channel
16 circuit that would connect the customers private branch
17 exchange, the customer's little switch, if you will, located
18 on his property at his office building, say, to the AT&T
19 switch location.

20 BY MS. PAIVA:

21 Q. Is that mostly the kind of customer AT&T has in
22 Pennsylvania or do you have other kinds of customers, too?

23 A. (Nurse) We'd like to have a lot more customers.
24 With proper UNE-P rates, we could have a lot of them.

25 Q. But I'm just asking today is that mostly the

1 kind of customer you have or do you have others?

2 A. (Nurse) Well, it depends on whether you count
3 by -- and I don't have the numbers right off the top of my
4 head, but it depends on whether you count by revenue, by
5 number of customers, by number of lines. These tend to be
6 very large customers, maybe illustratively a 500-line
7 customer or a thousand-line customer.

8 A. (Kirchberger) Better described by enterprise
9 customers. I think Verizon uses the same definition. But
10 to try to just clarify an answer, you asked what type of
11 customer would pay this charge. I assume the customer would
12 be an interexchange carrier terminating traffic, not an end-
13 user customer.

14 Not being an access pricing expert, I cannot explain
15 in detail exactly how these charges line up. We do have an
16 access pricing witness later on that may or may not be able
17 to help you with the detail on this tariff.

18 Q. Is that Mr. Oyefusi?

19 A. (Kirchberger) Yes.

20 Q. Actually, I think that Mr. Nurse was closer to
21 answering the question I intended to ask, although you're
22 correct. I guess the customer would be the one paying the
23 access, but I was asking what type of AT&T customer, and I
24 think he answered --

25 A. (Kirchberger) I'm only trying to answer the

1 question that you asked, and that would be the interexchange
2 carrier would be the customer.

3 Q. I have the rest of the tariff here. I didn't
4 see another local switching charge in here, but I'm happy to
5 hand this up there to you to see if there is some other
6 local switching charge in here that I should be asking about
7 instead if you want to take a minute to look at it.

8 A. (Nurse) I'd be happy to take it as a record
9 request, but I can guarantee you that we're not giving the
10 IXC's a free ride on UNE-P customers and charging them a zero
11 rate, although if we are, that may be an opportunity for us
12 to back bill them.

13 Q. Well, actually, that is a good idea. How about
14 this? I'll make a hearing request for any other intrastate
15 local switching rate that would be applicable in
16 Pennsylvania.

17 MR. BARBER: Just the local switching rate or carrier
18 access charge?

19 MS. PAIVA: Well, there are many pages of charges for
20 transit. I wasn't going to get into that. So there is a
21 local switching. Do you have a carrier charge?

22 MR. BARBER: Just for local switching, carrier access
23 local switching, understanding that we don't charge a
24 connection charge -- or we don't charge a carrier charge.

25 MS. PAIVA: Hang on a second.

1 (Pause.)

2 MS. PAIVA: Actually, it might be more helpful if you
3 could also calculate the traffic sensitive per minute rate
4 comparable to what you do for Verizon. I'm assuming it's
5 mostly the local switching; right?

6 MR. BARBER: Can we go off the record, Your Honor?

7 JUDGE FORDHAM: Yes. We're off the record.

8 (Discussion off the record.)

9 JUDGE FORDHAM: We're back on the record.

10 Ms. Paiva.

11 MS. PAIVA: To clarify our off-the-record discussions
12 of the data request, AT&T is going to give us, first, any
13 tariff references to any other local switching charges
14 intrastate access that would be applicable in Pennsylvania;
15 and, second, a calculation done on an apples to apples basis
16 with the calculations they did for Verizon of the effective
17 rate per minute of access.

18 Did that capture it?

19 MR. BARBER: We'll take that, Your Honor.

20 JUDGE FORDHAM: Thank you.

21 BY MS. PAIVA:

22 Q. Then just to finish up with the document that we
23 marked as Exhibit 8, which I understand may not be
24 everything, but for the customers that it applies to, under
25 Section 15.2, AT&T would charge originating switching of

1 1.7 cents per minute; correct?

2 A. (Nurse) Well, that's rounded up.

3 Q. Rounded up. 1.6686?

4 A. (Nurse) That's what it says.

5 Q. And the same figure for terminating switching;
6 correct?

7 A. (Nurse) Yeah. I note both of those are price
8 decreases apparently from the marginal D.

9 Q. Okay. So you believe that based on the fact
10 that this sheet was issued June 30th to be effective July
11 1st, 2003, that they were decreased at that time?

12 A. (Nurse) That's what my recollection of the
13 tariff decoder ring would say, and I like rates moving in
14 that direction.

15 Q. Do you have any knowledge of what they were
16 before they were decreased?

17 A. (Nurse) Higher.

18 Q. But you don't know the number?

19 A. (Nurse) No, I don't.

20 Q. Just to put it in context, this local switching
21 charge would be comparable to Verizon's local switching
22 charge of .9 of a cent per minute today. That's what
23 Verizon charges for local switching.

24 A. (Nurse) Yes.

25 Q. And AT&T charges 1.6686 cents per minute.

1 A. (Nurse) For the digital link product.

2 MS. PAIVA: I think that's all I have, but let me
3 just find my notes under all these exhibits and make sure.

4 (Pause.)

5 MS. PAIVA: Yes. That's it. I'm finished with my
6 cross. Thank you.

7 JUDGE FORDHAM: Thank you.

8 MS. PAIVA: I would also like to move Exhibits 1
9 through 8. You may have ruled on a couple of them already,
10 but I'll just move them all into the record at this point.

11 JUDGE FORDHAM: Yes. Four, 5, 6 and 7 have already
12 been entered. Are there any objections to Verizon Cross-
13 Examination Exhibit 1, which is the page from the AT&T Web
14 site?

15 MR. BARBER: We have no objection to any of the
16 remaining exhibits, Your Honor, 1 through 8.

17 JUDGE FORDHAM: Verizon Cross-Exam Exhibits 1, 2, 3
18 and 8 are hereby admitted.

19 (Whereupon, the documents marked as
20 Verizon Cross-Examination Exhibits
21 Nos. 1, 2, 3 and 8 were received in
22 evidence.)

23 JUDGE FORDHAM: Before we go to the next cross-
24 examination, I neglected at the beginning of the hearing to
25 have counsel enter their appearance. So we would do so now

1 starting with Mr. Barber?

2 MR. BARBER: Good morning, Your Honor; Robert Barber
3 for AT&T Communications of Pennsylvania, LLC.

4 MS. CONOVER: Julia Conover for Verizon Pennsylvania
5 and Verizon North.

6 MS. PAIVA: Suzan Paiva for Verizon Pennsylvania and
7 Verizon North.

8 MR. SPARKS: Shaun Sparks for the Office of Consumer
9 Advocate.

10 MR. MICKENS: Kenneth L. Mickens for the Office of
11 Trial Staff.

12 MS. JONES: Good morning, Your Honor; Angela Jones
13 for the Office of Small Business Advocate.

14 MR. CHESKIS: Joel Cheskis for the Office of Consumer
15 Advocate.

16 MS. ARMSTRONG: Patricia Armstrong on behalf of Rural
17 Telephone Company Coalition.

18 MS. SMITH: Kristin Smith on behalf of Qwest
19 Communication.

20 MR. POVILAITIS: John Povilaitis for Qwest
21 Communication Corporation.

22 MS. MISTURAK-GINGRICH: Kathleen Misturak-Gingrich
23 for MCI WorldCom Network Services.

24 MS. PAINTER: Michelle Painter for MCI WorldCom
25 Network Services.

1 MS. BENEDEK: Your Honor, Sue Benedek for Sprint.

2 JUDGE FORDHAM: Thank you. The next cross-
3 examination will be for Mr. Mickens for OTS.

4 MR. BARBER: Your Honor, would it be an appropriate
5 time for a short break?

6 JUDGE FORDHAM: Yes. Let's take ten minutes.

7 MR. BARBER: Thank you, Your Honor.

8 (Recess.)

9 JUDGE FORDHAM: We're back on the record.

10 Mr. Mickens.

11 MR. MICKENS: Thank you, Your Honor.

12 CROSS-EXAMINATION

13 BY MR. MICKENS:

14 Q. Mr. Nurse, Mr. Kirchberger, my name is Ken
15 Mickens. I represent the Office of Trial Staff. I think
16 I've seen Mr. Nurse before in a couple of proceedings.

17 A. (Nurse) Good to see you again.

18 Q. Good to see you. I don't believe I've
19 encountered Mr. Kirchberger before.

20 I have a couple of questions from your surrebuttal
21 testimony. At page 1, roughly lines 28 through 31 and over
22 to the top of page 2, you state that OTS Witness Mr. Kubas'
23 position on access charges relies upon anachronistic and
24 anti-competitive concepts of residential local exchange
25 pricing and loop cost allocation.

1 Is that you, Mr. Nurse?

2 A. (Nurse) Yes.

3 Q. It sounds like your language. You would agree
4 with me that Mr. Kubas did not refer to the appropriate
5 price for local exchange service, would you not?

6 A. (Nurse) I'm sorry?

7 Q. You would agree with me that Mr. Kubas did not
8 testify with regard to the appropriate price for local
9 exchange service?

10 A. (Nurse) I think his testimony about the price
11 of local exchange service was that it should remain the
12 same. It should remain at its current rate.

13 Q. That the local exchange service should remain
14 the same?

15 A. (Nurse) That the repricing that the carrier
16 charges for the former GTE and the former Bell Atlantic
17 areas should be merged or averaged out to a carrier charge
18 that is approximately double the Verizon PA or former Bell
19 Atlantic current carrier charge.

20 Q. All right. And this term "residential local
21 exchange pricing," can you define what you mean by that?

22 A. (Nurse) Oh, I'm sorry. It straddles the page.
23 The residual in residual local exchange goes to the
24 traditional rate base/rate of return, and I'm a recovering
25 rate of return regulator, and there was nothing wrong with

1 that at the time. But they would go through and essentially
2 pick a number for local rates and then push the other costs
3 onto traditionally access or before divestiture onto long
4 distance and very much onto vertical features, and you see
5 that in a lot of alternative regulation plans or sort of
6 Chapter 30 like plans. But often vertical features, Call
7 Waiting, Caller ID are put into a different basket or bucket
8 and the LEC may have pricing flexibility on that but not on
9 the basic local exchange rate.

10 So that's this residual idea that you would take the
11 local service costs of the loop and you would spread them
12 jurisdictionally 25 percent interstate and 75 intrastate and
13 then you would further spread them onto vertical services
14 and access services and long distance services.

15 Q. Let me stop you there. I appreciate that
16 historical perspective. What you're saying then is that it
17 relates to your feeling that some of these decisions that
18 were mentioned by Mr. Kubas that date from 1996 and 1997,
19 Commission decisions here in Pennsylvania that date from
20 1996 and 1997, you refer to them as ancient, is that
21 correct, as ancient history?

22 A. (Nurse) I think they've been replaced by more
23 current and on-point Commission decisions that followed
24 those. Those decisions that he cited initiated before the
25 passage of the Telecom Act, although the Orders came out

1 afterwards, but I think the more relevant decisions are the
2 Global Order and the RTCC Order.

3 Q. Also, you refer to the concept of joint and
4 shared costs you associate with these ancient decisions from
5 1996 and 1997, the inference being that more recent
6 decisions move away from this concept of joint or shared
7 costs; is that correct?

8 A. (Kirchberger) Yes. Judge Schnierle in his RD
9 dated June 30, 1998, in the generic investigation of
10 intrastate access charge reform on page 53 said, "On the
11 other hand, the loop as a joint cost theory simply will not
12 work in a competitive environment because it fails to
13 recognize the physical and financial reality that most of
14 the cost of providing a telephone network is incurred in
15 simply providing basic service.

16 "If society wants to replace the monopoly regulation
17 of local telephone service with open competition (as it has
18 indicated by the enactment of Chapter 30 and the
19 Telecommunications Act of 1996) then it must be prepared to
20 allow prices for local telephone service to be more
21 reflective of reality."

22 That coupled with the global decision and coupled
23 with this Commission's recent Order in the Sprint RTCC case
24 just last month points to the fact that implicit subsidies
25 should be replaced by explicit charges.

1 Q. All right. Let me ask you a question. What was
2 the date on that Order by Judge Schnierle?

3 A. (Kirchberger) Let me repeat the date; June 30,
4 1998, and this was the precedent to the Global Order.

5 Q. That's interesting. Decisions by the Commission
6 in 1996 and 1997 are ancient, but a Recommended Decision by
7 a Administrative Law Judge in 1998 is apparently very
8 topical and very appropriate and very contemporary. Is that
9 what you're saying?

10 MR. BARBER: I need to interpose an objection to the
11 way the testimony is being mischaracterized here. What was
12 being described as anachronistic was the theories that were
13 being espoused not only by the OTS witness, but by other
14 witnesses for residual loop pricing and loop allocation.
15 It was anachronistic theories that are being espoused, not
16 ancient decisions that were being derided.

17 So if we can just be accurate in terms of the way the
18 testimony is being characterized, I'd appreciate it.

19 MR. MICKENS: Your Honor, I believe I was being
20 accurate. Mr. Kirchberger quoted from a Recommended
21 Decision by an Administrative Law Judge obviously in support
22 of the general testimony that some of these ideas that Mr.
23 Kubas had been referring to were old and ancient form 1996
24 and '97.

25 My follow-up question simply said, you know, a year

1 later, apparently these matters are now contemporary and a
2 Recommended Decision from 1998 is apparently -- you know, we
3 can cite that and refer to it. It's not old and
4 anachronistic. That's all.

5 WITNESS NURSE: The sea change that you're ignoring
6 was the passage of the Telecommunications Act, which
7 fundamentally changed the landscape, that fundamentally
8 changed the national policy of protected monopoly LECs
9 having implicit subsidies and achieving universal service
10 through intra-company subsidies and from access subsidies to
11 local, expressly changed and explicitly required support to
12 be implicit.

13 Judge Schnierle recognized that. Society made a
14 change in the passage of the Telecommunications Act and
15 moved to a competitive local market and that there were
16 certain changes that would be necessary in access and local
17 pricing to do that.

18 His Recommended Decision in '98 was adopted by the
19 Commission in the global in '99 and then taken further with
20 the rural companies in the RTCC/Sprint settlement.

21 BY MR. MICKENS:

22 Q. All right. So any decision from the Commission
23 after 1998 then has the possibility of being considered
24 contemporary?

25 A. (Nurse) I mean, I wouldn't say that

1 universally. You have to look at what it is that they're
2 addressing. I mean, if they're addressing service
3 reliability or a safety issue, electrons still flow the same
4 way and cable clearance would need to be the same in 1950
5 as, you know, 2003. So you have to look at the subject
6 matter that you're talking about.

7 But if you're talking about access rates which had
8 implicit support in them for local service instead of
9 universal service before and after the passage of the
10 Telecommunications Act, yes, the Commission has treated
11 those differently. That's why they created a Universal
12 Service Fund after the Act.

13 Q. Gentlemen, you would agree with me that the
14 Commission has determined that the carrier common line
15 charge -- has defined what the carrier common line charge is
16 designed to be?

17 A. (Nurse) Just to get the terminology right, the
18 carrier common line charge was the charge before the global
19 that was converted to the carrier charge after the global?

20 Q. That's correct. Now it's referred to the CC or
21 carrier charge.

22 A. (Nurse) Right. Okay. I'm sorry. Could you
23 restate your question?

24 Q. Would you agree with me that the Commission has
25 defined what that CC charge is designed to recover?

1 A. (Nurse) My recollection in the global was that
2 Verizon had a cap before the global. It's not a proprietary
3 number, I don't think.

4 JUDGE FORDHAM: Just a minute. Let's go off the
5 record.

6 (Discussion off the record.)

7 JUDGE FORDHAM: We're back on the record.

8 WITNESS NURSE: So Verizon, for example, had a I
9 believe it was a \$44 million carrier common line charge,
10 which was a fix amount that it was seeking to recover on a
11 per minute basis. That's always kind of a lit bit difficult
12 to do unless you know exactly how minutes there are.

13 The Global Order converted that to a line charge, to
14 a flat fee.

15 BY MR. MICKENS:

16 Q. Are you familiar at all with the Commission
17 decision which was entered April 10, 2003 involving North
18 Pittsburgh Telephone Company?

19 A. (Nurse) I don't believe so.

20 A. (Kirchberger) I'm not.

21 MR. MICKENS: Your Honor, may I approach the
22 witnesses?

23 JUDGE FORDHAM: Yes. Would you give us the docket
24 number for that?

25 MR. MICKENS: Yes. Your Honor, this is an Order by

1 the Commission involving a neutral rebalancing proposal that
2 was approved by the Commission, and the docket number is
3 R-00038087.

4 JUDGE FORDHAM: Thank you.

5 (Pause.)

6 MR. MICKENS: Your Honor, I have a copy for the
7 witnesses. I'm going to ask them to look at this and read
8 into the record --

9 WITNESS NURSE: Do you have a second copy?

10 MR. MICKENS: No. I just have the one copy.

11 BY MR. MICKENS:

12 Q. Page No. 2, Footnote No. 4, I would just ask
13 you, once you review the document, to read that into the
14 record.

15 (Pause.)

16 A. (Nurse) The footnote reads, "The common carrier
17 line charge compensates the company for use of its local
18 loops by interexchange carries in the origination and
19 termination of long distance calls."

20 There is no common carrier line charge at issue in
21 this docket.

22 Q. I understand. You agree that it is a definition
23 of what the CC charge is designed to do?

24 A. (Nurse) No. I agree that it's a colloquial,
25 historical reference to what it was. When the common

1 carrier line charge was created, when you had access rates
2 created in the '80s nearly 20 years ago, the notions of loop
3 allocation were common in monopoly regulation, and I think
4 this is that sort of description of it. I don't think it's
5 a Commission finding that going forward loops should be
6 allocated to IXCs.

7 Q. Okay. So you think that the Commission still
8 can't get out of that ancient anachronistic approach toward
9 the carrier common line charge, and even though we're now in
10 the year 2003, after the Telecommunications Act and after
11 1998, what you're saying apparently is that the Commission
12 still has not gotten the message?

13 A. (Nurse) No, no. I think the RTCC Order is
14 quite clear that the Commission has gotten the message, but
15 I think --

16 Q. So you --

17 A. (Nurse) If I could finish my answer. I think
18 the public parties didn't get the message. The Commission
19 was quite clear, and they said that the subsidy should be
20 moved from access rates because it was distorting
21 competition in the long distance market and it was hampering
22 local entry and that they needed to go through a process, a
23 difficult process of moving hundreds of millions of dollars,
24 and how could you reduce access rates in a reasonable way,
25 increase local rates in a reasonable way, which they did,

1 including raising the local price cap above 16, up to \$18.00
2 even, work in the Universal Service Fund to do this.

3 So it's a complicated process that involves multiple
4 years and multiple steps, but the Commission has made clear
5 their objective is to make implicit subsidies explicit.

6 Q. All right. But they still have this language --

7 A. (Kirchberger) Could I just finish that answer,
8 because --

9 Q. Just a --

10 A. (Kirchberger) Because --

11 JUDGE FORDHAM: Mr. Mickens and then --

12 WITNESS KIRCHBERGER: Since --

13 JUDGE FORDHAM: No; Mr. Mickens.

14 WITNESS KIRCHBERGER: Oh, okay.

15 BY MR. MICKENS:

16 Q. So even though they've understood this change,
17 what you seem to be saying is that in Commission Orders, in
18 recent Commission Orders, they still are subject to using
19 language which is dated. So that even terms that are
20 defined in recent Orders may, in fact, rely upon old
21 thinking. So that we should be careful about our
22 interpretation of what language is coming out of Commission
23 Orders. Is that what you're saying?

24 A. (Nurse) No. There are so many predicates in
25 the question that I couldn't agree with. The carrier common

1 line charge is just a subsidy. There is no direct cost
2 associated with it. It essentially is a historical legacy
3 that essentially was built into LEC revenue requirements
4 when they had revenue requirements, and as they moved
5 towards Chapter 30 plans, it was historically there.

6 The Commission has recognized that the difference
7 between access costs and access rates constitutes a subsidy.
8 It's recognized explicitly distortion, and it said even in
9 the RTCC Order, it expressly said this was not their final
10 word on it, that they're moving. This is a long program.
11 They started in the global. They went further in the RTCC
12 Order, and they said they have to go further still. It's a
13 big, difficult transition to completely restructure local
14 rates, access rate, which will restructure necessarily long
15 distance rates.

16 Q. And perhaps as a result of this proceeding we
17 can move even further and hopefully the language will be
18 updated.

19 A. (Nurse) I think the only question in this
20 proceeding is how far we move.

21 Q. We'll see.

22 MR. MICKENS: That's all I have for these witnesses,
23 Your Honor. Thank you.

24 JUDGE FORDHAM: Thank you. Mr. Sparks.

25 MR. SPARKS: Thank you, Your Honor.

1 JUDGE FORDHAM: You're welcome.

2 MR. SPARKS: Your Honor, the first line of the cross-
3 examination of the OCA involves proprietary information. So
4 I would request that we go on the proprietary record.

5 JUDGE FORDHAM: Okay. We're on the proprietary
6 record at this time.

7 (Whereupon, the following pages 317 through 319 were
8 sealed and bound separately.)

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1 BY MR. SPARKS:

2 Q. When a Verizon customer with AT&T as their toll
3 carrier, when they make a toll call, doesn't that call
4 travel over the Verizon loop?

5 A. (Nurse) Yes.

6 Q. And --

7 A. (Nurse) Or two loops.

8 Q. If an AT&T call is coming into a Verizon local
9 service customer, does that call go over the Verizon loop as
10 well?

11 A. (Nurse) Yes.

12 MR. SPARKS: Thank you. I have nothing further.

13 JUDGE FORDHAM: Thank you. Does anyone else have
14 cross-examination for these witnesses?

15 (No response.)

16 JUDGE FORDHAM: Any redirect?

17 MR. BARBER: A few questions, Your Honor.

18 REDIRECT EXAMINATION

19 BY MR. BARBER:

20 Q. Just on the last point Mr. Sparks was
21 addressing, when a call from a wireless carrier goes to a
22 Verizon local exchange customer, does that call go over the
23 Verizon loop?

24 A. (Nurse) A wireless to a wire line call will
25 only go over one loop.

1 Q. But if it's being terminated at a Verizon local
2 exchange customer, does that go over that Verizon --

3 A. (Nurse) Yes. That minute of use would go over
4 the loop.

5 Q. And a message from an Internet service provider,
6 would that go over the Verizon loop?

7 A. (Nurse) Yes.

8 Q. Just a couple questions related to a couple
9 questions from Ms. Paiva. Turning to --

10 A. (Nurse) I think that should be a message to an
11 Internet service provider.

12 Q. I'm sorry. Turning to Verizon Cross-Examination
13 Exhibits 1 and 2 dealing with the in-state connection fee a
14 charge that is assessed only in Verizon Pennsylvania's
15 service territory?

16 A. (Nurse) No.

17 A. (Kirchberger) No.

18 Q. One at a time. I'm glad I got the right answer
19 from both of you.

20 A. (Nurse) I forget the section, but the Telecom
21 Act requires long distance prices to be set on a statewide
22 average basis. If we were looking -- and that's driven for
23 equity. If we were going by efficiency, then long distance
24 pricing would reflect the access prices of the respective
25 LECs, but that would make long distance pricing very

1 expensive in LECs who have high access prices.

2 We have to set postal rates, as they used say,
3 statewide rates at retail even though we have radically
4 different access rates, and this rate is applied statewide
5 also.

6 Q. So it's also fair to say that this rate reflects
7 AT&T's access experience across the state; would that be
8 correct?

9 A. (Nurse) Yes, Verizon and Verizon companies.

10 Q. And as I believe Verizon has noted in its
11 testimony in this case, the rates that AT&T experiences in
12 non-Verizon Pennsylvania local exchange territories are
13 substantially higher than what we experience in Verizon
14 Pennsylvania service territory; correct?

15 A. (Kirchberger) That's correct.

16 Q. There was some confusion at least in my mind
17 about when Ms. Paiva was describing regional toll calls
18 versus interstate long distance calling.

19 Would it be fair to say that regional toll calling is
20 generally what is known as intraLATA toll calling?

21 A. (Nurse) Yes.

22 Q. As opposed to interstate long distance, which
23 would generally be considered to be interLATA toll calling?

24 A. (Nurse) There are three gradations. There is
25 intraLATA, and then there is interLATA, which is between

1 LATAs. That could include Philadelphia to Pittsburgh.
2 And then there would be also interLATA that is interstate,
3 which might be Philly to New York.

4 Q. I guess to further complicate the matter,
5 oftentimes when a company may be referring to regional toll
6 calling, it can also use the term local toll calling
7 somewhat interchangeably with that?

8 A. (Nurse) Yeah; and I think you see that in the
9 Verizon Exhibits 4, 5, 6 and 7. When you go down and look
10 at what they call their generically intraLATA calling, they
11 have some regional calling and local toll, and I think
12 that's recognized and different customers might have heard
13 it a different way, and you want to try to put a term to a
14 customer so that he recognizes it whether it's technically
15 correct or not.

16 Q. And, finally, turning to Verizon Exhibit 8, and
17 I know we're going to be providing some additional data to
18 the extent we've got it, but would it be fair to say looking
19 at the third page of that exhibit, would that indicate that
20 AT&T has attempted to match Verizon's intrastate access rate
21 structure?

22 A. (Nurse) Not necessarily the structure.

23 Q. In what way would this indicate that the
24 structure has not been matched?

25 A. (Nurse) Well, the switching rate is higher, but

1 --
2 Q. I'm talking about the structure as opposed to --

3 A. (Kirchberger) There is no carrier charge on
4 this page. That's one obvious difference.

5 Q. AT&T doesn't assess a carrier charge?

6 A. (Nurse) Right. So you don't have the same
7 number of rate elements and you don't necessarily have the
8 same number of rates, but you could have more or less
9 elements, higher or lower rates. The effective price could
10 be higher or lower in any combination. You have to run
11 through the analysis to see what that means.

12 Q. I mean, if you were to just look, for example,
13 at the one end, the originating switching charge there, does
14 that equate in any way to an access charge that is already
15 in the record, page 4 of your rebuttal testimony?

16 A. (Kirchberger) Yes. It's similar to the one end
17 combined rate of somewhere near 1.8 cents, 1.79 cents or
18 whatever.

19 Q. For Verizon Pennsylvania?

20 A. (Kirchberger) For Verizon, yes.

21 MR. BARBER: That's all the questions I have, Your
22 Honor. Thank you.

23 JUDGE FORDHAM: Thank you. Anything further?

24 MS. PAIVA: Yes. I do have a couple.

25 JUDGE FORDHAM: Ms. Paiva.

REXCROSS-EXAMINATION

1
2 BY MS. PAIVA:

3 Q. Mr. Barber asked you about the in-state
4 connection fee and the fact that you charge it all over
5 Pennsylvania, not just in Verizon Pennsylvania territory.

6 My question for you is: do you intend to reduce the
7 \$1.95 in-state connection fee in light of the Commission's
8 approval of the RTCC settlement?

9 A. (Kirchberger) As I had indicated before, we
10 look at our total pricing packages. The in-state connection
11 fee is a portion of that. So as we evaluate this, we will
12 react appropriately. I cannot make pricing decisions from
13 the stand.

14 MR. BARBER: If I could note, despite -- I think Ms.
15 Armstrong confirmed this on the record yesterday. Despite
16 the fact that the Commission issued its Order, various
17 companies are not yet taking the action to implement that
18 Order, so we do not yet have the access reductions yet that
19 one would expect from that Order. So as yet, we haven't had
20 a pricing reaction.

21 WITNESS NURSE: And that Order also sets out changes
22 over multiple years, and sole discretion I think is a common
23 term in that Order for various ways a LEC can structure
24 that.

25 BY MS. PAIVA:

1 Q. So you're waiting to see if they actually do
2 reduce their access charges and, if so, by how much?

3 A. (Nurse) That's a large component of it, and
4 then, of course, we're restricted to average pricing. It
5 would be more efficient to price each toll call relative to
6 its terminating and originating access and to charge a
7 really high toll rate for a customer who has a really high
8 access rate. That would send the right price signal to that
9 customer, but we're required to take those high prices and
10 average them out

11 So if one company changes their access rate, we can't
12 necessarily change our toll rate, because we have to deal
13 with average toll and average access over the state.

14 Q. Actually, you're touching on my next question.
15 I think I understood what you just said and you said before
16 in response to Mr. Barber that AT&T comes up with \$1.95
17 basically by averaging what it's paying for access over the
18 entire state; correct?

19 A. (Nurse) I think it comes up with \$1.95 in
20 Pennsylvania by looking at access rate. That fee is
21 different in different states.

22 Q. So for Pennsylvania, in Verizon Pennsylvania
23 territory, you're paying a carrier charge of 63 cents. The
24 in-state connection fee of \$1.95 is higher because,
25 basically, customers in Verizon Pennsylvania territory are

1 being charged, I guess, to recoup the higher access in the
2 other states.

3 A. (Nurse) That's the federal law. That's not my
4 choice. Congress required us to average our toll rates, and
5 before divestiture, we had toll customers, long distance
6 customers statewide. It would have been much more
7 advantageous if we had been a start-up company who then had
8 a large -- say we got like approval to offer long distance
9 and we could offer it and market it just in, say, the
10 Verizon PA territory or the --

11 Q. I think you're going beyond my question again.
12 The answer was yes; right?

13 A. (Nurse) The answer is that our access rates are
14 statewide. Our toll customers are statewide. If we had a
15 different geographic footprint, a geographic footprint like
16 yours, we could have had a different connection fee, because
17 we would have faced different access costs.

18 Q. But the answer to my question was yes? Do you
19 recall the question?

20 A. (Nurse) Your question is --

21 Q. My question was: AT&T customers located in
22 Verizon Pennsylvania territory are basically paying a higher
23 in-state connection fee in order to recover the money that
24 AT&T is paying in the rural carrier's territory?

25 A. (Nurse) Yeah. There's averaging going on

1 there, just like there's averaging in your settlement.

2 Q. So, yes?

3 A. (Nurse) Yes. Yes, we average the access rate.

4 MS. PAIVA: That's it. Thank you.

5 MR. BARBER: I have no further questions, Your Honor.
6 I'm afraid to ask any.

7 JUDGE FORDHAM: Thank you. We have the statements,
8 AT&T Statement 1.0 and AT&T Statement 1.1. Are there any
9 objections to the admission?

10 (No response.)

11 JUDGE FORDHAM: Hearing none, they're both admitted.

12 (Whereupon, the documents marked as
13 AT&T Statements Nos. 1.0 and 1.1 and
14 Exhibits Nos. K-N 1 through 8 were
15 received in evidence.)

16 JUDGE FORDHAM: Thank you, gentlemen.

17 (Witnesses excused.)

18 MR. POVILAITIS: Your Honor, while we're changing
19 witnesses, could we have a clarification that the responses
20 to the periodic in-hearing data requests that are being made
21 will be served electronically on all parties?

22 JUDGE FORDHAM: Okay.

23 MR. POVILAITIS: I just wanted to mention that before
24 the record closes. We appreciate that.

25 JUDGE FORDHAM: We have talked about on-the-record

1 data requests, and we're asking that they be served
2 electronically so we don't have a lag in the time period
3 that they're received.

4 MR. POVILAITIS: Thank you, Your Honor.

5 JUDGE FORDHAM: Thank you, Mr. Povilaitis.

6 MS. JONES: Your Honor, I'm assuming that Exhibits
7 K-N 1 through 8 are also admitted.

8 MR. BARBER: Yes, to the extent they were part of --

9 JUDGE FORDHAM: Yes. They are part of the statement.
10 Thank you very much.

11 MR. BARBER: AT&T would call Dr. Ola Oyefusi.

12 Whereupon,

13 OLA A. OYEFUSI

14 having been duly sworn, testified as follows:

15 JUDGE FORDHAM: Would you state your name and
16 business address for the record, please?

17 THE WITNESS: Ola A. Oyefusi, 3033 Chain Bridge Road,
18 Oakton, Virginia.

19 JUDGE FORDHAM: Thank you. You may proceed, Mr.
20 Barber.

21 MR. BARBER: Thank you, Your Honor.

22 DIRECT EXAMINATION

23 BY MR. BARBER:

24 Q. Dr. Oyefusi, do you have before you a document
25 entitled "Rebuttal Testimony of Dr. Ola A. Oyefusi on Behalf

1 of AT&T Communications of Pennsylvania, LLC," identified as
2 AT&T Statement 2.0 and dated July 18, 2003?

3 A. I do.

4 Q. And is that a document that consists of 12 pages
5 of written questions and answers, as well as four exhibits
6 labeled OAO Rebuttal Exhibits 1 through 4?

7 A. Yes.

8 (Whereupon, the documents were marked
9 as AT&T Statement No. 2.0 and
10 Exhibits Nos. 1 through 4 for
11 identification.)

12 BY MR. BARBER:

13 Q. And was this document prepared by you or under
14 your direct supervision?

15 A. Yes, it was.

16 Q. Do you have any corrections, additions or other
17 modifications to make to this document?

18 A. Yes, I do. On page 7, Footnote 7, after "VZ
19 Response to AT&T III-1," strike everything after that.

20 Q. So for Footnote 7, page 7, the footnote would
21 just read, "VZ Response to AT&T III-1."?

22 A. That is correct.

23 Q. Do you have any other changes?

24 A. Yes. On page 8 --

25 Q. One of these will be a proprietary number, I

1 believe, a percentage.

2 A. Yes, but I will be -- there is a number on line
3 19. Strike the "8" and insert "7." I will not say the
4 number that precedes it.

5 Q. So on line 19, the proprietary figure, the
6 second digit would be a "7" rather than an "8"?

7 A. That's correct.

8 Q. Any other changes?

9 A. Yes. On line 20 of the same page, page 8,
10 strike one zero after the decimal point. So that number
11 should read ".000144."

12 Q. Subject to those -- are there any other changes?

13 A. No.

14 Q. Subject to those modifications to AT&T Statement
15 2.0, if I were to ask you the questions that are set forth
16 in AT&T 2.0 today, would your answers remain the same?

17 A. Yes, they would be.

18 MR. BARBER: With that, Your Honor, I would move for
19 the admission of AT&T Statement 2.0 subject to cross-
20 examination and would make Dr. Oyefusi available for cross-
21 examination.

22 JUDGE FORDHAM: Thank you. Verizon, Ms. Paiva.

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

24 CROSS-EXAMINATION

25 BY MS. PAIVA:

1 Q. Good morning, Dr. Oyefusi.

2 A. Good morning, Ms. Paiva.

3 Q. I just have a few questions for you.

4 In your testimony generally, you attempt to calculate
5 the cost to Verizon of providing access service using
6 unbundled network element or UNE rates; correct?

7 A. Did you say a cost to Verizon?

8 Q. Yes; Verizon's cost of access.

9 A. Okay.

10 Q. Is that correct?

11 A. Yes.

12 Q. UNE rates are the prices that are charged to
13 companies that want to use part of Verizon's network to
14 provide local telephone service; correct?

15 A. UNE rates are the cost of unbundled network
16 elements which are elements that are derived from the same
17 network that use access.

18 Q. And unbundled network elements are used to
19 provide local service, competing local service using
20 Verizon's network; correct?

21 A. Yes. Unbundled network elements are used to --
22 some of the unbundled network elements -- there are several
23 of them. Some are used to provide local exchange service by
24 competitive local exchange carriers, and there are elements
25 within the unbundled network elements that are also similar

1 to elements that are used to provide access service.

2 Q. The prices for unbundled network elements, which
3 are what you use here, those are set under specific FCC
4 rules known as the TELRIC rules; correct?

5 A. When you say they are set, what do you mean?

6 Q. The prices that are set for unbundled network
7 elements, they're set by the Commission. The Commission is
8 required to follow these rules, the FCC rules known as
9 TELRIC; correct?

10 A. Well, yeah. The unbundled network elements, the
11 cost of unbundled network elements were calculated using the
12 TELRIC costing system.

13 Q. And TELRIC is based on an FCC regulation;
14 correct?

15 A. TELRIC is based on a costing methodology which
16 preceded the FCC regulation.

17 Q. But is memorialized in and required by the FCC
18 regulations?

19 A. The FCC requires certain rules to be followed
20 when calculating the costs, but the FCC did not invent the
21 costing methodology that actually underlied the TELRIC.

22 Q. I understand, but the FCC requires TELRIC to be
23 used for unbundled network elements?

24 A. That's correct.

25 Q. Generally, the TELRIC -- I mean, I may be being

1 too general here, but the TELRIC rate for a network element
2 is based on what it would cost a hypothetical network to
3 provide the element using the most efficient technology
4 currently available and the lowest cost network
5 configuration; right?

6 A. Could you repeat that again?

7 MR. BARBER: Are you quoting from a particular FCC
8 document?

9 MS. PAIVA: No. I was paraphrasing the rules. If he
10 can't answer the question, that's fine. Let me ask it again
11 and see if he can answer it.

12 BY MS. PAIVA:

13 Q. Generally, do you understand the TELRIC standard
14 to be that the price is set based on what it would cost a
15 hypothetical network to provide the element using the most
16 efficient technology currently available and the lowest cost
17 network configuration?

18 A. That is one of the rules that are supposed to be
19 followed when you're calculating those costs, and there's
20 others, too.

21 MS. PAIVA: Your Honor, may I approach the witness?

22 JUDGE FORDHAM: Yes, you may.

23 MS. PAIVA: I have two FCC Orders. These are cited
24 in our testimony, so I was not going to mark them as
25 exhibits, but I have extra copies.

1 (Pause.)

2 JUDGE FORDHAM: Ms. Paiva, for the record, could you
3 explain which Orders you just were referring to?

4 MS. PAIVA: Yes, Your Honor, I will.

5 JUDGE FORDHAM: Thank you.

6 MS. PAIVA: Your Honor, I've put before Dr. Oyefusi
7 excerpts from two FCC Orders, which I'm not going to have
8 marked as exhibits, because they are FCC Orders and they're
9 cited in our testimony, but for the record, I'll just
10 describe what I've put in front of him.

11 I've noted on the top the common name for these
12 Orders, which in our brief we note the common name so it's
13 easy to match it up.

14 The first one is commonly known as the Access Reform
15 Order, and it's more formal title is "In the Matter of
16 Access Charge Reform," the FCC's First Report and Order
17 issued May 16, 1997. This is just an excerpt from the
18 Order; not the entire Order.

19 The second one is commonly referred to as the CALLS
20 Order, C-A-L-L-S. This is also just an excerpt, and it's
21 also more formally known as as the "In the Matter of Access
22 Charge Reform." It's the FCC's Sixth Report and Order
23 issued May 31, 2000.

24 BY MS. PAIVA:

25 Q. Dr. Oyefusi, I have just excerpted parts of this

1 Order. Have you read these two Orders or are you familiar
2 with them?

3 A. At some point in time, I might have -- I have
4 read them.

5 Q. In the CALLS Order, if you turn to the third
6 page of my excerpt that I gave you up there, this is in
7 paragraph 164 of the CALLS Order, and if you look at the
8 language that I underlined for you, would you agree with me
9 that the FCC says, "UNEs and access charges are subject to
10 different pricing standards"?

11 MR. BARBER: Do you want him to read the full
12 sentence?

13 MS. PAIVA: If he wants to read the full sentence, he
14 can. There are a couple more words.

15 THE WITNESS: I'm trying to read the whole paragraph.
16 (Pause.)

17 THE WITNESS: Okay. The FCC is saying here that they
18 have chosen this policy, their policy, to treat UNEs and
19 access differently. Why they have chosen to do that is a
20 public policy decision. What they are not saying here is
21 that the network that carries the UNE or local connectivity
22 calls is different technically from the network that carries
23 access, and there is one Order that, if you go back to the
24 series of the Orders that the FCC has issued over the years,
25 there is, I believe, the Remand Order when the FCC was

1 talking about whether special access should be priced as
2 UNE.

3 The FCC in that Order also admitted that because of
4 the Universal Service concern, that was the only reason why
5 the FCC did not allow special access to be priced by UNE.

6 So there is a public policy concern in play here,
7 which is the universal service. They wanted to continue to
8 retain the Universal Service Fund or the contribution to the
9 Universal Service Fund, and that was the only reason why
10 they could justify treating UNEs and access differently; and
11 the same thing applies here, I believe.

12 BY MS. PAIVA:

13 Q. So as a public policy matter, the FCC decided
14 for the reasons that you just stated to treat UNEs and
15 access separately for pricing reasons or for pricing
16 purposes?

17 A. Yes.

18 Q. If you could turn then to the Access Reform
19 Order, to the third page of the package that I copied for
20 you, and it's paragraph 199, I've underlined some language
21 here. "We disagree with those commentators that argue that
22 the Local Competition Order requires us immediately to
23 prescribe rate levels for access elements based on long-run
24 incremental cost.

25 "The Local Competition Order addressed inter alia the

1 pricing of unbundled network elements. While unbundled
2 network elements may be used to provide interstate access
3 services, their availability at TELRIC-based prices does not
4 compel adoption of similar rates for access services."

5 Is this just another manifestation of the FCC's
6 policy decision that you described?

7 A. I would emphasize one word here, "immediately,"
8 which tells me that the FCC has not closed the door here.
9 The FCC is saying that at the time that we're writing this
10 Order, that we're not ready to price access at UNE.

11 That doesn't mean that the FCC is not going to move
12 in that direction or do not intend to move in that
13 direction.

14 Q. Right. But today, sitting here today, the FCC
15 does not price interstate access at UNE rates under the
16 TELRIC methodology, does it?

17 A. Today, the FCC does not price interstate access
18 at UNE, but the FCC over the years after this Order was
19 issued has taken significant steps towards that direction.

20 Q. And that's been basically through industry
21 settlements; correct?

22 A. It was through a proceeding, and the industry
23 settlement came in between, but the FCC issued an Order and
24 adopted the industry settlement.

25 Q. In your testimony when you're using particular

1 UNE rates to do your calculations, those are Verizon PA's
2 UNE rates under the Commission's Tentative Order; correct?

3 A. Well, I did a couple calculations. I did one
4 using the current Verizon PA UNE rates and I did another
5 calculation using the results of Verizon PA's compliance
6 filing to the Commission's Tentative Order.

7 Q. But you do understand that the compliance filing
8 to the Tentative Order has not yet been accepted? They're
9 not yet final rates; correct?

10 A. They're not final rates, but the Commission made
11 some definitive decision in that Order and remanded whatever
12 was still -- I mean regarding inputs. The Commission
13 adopted some inputs in that Order and asked Verizon to file
14 compliance using those inputs.

15 Q. And Verizon filed the compliance using the
16 inputs, but now the Commission has still entertained
17 comments on the inputs and is at some point is going to
18 issue a Final Order on the inputs?

19 A. Yeah. The Commission has not issued a Final
20 Order.

21 Q. Now, you say, I guess it's fair to say, that
22 AT&T believes that it's appropriate to evaluate Verizon's
23 costs of providing access based on UNE rates; right?

24 A. The access cost study uses the TSLRIC costing
25 methodology. UNEs use the TELRIC costing methodology. They

1 are both based on forward-looking incremental cost
2 methodology. So you are making a distinction without a
3 difference here.

4 Q. Then my next question is does AT&T also believe
5 that the cost of providing access for all Pennsylvania ILECs
6 should be based on TELRIC?

7 A. Do we believe that all LECs should base their
8 costing methodology on TELRIC? We believe all LECs should
9 base their costing methodology on forward-looking
10 incremental cost.

11 So when you apply that costing methodology to a total
12 service, you will be dealing with a TSLRIC cost study.
13 When you apply it to elements, you will be dealing with
14 TELRIC. So, regardless, depending on what you apply it to,
15 whether you are applying it to calculate the other pieces of
16 the network, you will be dealing with TELRIC, but they are
17 still the same costing methodology; and if you're using the
18 same network, the answer should be the same.

19 Q. So, just to be clear, if you were trying to
20 figure out the costs of providing access for one of the
21 rural companies or for Sprint or for Alltel, in theory, you
22 believe that TELRIC would be the proper standard for any of
23 those companies to determine the cost of access?

24 A. I believe the forward-looking incremental cost
25 would be the proper standard. So whether you decide to use

1 that costing methodology to calculate elements, then you'd
2 be dealing with TELRIC. If you're using that forward-
3 looking incremental cost to calculate the cost of the
4 service for that rural company, you'd be dealing with
5 TSLRIC. You have a TSLRIC cost study instead of a TELRIC
6 cost study.

7 So the difference is that in one study, you are
8 calculating the cost of pieces of the network.

9 Q. Right.

10 A. In the other study, you are calculating the cost
11 of a service; and if you take your local exchange service,
12 for example, there are pieces of the network that make up
13 the local exchange service. So if you want to know the
14 different pieces, you have to calculate and use the TELRIC.
15 If you just want to calculate the total cost of the service,
16 you use your TSLRIC.

17 Q. So I think what you're saying then is even
18 Verizon's costs should be evaluate using the TSLRIC study,
19 but you just don't agree with the inputs that we used in our
20 TSLRIC study?

21 A. I believe that if you put the same inputs that
22 you used for your TELRIC study in your TSLRIC study, you
23 will get the right answer for access.
24
25

1 MS. PAIVA: I have nothing further.

2 Thank you, Dr. Oyefusi.

3 JUDGE FORDHAM: Thank you.

4 Does any other party have any cross for this witness?

5 (No response.)

6 JUDGE FORDHAM: Any redirect, Mr. Barber?

7 MR. BARBER: No, Your Honor.

8 JUDGE FORDHAM: Thank you.

9 THE WITNESS: Thank you.

10 (Witness excused.)

11 JUDGE FORDHAM: We have AT&T Statement 2.0, with
12 Exhibits 1 through 4. Are there any objections to the
13 admission?

14 (No response.)

15 JUDGE FORDHAM: Hearing none, the statement and the
16 exhibits are admitted without objection.

17 (Whereupon, the documents marked
18 as AT&T Statement No. 2.0 and
19 Exhibits 1 through 4
20 were received in evidence.)

21 JUDGE FORDHAM: Next we have MCI's case.

22 MS. PAINTER: Yes. Thank you, Your Honor. MCI calls
23 Dr. Michael Pelcovits to the stand.

24 JUDGE FORDHAM: Please raise your right hand.

25 Whereupon,

1 MICHAEL D. PELCOVITS

2 having been duly sworn, testified as follows:

3 JUDGE FORDHAM: You may be seated.

4 THE WITNESS: Thank you.

5 JUDGE FORDHAM: Would you state your name and
6 business address for the record, please?

7 THE WITNESS: My name is Michael Pelcovits. My
8 business address is 1155 Connecticut Avenue, N.W.,
9 Washington, D.C., 20036.

10 JUDGE FORDHAM: Thank you.

11 You may proceed, Ms. Painter.

12 MS. PAINTER: Thank you, Your Honor.

13 DIRECT EXAMINATION

14 BY MS. PAINTER:

15 Q. Dr. Pelcovits, do you have before you what has
16 been marked MCI WorldCom Network Services Statement 1.0,
17 which is your rebuttal testimony?

18 (Whereupon, the document was
19 marked as MCI Statement No. 1.0
20 for identification.)

21 THE WITNESS: I do.

22 BY MS. PAINTER:

23 Q. And was this prepared by you or under your
24 direct supervision?

25 A. Yes.

1 Q. Do you have any corrections to the testimony?

2 A. I do. On page 13, Table 3, the first row of the
3 table which gives the local switching rates, I have a
4 correction for the second column of data. Instead of
5 0.17085, the correct rate is 0.2431, and as a result of
6 that, the percentage shown in the right-most column, instead
7 of 546.4 is changed to 384.0 percent.

8 Q. Do you have any other corrections or
9 modifications to your testimony?

10 A. I do not.

11 Q. Is the information contained in this statement,
12 with that correction, true and correct to the best of your
13 knowledge?

14 A. Yes.

15 Q. If I were to ask you the same questions today,
16 would your answers be the same?

17 A. Yes.

18 Q. Do you also have before you what has been marked
19 MCI WorldCom Network Services, Inc. Statement 1.1, which is
20 your surrebuttal testimony?

21 (Whereupon, the document was
22 marked as MCI Statement No. 1.1
23 for identification.)

24 THE WITNESS: I do.

25 BY MS. PAINTER:

1 Q. Was this prepared by you or under your direct
2 supervision?

3 A. Yes.

4 Q. Do you have any corrections to this statement?

5 A. I do not.

6 Q. Is the information contained therein true and
7 correct to the best of your information and belief?

8 A. Yes.

9 Q. If I were to ask you the same questions today,
10 would your answers be the same?

11 A. Yes.

12 MS. PAINTER: Thank you.

13 Your Honor, with that, I would move for the admission
14 of MCI WorldCom Network Services, Inc. Statements 1.0 and
15 1.1.

16 JUDGE FORDHAM: Thank you.

17 Verizon, Ms. Conover.

18 MS. CONOVER: Yes.

19 **CROSS-EXAMINATION**

20 BY MS. CONOVER:

21 Q. Good morning, Dr. Pelcovits. My name is Julia
22 Conover. I'm the attorney for Verizon. I have a few
23 questions for you.

24 First, a very general question. Would you agree in
25 general that the longer a loop is, the higher is the cost

1 for that loop, all things being equal?

2 A. All things being equal, yes, I would agree.

3 Q. And generally, rural loops have higher costs
4 than urban loops?

5 A. In addition to, or do you mean because of the
6 length?

7 Q. I think it's primarily -- wouldn't you agree
8 that they have higher costs primarily attributable to the
9 longer lengths?

10 A. Well, I don't know if it's primarily attributed
11 to longer lengths. There's probably two key factors. One
12 is the length of the loop and the other is the density, and
13 density has a big effect also. So for both of those
14 reasons, generally rural loops are more costly than urban
15 loops.

16 Q. Thank you for that clarification.

17 On page 32 of your testimony you state --

18 MS. PAINTER: This is Statement 1.0?

19 MS. CONOVER: I'm sorry; yes, it is.

20 BY MS. CONOVER:

21 Q. Your direct testimony. Most of my questions are
22 about your direct testimony. I should mention that.

23 You state, "Long distance carriers" -- this is on
24 line 11 or so. "Long distance carriers have no feasible
25 alternatives to reach most local telephone customers in

1 Pennsylvania except by using switched access." Do you see
2 that statement?

3 A. I do.

4 Q. First of all, does MCI serve local customers in
5 Verizon Pennsylvania territory?

6 A. Yes.

7 Q. Do you know approximately how many? I don't
8 want to get into anything proprietary, but just order of
9 magnitude, approximately how many?

10 A. No, I don't.

11 Q. Would you expect that it would be in the
12 hundreds of thousands?

13 A. I think that's probably correct.

14 Q. Am I correct that most of these customers are
15 served using the UNE Platform, or UNE-P?

16 A. If we're talking about residential customers, I
17 would say yes.

18 Q. But business customers would be served in other
19 ways?

20 A. Yes.

21 Q. And how would they be served?

22 A. Business customers might -- most likely, the
23 larger business customers are mostly served, at least to the
24 best of my knowledge, using special access, which is
25 essentially the local exchange carrier's loops, with proper

1 electronics to enable the higher capacity for the larger
2 customers.

3 Q. To set aside the larger customers who are served
4 in that way, would it be fair to say that for those
5 customers MCI is not paying switched access charges, by
6 definition?

7 A. MCI would not be paying switched access on
8 the originating end where MCI is providing local service
9 using UNE-P; they would still be paying switched access on
10 the terminating end of calls that terminate to Verizon local
11 customers.

12 Q. Does MCI serve any local customers in the
13 Verizon North territory?

14 A. I don't know.

15 Q. Would it be fair to say that if it does, they
16 would be very few?

17 A. I just don't know the answer.

18 Q. You really don't know.

19 Are you familiar with the FCC local competition
20 report, generally, the most recent one that has been issued
21 by the FCC?

22 A. Do you mean the Triennial Review Report or --

23 Q. No. I'm sorry. I'm not going to ask you a
24 question about that. I mean, essentially there's a report
25 that's periodically issued by the FCC on data on local

1 telephone competition.

2 A. Yes, I am familiar with that.

3 Q. Would you accept, subject to check, or would you
4 verify that as of 12/31/2002, the FCC reports that there are
5 1.5 million CLEC lines in the state of Pennsylvania?

6 A. That sounds about right. I haven't looked at it
7 recently.

8 Q. Okay. Thank you.

9 A. Of course -- I thought you'd follow up. I just
10 wanted to add that that's CLECs serving both with unbundled
11 loops, UNE Platform and their own facilities.

12 Q. Correct. Would it be your recollection that
13 about 600,000 of those are being served via UNES?

14 A. That's about right. It's starting to level off,
15 I mean, I think it's -- since you mentioned the report, the
16 report has been providing and collecting data for about two
17 years now, and there was a big acceleration of CLEC
18 penetration into Pennsylvania. Within the first 18 months
19 of the report, it's about a 170 percent increase in CLEC
20 lines, and it's leveling off; in the last 18 months it's
21 about a 25 percent increase. So it's gone from 14 percent
22 to 15 percent to 16 percent; it's really leveled off.

23 Q. But it has continued to increase over time;
24 isn't that correct?

25 A. It has increased by a smaller amount and there's

1 still -- the vast majority of customers are served by the
2 incumbent LEC, in this case Verizon, for much of the state.

3 Q. Would you expect that most of those 1.5 million
4 CLEC lines would be in the Verizon, particularly the Verizon
5 Pennsylvania territory?

6 A. I would expect that as a matter of just
7 Verizon's share of the total state, in terms of the total
8 number of lines served by Verizon; yes, I would expect that.

9 Q. Getting back to MCI serving customers using the
10 UNE Platform, am I correct that under current FCC rules,
11 when MCI or any CLEC serves a customer via UNE-P, it
12 receives access charge payments from the long distance
13 carriers, just like the local companies do?

14 A. That's correct, under current law and
15 regulation.

16 Q. So just to illustrate, so we're all talking
17 about the same thing, if an MCI local customer makes a long
18 distance call, MCI would receive originating access from the
19 long distance carrier, whoever that may be?

20 A. That's correct.

21 Q. Now, in general, is it generally the case that
22 MCI local customers would use MCI long distance service?

23 A. I believe they do in the vast majority of cases.

24 Q. In fact, in The Neighborhood plan, is that
25 essentially a requirement?

1 A. I believe to get The Neighborhood rate,
2 including long distance service, it is, but I am not 100
3 percent certain.

4 Q. But you did agree that, in the vast majority of
5 cases, the MCI local customers would use MCI toll service?

6 A. Yes.

7 Q. So when that MCI local customer places a call
8 using MCI toll service, there may be -- I guess I'll ask
9 you. Is there in fact a payment made between the
10 affiliates?

11 A. I don't know for sure.

12 Q. But essentially, it's a wash as between those
13 companies?

14 A. Just like a Verizon-to-Verizon, yes.

15 Q. Yes; absolutely.

16 A. It's either -- it's one pocket to another.

17 Q. Now, if the MCI local customer receives a call,
18 MCI collects terminating access charges from the long
19 distance carrier that's used by the caller?

20 A. Used by the party placing the call; correct.

21 Q. Correct. So if AT&T carries that call, for
22 example, and it terminates on an MCI local customer, MCI
23 would collect terminating access from AT&T; is that correct?

24 A. That's correct.

25 Q. And if Verizon Long Distance -- the same thing;

1 if Verizon Long Distance carries the call, MCI collects that
2 from Verizon Long Distance?

3 A. Right. In all cases, the access charges are
4 going to the customer's selected local exchange carrier.

5 Q. So I guess that's a roundabout way of saying
6 that by getting a local customer, MCI can in fact avoid the
7 payment of access charges?

8 A. MCI can, and any carrier, once they get the
9 local customer, they get the access revenue, but that's not
10 the same thing as saying that the local carrier maintains an
11 ability and a market power over the long distance providers,
12 which is the point of the question and answer on page 32,
13 which is to say if you're defining the market properly, the
14 market is really defined in terms of the individual customer
15 and the local provider to that customer and whether that
16 local provider can set prices above cost for switched
17 access, which both conceptually and empirically we know that
18 they do.

19 Q. But just to summarize, by acquiring the local
20 customer, MCI not only avoids paying access charges, but
21 then would actually receive terminating access from other
22 long distance carriers?

23 A. Yes, I would agree; that is absolutely correct.
24 And as long as you have the -- if you were to have a
25 perfectly competitive local market, I would say that you

1 probably would not have too much concern about switched
2 access charges on the originating end. You have a serious
3 terminating access problem regardless.

4 Q. Just to clarify -- and you probably know where
5 I'm going on this -- the access charges are collected at the
6 rate that is in the MCI local tariff, that MCI sets for
7 switched access?

8 A. In the MCI either intrastate or interstate
9 switched access tariff, depending on the nature of the call
10 being handled.

11 Q. Now, I understand it's your testimony in this
12 case that switched access rates are properly set at TELRIC;
13 is that correct?

14 A. I believe I said it should be a forward-looking
15 economic cost, and yes, I did say TELRIC, and I also
16 discussed that there are nuance differences between
17 different measures of forward-looking cost.

18 MS. CONOVER: We'd like to mark at this time a
19 document that I believe is Verizon Cross-Examination
20 Exhibit 9, I think.

21 JUDGE FORDHAM: Nine.

22 (Whereupon, the document was marked
23 as Verizon Cross-Examination Exhibit
24 No. 9 for identification.)

25 BY MS. CONOVER:

1 Q. Verizon Cross-Examination Exhibit No. 9 is a
2 document that I pulled from the MCI local web site and what
3 is, I believe, the MCI metro access transmission local tariff
4 and, in particular, the switched access portion of that
5 tariff.

6 Do you see that? Do you have that in front of you at
7 this time?

8 A. I see this in front of me, yes.

9 Q. Are you familiar with this tariff, Dr.
10 Pelcovits?

11 A. I am not familiar with it.

12 Q. Are you willing to accept, subject to check --
13 and we can certainly check later and you can verify -- that
14 this is in fact an accurate copy of MCI metro's currently
15 effective switched access tariff?

16 A. Yes, I will accept it subject to check.

17 MS. PAINTER: And, Your Honor, I would like the
18 ability to go back and look in general at whether there are
19 other sections of the tariff that we would like to
20 supplement that we believe would be relevant.

21 JUDGE FORDHAM: Yes, you may.

22 MS. PAINTER: Thank you.

23 MS. CONOVER: We have no objection to that at all.

24 JUDGE FORDHAM: Thank you.

25 BY MS. CONOVER:

1 Q. Would you turn then to what I believe, beginning
2 on Original Sheet No. 62, which is several pages back -- I'm
3 sorry; 65. I believe that's the section that begins to talk
4 about the tariffed rates for switched access that are
5 charged by MCImetro.

6 I don't completely understand these charges, Dr.
7 Pelcovits, so perhaps you can help me. Actually, turn to
8 page number 66, Original Sheet No. 66. This appears to have
9 per minute charges for originating use and terminating use.
10 Is that how you read that page?

11 A. This is under the Option 1, you're talking
12 about?

13 Q. Correct. And there's something similar under
14 Option 2.

15 A. Right.

16 Q. I was actually going to ask you if you
17 understand what the difference is between Option 1 and
18 Option 2.

19 A. I have not had enough time to review it to be
20 able to understand that difference.

21 Q. But as I read this, under either option the rate
22 per minute of use for originating and for terminating is
23 about 3.8 cents per minute of use. Would that be accurate?

24 MS. PAINTER: I'm sorry; are you still on Option 1?

25 BY MS. CONOVER:

1 Q. Well, Option 1 is set out there, 3.8, so let's
2 start with Option 1. Would you agree that Option 1 appears
3 to be 3.8 cents per minute on originating and 3.8 cents per
4 minute on terminating?

5 A. Yeah, as best as I can tell from this --

6 Q. And again, Option 2, would you add, in fact, the
7 termination charge, the network charge, and the local
8 switching center charge?

9 A. Sure.

10 (Pause.)

11 A. Okay. I have a rate of about .039.

12 Q. So it's about 3.9 cents for Option 2?

13 A. Right. They're very close.

14 Q. They're very close. Now, Dr. Pelcovits, are
15 these rates set at MCI's TELRIC level?

16 A. I don't know.

17 Q. You don't know.

18 A. I would actually -- under current marketplace
19 conditions, I would not necessarily expect them to be. I
20 think the whole issue of, in this case, CLEC access charges
21 has been the subject of a proceeding at the FCC. I don't
22 know whether there's been analogous proceedings in
23 Pennsylvania, but I think it just goes to the point, quite
24 frankly, that unless regulation forces switched access rates
25 down to TELRIC costs, they're not going to end up there, and

1 there is no marketplace pressure that causes them to end up
2 there, because, essentially, once a carrier is the local
3 provider to a customer, that carrier is not disciplined as
4 far as its switched access rates to the long distance
5 carriers. And that applies whether it's a CLEC or an ILEC.

6 Q. So, if I hear you correctly, what you appear to
7 be saying is that MCI is charging whatever the market can
8 bear for switched access rates?

9 A. I don't know, the term, "whatever the market can
10 bear" is very loaded. I would say that it's not fully
11 constrained by competition to set its access rates at TELRIC
12 costs, in the same way that Verizon isn't, or any ILEC,
13 because of the nature of the fact that the long distance
14 carrier does not have a choice of which local provider it's
15 going to use to originate or terminate long distance calls,
16 once the customer, the end user, has selected the local
17 provider.

18 Q. But just to make sure --

19 MS. CONOVER: And the next question will be on the
20 proprietary record, just one question and answer.

21 (Whereupon, the following pages 358 through 360 were
22 designated proprietary and were sealed and bound
23 separately.)
24
25

1 JUDGE FORDHAM: We're off the proprietary record,
2 back on the public record.

3 BY MS. CONOVER:

4 Q. You would certainly agree that MCI metro's tariff
5 rate is higher than the TELRIC rate that MCI is advocating
6 here for Verizon Pennsylvania and Verizon North?

7 A. Yes.

8 Q. I would think, based upon what you've said, that
9 you would agree that MCI has market power in the switched
10 access market, in the sense at least as for terminating
11 access, for those customers that it has?

12 A. I would say that every CLEC has a certain degree
13 or market power over terminating access, and that would --
14 obviously, there are different consequences of that and
15 different degrees of importance, depending on how big the
16 CLEC is and what the implication is of prices being above
17 cost for the state of competition in the long distance
18 market, which is really what I've tried to emphasize in my
19 testimony. So the fact that a CLEC has above-cost access
20 charges I do not believe causes significant competitive
21 problems in the long distance market and is unlikely to
22 cause those type of problems, as opposed to the case of
23 Verizon where I believe there are competitive problems
24 caused by the fact that the dominant local exchange carrier
25 is charging rates to long distance carriers that are far

1 above cost.

2 Q. So if I can follow your logic, so long as
3 "competitive problems" aren't being caused by a rate, that
4 it is okay to charge a rate significantly above cost for
5 access?

6 A. No, I wouldn't say that. In fact, I believe
7 that the -- I know the way the FCC approached this, which
8 was to require CLECs to bring their switched access charges
9 much closer and eventually to transition them to the level
10 of the incumbent LEC access charges. I think that was a
11 good policy. Whether that's necessary as a matter of
12 regulation in Pennsylvania, I can't say, but I think
13 particularly on the terminating end, there is and I think
14 there will for some time be a problem of every local
15 exchange carrier having the ability to price terminating
16 access above cost; and that does cause problems.

17 Q. And so, again, just to be clear, if Verizon Long
18 Distance completes a call to one of MCI's local customers,
19 one of several hundred thousand, Verizon Long Distance pays
20 a per minute charge of 3.8 cents per minute; is that
21 correct?

22 A. I didn't catch the last piece, the rate you said
23 in the question?

24 Q. Correct. A per minute charge of 3.8 cents.

25 A. Oh, per minute charge --

1 Q. Yes.

2 A. -- of 3.8 cents. At least based on what I
3 understand of the tariff sitting here today, yes.

4 Q. Now, is MCI willing to commit to reduce its
5 intrastate access charge levels to the level that Verizon
6 reduces its access charge rates in this proceeding?

7 A. I can't say that they do make that commitment.

8 Q. You make several statements -- I'll refer to
9 page 14 and 15 of your testimony -- about the operation of
10 Verizon Pennsylvania's price cap plan. Are you generally
11 familiar with the way the price cap plan operates? I mean
12 very generally.

13 A. You're talking about the interstate price cap
14 plan?

15 Q. The intrastate price cap plan.

16 A. Intrastate price cap plan. I am just generally
17 familiar with that.

18 Q. Are you familiar with the term the "price change
19 opportunity," or the PCO, and what that stands for?

20 A. I have seen that in the Global Order, yes.

21 Q. Am I correct that the PCO is essentially the
22 annual price cap mechanism which adjusts Verizon's rates by
23 the rate of inflation, less a productivity offset of 2.93
24 percent?

25 A. Yeah; that's my understanding.

1 Q. Now, isn't it true that the application of this
2 PCO has resulted in rate decreases for Verizon virtually
3 every year since its inception?

4 A. I don't know exactly, because I know in some
5 cases it's credited to certain types of funds and so forth,
6 so I can't really say exactly how it's been used every year.

7 Q. Okay. That's a good clarification. But would
8 you agree that the rate of inflation has been less than the
9 offset since nineteen -- essentially 2.93 percent?

10 A. Since when?

11 Q. Since 1994 when Verizon's plan was approved.

12 A. Actually, I don't know. I have to check what
13 the -- I know that that's true very recently, but if you
14 take ten years' worth of inflation, I don't know.

15 Q. Certainly, recently it's below that rate.

16 A. In the last few years, yes.

17 Q. Yes.

18 A. I don't know about 1994, though.

19 Q. Now, on page 15 of your testimony, you claim
20 that Verizon's price cap plan has not generated any benefits
21 for intrastate access charge rates, and you specifically
22 cite the fact that access rates have not been reduced since
23 the Global Order in 1999.

24 A. Yes.

25 Q. I'm sorry; page 15 of your rebuttal.

1 Did you actually look at the Global Order before you
2 prepared this testimony?

3 A. I did not, but the person working for me did.

4 Q. Then is it correct that the access charge
5 reductions adopted by the Commission in the Global Order
6 reflected the cumulative price change opportunities for a
7 four-year period from 1999, 2000, 2001 and 2002?

8 A. I don't know.

9 Q. But that would be clear on the face of the
10 order. Would you be willing to accept that subject -- at
11 least hypothetically for purposes of this question?

12 MS. PAINTER: Your Honor, I would object. As Ms.
13 Conover just said, the order speaks for itself.

14 MS. CONOVER: Right, it does speak for itself, but I
15 would like him to accept that fact for purposes of my
16 follow-up question.

17 JUDGE FORDHAM: Do you object that she's going to ask
18 him a question regarding that?

19 MS. PAINTER: He can accept it for purposes of this
20 follow-up question. That would be fine.

21 JUDGE FORDHAM: Okay.

22 BY MS. CONOVER:

23 Q. If what I stated is correct, would you agree
24 that what the PUC essentially did was accelerate the PCO so
25 that productivity increases from this entire four-year

1 period would all benefit interexchange carriers through
2 access charge reductions?

3 A. I'm sorry; would you mind restating the
4 question?

5 Q. Yes. If, in fact, the Global reductions
6 reflected the cumulative PCO, price change opportunity,
7 reductions for the four-year period from 1999 to 2002, would
8 you agree that what the PUC did was to accelerate the PCOs
9 so that the productivity increases from that entire four-
10 year period would all benefit the interexchange carriers
11 through carrier access charge reductions?

12 A. I mean, it's very hypothetical, because I
13 haven't --

14 Q. Correct.

15 A. -- seen how this is portrayed in the order. It
16 is certainly -- if, as you say, there has been some
17 productivity improvement built into the 63 cents, then there
18 has been some benefit from that. That doesn't mean that
19 it's an effective reflection of all of the productivity
20 changes. The 2.9 percent is very, very low, and there is
21 also -- you know, there are give and takes in terms of the
22 number of minutes that you would have foreseen back in 1999
23 that are now lower, and yet there's a rate built into that
24 that's built off, probably, higher minutes than you've
25 actually experienced.

1 Q. But certainly, if that was the PUC's intent,
2 based upon the price cap mechanism that they approved in
3 Pennsylvania, that the productivity improvements during
4 those four-year period would be reflected in access charge
5 reductions?

6 A. As you have explained it, that would be true
7 until 2002. We're now in 2003. We're setting rates that I
8 would expect would last at least another year, so it's still
9 not -- it's not there yet.

10 Q. Okay. I accept that.

11 MS. CONOVER: I have no further questions of this
12 witness. I would like to move into the record Verizon
13 Cross-Examination Exhibit No. 9.

14 JUDGE FORDHAM: Are there any objections?

15 MS. PAINTER: I have no objection, Your Honor,
16 subject to the ability to supplement it upon further review
17 and inspection of the tariff.

18 JUDGE FORDHAM: Yes, that right is reserved. Verizon
19 Cross-Exam Exhibit 9 is entered into the record, and we note
20 that Ms. Painter can add other sections if, after she
21 reviews the tariff, they are needed to supplement the
22 sections that are in the record.

23 (Whereupon, the document marked
24 as Verizon Cross-Examination Exhibit
25 No. 9 was received in evidence.)

1 JUDGE FORDHAM: Mr. Mickens.

2 MR. MICKENS: Thank you, Your Honor.

3 JUDGE FORDHAM: You're welcome.

4 CROSS-EXAMINATION

5 BY MR. MICKENS:

6 Q. Mr. Pelcovits, good afternoon.

7 A. Good afternoon, sir.

8 Q. I just have very brief cross-examination for you
9 this afternoon.

10 You believe that all the costs of the local loop
11 should be allocated to local service; is that correct?

12 A. I think what I've hopefully tried to convey is
13 that I believe that the cost of the local loop should be
14 recovered directly from the customer rather than flowed
15 through an intermediary. Exactly what you mean by cost
16 allocation is far less important than what happens to the
17 rates.

18 Q. All right. Let me ask you a very general
19 hypothetical that I've asked one or two other witnesses.
20 Consider a CLEC that buys and resells access to the local
21 loop. Okay?

22 A. Just to make sure I understand you, sir, do you
23 mean buys a loop at UNE rates? Is that what you mean by
24 that?

25 Q. Yes.

1 A. Okay.

2 Q. And the CLEC plans to sell toll and premium
3 services.

4 A. I understand.

5 Q. Now, would you agree with me that given that
6 fact, the CLEC has options in terms of recovering the cost
7 that it incurs to gain access to the local loop? That it
8 can either charge its customers directly for that cost, or
9 it could provide the access free to its customers, with the
10 understanding that they would purchase a certain amount of
11 those services, toll or premium services; is that correct?

12 A. Well, I don't think they could -- if you say
13 with an understanding, then you're essentially saying
14 they're going to get that revenue from the customer --

15 Q. I'm saying that the CLEC has the ability to
16 price that service so that it recovers its cost. Is that
17 accurate?

18 A. It really is driven very much by the market, and
19 it's going to be constrained by the customer's alternatives
20 either from the ILEC or other CLECs; and I don't think that
21 the CLEC would be able to charge a local rate that did not
22 recover the cost of the loop, assuming it had no conditions
23 that the customer buy other services from it. So I believe
24 that --

25 Q. I'm not suggesting that they do that, I'm simply

1 asking do you believe that it's possible that they can price
2 that premium or toll service -- if they receive enough usage
3 from their customers, that they can price that so that they
4 do not have to separately charge that customer for access,
5 what it pays for access?

6 A. I don't know if they could, actually, quite
7 frankly. I think that they're certainly not pricing that
8 way. Most of the -- you know, certainly the flagship
9 products and the most heavily marketed products of the
10 CLECs, as we saw earlier today, are bundles and certainly
11 are priced high enough to recover the cost of the UNEs.

12 Q. Has that happened in the past? Have the
13 circumstances ever occurred in the past where that would be
14 true?

15 A. Well, I believe there are some CLEC tariffs
16 which offer local service at reasonably similar terms to the
17 ILEC, in which case, if the ILEC local service is not
18 covering the full cost of the loop and other non-traffic
19 sensitive parts of the network, then the CLEC wouldn't. But
20 again, I think that that's really the -- that's not a very
21 sustainable type of pricing structure in the marketplace as
22 competition grows.

23 Q. Referring to your surrebuttal statement, page
24 10, roughly lines 3 through 8 -- do you have that?

25 A. Page 10, sir?

1 Q. Yes.

2 A. Yes.

3 Q. Lines 3 through 8, basically, you state that
4 "there is nothing to be gained by creating this mechanism"
5 -- and the mechanism you're referring to is access charges
6 -- "that turns the long distance carriers into
7 intermediaries to collect some of the per-line costs from
8 customers. The additional steps required to compute the CC,
9 bill it to long distance carriers, and then have the long
10 distance carriers bill and collect it from their customers,
11 create transaction costs and have no offsetting benefits."
12 Isn't that your testimony?

13 A. Yes, sir, although you said access charges at
14 one point in the question, and specifically we're referring
15 to the CC here, the carrier charge.

16 Q. All right. I understand that correction.

17 Now, looking at Verizon here in Pennsylvania, you
18 would agree with me that Verizon owns the network or the
19 local loop?

20 A. Verizon owns the loops that it owns, and --

21 Q. Yeah; Verizon owns the loops that it owns.

22 A. Right.

23 Q. And under your theory, wouldn't it be more
24 efficient for the ILEC, or Verizon in this case, to simply
25 provide toll service themselves and not have to have MCI,

1 Sprint, Qwest and AT&T pay for this access and do all these
2 other things to provide these services?

3 A. I think you got a lot of smiles in the room from
4 Verizon from that.

5 Q. I want you to look at your theory and bring it
6 to its natural conclusion. Wouldn't you reach that
7 conclusion based upon your theory?

8 A. No, because I think we're distinguishing between
9 -- I think it's important to distinguish between traffic
10 sensitive switched access charges, like the local switching
11 charge. If that is actually based on and set at the actual
12 traffic sensitive cost, then those rates are properly
13 charged through the long distance carrier and then charged
14 to the customer. If we're talking about the loop charge,
15 we're just, as I said, at best, creating some sort of an
16 indirect mechanism so that the customer sees that exact same
17 charge on a different bill, just like the subscriber line
18 charge, and there's really no benefit to setting things up
19 that way, and all you're doing, once you're getting no
20 benefit out of it, is you're creating a cost. That's very
21 different from saying let's have a separate company provide
22 a service, whether it's long distance, whether it's
23 voicemail, regardless of what it is, that uses the telephone
24 network and pays for the use. If you're actually paying for
25 the use and creating another service and offering another

1 service, then that provides benefit. Flowing the loop cost
2 through the intermediary just for the sake of labeling it as
3 something else and having it show up on another bill has no
4 benefits.

5 MR. MICKENS: Your Honor, that's all I have for this
6 witness.

7 Thank you, Mr. Pelcovits.

8 THE WITNESS: You're welcome.

9 JUDGE FORDHAM: Thank you.

10 Any other parties have anything for this witness?

11 (No response.)

12 JUDGE FORDHAM: Ms. Painter, do you have any
13 redirect?

14 MS. PAINTER: Very briefly, Your Honor.

15 **REDIRECT EXAMINATION**

16 BY MS. PAINTER:

17 Q. Dr. Pelcovits, going back to something that Ms.
18 Conover asked you earlier about MCI avoiding paying access
19 if MCI, as a CLEC, has the local customer. Isn't it true
20 that if MCI has the local customer, MCI can only avoid
21 paying access on the originating side?

22 A. That's correct. I think I mentioned that, and
23 that's -- it only avoids it on the originating side. When
24 it terminates a call to any local customer, other than
25 another MCI local customer, it would still pay terminating

1 access charges.

2 Q. Ms. Conover also asked you about the
3 productivity offset and Verizon flowing through some of the
4 reductions to access rates. Are you familiar with the fact
5 of whether Verizon has flowed through the 2002 reductions to
6 access rates?

7 A. No, I don't know about that.

8 MS. PAINTER: I have nothing further, Your Honor.

9 JUDGE FORDHAM: Thank you.

10 Anything further, Ms. Conover?

11 MS. CONOVER: Nothing.

12 (Witness excused.)

13 JUDGE FORDHAM: We have Statement 1.0 from MCI and
14 Statement 1.1. Are there any objections to the admission of
15 these two statements?

16 (No response.)

17 JUDGE FORDHAM: They're admitted without objection.

18 (Whereupon, the documents marked
19 as MCI Statements Nos. 1.0 and 1.1
20 were received in evidence.)

21 JUDGE FORDHAM: It's about 12:20. We have four more
22 witnesses to go. If we reduce the amount of time that we
23 have for lunch, instead of taking a full hour for lunch, I
24 believe that we can get through this. So we'll leave now
25 and come back, let's see, ten after 1:00. That's about a

1 50-minute lunch.

2 MS. CONOVER: Your Honor, I think we can take a full
3 hour and have no problem finishing.

4 JUDGE FORDHAM: Ms. Jones?

5 MS. JONES: I will go on faith with Ms. Conover's
6 estimation.

7 JUDGE FORDHAM: Okay; we'll take an hour for lunch.

8 (Whereupon, at 12:20 p.m., the hearing was adjourned,
9 to be reconvened at 1:20 p.m., this same day.)

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AFTERNOON SESSION

(1:23 p.m.)

FORM 2

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JUDGE FORDHAM: We're back on the record.

At this time we have Qwest's case.

Mr. Povilaitis.

MR. POVILAITIS: Thank you, Your Honor.

Your Honor, Qwest has previously distributed the rebuttal testimony of Mr. Scott McIntyre identified as Statement 1.0, and copies have been provided to the reporter.

JUDGE FORDHAM: Thank you.

MS. CONOVER: Also, Your Honor, attached to the testimony is what has been labeled as Qwest Exhibit No. 1, which are the attachments to Mr. McIntyre's testimony.

JUDGE FORDHAM: Thank you.

(Whereupon, the document was marked as Qwest Statement No. 1.0 and Exhibit No. 1 for identification.)

Whereupon,

SCOTT A. McINTYRE

having been duly sworn, testified as follows:

JUDGE FORDHAM: You may be seated.

Would you state your name and business address for the record, please?

THE WITNESS: My name is Scott A. McIntyre. My

1 business address is 1600 Seventh Avenue, Seattle,
2 Washington, 98191.

3 JUDGE FORDHAM: Thank you.

4 Mr. Povilaitis.

5 MR. POVILAITIS: Thank you, Your Honor.

6 DIRECT EXAMINATION

7 BY MR. POVILAITIS:

8 Q. Mr. McIntyre, do you have before you the
9 documents that have been identified as Statement No. 1.0 and
10 Exhibit No. 1 on behalf of Qwest?

11 A. Yes, I do.

12 Q. Were these prepared by you or under your
13 direction and supervision?

14 A. Yes.

15 Q. Are they true and correct to the best of your
16 knowledge, information and belief?

17 A. Yes.

18 Q. If the questions in the statement were posed to
19 you today, would your answers be as reflected in Statement
20 No. 1.0?

21 A. With one correction I have, yes.

22 Q. Could you proceed to identify that correction?
23 Can you give me a page reference?

24 A. Page 14. The footnote at the bottom is
25 designated as "footnote 5," and that should be "footnote 4,"

1 which is referenced above on line 2 of that page.

2 Q. Thank you.

3 MR. POVILAITIS: Your Honor, at this time I move the
4 admission of Qwest Statement 1.0 and the associated Exhibit
5 1, subject to cross-examination.

6 JUDGE FORDHAM: Thank you.

7 Ms. Paiva.

8 MS. PAIVA: Thank you, Your Honor.

9 JUDGE FORDHAM: You're welcome.

10 **CROSS-EXAMINATION**

11 BY MS. PAIVA:

12 Q. Welcome to Pennsylvania, Mr. McIntyre.

13 A. Thank you.

14 Q. You traveled a long way.

15 A. Yes, and I actually saw rain today for the first
16 time in months, if you can believe that.

17 Q. We've seen a lot of it this summer. I have a
18 few questions for you.

19 Part of Qwest is the former Regional Bell Operating
20 Company that used to be known as U.S. West; correct?

21 A. That's correct.

22 Q. And in that capacity, Qwest operates as a local
23 exchange carrier in 14 states, I believe; right?

24 A. Yes.

25 Q. So as a local exchange carrier, you basically

1 have operations similar to what Verizon Pennsylvania and
2 Verizon North do in Pennsylvania; right?

3 A. Yes.

4 Q. Qwest does not operate as an incumbent local
5 exchange carrier in Pennsylvania, does it?

6 A. No.

7 Q. But in those other 14 states, Qwest has
8 intrastate access charges just like the rates that are at
9 issue in this proceeding; right

10 A. Yes. Well, "just like." A similar function,
11 yes.

12 Q. A similar function but not the same numbers.

13 A. Right.

14 Q. Now, another part of Qwest's business also
15 operates as an interexchange carrier, or an IXC, like AT&T
16 and MCI do; correct?

17 A. Much smaller than those, but yes.

18 Q. Does Qwest offer long distance service in
19 Pennsylvania?

20 A. Yes.

21 Q. So then would I be correct in understanding that
22 Qwest actually does pay some intrastate access charges in
23 Pennsylvania?

24 A. Yes.

25 Q. And just to be sure I understand Qwest's

1 position in this case, Qwest believes that Verizon PA and
2 Verizon North should reduce their access rates, and you also
3 agree that the access reductions should be revenue neutral,
4 with an increase to basic local exchange rates; correct?

5 A. That's correct.

6 Q. And your disagreement begins because you believe
7 that Verizon should be reducing its rates even farther than
8 what we have proposed?

9 A. Fundamentally true, for a lot of reasons I go
10 into in my testimony. I think it's very important to
11 recognize that the FCC juggernaut of reducing access is
12 something that needs to be taken seriously, and to the
13 degree that rates are disparate from the FCC rates,
14 consumers face problems; and I believe the Commission should
15 recognize the problems faced by consumers and should
16 aggressively move to reduce the differences between
17 intrastate and interstate switched access rates.

18 Q. And the interstate switched access rates are the
19 rates that are in the FCC's jurisdiction that are paid when
20 a call crosses state lines; right?

21 A. That's correct.

22 Q. Now, the FCC does not require cost studies,
23 studies of the cost of providing access or the cost of a
24 dial tone line, in order to set its interstate access rates,
25 does it?

1 A. Well, not currently, but you have to understand
2 that switched access, which became a standard with
3 divestiture -- there were some switched access rates prior
4 to that, but they weren't called that. But they were
5 established essentially at the time of divestiture. Until
6 '91, they were cost based, they were rate of return based.
7 In '91, then certain carriers, which included the Regional
8 Bell Operating Companies and GTE, were put under price cap
9 regulation. Since then, the price cap regulation, which
10 adjusts annually to the various rates, is not cost based,
11 but it started cost based. So there is some legacy there of
12 where they started, however, the annual adjustments do not
13 need to be cost justified at this time for those carriers
14 that are under price cap regulation.

15 Q. So, basically, they've been going down and
16 there's no longer been any cost justification for the
17 reductions?

18 A. There is a formula or there are formulas within
19 the FCC rules that dictate how price adjustments are done on
20 an annual basis, and one factor, of which there are many,
21 one factor is productivity, which tends to drive improved
22 productivity, tends to drive prices down, and productivity
23 is, in a sense, a cost factor. So I can't say that costs
24 don't come into it. The FCC has anticipated that there will
25 be cost improvements, and that's part of their price cap

1 philosophy, but there's not a direct cost study and there's
2 not a direct correlation between some cost study and the
3 rate adjustment that's made on an annual basis.

4 Q. Now, going back to the 14 states where Qwest
5 operates as an ILEC, in those states, do Qwest's intrastate
6 access rates mirror its interstate access rates in all of
7 those states?

8 A. "Mirror" is an interesting term. They are
9 closer in some respects in terms of structure, but the only
10 state we have that currently exactly mirrors the FCC's
11 structure and rates would be Nebraska. The other states
12 vary, some are close, some are farther away; it varies quite
13 a bit from state to state.

14 Q. You understand that in this case, Verizon is
15 proposing to mirror its structure, its interstate structure;
16 correct?

17 A. Yes, I understand that. I just point that out
18 because you need to -- there's a lot of issues in access
19 reform, and you need to be sure you're clarifying your terms
20 or it can get confusing.

21 Q. Yes. Thank you. Actually, that was all that I
22 had for you. Thank you.

23 JUDGE FORDHAM: Thank you.

24 Mr. Mickens.

25 MR. MICKENS: Thank you, Your Honor.

1 JUDGE FORDHAM: You're welcome.

2 CROSS-EXAMINATION

3 BY MR. MICKENS:

4 Q. Good afternoon, Mr. McIntyre.

5 A. Good afternoon.

6 Q. My name is Ken Mickens. I represent the Office
7 of Trial Staff in this proceeding. I just have a couple of
8 questions for you.

9 You indicated to Ms. Paiva that Qwest operates as an
10 ILEC in certain states; is that correct?

11 A. Yes.

12 Q. And in those states, you have what's called a CC
13 rate; is that correct?

14 A. Typically, we refer to it as a CCL or a carrier
15 common line charge. I think that's what you're referring
16 to.

17 Q. Yes.

18 A. Yes. In some states. Not all states. In some
19 it's been eliminated.

20 Q. In some states. Could you identify the states
21 where that CCL rate is in effect?

22 A. To be honest, I can't --

23 Q. I know of three, and I just wanted you to verify
24 that. Colorado?

25 A. I believe it's there.

1 Q. Arizona?

2 MR. POVILAITIS: Your Honor, we can accept Mr.
3 Mickens' designation of these states subject to check.

4 JUDGE FORDHAM: Thank you.

5 THE WITNESS: I'm not sure. For example, in Arizona
6 we've gone through a series of reductions annually, and I
7 haven't kept track of exactly what rates were adjusted, so
8 I'm not sure what our current status is exactly there.

9 MR. MICKENS: All right. I heard Mr. Povilaitis -- I
10 have a copy of the tariffs from three states, Colorado,
11 Arizona and Iowa. If you'd like to see it, or if you'd just
12 like to accept subject to check that you do have CCL rates
13 in those states.

14 MR. POVILAITIS: We can accept that subject to check.

15 MR. MICKENS: Thank you.

16 BY MR. MICKENS:

17 Q. Mr. McIntyre, are you transitioning -- if you
18 know, in those states where Qwest does currently have a CCL
19 rate, are you transitioning that rate down to zero at some
20 point? Is there a plan to do that?

21 A. Well, we have a variety of cases in various
22 states where we're dealing with the issue. Where we have
23 the opportunity, we certainly are presenting our case that
24 not only the carrier common line charge but all switched
25 access charges should be restructured to mirror the FCC rate

1 structure and should be lowered on a revenue neutral basis
2 to those rates. So we're making the exact same case in
3 every state where it comes up within our territory that
4 we're making here.

5 Q. Right. Specifically, though, I'm asking: is
6 there currently a plan to trim those CCL rates down to zero
7 at some point?

8 A. Well, again, it varies by state. As I
9 mentioned, --

10 Q. If you know.

11 A. Well, as I mentioned, Arizona, as part of an
12 agreement as a result of the last rate case, we had an
13 agreement to step down the switched access rates in Arizona.
14 Whether they get all of the way to the FCC rates within the
15 time frame that the AFOR, alternative form of regulation, is
16 enacted, I'm not sure. It depends on some other conditions
17 that happen in Arizona. That was stated as one of the goals
18 of the last rate case, was to end up mirroring the FCC rates
19 and structure, but there's some timetable steps in there
20 that I'm not exactly sure of.

21 In New Mexico, we're currently in the process of a
22 switched access rate restructure. I was at a workshop there
23 last week, presenting this exact same case to the New Mexico
24 Commission, that they should follow the same guidelines. We
25 also have had discussions in Colorado. We accomplished this

1 last year, to match the FCC rates, in Nebraska. We've had
2 discussions or there is a docket that's open, it was opened
3 a couple years ago, in Minnesota where these exact same
4 issues were at stake.

5 So there are a number of different dockets open or
6 starting to open in a variety of states, but they all have a
7 different structure. Some of them are going to be under the
8 form of a rate case, where we do it as part of an overall
9 rate case, some of them are specifically addressing switched
10 access restructure as an item onto its own, and some of them
11 fall under different categories. The Nebraska case was
12 under a universal service category of dockets. So it varies
13 on a state-by-state basis.

14 Q. All right. Thank you.

15 MR. MICKENS: That's all I have, Your Honor.

16 JUDGE FORDHAM: Thank you.

17 Does any other party have anything for this witness?

18 (No response.)

19 JUDGE FORDHAM: Any redirect?

20 MR. POVILAITIS: No redirect, Your Honor.

21 JUDGE FORDHAM: Thank you.

22 We have the rebuttal testimony of Mr. McIntyre, which
23 is Qwest Statement No. 1.0, and the exhibit, Exhibit 1. Are
24 there any objections to the admission of these two
25 documents?

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(No response.)

JUDGE FORDHAM: Hearing none, the statement and the exhibit are admitted without objection.

Thank you very much.

THE WITNESS: Thank you.

(Whereupon, the documents marked as Qwest Statement No. 1.0 and Exhibit No. 1 were received in evidence.)

(Witness excused.)

JUDGE FORDHAM: Mr. Mickens.

MR. MICKENS: Thank you, Your Honor.

The Office of Trial Staff calls Joseph Kubas to the stand.

Whereupon,

JOSEPH KUBAS

having been duly sworn, testified as follows:

JUDGE FORDHAM: You may be seated.

Would you state your name and business address for the record, please?

THE WITNESS: My name is Joseph Kubas. My business address is Pennsylvania Public Utility Commission, P.O. Box 3265, Harrisburg, PA, 17105.

JUDGE FORDHAM: Thank you.

Mr. Mickens.

1 MR. MICKENS: Thank you, Your Honor.

2 DIRECT EXAMINATION

3 BY MR. MICKENS:

4 Q. Mr. Kubas, I have before me several documents,
5 OTS Statement No. 1, OTS Exhibit No. 1, and OTS Statement
6 No. 1-SR, and there are two versions, a proprietary version
7 and a non-proprietary version. Were these documents
8 prepared by you or under your direct supervision and
9 control?

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

14 THE WITNESS: Yes.

15 BY MR. MICKENS:

16 Q. Mr. Kubas, are there any changes that need to be
17 made to your OTS Statement No. 1 and OTS Exhibit No. 1 at
18 this time?

19 A. Yes, there is.

20 Q. Have you already included those changes in a
21 revised document for the record?

22 A. Yes, I did. They were provided to the parties
23 yesterday in an envelope and marked "revised testimony."

24 Q. Would you identify at this time the reason for
25 the revisions that were made to your Statement No. 1 and

1 your Exhibit No. 1?

2 A. Yes. Your Honor, based on Verizon's surrebuttal
3 testimony, OTS has decided not to pursue the imputation
4 issue described on pages 13 through 16 of OTS Statement No.
5 1. However, by not including this imputed revenue, my
6 recommendation to establish a carrier charge of \$1.16 should
7 now be increased to \$1.20 per line, per month. This change
8 in rate will keep the filing revenue neutral.

9 Now, this change is applicable to the following pages
10 on OTS Statement No. 1, which have already been changed in
11 the revised testimony but I wanted to go through them now.

12 JUDGE FORDHAM: Thank you.

13 THE WITNESS: The \$1.20 should appear on page 10,
14 line 2; page 11, lines 11 and 16; page 18, lines 6, 8, 13
15 and 15; page 26, line 12.

16 This change also affects the proprietary revenue
17 amounts on page 18.

18 BY MR. MICKENS:

19 Q. The amounts that you have changed, are those
20 amounts proprietary?

21 A. Yes, they are.

22 JUDGE FORDHAM: We will go on the proprietary record
23 at this time.

24 (Whereupon, the following page 390 was designated
25 proprietary and was sealed and bound separately.)

1 BY MR. MICKENS:

2 Q. Please continue, Mr. Kubas.

3 A. Yes, continuing, this change also affects the
4 final revenue difference on page 20 of my direct testimony
5 where I change the word "reduction of \$172,500" to an
6 "increase of \$38,000."

7 Then there is another correction, if you will, not
8 related to the imputation issue, but just a general
9 correction of the testimony. On page 21, line 5, change the
10 word -- the original word was "coalition," and it should be
11 -- I'm sorry; the original word was "collation" and the
12 correct word is "coalition," c-o-a-l-i-t-i-o-n.

13 That's all that I have at this time.

14 Q. Mr. Kubas, with the changes that have been
15 identified for the record and already incorporated in your
16 OTS Statement No. 1, do you believe that the answers that
17 you have provided are correct to the best of your
18 understanding and belief?

19 A. Yes.

20 Q. And if I were to ask you the questions that are
21 indicated on any of your statements that have been
22 identified for the record today, would your answers be the
23 same?

24 A. Yes, they would.

25 MR. MICKENS: Your Honor, I've given two copies of

1 OTS Statement No. 1, OTS Exhibit No. 1, and OTS Statement
2 No. 1-SR, both the proprietary and non-proprietary versions,
3 to the court reporter, and I would ask that they be admitted
4 at this time, subject to cross-examination.

5 JUDGE FORDHAM: Thank you very much.
6 Verizon, Ms. Paiva.

7 **CROSS-EXAMINATION**

8 BY MS. PAIVA:

9 Q. Good afternoon, Mr. Kubas.

10 A. Good afternoon, Ms. Paiva.

11 Q. I have a few questions for you.

12 In your testimony you discuss that you believe the
13 Commission has ruled that 74 percent of the cost of the
14 local loop should be recovered through local exchange rates;
15 correct?

16 VOICE: I don't think your mike is on.

17 BY MS. PAIVA:

18 Q. Did you hear me, or do you want me to repeat the
19 question?

20 A. No, I heard the question --

21 JUDGE FORDHAM: Could you repeat it? I didn't hear
22 it.

23 MS. PAIVA: I guess these microphones do make a
24 difference.

25 JUDGE FORDHAM: Yes.

1 BY MS. PAIVA:

2 Q. In your testimony you discuss that you believe
3 the Commission has ruled that 74 percent of the cost of the
4 local loop should be recovered through local exchange rates;
5 correct?

6 A. Yes, that's correct, as shown on page 6 of OTS
7 Statement 1.

8 Q. And so then you believe that 26 percent of the
9 cost should be recovered from other services; correct?

10 A. Yes, 26 percent from other services that also
11 use the local loop.

12 Q. Right. And a total of 10 percent should be
13 recovered from IXCs through the carrier charge?

14 A. Yes, that's correct, as shown on page 8, line
15 11.

16 Q. Now, when you're saying 10 percent of the cost
17 of the loop, are you talking about just the cost of the
18 loop, or is it the cost of the loop and the port?

19 A. For the purposes of this, I just used the loop.

20 Q. But if you were going to do it in theory, should
21 it be just the loop or should it be the loop and the port?

22 A. No, you could add on additional cost for the
23 port, but for the purposes of my analysis here, I just did
24 the loop.

25 Q. And to estimate the cost of the loop, you use

1 the UNE rates from the compliance filing to the Commission's
2 tentative order; correct?

3 A. Yes; that's correct.

4 Q. But you do understand that that proceeding is
5 not yet final; correct?

6 A. That's correct.

7 Q. And you also understand that that proceeding
8 relates only to Verizon Pennsylvania?

9 A. Yes; that is correct.

10 Q. In fact, the Commission has opened another
11 proceeding to set loop rates for Verizon North, but it
12 hasn't really started yet; correct?

13 A. Yes; that's right.

14 Q. Do you understand, either generally or from
15 reviewing Verizon's testimony, that UNE rates exclude
16 retail-related costs, don't they?

17 A. I really didn't address that, so I'm not sure
18 whether they do or not.

19 Q. So you don't know?

20 A. I don't know.

21 Q. Do you understand that UNE rates are averaged
22 together, the costs of business and residential loops?

23 A. I didn't really do that analysis, so I don't
24 know.

25 Q. You don't know.

1 Now, assuming, just for the sake of the questioning,
2 your 10 percent number, that 10 percent of the cost of a
3 loop -- and we'll just use the loop for the sake of the
4 questioning also -- 10 percent should be allocated to the
5 IXCs through the carrier charge and, although we don't agree
6 with it, for the sake of the question let's use your number
7 of \$15.09 as the cost of a loop, that would mean that
8 Verizon PA's carrier charge should be about \$1.51; correct?

9 A. Yes, that analysis is correct. As shown on OTS
10 Exhibit No. 1, Schedule 2, if the IXC carrier charge
11 recovered the full 10 percent, it would be about \$1.50.

12 Q. That would be just the IXC portion of the
13 carrier charge, comparable to the 63 cents today?

14 A. Yes; that's right.

15 Q. So then as the Commission has basically reduced
16 Verizon's access rates and reduced its carrier charge to
17 what is 63 cents today, the Commission has reduced Verizon
18 PA's carrier charge below what it should be under your
19 theory; correct?

20 JUDGE FORDHAM: Ms. Paiva, let's go off the record a
21 minute.

22 (Discussion off the record.)

23 JUDGE FORDHAM: We're back on the record.

24 There was a question as to whether the information on
25 Schedule 2 that is listed as proprietary was a part of the

1 record, but it seems that some of the figures that have
2 already been mentioned are already on the public record,
3 therefore, there's no need to go onto the proprietary
4 record.

5 BY MS. PAIVA:

6 Q. Do you want me to repeat the question for you?

7 A. Yes.

8 Q. Verizon PA's carrier charge today is 63 cents.

9 Basically, that's where it has gotten down to after the
10 Global Order and the reductions that have been made. So the
11 Commission has reduced Verizon PA's carrier charge below the
12 \$1.51 that you say it should be under your theory; correct?

13 A. Yes; that's right.

14 Q. Also under your theory, Verizon North's carrier
15 charge should be at least \$1.51; right?

16 A. I don't know if I would just the word "at
17 least." I would say it could be a maximum of that high, the
18 number of \$1.51, but I'm recommending \$1.20.

19 Q. Verizon North's current carrier charge is \$8.64,
20 so you would agree then that Verizon North's carrier charge
21 today should be reduced; right?

22 A. Yes. Verizon North's carrier charge should be
23 reduced.

24 Q. So I guess one of your disagreements with
25 Verizon's proposal is that you think we're reducing Verizon

1 North's carrier charge too much?

2 A. Yes; that's right.

3 Q. And another disagreement is you think we should
4 be recouping the reduction by raising Verizon PA's carrier
5 charge rather than by raising local rates?

6 A. Yes; that's right. If you raise a rate, it
7 generates revenue.

8 Q. Now, OTS was a party to the RTCC settlement that
9 was recently approved by the Commission; correct?

10 A. Yes; that's right.

11 Q. And in that settlement, the other ILECs in
12 Pennsylvania proposed basically to raise their residential,
13 or I guess residential and/or business local rates to offset
14 decreases to their access charges; correct?

15 A. Yes; that's generally the premise of the RTCC
16 settlement.

17 Q. From reviewing some of the documents -- which
18 actually, this is in our testimony in Exhibit DMB-2 to the
19 Berry/Wirl surrebuttal -- it seemed that the average rate
20 increase for the RTCC companies to their residential local
21 rates was \$2.00, and the highest increase was \$4.82. Does
22 that sound about right to you?

23 A. I don't recall the exact numbers, but that
24 sounds about right.

25 Q. And the ILECs that are in the RTCC settlement

1 raised -- the highest increase to the weighted average
2 residential rate was up to \$18.00, to make the rate \$18.00;
3 correct?

4 A. Yes. I think one or two of the companies have a
5 rate that high.

6 Q. But the final residential rates were not all the
7 same. It ranged from a low of around \$11.00 up to \$18.00;
8 right?

9 A. I don't remember what the bottom number was, but
10 I believe the highest number in that settlement would be
11 \$18.00.

12 Q. And there was a range, they were not all the
13 same?

14 A. Yes; that's right.

15 Q. Now, also in the RTCC settlement, the rural
16 ILECs all ended up with carrier charges, which I guess they
17 reduced to some extent, but it seemed at the end of the day
18 that there was a range of carrier charges, ranging from a
19 low of 72 cents to a high of about \$10.00. Does that sound
20 right to you?

21 A. No. That whole statement is incorrect.

22 Q. What would you say? What was the range of
23 carrier charges at the end of the day for the RTCC
24 companies?

25 THE WITNESS: One moment, Your Honor. I'm trying to

1 find the numbers here.

2 JUDGE FORDHAM: Sure.

3 (Witness perusing document.)

4 THE WITNESS: If you turn to page 23 of my OTS
5 Statement No. 1, I basically state that 21 of the 30
6 companies in that RTCC settlement end up with a higher
7 carrier charge. The lowest final carrier charge, I believe,
8 was around \$1.22 per month, per line, and I don't recall
9 what the highest one was, but it was around \$13.00 per
10 month, per line. So that's my answer.

11 BY MS. PAIVA:

12 Q. But there was a range, they were not all the
13 same. The carrier charges at the end of the day ranged over
14 a range of prices; right?

15 A. That's correct; yes. Some went up and some went
16 down.

17 MS. PAIVA: I think actually that's all that I have
18 for you. Thank you.

19 THE WITNESS: Thank you.

20 JUDGE FORDHAM: Thank you.

21 Mr. Barber.

22 MR. BARBER: Thank you, Your Honor.

23 **CROSS-EXAMINATION**

24 BY MR. BARBER:

25 Q. Good afternoon, Mr. Kubas.

1 A. Good afternoon, Mr. Barber.

2 Q. I guess just sort of completing the thought of
3 where Ms. Paiva was, on page 23 of your rebuttal testimony,
4 talking about how the RTCC/Sprint proposal may have affected
5 particular rates, would it be fair to say that to the extent
6 a particular company raised its carrier charge, the overall
7 net result for that company still was an overall reduction
8 in carrier access charges; correct?

9 A. Yes; that's right. Those companies that have a
10 higher carrier charge reduced their switching rates or their
11 traffic sensitive rates, in other words, the revenue
12 switched from recovering it from a traffic sensitive
13 component to a non-traffic sensitive component called a
14 carrier charge.

15 Q. In fact, the first step that each of the
16 parties, each of the ILECs that is a party to the
17 RTCC/Sprint access proposal, access settlement, was
18 permitted to do was a restructuring of their carrier access
19 charges to match interstate charges; correct?

20 A. No, I don't think that's correct.

21 Q. That wasn't something they were permitted to do
22 under the settlement?

23 A. No. It was just a reduction towards interstate
24 switched access rates, not all the companies went to
25 switched access. At least that's my understanding of how it

1 worked.

2 MR. BARBER: Your Honor, may I approach?

3 JUDGE FORDHAM: Yes, you may.

4 BY MR. BARBER:

5 Q. I want to show you --

6 MR. MICKENS: What are you showing him, Mr. Barber?

7 MR. BARBER: It's the appendix to the RTCC/Sprint
8 order talking about the elements of the proposal that the
9 Commission adopted, and I was going to ask him to read the
10 first sentence in the first paragraph.

11 BY MR. BARBER:

12 Q. Just read it to yourself, and then you can give
13 me a signal here.

14 A. Okay.

15 (Witness perusing document.)

16 A. Well, it says just like I said. They can move
17 it towards or to -- see what it says on the third line --
18 closer to traffic sensitive --

19 Q. Exactly. Maybe we're in violent agreement here,
20 but what I'm trying to indicate is that the first step they
21 were permitted to do was a mirroring of their interstate
22 rates. They were permitted to do, not required to do -- was
23 a mirroring of their interstates rates; correct?

24 A. That's what they were permitted to do.

25 Q. And if they in fact exercised their discretion,

1 and we've had it on the record several times, none of these
2 companies have done anything relative to the rate
3 structuring yet; is that correct?

4 A. Yes; that's right. The RTCC settlement is not
5 finally approved.

6 Q. It's been approved. None of them have actually
7 filed any tariffs to implement it yet; correct?

8 A. I believe there's a tentative order out for
9 comments, and that's what the hold-up is.

10 Q. Is the order scheduled as a tentative order?

11 A. I think so.

12 MR. BARBER: I'm learning something new every day in
13 this case, Your Honor.

14 JUDGE FORDHAM: Let's go off the record a minute.

15 (Discussion off the record.)

16 JUDGE FORDHAM: We're back on the record.

17 The document that we're referring to was discussed at
18 the public meeting which was held on July 10 of 2003. The
19 order was entered on July 15 of 2003. One of the things
20 that I saw is in paragraph 7. I've been told that that
21 relates to another issue, so the issue at hand is not
22 related to paragraph 7.

23 Ms. Armstrong made a comment off the record, I would
24 ask her to repeat it on the record, regarding whether she
25 believes this is tentative or not.

1 MS. ARMSTRONG: Your Honor, the comment that I made
2 off the record is that we believe it is a final entered
3 order as to the RTCC/Sprint joint settlement that was
4 addressed in that order. Perhaps the confusion has come in
5 that it was published in the Pennsylvania Bulletin, as was
6 the joint proposal, when it was first filed back on December
7 15, but to my knowledge no appeal or comments or anything
8 else have been filed, and we view it as a final order.

9 JUDGE FORDHAM: And then Mr. Mickens made a response
10 to that.

11 Would you repeat that for the record?

12 MR. MICKENS: Your Honor, I'm simply saying, if it
13 was published in the Pennsylvania Bulletin, there is a
14 comment period. OTS's position is not that the order should
15 not be viewed as final. I was simply responding to the
16 statement by Mr. Kubas concerning his questioning of whether
17 there was a comment period still in effect; that's all.

18 JUDGE FORDHAM: I'm not sure that we -- I know we
19 don't have to stop at this point to find out. If we find
20 out that there is something else, that there is another
21 order forthcoming, then we will add that to the record, but
22 at this time we will assume that it is a final order.

23 MR. BARBER: Thank you, Your Honor.

24 BY MR. BARBER:

25 Q. Based on that assumption, the proposal that the

1 Commission adopted and approved here contemplates as a step
2 one, each of the signatory carriers, the independent
3 companies that were parties to this settlement, as an
4 initial step, were permitted to mirror interstate traffic
5 sensitive rates; correct?

6 A. Yes.

7 Q. And if they were to do so, for most of them that
8 would mean a reduction in traffic sensitive rates, their
9 interstate traffic sensitive rates; correct?

10 A. For most of them, but not all of them.

11 Q. And what that would mean, what the Commission
12 indicated in that case, is if, in fact, they reduced their
13 intrastate traffic sensitive to mirror their interstate
14 rates, that difference would then be carried over to the
15 carrier charge; correct?

16 A. Yes; that's right.

17 Q. And then each of these signatory companies was
18 required to reduce its access charges by a certain amount;
19 correct?

20 A. I think it's clearer to say their carrier charge
21 by a certain amount at that point.

22 Q. Well, the totality of their carrier access
23 charges are going to be reduced; correct?

24 A. Yes; that's right. The overall access charges
25 would come down.

1 Q. And I believe they have discretion as to which
2 element within their carrier access charges, whether traffic
3 sensitive or on the carrier charge, they're permitted to
4 implement the reductions; correct?

5 A. Yes; that's right.

6 Q. And then those reductions will be offset with
7 increases in local exchange rates; correct?

8 A. Right.

9 Q. Let's turn to your surrebuttal. Looking at page
10 2, one of your criticisms of the concept of eliminating the
11 carrier charge for Verizon completely is that it would, and
12 I'm looking at line 18, would provide -- (inaudible) single
13 out AT&T and MCI -- but it would allow AT&T to have
14 "unlimited free use of the local loop." Now, if the carrier
15 charge were eliminated, even under Verizon's proposal, AT&T
16 would still be paying traffic sensitive rates for the
17 origination and termination of its toll traffic, correct, on
18 the Verizon network?

19 A. Right.

20 Q. And again, if it were the Verizon proposal that
21 were adopted, those would be traffic sensitive rates that
22 are set in excess of the cost of providing carrier access
23 service; correct?

24 A. I haven't made that determination.

25 Q. You understand that even Verizon admits that

1 those rates would be in excess of their cost?

2 A. I understand that.

3 Q. So if we were to accept even their concept of
4 how the cost was done, their final traffic sensitive rates
5 would still be in excess of cost; right?

6 A. I haven't made that determination.

7 Q. You haven't made that determination. They made
8 that determination.

9 A. All right.

10 Q. Now, let's talk about -- you single out again
11 AT&T and MCI. Let's talk about some other folks that may be
12 involved here. Should wireless carriers pay for the support
13 of the loop?

14 A. I haven't made that determination either.

15 Q. You've got no opinion about whether wireless
16 carriers should provide support to the loop?

17 A. Not in this testimony, no.

18 Q. How about internet service providers?

19 A. No, I haven't made that determination.

20 Q. DSL providers?

21 A. I haven't made that determination.

22 Q. You have no opinion at all; OTS has no position
23 on whether they should provide support for the loop?

24 A. Not in this testimony, no.

25 Q. Not at all?

1 MR. MICKENS: Your Honor, I think it has been asked
2 and answered.

3 JUDGE FORDHAM: Sustained.

4 BY MR. BARBER:

5 Q. Turning to page 5 to 6 of your surrebuttal,
6 you've got some criticism of AT&T's claim that the carrier
7 charge is a pure subsidy element, am I correct, basically
8 summarizing your testimony there, page 5 to 6 of your
9 surrebuttal?

10 A. Yes; page 5 to 6. That's on page 5, line 14.

11 Q. Now, are you denying that the carrier charge is
12 an implicit source of subsidy?

13 A. Yeah, I am, because I think it's a cost recovery
14 mechanism for local loop.

15 Q. So it's not an implicit source of subsidy. How
16 does an implicit source of subsidy differ from a cost
17 recovery mechanism for the loop?

18 A. Well, implicit would be, for example, Verizon
19 North's charge. In that case, it's presently over \$8.00.
20 Well, that includes implicit subsidies.

21 Q. So it's not the charge itself that's an implicit
22 subsidy; it's the level of the charge?

23 A. I don't understand the question.

24 Q. I mean when do you turn from an implicit source
25 of subsidy into an explicit source of subsidy, at what rate

1 and what level?

2 A. Well, when you determine the cost, if I
3 understand your question correctly. Once a rate is above
4 cost, it provides explicit subsidies.

5 Q. So any rate above cost is an implicit source of
6 subsidy and any one at cost is an explicit source of
7 subsidy?

8 A. I think that's right, if I understand your
9 questioning.

10 Q. So just as a general concept, carrier access
11 charges are not an implicit source of subsidy?

12 A. I haven't made that determination.

13 Q. Well, let me ask it this way. Does the
14 Commission -- do you understand whether the Commission
15 believes that carrier access charges are an implicit source
16 of subsidy?

17 A. Yes. They have made that statement before and
18 they believe that.

19 Q. And that was most recently in the RTCC/Sprint
20 Order; correct?

21 A. Yes, that's right.

22 Q. And basically equated carrier access charges
23 with an implicit form of subsidy?

24 A. Right.

25 MR. BARBER: That's all I have, Your Honor. Thank

1 you.

2 JUDGE FORDHAM: Thank you. MCI.

3 MS. MISTURAK-GINGRICH: We have no questions for this
4 witness, Your Honor.

5 JUDGE FORDHAM: Thank you. Qwest?

6 MS. SMITH: We have no questions.

7 JUDGE FORDHAM: Thank you. Any other parties?

8 (No response.)

9 JUDGE FORDHAM: Let's go off the record a minute.

10 (Discussion off the record.)

11 JUDGE FORDHAM: We're back on the record.

12 We have the proprietary and non-proprietary testimony
13 of Mr. Kubas, which is OTS Statement 1. We have the
14 exhibit, which is OTS Exhibit No. 1, and the surrebuttal,
15 which is OTS Statement No. 1-SR.

16 Are there any objections to the admission of these
17 documents?

18 (No response.)

19 JUDGE FORDHAM: They are so admitted without
20 objection.

21 (Whereupon, the documents marked as
22 OTS Statements Nos. 1 and 1-SR and
23 Exhibit No. 1 were received in
24 evidence.)

25 JUDGE FORDHAM: Mr. Mickens?

1 MR. MICKENS: Thank you, Your Honor. I have
2 redirect.

3 JUDGE FORDHAM: Oh, I'm sorry.

4 REDIRECT EXAMINATION

5 BY MR. MICKENS:

6 Q. Mr. Kubas, you were asked by Mr. Barber for AT&T
7 about the RTCC settlement mirroring the interstate rates.
8 Do you recall that question and answer with Mr. Barber?

9 A. Yes, I do.

10 Q. Are the interstate access rates of the RTCC
11 companies much higher than the interstate access rates of
12 Verizon?

13 A. I'm not sure. I'm not sure.

14 Q. Would you agree with me that they are higher?

15 A. Yes.

16 MR. MICKENS: That's all I have.

17 MR. BARBER: I'm not sure I understood that sequence
18 of questions.

19 JUDGE FORDHAM: Does anybody have anything further?
20 Ms. Paiva?

21 MS. PAIVA: Yes, Your Honor. I don't have any more
22 questions for Mr. Kubas, but just one more thing that
23 relates to his testimony. About a week ago, we had asked
24 the OTS a couple of discovery requests, and they provided us
25 the answers this morning. One of the things we asked for

1 was a particular document, which they did not provide to us.

2 I don't know for a fact that we would actually want
3 to get anything in the record from the document, but we
4 would like to at least get it and review it. So I wanted to
5 just reserve the right, if necessary, to come back and ask
6 for something to be put on the record from that document.

7 MR. MICKENS: Your Honor, if I could respond?

8 JUDGE FORDHAM: Sure.

9 MR. MICKENS: Your Honor, the document that Verizon
10 asked us to supply to them was a cost study that was
11 prepared by Sprint that is proprietary to Sprint. We
12 indicated in our response to Verizon that because it was
13 proprietary to Sprint, we could not provide it to them, but
14 that they could obtain it from Sprint.

15 So I just wanted to clarify as to the circumstances.

16 MS. PAIVA: Actually, Your Honor, if you want to know
17 the whole story, when I served the discovery request a week
18 ago, I told OTS that we had already communicated with Sprint
19 and they had given OTS permission to release the proprietary
20 document. They waited the entire time for discovery and
21 responded this morning saying that the document was
22 proprietary to Sprint.

23 So we're not entirely satisfied with their response,
24 but I -- I mean, it may be something that we won't want to
25 use. I just want to reserve the right.

1 MR. MICKENS: Just in response to that, Your Honor, I
2 was told in an e-mail that Sprint did not have a problem,
3 but there are a lot of attorneys in here. If I don't have a
4 letter from Sprint informing me that it's okay to release a
5 proprietary document, it would not be a defense that a third
6 party told me in an e-mail that it was okay to release a
7 document that was proprietary to Sprint.

8 That's why we did not release the document. That's
9 why we responded the way that we did in the interrogatory
10 response today. Ms. Paiva is aware of that.

11 JUDGE FORDHAM: Okay. Ms. Benedek was here this
12 morning. I don't see her here this afternoon. I think that
13 if she were here, I would let her respond, but since she's
14 not here, I think we should get something from Sprint before
15 OTS releases it.

16 MS. PAIVA: Yes, Your Honor. I mean, had they let us
17 know they were going to take that position before the
18 hearings, I could have contacted Sprint before the hearings
19 and asked for the document, but at this point it was a
20 little too late.

21 MR. MICKENS: Your Honor, they could have filed that
22 interrogatory on us at a much earlier time. Mr. Kubas'
23 testimony was filed in mid July. They could have asked that
24 question at a much earlier time and had the response at a
25 much earlier time.

1 MS. PAIVA: Nevertheless, Your Honor, discovery
2 continues up until this point. In fact, we answered
3 interrogatories for Qwest that we gave right before the
4 hearing.

5 So, anyway, despite all this argument, the only
6 question I had was can we reserve the right --

7 JUDGE FORDHAM: You can reserve the right, but we
8 need to contact Sprint's attorney also.

9 MS. PAIVA: Yes, and I will do that.

10 JUDGE FORDHAM: Okay. You may be excused from the
11 stand. Thank you.

12 THE WITNESS: Thank you, Your Honor.

13 (Witness excused.)

14 JUDGE FORDHAM: Now we're ready for OCA's case, Mr.
15 Sparks.

16 MR. CHESKIS: Thank you. This is Joel Cheskis from
17 the Office of Consumer Advocate.

18 JUDGE FORDHAM: Oh, I'm sorry. I'm sorry, Mr.
19 Cheskis.

20 MR. CHESKIS: Your Honor, the OCA would like to call
21 Mr. Dunkel to the stand.

22 JUDGE FORDHAM: Mr. Dunkel, I need to swear you in.
23 Please raise your right hand.

24 Whereupon,

25 WILLIAM DUNKEL

1 having been duly sworn, testified as follows:

2 JUDGE FORDHAM: You may be seated. Would you state
3 your name and business address for the record, please?

4 THE WITNESS: Yes. My name is William Dunkel. My
5 business address is 8625 Farmington Cemetery Road, Pleasant
6 Plains, Illinois.

7 JUDGE FORDHAM: Thank you. Mr. Cheskis.

8 DIRECT EXAMINATION

9 BY MR. CHESKIS:

10 Q. Mr. Dunkel, do you have before you your rebuttal
11 and surrebuttal testimonies filed on behalf of the Office of
12 Consumer Advocate on July 18, 2003 and August 4, 2003,
13 respectively?

14 A. Yes, I do.

15 Q. And your rebuttal testimony consists of 68 pages
16 and Appendix A, which includes your qualifications, and
17 Schedules WDA-1 through WDA-6; is that correct?

18 A. That's correct.

19 Q. And your surrebuttal testimony consists of 19
20 pages and no appendices or attachments; is that correct?

21 A. That's correct.

22 MR. CHESKIS: Your Honor, the Office of Consumer
23 Advocate has previously distributed copies of these
24 statements to all the parties. I would like to have these
25 statements marked as OCA Statements No. 1 and 1-S for the

1 record. I've also presented copies of each of these
2 statements to the court reporter for inclusion into the
3 official record.

4 JUDGE FORDHAM: Thank you. They shall be so marked.

5 (Whereupon, the documents were marked
6 as OCA Statements Nos. 1 and 1-S
7 with attached exhibits for
8 identification.)

9 BY MR. CHESKIS:

10 Q. Mr. Dunkel, would you like to make any
11 corrections or clarifications to these documents?

12 A. Yes. I have a few minor corrections. On the
13 rebuttal testimony, page 22, on the first line with text, it
14 begins, "The residential dial tone line facility costs."
15 That should be "The residential flat rate local service
16 costs."

17 On page 24, line 3, at the end of the line, it says,
18 "1325(c)." We should strike the "(c)." It's "1325."

19 Likewise, on line 9 where it says, "1325(c)," strike
20 the "(c)." It should just say "1325."

21 On Exhibit WDA-1, page 1, if you'll notice, across
22 the bottom there are two of these that have white boxes in
23 front of them. On the last one, which is called "Allocated
24 Cost," put some dots inside the white box.

25 On the chart above it, the long column, the fourth

1 column over that has an arrow pointing at it that says,
2 "Cost of Providing Local Exchange Service," put some dots in
3 that box as well.

4 That concludes my corrections. These make no change
5 in my overall views or recommendations.

6 MR. CHESKIS: Did everybody follow the dots issue?

7 MR. BARBER: We're making dots in one of the boxes to
8 differentiate it from the other undotted box.

9 MR. CHESKIS: Would you like a colored pencil to do
10 that?

11 (Laughter.)

12 BY MR. CHESKIS:

13 Q. The first column on WDA-1 has four bars in it.

14 A. Yes.

15 Q. Two of the bars are colored white. The second
16 of the two bars, the one farthest to the right that has an
17 arrow pointing to it should be differently colored. In this
18 situation, we are coloring it with dots as opposed to making
19 it completely white.

20 A. That's correct.

21 Q. On the bottom line where it says, "Allocated
22 Cost," the box next to it is white. That should be with
23 dots as well?

24 A. Yes.

25 Q. With those changes in mind, Mr. Dunkel, would

1 your answers be the same if I were to ask you those
2 questions in these statements today?

3 A. Yes.

4 Q. Is everything contained in Statements OCA 1 and
5 1-S prepared by you or under your supervision?

6 A. Yes.

7 Q. And are these documents true and correct to the
8 best of your knowledge, belief and understanding?

9 A. Yes.

10 MR. CHESKIS: Your Honor, subject to cross-
11 examination and timely motions, the OCA moves that OCA
12 Statements 1 and 1-S be admitted and the accompanying
13 appendices and schedules be admitted into the record.

14 I'd also like to at this point for the record comment
15 that the OCA supports the joint proposal of OCA and Verizon
16 as contained in the surrebuttal testimony of Debra Berry.

17 Mr. Dunkel is now available for cross-examination.

18 JUDGE FORDHAM: Thank you. Mr. Barber.

19 MR. BARBER: Thank you, Your Honor. I thought you
20 were going to start with Verizon.

21 **CROSS-EXAMINATION**

22 BY MR. BARBER:

23 Q. Good afternoon, Mr. Dunkel.

24 A. Good afternoon.

25 Q. Turning to page 12 of your surrebuttal,

1 generally what you're dealing with here is a response to Mr.
2 Kirchberger and Mr. Nurse and the issues they raised about
3 wireless versus wire line; is that correct?

4 A. That's correct.

5 Q. As I see it, what you're indicating here is that
6 the basic issue is that the local calling areas of wireless
7 carriers and LECs are, as you put it, quote, "defined
8 differently," end quote. Do I have that right?

9 A. Yes, by the FCC.

10 Q. Now, by differently, you do mean that at least
11 here in Pennsylvania, the wireless local calling area is
12 larger than a LEC's local calling area; correct?

13 A. That's generally true, yes.

14 Q. As a matter of fact, substantially larger;
15 correct?

16 A. I can't get into that. A lot of LECs have large
17 local calling areas as well, but generally, I would say the
18 wireless local calling area is larger, yes.

19 Q. Let's see if I can give you an example here;
20 and, once again, I'm not sure I have enough copies for
21 everyone.

22 MR. BARBER: I'll have this marked as AT&T Cross-
23 Examination Exhibit, I think, 3.

24 (Whereupon, the document was marked
25 as AT&T Cross-Examination Exhibit

No. 3 for identification.)

BY MR. BARBER:

Q. And what I'll represent to you is that -- this accounts for the fuzziness -- this is a blow-up of a portion of the wireless MTA map that has already been admitted in the record as an exhibit to Mr. Kirchberger and Mr. Nurse's rebuttal testimony. I believe it might have been Exhibit 1 to their testimony. I could go back and check.

But what we tried to do here is just blow it up to provide a little more amplification on the MTAs that are in Pennsylvania.

Do you have this in front of you, sir?

A. Yes, I do.

Q. Have you ever taken a look at the FCC MTA wireless -- or the wireless MTA map that the FCC promulgates?

A. I'm generally familiar with it. I haven't studied this particular section of it for any reason.

Q. Any reason to doubt that this is, at least in terms of its amplification, a correct copy or correct representation of the wireless MTAs for Pennsylvania?

A. I can't really tell what this is, actually.

MR. CHESKIS: Your Honor, I would request, if possible, that Mr. Dunkel be shown the actual exhibit attached to the Kirchberger/Nurse testimony so that it is

1 more clear which are state boundaries and which are MTA
2 boundaries.

3 BY MR. BARBER:

4 Q. What I'd like you to look at in particular, you
5 can see on that map as you move to the northeast part of the
6 country, you see numbers 21 and 9?

7 A. Yes; I see 21 and 9.

8 Q. Do you see how they roughly correlate to two
9 MTAs within the geographic boundaries of the State of
10 Pennsylvania?

11 A. I'll take your word for it.

12 Q. Well, would you accept subject to check that the
13 MTA labeled number 9 is also known as the Philadelphia MTA?

14 A. I don't have that name. It's certainly
15 possible.

16 Q. Would you also accept subject to check that
17 under the FCC rules, that MTA covers, as you can see
18 basically from the map, not only the States of Delaware and
19 part of the southern New Jersey, but extends all the way
20 into central Pennsylvania?

21 A. I can't tell that from this map.

22 Q. Well, just looking at the State of Pennsylvania,
23 that MTA, just looking within the boundaries of
24 Pennsylvania, indicates it stretches from southeast
25 Pennsylvania into central Pennsylvania?

1 A. I really can't -- we have the map in front of
2 us. It shows what it shows. I'm not going to try and match
3 up little towns off of this map. It's not that accurate.

4 Q. Would you accept subject to check that if you --
5 and we can check this through the FCC's own Web site -- that
6 the MTA No. 9, in fact, extends from southeast Pennsylvania
7 through central Pennsylvania?

8 A. The map shows what it shows.

9 Q. And the MTA No. 21 covers a large portion of
10 western Pennsylvania?

11 A. That certainly looks possible.

12 Q. Are you aware of any LEC in Pennsylvania that
13 has a local calling area as large as MTA No. 9?

14 A. Probably not.

15 Q. How about as large as MTA-21?

16 A. Probably not.

17 Q. In fact, it's more likely these extend through
18 intraLATA boundaries in addition to state geographic
19 boundaries; correct?

20 A. Again, I'd have to see the boundary map to
21 determine that.

22 Q. Now, when a wireless carrier terminates a call
23 within, for example, a call that originates in MTA-9 and
24 terminates in MTA-9, they are only paying reciprocal
25 compensation rates; correct?

1 A. That's correct; and part of the reason for that
2 is in return, Verizon gets to terminate traffic into the
3 cellular carrier. It's a tradeoff of traffic. IXCs don't
4 do that. IXCs don't give you termination rights on loops
5 they own, but the cellulators do. That's one reason they're
6 treated differently.

7 Q. And reciprocal compensation is priced lower than
8 carrier access charges; correct?

9 A. It's lower because it's payment in time. The
10 cellular companies call you, use your facilities to
11 terminate their calls. You call them and use their
12 facilities to terminate your calls. That's entirely
13 different. An IXC does not have any facilities that they
14 let you use to terminate their calls.

15 Q. Now, you indicate on page 12 again at line 6
16 that wireless carriers must pay originating access,
17 "wireless carriers must pay access charges on both the
18 originating and terminating end" for calls that extend
19 outside the MTA. Would you agree with that?

20 A. In the case of a wireless carrier, it would
21 normally be paid terminating. Usually the call would
22 originate on their cell phone in their system.

23 Q. I was going to say to whom would they be paying
24 originating access?

25 A. Technically, it would apply, but in the real

1 world, they would very seldom pay originating.

2 Q. Now, turning to page 19 of your surrebuttal
3 testimony, specifically line 7, you describe how in
4 Verizon's interstate tariffs, there is no carrier charge;
5 correct?

6 A. Yes, that's my understanding.

7 Q. Now, originally, Verizon at the interstate level
8 had an interstate carrier common line charge; correct?

9 A. Yes.

10 Q. And the FCC in a series of Orders several years
11 back turned that carrier common line charge into what was
12 known as a PICCC, a P-I-C-C, prescribed interexchange carrier
13 charge?

14 A. That's correct.

15 Q. And the FCC as a result of those Orders is now
16 moving to eliminate that PICCC and turn it into a subscriber
17 line charge; correct?

18 A. That's correct.

19 Q. So the reason there is no interstate carrier
20 charge is because the FCC has essentially moved to take that
21 original carrier common line charge and turn it into an end
22 user charge; correct?

23 A. I'd say that's essentially true, yes.

24 MR. BARBER: Thank you. I have nothing further, Your
25 Honor.

1 JUDGE FORDHAM: Thank you. Verizon, Ms. Conover.

2 MS. CONOVER: Thank you. Before I begin, Your Honor,
3 if I could just make a statement for the record. There was
4 --

5 MR. BARBER: I'm sorry. Your Honor, I would move the
6 admission of AT&T Cross-Examination Exhibit 3.

7 MR. CHESKIS: My only objection, Your Honor, is that,
8 first of all, I think this was already provided in the
9 Nurse/Kirchberger testimony, and, for that matter, it's much
10 more clear there than it is here. I would suggest that we
11 rely on that exhibit instead of this cross-examination
12 exhibit.

13 JUDGE FORDHAM: Do you have any objection to that?

14 MR. BARBER: Your Honor, to the extent that this is
15 an amplification of what's again already in the record, but
16 it's -- I have a hard time understanding how this is less
17 clear than what's already in the record given the fact that
18 it's a blowup of a very tiny map. It's very clear to me
19 it's Pennsylvania and where the boundaries of Pennsylvania
20 begin and end.

21 JUDGE FORDHAM: I don't think it's clear to all of
22 us.

23 MR. BARBER: Okay.

24 JUDGE FORDHAM: We can indicate that it was marked
25 and you do have it in the record and it was an

1 amplification.

2 MR. BARBER: Very well, Your Honor. Thank you.

3 JUDGE FORDHAM: So your objection is sustained.

4 MR. CHESKIS: Thank you.

5 MS. CONOVER: Your Honor, my statement was going to
6 be about the extent of the discussion in Mr. Dunkel's
7 testimony that could be construed as legal argument and
8 legal interpretation. In many instances like this, I would
9 move to strike those provisions. However, today, given that
10 so many of the witnesses have given similar kinds of
11 testimony, I think what I'm going to do is make that
12 statement on the record and essentially request that, of
13 course, Your Honor and the Commission would interpret the
14 statutes ultimately the way you believe it's appropriate.

15 So, with that, I'm not going to make such a motion,
16 but I did want to make that statement on the record.

17 JUDGE FORDHAM: Thank you. It is so noted.

18 **CROSS-EXAMINATION**

19 BY MS. CONOVER:

20 Q. Good afternoon. I have a few questions to ask
21 you about the rural companies settlement that are fairly
22 general.

23 Are you familiar basically with the rural companies
24 settlement that was just approved by the Commission?

25 A. I did not file testimony on it. However, I did

1 provide some mathematical support to the office, yes.

2 Q. Okay. You're aware that the settlement
3 permitted local residential rates to go as high as \$18.00
4 per month?

5 A. For those companies in the settlement, but they
6 are very different than Verizon. The average CCLC in those
7 companies was around \$7.00, which is much different than
8 Verizon.

9 MR. CHESKIS: Your Honor, if I could just interject
10 here for a moment, I would just like to reiterate that Mr.
11 Dunkel has not provided any testimony on the RTCC settlement
12 and really I think was involved in that settlement in an
13 ancillary basis, and certainly Ms. Conover can continue with
14 her questions, but I would caution the witness from
15 speculating as to what the answers may be.

16 JUDGE FORDHAM: Thank you.

17 MS. CONOVER: That's fine. With that understanding
18 -- I do understand that, but I think I do have some relevant
19 questions for the record that relate to his rebuttal
20 testimony.

21 JUDGE FORDHAM: Okay. I'll allow some latitude.

22 MS. CONOVER: Thank you.

23 BY MS. CONOVER:

24 Q. In your opinion, is \$18.00 a just and reasonable
25 rate for local residential rates?

1 A. It depends on the costs of the company. For the
2 rural RTCC companies, their costs are much higher. In fact,
3 I have a schedule in my testimony. NECA publishes loop
4 costs, and what it shows is the loop costs of these rural
5 companies are higher than the Verizon loop costs.

6 So it's what's a fair rate. Well, it depends what
7 the costs are.

8 Q. I appreciate that answer. So, essentially, what
9 you're saying is that the fairness, the just and
10 reasonableness of the rate has to be determined in
11 conjunction with looking at the underlying costs?

12 A. That's one of the major considerations. That's
13 not the only consideration, but if something is expensive --
14 a fair price for a diamond ring and a fair price for a glass
15 ring are two different things. There is a cost that's
16 different.

17 Q. Now, did you, in fact, examine any of the costs
18 that were submitted in connection with the RTCC settlement?

19 A. What I did --

20 Q. I'm not going to ask you details about that, by
21 the way.

22 A. No. If you look at my testimony, one of my
23 schedules actually has some RTCC costs. If you look at
24 Schedule 4, what we're showing here -- and this is public
25 information -- it is the actual loop costs of the RTCC

1 companies compared with the Verizon company.

2 Q. Correct. Those are the NECA loop schedule.

3 A. Yes. And this gives you a uniform way to look
4 at the cost of loops, which is one of the biggest costs of a
5 company. What this shows is that rural companies have
6 higher costs than Verizon has.

7 Q. Do you know if the rural companies -- do you
8 know if they submitted any stand-alone cost studies?

9 A. I don't know.

10 Q. When you looked at the PUC Order, did they refer
11 to any stand-alone cost studies that were submitted by the
12 --

13 A. I don't recall that wording, but the Order says
14 what it says.

15 Q. That's right. And, again, do you recall whether
16 or not the Order made any mention of any analysis of Section
17 1325 of the Code?

18 A. Again, the Order says what it says. I don't
19 recall reading that, however.

20 Q. Did you make any analysis as to whether the
21 rates in the RTCC proposal complied with Section 1325 the
22 way you analyze it, the way you interpret it?

23 A. As you know, I did not file any -- testimony was
24 not filed in that case, so no such analysis was prepared.

25 Q. Okay. Now, am I correct or would you agree that

1 the PUC has never actually endorsed your methodology for
2 performing a stand-alone cost study?

3 A. No, I do not agree at all. If you look at 1996
4 case, we presented the method we've presented here. We
5 presented the arguments we've presented here. The Order of
6 the Judge and the Commission both adopted -- first of all,
7 they said 1325 does apply to a revenue neutral filing, which
8 was our position. It said the loop cost had to be
9 allocated. It could not all be placed on basic, which was
10 our position.

11 Q. But I'm not sure that that exactly answers my
12 question. Did they ever endorse your methodology for
13 performing a stand-alone cost study, that specific issue?

14 A. After reading my testimony, they said that 1325
15 applies and it prevented the increase that Verizon was
16 recommending, or, in that case, Bell.

17 Q. But they did not in their Order ever discuss the
18 methodology you used for performing a stand-alone cost
19 study, did they?

20 A. I don't know if they discussed the methodology,
21 but they adopted our position, our recommendations and
22 conclusions. It was a pretty thorough win right across the
23 board.

24 Q. Okay. Well, I'm sure the Order will speak for
25 itself.

1 A. It does, and I've quoted it extensively in my
2 testimony, because it was a win.

3 Q. Are you aware of any PUC case since 1997 where
4 the PUC has actually agreed with your theory that the loop
5 is a shared or joint cost that should be allocated?

6 A. To the best of my knowledge, that was the last
7 revenue neutral Bell case that came in front of the
8 Commission. I've got plenty of quotes in my testimony.

9 Q. Correct. I'm just asking if any of those have
10 been since I think it was January of 1997.

11 A. I'm not sure the issue has come up. This was
12 the last Bell revenue neutral proposal.

13 Q. Right. So the answer is no, you know of no
14 Order since then that has addressed that?

15 A. No. I don't think it has been addressed that I
16 know of.

17 Q. Okay.

18 A. But, again, the lawyers can bring up the Orders.
19 I don't have a file of all Pennsylvania Orders here.

20 Q. Absolutely.

21 A. Okay.

22 Q. And, again, I am asking you these questions
23 because you put so much in your testimony about the Orders.

24 Again, just one other question. You had referenced
25 to your Exhibit WDA-1. Do you have that in front of you?

1 A. I can find it here. Yes, I have it.

2 Q. And just so we're using a similar terminology,
3 I'd like to use the term mark-up over cost to mean, for
4 example, if something cost \$10.00 and the price is \$20.00,
5 that that's essentially priced at a 100 percent mark-up.

6 Can you agree with that terminology?

7 A. Yes. If you could define which cost you're
8 using, that would be a big help.

9 Q. Fine. What I would like you to tell me is, and
10 I've actually done -- I think I've done the math, but if you
11 could calculate the mark-up for the vertical services in
12 excess of their TSLRIC. The number I came out with was
13 about a (proprietary number deleted) percent mark-up.

14 A. All right. If you look at page 2 of this
15 schedule, the contribution, which is the amount above direct
16 cost, the bottom of TSLRIC, is shown in the last column.

17 Q. Correct.

18 A. So for vertical services --

19 JUDGE FORDHAM: Just a minute. This is proprietary?

20 MS. CONOVER: The mark-up I'm not sure would be
21 proprietary.

22 JUDGE FORDHAM: Okay. I think --

23 MS. CONOVER: The underlying --

24 JUDGE FORDHAM: He's referring to page 2 of his
25 exhibit, and it seems that that is proprietary.

1 MR. CHESKIS: I don't believe that this page is
2 marked as proprietary.

3 THE WITNESS: Yes, it is. It's up in the seam. Look
4 up in the seam.

5 JUDGE FORDHAM: And then page 2 in your non-
6 proprietary is blank, and that's what he is referring to.

7 MR. CHESKIS: I couldn't see the proprietary marking
8 in the fold of the testimony.

9 MS. CONOVER: Actually, I think probably it's safer
10 to have the percentage be proprietary, because the number
11 that is, I believe, proprietary is the TSLRIC, and you might
12 be able to back into that through the percentage. So to be
13 on the safe side, if we could make this proprietary.

14 JUDGE FORDHAM: At this point, we're going on the
15 proprietary -- we're off the record.

16 (Discussion off the record.)

17 JUDGE FORDHAM: We're back on the record.

18 There was a number that was given that was
19 proprietary. That should be deleted from the transcript,
20 and now we're going on the proprietary record.

21 (Whereupon, the following page 433 was sealed and
22 bound separately.)
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1 BY MS. CONOVER:

2 Q. I do just have one other follow-up. This has to
3 do with the question about whether or not the Commission has
4 addressed 1325 or loop allocation.

5 My question is whether or not 1325 does apply to the
6 other telephone companies, other incumbent telephone
7 companies as well as Verizon, does it not?

8 A. I'm not aware of any wording in it that directs
9 it only to Verizon.

10 Q. So it would apply to other local telephone
11 companies then?

12 A. I would certainly expect so.

13 Q. Would you agree that there have been other
14 telephone company rate increases or rate changes since 1997
15 where this could have been addressed by the Commission?

16 A. I don't know. I'm only involved in those cases
17 I'm hired to be involved in. So what happens when I'm not
18 here is not really something I'm familiar with.

19 Q. Okay. So you just don't know whether or not
20 that's true or not?

21 A. Right.

22 MS. CONOVER: Okay. Thank you. No further
23 questions.

24 JUDGE FORDHAM: Thank you. At this point we have two
25 other parties that were interested in cross-examining

1 Mr. Dunkel. I just want to see whether they're still
2 interested, MCI and Qwest.

3 MS. MISTURAK-GINGRICH: I have a single question for
4 Mr. Dunkel. That's it.

5 JUDGE FORDHAM: And Qwest?

6 MR. POVILAITIS: Just a couple of questions.

7 JUDGE FORDHAM: Okay. Let's take a 15-minute break,
8 and we'll come back, and then I think we will be able to
9 finish for today.

10 (Recess.)
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1 JUDGE FORDHAM: We're back on the record.

2 MCI?

3 MS. MISTURAK-GINGRICH: Your Honor, I just have one
4 question, so I think I can project well enough.

5 **CROSS-EXAMINATION**

6 BY MS. MISTURAK-GINGRICH:

7 Q. Mr. Dunkel, I'm Kathleen Misturak-Gingrich. I
8 represent MCI.

9 A. Hello.

10 Q. Just so I'm clear on your testimony, in the
11 event that this Commission would determine that any access
12 charge reductions should be taken on a revenue neutral
13 basis, is it your position that you agree with Dr. Pelcovits
14 that those increases in other rates do not necessarily have
15 to be attributed to local residential service but they could
16 be taken in for example Verizon's vertical services?

17 A. My testimony is they can't be taken in local
18 services because of the 1325 requirement. Vertical services
19 is a good example. A five percent increase in vertical
20 service would generate \$24 million of revenue, and that
21 would not run afoul of the 1325 rule.

22 MS. MISTURAK-GINGRICH: Thank you.

23 That's all I have, Your Honor.

24 JUDGE FORDHAM: Thank you. Qwest? Mr. Povilaitis?

25 **CROSS-EXAMINATION**

1 BY MR. POVILAITIS:

2 Q. Good afternoon, Mr. Dunkel.

3 A. Hello.

4 Q. I'm John Povilaitis, representing Qwest this
5 afternoon.

6 MR. BARBER: John, he can't hear.

7 BY MR. POVILAITIS:

8 Q. Mr. Dunkel, do I correctly assume that you
9 assisted the Office of Consumer Advocate in what's been
10 described in the record on this case as the Verizon/Office
11 of Consumer Advocate proposal?

12 A. You mean the settlement?

13 Q. Yes, the settlement.

14 A. No. I was involved, occasionally they called
15 and asked what revenues would be produced by some certain
16 number. That was it. I did not participate in the other,
17 the overall concept.

18 Q. Just to clarify this, your prior response, was
19 that in reference to the rural company settlement proposal
20 that's been discussed earlier today or the Verizon/OCA
21 proposal?

22 A. The Verizon/OCA.

23 MR. CHESKIS: The Verizon/OCA proposal that's
24 discussed in Ms. Berry's surrebuttal testimony in this
25 proceeding.

1 BY MR. POVILAITIS:

2 Q. But do I assume that you're familiar with the
3 terms of that proposal?

4 A. I've read it after it was filed. I actually
5 didn't even see it before it was filed.

6 Q. Do you have a copy of it at all?

7 A. No, I do not.

8 MR. POVILAITIS: At this point, Your Honor, we're
9 going to be mentioning proprietary numbers, so I request
10 that we go onto the proprietary record.

11 JUDGE FORDHAM: Okay. At this point, we're going on
12 the proprietary record.

13 (Whereupon, the following pages 439 through 442 were
14 sealed and bound separately.)

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1 JUDGE FORDHAM: Are there any other parties that
2 would like to cross-examine this witness?

3 (No response.)

4 JUDGE FORDHAM: If not, any redirect, Mr. Cheskis?

5 MR. CHESKIS: Yes. May I have a moment to confer
6 with the witness?

7 JUDGE FORDHAM: Sure.

8 (Discussion off the record.)

9 JUDGE FORDHAM: Back on the record.

10 You may proceed, Mr. Cheskis.

11 **REDIRECT EXAMINATION**

12 BY MR. CHESKIS:

13 Q. Mr. Dunkel, do you remember earlier questioning
14 by counsel for Verizon regarding allocation issues in
15 Section 1325?

16 A. Yes.

17 Q. In your opinion, is it appropriate after the
18 implementation of the federal Telecommunications Act of 1996
19 to do that allocation?

20 A. Yes. In fact, that Act required the Commissions
21 to establish allocation rules if they didn't have them
22 already. Section 254(k) of the federal Act of 1996 says,
23 among other things, the Commission, meaning the FCC, with
24 respect to interstate services and the states with respect
25 to intrastate services shall establish any necessary cost

1 allocation rules, accounting safeguards and guidelines to
2 insure that the services included in the definition of
3 universal service bear no more than a reasonable share of
4 the joint and common costs of facilities used to provide
5 those services.

6 And universal services, that includes local services.
7 So they essentially require this Commission and the FCC to
8 establish allocation rules so that no more than a reasonable
9 share of the shared facility costs are recovered from local
10 service. It doesn't eliminate allocation. It requires it.
11 If you didn't do it before, you have to start doing it.

12 Q. And are you aware of what percentage of the loop
13 costs are recovered in the carrier charge for Verizon PA?

14 A. Yes. Using public numbers, NECO loop cost for
15 Verizon PA is \$16.85 per line per month. The carrier common
16 line charge is 63 cents. So right now, the IXCs get to use
17 the Verizon loops and pay for three percent of the loop
18 costs. That is a very, very reasonable rent for those
19 facilities.

20 If they didn't subscribe to CC service and built
21 their own loops, they'd have to pay \$16.85, assuming they
22 were as efficient as Verizon is. So basically instead of
23 building their own loops and paying a cost of \$16.85, they
24 pay 63 cents and share the loops that the local customers
25 also use.

1 They do not subsidize the local customers. If you
2 separated them from the local customers, it would cost them
3 \$16.85 a month instead of 63 cents a month. They are very
4 much better off because of the local customers being there
5 and paying most of the loop costs.

6 Q. With regards to the questioning by Qwest and
7 well as some of it related to the questioning by MCI, can
8 you explain to me in your opinion the relationship between
9 lowering access rates and lowering local rates?

10 A. Well, first of all, I don't think there's any
11 need to lower the Verizon access rates. What we need to do
12 in this case is combine the two companies, come out with an
13 average, weighted average to rate, and quit.

14 However, if you were going to lower the access
15 charges, you still cannot raise the local rates because of
16 1325 and because of TA-96 that require you have to have
17 reasonable rates, proper allocation, etcetera.

18 If you wanted to lower access rates, you could do it
19 by raising vertical service rates. Like we said, a five
20 percent increase gives you somewhere in the range of \$20
21 million to \$25 million additional money out of vertical
22 services and then you don't get into these problems.

23 Q. I think you might have touched on this in some
24 of your answers, but is there a cost to Verizon of providing
25 the local loop?

1 A. Yes. The theory that carrier common line
2 service is a no-cost service is incorrect. In order to
3 provide carrier common line service, Verizon has to have
4 loop facilities. They have to maintain them, put them in
5 the ground, replace them from time to time. If they break,
6 they have to fix them.

7 IXCs want to use those facilities but pay nothing, so
8 if it breaks, somebody calls, Verizon comes out and fixes
9 it, AT&T starts using it again. That's their theory.

10 They don't want a lower carrier common line charge,
11 they want free. So three percent to them is too much. Two
12 percent is too much. One percent is too much. A tenth of a
13 percent is too much. They want to use the facilities, pay
14 zero. In the real world, that never happens. There is no
15 such thing as a free ride, but that's what the companies are
16 asking for.

17 Q. Finally, I wanted to ask you a question
18 regarding Qwest's cross-examination about the OCA/Verizon
19 joint proposal as discussed in Ms. Berry's surrebuttal
20 testimony. I think we've made it clear on the record here
21 that you were involved in that settlement only on a very
22 limited and ancillary basis. Can you provide any reason
23 otherwise as to what may be factors going into that
24 settlement, if that's possible?

25 A. First of all, as far as this settlement knows, I

1 don't know because my only involvement is they would
2 occasionally call me and say, "Here's a number, what revenue
3 would that produce?" I had no involvement in the concept of
4 it.

5 In general, settlements are settlements, that is,
6 people negotiate. They trade something for something else.
7 So a lot of times in settlements, a party will have traded
8 something that they didn't really agree with in return for
9 something else. So settlements do not always follow the
10 principles that a certain party advocates or believes to be
11 true. But as far as this particular settlement, I wasn't
12 involved in those negotiations.

13 MR. CHESKIS: I have no further redirect, Your Honor.

14 JUDGE FORDHAM: Thank you. Mr. Povilaitis?

15 MR. POVILAITIS: I do have a question.

16 JUDGE FORDHAM: Yes, go ahead.

17 MR. POVILAITIS: Mr. Dunkel, you were --

18 JUDGE FORDHAM: Come forward to the mic.

19 **RE-CROSS-EXAMINATION**

20 BY MR. POVILAITIS:

21 Q. Mr. Dunkel, you're just speaking to your general
22 understanding of settlements and how parties trade off their
23 litigation position elements --

24 A. Yes.

25 Q. -- relative to other gains. Is it part of your

1 general understanding of how settlements are derived that
2 because you are in a settlement context, elements of the
3 settlement can be inconsistent with state law?

4 A. I couldn't speak to that.

5 Q. You don't have an opinion on it?

6 A. I'm not an attorney. I have a lay opinion, yes.

7 Q. What is that lay opinion?

8 A. I would suspect that you could not be
9 inconsistent with state law.

10 MR. POVILAITIS: Okay.

11 MR. BARBER: I did have one question in light of --

12 JUDGE FORDHAM: Mr. Barber?

13 MR. BARBER: Thank you, Your Honor.

14 **RE-CROSS-EXAMINATION**

15 BY MR. BARBER:

16 Q. Mr. Dunkel, did I hear you -- I know you were
17 indicating that in your opinion, is it Section 254 of the
18 federal Act you were referring to, 254(k)?

19 A. Yes.

20 Q. It's your opinion that 254(k) required the state
21 to engage in loop allocation; is that correct?

22 A. It says, establish allocation rules, and that
23 pertains to the joint and common costs that facilities use
24 to provide services. The loop is used to provide local
25 service.

1 Q. I know you were mentioning the state. Did I
2 also hear you say that in your opinion, 254(k) required the
3 FCC to engage in loop allocation as well?

4 A. To establish allocation rules, yes. They don't
5 deal with local service, however. That's one difference.

6 Q. But if they are engaged in allocation rules and
7 engaged in loop allocation, they would be allocating, under
8 your interpretation of 254(k), some portion of interstate
9 charges to support of the loop, correct?

10 A. That doesn't make sense. They don't deal with
11 universal services. The universal services are local
12 services because they're virtually all tariffed under state
13 tariffs.

14 Q. There's no portion of the loop under your
15 interpretation that would be allocated to interstate
16 services?

17 A. Twenty-five percent is according to the FCC
18 requirements.

19 Q. Okay. And is that consistent with your
20 understanding of 254(k)?

21 A. That's an allocation of a loop.

22 Q. Okay. And how does the FCC recover that
23 allocation of the loop?

24 A. A combination of services, mostly in the carrier
25 common line charge -- I'm sorry, mostly in the SLC or the

1 EULC.

2 Q. The subscriber line charge, correct?

3 A. Yes.

4 Q. Which is an end user charge, correct?

5 A. Yes.

6 MR. BARBER: Thank you. Nothing further.

7 JUDGE FORDHAM: Anything further from any other
8 counsel?

9 (No response.)

10 JUDGE FORDHAM: We have OCA Statement No. 1 with
11 Exhibits 1 through 6 and OCA Statement 1-S. Are there any
12 objections to the admission of any of these documents?

13 MR. CHESKIS: Your Honor, there's also an Appendix A
14 to OCA Statement No. 1.

15 JUDGE FORDHAM: Thank you. So in addition to the
16 documents I mentioned, there's an Appendix A. Are there any
17 objections to any of these documents?

18 (No response.)

19 JUDGE FORDHAM: Hearing none, OCA Statement No. 1,
20 the appendix and the six exhibits attached thereto and OCA
21 Statement No. 1-S are admitted without objection.

22 (Whereupon, the documents marked as
23 OCA Statements Nos. 1 and 1-S with
24 attached exhibits and appendix were
25 received in evidence.)

1 JUDGE FORDHAM: Thank you very much.

2 (Witness excused.)

3 JUDGE FORDHAM: Mr. Cheskis?

4 MR. CHESKIS: Your Honor, while we're changing
5 witnesses here, I did want to note that I had a brief
6 conversation with you off the record earlier today about
7 this.

8 There was OCA Cross-Examination Exhibit No. 2 that
9 was admitted into the record yesterday during the
10 presentation of Debra Berry and Michael Wirl on behalf of
11 Verizon. That cross-examination exhibit involved documents
12 related to the Bentleyville proceeding as had been discussed
13 in the Verizon testimony.

14 We had not included in that cross-examination exhibit
15 copies of the Public Utility Commission's order addressing
16 that case, and just to make the record more complete, we
17 would like to now include the copy of that order as OCA
18 Cross-Examination Exhibit No. 7.

19 I originally did not include it because it is a
20 public order and didn't see a need to do that, but I am now
21 making the request that that get included as the cross-
22 examination exhibit.

23 JUDGE FORDHAM: Thank you.

24 MR. CHESKIS: And if there's no objection to that,
25 I'll provide the court reporter and Your Honor and all

1 counsel of record with copies of that.

2 JUDGE FORDHAM: Thank you.

3 MR. MICKENS: What number is this?

4 MR. CHESKIS: Seven.

5 (Whereupon, the document was marked
6 as OCA Cross-Examination Exhibit
7 No. 7 for identification.)

8 JUDGE FORDHAM: Are there any objections to the
9 admission of this document?

10 (No response.)

11 JUDGE FORDHAM: OCA Cross-Examination Exhibit 7 is
12 admitted without objection.

13 (Whereupon, the document marked as
14 OCA Cross-Examination Exhibit No. 7
15 was received in evidence.)

16 JUDGE FORDHAM: Thank you, Mr. Cheskis.

17 MR. CHESKIS: Thank you.

18 JUDGE FORDHAM: Ms. Jones?

19 MS. JONES: Yes. Thank you, Your Honor. OSBA calls
20 Mr. Allen Buckalew to the stand.

21 Whereupon,

22 ALLEN G. BUCKALEW

23 having been duly sworn, testified as follows:

24 JUDGE FORDHAM: Would you state your name and
25 business address for the record, please?

1 THE WITNESS: Yes. My name is Allen G. Buckalew. My
2 business address is 1601 North Kent Street, Suite 1104,
3 Arlington, Virginia, 22209.

4 JUDGE FORDHAM: Thank you. You may proceed, Ms.
5 Jones.

6 MS. JONES: Thank you, Your Honor.

7 **DIRECT EXAMINATION**

8 BY MS. JONES:

9 Q. Mr. Buckalew, do you have before you what has
10 been previously marked as Revised OSBA Statement No. 1?

11 (Whereupon, the document was marked
12 as Revised OSBA Statement No. 1
13 for identification.)

14 A. Yes, I do.

15 Q. And is that purported to be your testimony in
16 this case?

17 A. Yes, it is.

18 Q. And does it consist of 17 pages in question and
19 answer format?

20 A. Yes, it does.

21 MS. JONES: Your Honor, let the record indicate that
22 we have provided two copies to the court reporter, one
23 proprietary, one non-proprietary, and we have distributed
24 copies as of this morning to all parties of record.

25 The reason it has been marked "revised" is that

1 Verizon in their Statement 2.0 changed their designation on
2 some things that were non-proprietary to proprietary, which
3 we had cited, so then we had to reflect that in our
4 testimony, and that meant that our testimony now became
5 proprietary and non-proprietary.

6 JUDGE FORDHAM: Thank you very much.

7 BY MS. JONES:

8 Q. Mr. Buckalew, with that explanation, do you have
9 any other corrections to the testimony?

10 A. No, I do not.

11 Q. And is this testimony true and correct to your
12 belief?

13 A. Yes, it is.

14 Q. And if I asked you the questions that are
15 contained herein, would your answers be the same?

16 A. Yes, they would.

17 MS. JONES: Your Honor, with that, we move to admit
18 Revised OSBA Statement No. 1 to the record subject to any
19 motions by the other parties.

20 JUDGE FORDHAM: Thank you.

21 MS. JONES: And Mr. Buckalew is available for cross.

22 JUDGE FORDHAM: Thank you. Mr. Barber?

23 MR. BARBER: Just very briefly, Your Honor, thank
24 you.

25 **CROSS-EXAMINATION**

1 BY MR. BARBER:

2 Q. Good afternoon, Mr. Buckalew. I'm Bob Barber
3 from AT&T. Turning to page 13 of your testimony, I'm
4 looking at the question and answer that begins at line seven
5 and extends through line 13. You're talking about how toll
6 users require the use of loop facilities to complete calls.

7 Are you aware of any instance in which a toll
8 customer is basically receiving stand-alone long distance
9 service without also receiving local exchange service?

10 A. No. I wouldn't expect that there's many
11 customers that have only toll service and not local service
12 and that in fact is the point, that in fact this is a shared
13 facility used by all these services and should be paid by
14 all the services.

15 Q. The point is, when a customer is approaching his
16 local exchange company for service, he's doing so or she is
17 doing so as an initial matter to obtain local service from
18 that company, correct?

19 A. I think what they're doing is they're obtaining
20 service to provide them with calling throughout the world,
21 local calls, toll calls, toll calls within their state, toll
22 calls within the United States, toll calls across the world.
23 They're buying a service. They're not just buying a local
24 service. They're buying something much, much greater than
25 that and I doubt if anybody really would think about buying

1 it simply in terms of, I'm only going to call local service.

2 We often used to think about the old lady in tennis
3 shoes that only did that, but even she had to call her sons
4 that lived in another state once in a while.

5 People use the telephone to call for different
6 things, and in fact the system has been designed for toll
7 service as well as local service.

8 You can go as far back as the turn of the century
9 when in fact we had two different systems. We had a local
10 system and we had a toll system.

11 Both systems merged to one, and the standards merged,
12 the standards, for example, with respect to how telephone
13 poles were laid out. The local required less telephone
14 poles per mile than the toll to keep the resistance down.

15 Now we have one standard and the loop is used for
16 many different things. I mean, it would be like saying that
17 we're only going to use it for local services now. What
18 happens to DSL? Now we can split the loop and a loop is
19 used by DSL, so DSL will pick up a portion of that.

20 Q. I didn't hear the last part of that. DSL should
21 pay a portion of that?

22 A. Yes, they should.

23 Q. And how much should that portion be?

24 A. I think that's up for the Commission to
25 determine. I think that the problem is that we've got a

1 cost that is used by all these services and Commissions have
2 to make a determination, just as Mr. Dunkel said that the
3 FCC has chosen 25 percent based on a number of court
4 proceedings and history.

5 They have not chosen to say zero and assign it all
6 back to the local exchange. Twenty-five percent is assigned
7 to interstate. A portion of the local loop ought to be paid
8 by the local customer for local exchange service. A portion
9 ought to be paid for DSL, and a portion for toll service
10 within the state.

11 Q. How much of a proportion --

12 A. Exactly what that proportion is can vary, but
13 it's the Commission's determination for that proportion.
14 It's not -- because it is a common cost, it's not something
15 that there's magic that says 50 percent here and 50 percent
16 there.

17 I in the past have always stuck with the 50 percent
18 for local and 50 percent for toll, splitting the toll into
19 25 for interstate as the FCC has done and 25 percent for
20 intrastate. Certainly the bargain that they're getting here
21 for \$1.20 is significantly less than that amount that we
22 assign.

23 Q. How much of a proportion does DSL contribute to
24 the loop now?

25 A. It depends. If you look at SBC's territory,

1 they actually recommend --

2 Q. Let's look at Pennsylvania.

3 A. Well, I don't know about Pennsylvania, and I'm
4 answering your question --

5 Q. Well, you say you don't know the answer for
6 Pennsylvania, how much DSL contributes to the loop?

7 A. That wasn't your question. You said, how much
8 was DSL contributing --

9 Q. Let me rephrase the question, then. How much
10 does DSL contribute to the loop in Verizon Pennsylvania's
11 territory?

12 A. I have no idea.

13 Q. Let's posit a situation in Verizon
14 Pennsylvania's service territory. Now, you're talking about
15 DSL in particular. DSL is an always-on connection, correct?

16 A. It can be, yes.

17 Q. A customer can turn on DSL and leave it running
18 24 hours a day, correct?

19 A. Correct.

20 Q. And one of the joys of DSL is at the same time
21 they have that on for 24 hours a day, they can also be
22 making voice calls, correct?

23 A. Correct.

24 Q. So they've put their computer on the DSL
25 connection for 24 hours a day and then intermittently during

1 the course of the day over the same loop, they're making
2 voice calls, correct?

3 A. Correct.

4 Q. And how should that be allocated under those
5 circumstances?

6 A. Well, I was trying to give you an example.

7 SBC --

8 Q. I just gave you an example. How would it be
9 allocated under those circumstances?

10 MS. JONES: Your Honor, I would appreciate it if Mr.
11 Barber would let the witness answer his questions before he
12 asks another question.

13 MR. BARBER: I provided the example and asked him how
14 it should be allocated under those circumstances in Verizon
15 Pennsylvania's territory.

16 JUDGE FORDHAM: If you know, Mr. Buckalew.

17 THE WITNESS: Well, I think the only reason I know is
18 because I know what other companies have recommended, and I
19 think it's a reasonable allocation. SBC's territory, they
20 have recommended that it be split 50/50, 50 percent to local
21 and 50 percent to DSL.

22 BY MR. BARBER:

23 Q. Who's "they"?

24 A. SBC.

25 Q. They recommended, SBC recommended?

1 A. Yes, in fact they did, in Connecticut.

2 Q. Do you have a cite for that?

3 A. No, but I can get it for you.

4 MR. BARBER: I'd make a data request for the
5 particular cite for that recommendation.

6 That's all I have, Your Honor.

7 JUDGE FORDHAM: Ms. Conover?

8 MS. CONOVER: Yes. Thank you.

9 **CROSS-EXAMINATION**

10 BY MS. CONOVER:

11 Q. Mr. Buckalew, again, just to pick up a little
12 bit from the last questions Mr. Barber has asked, you
13 testified, and I would refer you to page 16, but you've
14 testified similarly elsewhere, that local loops are not
15 customer specific facilities such as gas lateral or an
16 electric drop. Do you see where you say that?

17 A. Yes.

18 Q. Okay. So now, would you agree that the cost of
19 a customer specific facility like a gas lateral or an
20 electric drop would need to be recovered directly from end
21 users?

22 A. A lot of those charges in fact are. Those that
23 are shared are shared among the customers, but a number of
24 electric drops and gas drops that are dedicated specifically
25 to the customer are paid for by the customer.

1 Q. Okay, directly by the customer. And wouldn't
2 you agree with me that a loop is in fact dedicated to a
3 specific end user?

4 A. No. Loops are fungible. I mean, you might have
5 a loop that goes to you as a specific end user today. That
6 loop could in fact be bridged to other customers. That loop
7 could be split so it could be used for other services like
8 DSL.

9 Q. Well, but I'm not sure that that answers my
10 question. Once it's assigned -- that's true, and one
11 customer can disconnect and it can go to the other -- but
12 once it's assigned to that customer, then that customer is
13 the only customer that uses that loop, isn't that correct,
14 that uses it as an end user, that uses that loop?

15 A. Well, there are many customers that access
16 that --

17 Q. Could you --

18 A. No.

19 Q. Could you --

20 A. I'm answering your question. The answer is no.

21 Q. And who else would use that loop --

22 A. Other customers --

23 Q. -- as an end user?

24 A. Other customers trying to call that customer
25 would use that loop. In fact, if you make that argument,

1 you could say that in fact --

2 Q. Well, okay, let --

3 A. -- the entire network is constructed that way
4 where once we had it dedicated to that customer I could say,
5 well, I have a dedicated switch, so maybe the customer ought
6 to pick up the switch too because we're only buying the
7 switch today. We're not going to buy another one for years
8 anyway, or the transport.

9 I mean, you could make the same argument through the
10 entire network. The loop is simply a piece of that entire
11 network.

12 Q. Let me see if we can decide on specific,
13 undisputed physical facts, and that is that once a loop is
14 assigned to a specific customer, that loop from the switch
15 to the specific end user stays assigned to that specific
16 customer, to that specific end user; is that correct?

17 A. That it can stay assigned to that customer, yes.

18 Q. Okay. Now, I think where we disagree -- I don't
19 know if we disagree, but would you agree that generally the
20 telephone company must be able to fully recover the cost of
21 its loops from its customers?

22 A. Yes.

23 Q. Okay. Now, I'd like to just hypothesize that
24 you have a user, an end user that only makes local calls.
25 And I don't know that that's that farfetched these

1 days. There are certainly people who decide they're only
2 going to use their computer, do IMs, whatever, and only make
3 their toll calls on their cell phone, and so they only make
4 local calls and only receive local calls on their basic
5 phone. Do we have that hypothetical?

6 A. I have that hypothetical in mind, yes.

7 Q. Given that hypothetical, would you agree that
8 for that customer, the telephone company should be able to
9 collect charges that recover the full cost of that loop from
10 that customer?

11 A. No, because we don't design loops that way. We
12 don't assign usage to loops that way. We don't --

13 Q. Well, how else would that --

14 A. Excuse me, I'm not finished --

15 Q. -- telephone company recover those costs if not
16 through that customer?

17 A. Well, you would design a loop differently if it
18 was only for that specific usage, but it's not. It was
19 designed for toll usage. It was designed for local usage.
20 And because that customer is not making any toll calls, you
21 just have a facility that was designed wrong.

22 Q. You're testifying here on behalf of the Office
23 of Small Business Advocate; is that correct?

24 A. That's correct.

25 Q. Are you familiar with Dr. Stanford Levin?

1 A. No.

2 Q. Are you aware that Dr. Levin has testified on
3 behalf of the OSBA in other cases?

4 A. Since I'm not aware of him, I guess I would be
5 not aware that he testified.

6 Q. Okay. Would you accept subject to check, and I
7 do have the testimony here, that Dr. Levin has testified in
8 other cases, in at least one other case that I'm aware of,
9 that it is not appropriate to allocate loop costs to other
10 services and that all of the loop can only be considered
11 part of the cost of providing local service?

12 MS. JONES: Your Honor, the witness has testified
13 that he does not know Dr. Levin. He is unaware of the
14 testimony. Counsel can show him the testimony. He can only
15 say yes, that's what it says. To the extent that that's
16 what it says, that's what he can say.

17 MS. CONOVER: But I think it's relevant for the
18 Commission to know that the OSBA has taken a dramatically
19 different position on this very issue, and that's the
20 sole reason --

21 MS. JONES: Your Honor, Your Honor, at this point,
22 counsel is testifying as opposed to asking questions.

23 MS. CONOVER: No, I was responding to the objection,
24 Your Honor.

25 JUDGE FORDHAM: And what proceeding was this in?

1 MS. CONOVER: The one that I have is the proceeding
2 that was the formal investigation to examine and establish
3 updated universal services principles and policies for
4 telecommunications services to the Commonwealth. It was at
5 Docket I-00940035.

6 JUDGE FORDHAM: And when was the testimony?

7 MS. CONOVER: The testimony that I have here is dated
8 in February 15, 1996.

9 JUDGE FORDHAM: Ms. Jones, do you have any objection
10 to her showing this to the witness?

11 MS. JONES: I don't have any objection to her showing
12 it to the witness. I do have an objection, however, as to
13 how Verizon is planning to use this testimony through this
14 witness who has already testified he is not aware of Dr.
15 Levin, he does not know what Dr. Levin has previously
16 stated.

17 I'd also like to note that the testimony is in 1996.
18 We are now in 2003. Previous witnesses have testified that
19 that constitutes a change in the rules that we are playing
20 in the telecommunications market.

21 MS. CONOVER: Your Honor, all that is argument that
22 certainly should be made in the brief. We have one witness
23 from the OSBA that's presented as a party, and I believe I'm
24 entitled to show that as a party, this party has taken an
25 inconsistent position in another proceeding. And that's

1 what I'm about to do.

2 JUDGE FORDHAM: Could you address, because we had
3 considerable testimony this morning about whether things
4 prior to 1996 should be considered and that's the argument
5 that Ms. Jones is saying, there are other parties who have
6 changed based on opinions that have been handed down after
7 1996.

8 MS. CONOVER: That is an argument that has been made.
9 However, I believe what certainly is Verizon's position and
10 I believe others would support is that the position that the
11 loop should be allocated is one that has been abandoned,
12 that it is essentially old news, that it is something that's
13 anachronistic.

14 And in fact, we believe Dr. Levin on behalf of the
15 OSBA was part of the vanguard that essentially established
16 that that was an improper economic principle. And that's
17 certainly what we would argue in the brief.

18 For purposes of today, I just want to establish the
19 fact that Dr. Levin on behalf of the OSBA gave different
20 testimony in a case involving universal service where this
21 very issue was litigated fairly extensively.

22 JUDGE FORDHAM: Ms. Jones, do you have a reply to
23 that?

24 MS. JONES: I really do not think that counsel has
25 addressed the fact that this testimony is in 1996, not in

1 2000, not in 2003.

2 MS. CONOVER: I think that if that's the case, then
3 many other pieces of testimony that have been presented in
4 the record would be expunged. All I'm doing is essentially
5 presenting this as an admission of a party, which is OSBA,
6 in a prior statement put on the record.

7 And certainly Ms. Jones is free to argue its
8 relevance later, as we will argue the relevance of some of
9 the older pieces of Commission orders that have been
10 presented.

11 JUDGE FORDHAM: But in the other --

12 MS. CONOVER: And if the oldness of testimony or
13 Commission orders is a basis for objecting to them, then I
14 think there's been a whole lot of objectionable testimony in
15 this record.

16 MS. JONES: Your Honor, this is public. This is a
17 public order, I'm assuming. She can -- counsel is very
18 likely to cite it in a brief. However, to use this witness
19 to authenticate it I think is improper.

20 MS. CONOVER: It is testimony in a public record, and
21 I was --

22 MS. JONES: It's not this witness' testimony. It is
23 not his testimony. He does not know of the testimony. I
24 think it's very improper for her to try to authenticate it
25 through this witness.

1 MS. CONOVER: Well, let me ask if OSBA -- OSBA was
2 the party that presented this testimony. Would OSBA
3 stipulate to the authenticity of it, or at least certainly
4 would give them the opportunity to check, but it is
5 testimony that was submitted by OSBA in a docket in this
6 Commission.

7 And I believe that I'm entitled to show that the
8 position that OSBA took previously on the same issue is very
9 different. They can make whatever argument that they want
10 about it.

11 JUDGE FORDHAM: Let's go off the record a minute.

12 (Discussion off the record.)

13 JUDGE FORDHAM: We're back on the record.

14 MS. JONES: Your Honor, at this point, OSBA is
15 willing to state that this was testimony at the specific
16 docket that OSBA's witness did sponsor. Any more than that,
17 we would argue in brief.

18 JUDGE FORDHAM: Thank you. You may continue, Ms.
19 Conover.

20 MS. CONOVER: I'm going to show this to the witness.

21 MS. JONES: Your Honor, why is she showing it to the
22 witness?

23 MS. CONOVER: Well, I'd be happy to read the relevant
24 sections if you want me to do that. I was going to ask the
25 witness to.

1 MS. JONES: What does this witness have to do with
2 that testimony?

3 MS. CONOVER: This is testimony presented by the OSBA
4 in a previous case that is different from the testimony that
5 he's presented here, so I'm presenting this as a --

6 MS. JONES: But you're not impeaching that witness.

7 MS. CONOVER: It's not -- I think I am. He's the
8 representative --

9 MS. JONES: No, you're not. This is not inconsistent
10 with this witness.

11 MS. CONOVER: Yes, it is inconsistent.

12 MS. JONES: No, it's not.

13 MR. BARBER: Your Honor --

14 JUDGE FORDHAM: Let's go off the record again.

15 (Discussion off the record.)

16 JUDGE FORDHAM: We're back on the record. We had a
17 discussion regarding the testimony that was previously
18 submitted in another proceeding. The witness was different,
19 and we had a number of the parties weighing in on either
20 side. At this point, I would have Ms. Jones indicate what
21 her preference is.

22 MS. JONES: Your Honor, we do not take exception to
23 Verizon and/or any other party citing the testimony of Dr.
24 Levin in the universal service investigation, however we do
25 want the latitude to be able to cite the recommended

1 decision and the Commission opinion and order from the same
2 docket, and also want the latitude to argue any arguments
3 within the context of those documents.

4 JUDGE FORDHAM: Thank you. And I believe you
5 mentioned something about the appendix.

6 MS. JONES: Yes. We do not want the entirety of Dr.
7 Levin's testimony submitted into the record. I believe
8 there are appendices that are attached to that. We would
9 not want those appendices attached, just the question and
10 answer.

11 MS. CONOVER: I have no objection to that. I will
12 prepare as an exhibit the testimony of Dr. Stanford Levin,
13 removing the appendices, and I will mark that, circulate
14 that to the parties and mark that as Verizon Cross-
15 Examination Exhibit No. --

16 JUDGE FORDHAM: Ten.

17 (Whereupon, the document was marked
18 as Verizon OCA Cross-Examination
19 Exhibit No. 10 for identification.)

20 MS. CONOVER: -- 10. And I apologize, I do not have
21 copies, but I will distribute copies to you and to the court
22 reporter and to all the parties.

23 JUDGE FORDHAM: Thank you.

24 MS. CONOVER: And you'll be glad to know I have no
25 further questions. Could I move this into the record, then?

1 JUDGE FORDHAM: Do you have any objection? I mean,
2 the other people have not seen it. Ms. Jones is the only
3 one that has reviewed it at this point, but I assume --

4 MR. MICKENS: That's part of the problem, Your Honor,
5 that while perhaps some of the other parties were raising
6 issues about this, I'm certainly not familiar with the
7 testimony --

8 MS. CONOVER: Okay, perhaps you can look at it --

9 MR. MICKENS: I'm sorry, I'm still speaking -- I'm
10 not familiar with the testimony and, you know, I'm not
11 knowledgeable enough at this point to comment on whether I
12 have a problem with it.

13 JUDGE FORDHAM: Well, what I will allow is, I'll hold
14 this without admitting it. The motion has been made. And
15 if I receive any objections, I'll rule on those objections.

16 MR. MICKENS: Thank you, Your Honor.

17 JUDGE FORDHAM: You're welcome.

18 MS. CONOVER: Thank you.

19 JUDGE FORDHAM: MCI?

20 **CROSS-EXAMINATION**

21 BY MS. MISTURAK-GINGRICH:

22 Q. Good afternoon, Mr. Buckalew. I'm Kathleen
23 Misturak-Gingrich from MCI.

24 A. Good afternoon.

25 Q. I have just a few short questions for you.

1 A. So did the last one.

2 (Laughter.)

3 Q. I don't think they were really directed to you.
4 On page seven of your testimony as well as on page 13, you
5 reference that the loop was designed to provide quality toll
6 service. Isn't in fact the loop designed primarily for
7 purposes of providing local service to the end user customer
8 and the fact that long distance traffic is transported over
9 it is purely incidental to the existence of the loop in the
10 first instance to serve that customer for local service?

11 A. No, absolutely, totally wrong. In fact, you
12 could -- if you ever read the book that AT&T commissioned
13 called "Telephone" by Brooks, it goes through the entire
14 history of the system, the loops, and how they were
15 designed.

16 And in fact, the loop was designed to benefit toll.
17 It has to be. If it didn't have the type of resistance and
18 the quality that it has today, we couldn't make toll calls
19 across the country.

20 There was a time when we had two different systems
21 and the local system was simply a single wire, using the
22 ground as a return because you can do that for local calls.
23 You don't need two wires. You absolutely need two wires for
24 making a toll call.

25 Q. And the history of this is, I'm sorry, what?

1 A. A good source of it is a book called "Telephone"
2 by Brooks that AT&T had commissioned back before
3 divestiture.

4 Q. So following up on Verizon's questions, then,
5 what happened -- you testified, I believe, and you can
6 correct me if I'm wrong -- that it is not possible to your
7 knowledge for a customer to have the end user loop for only
8 long distance services and not for local services; isn't
9 that correct?

10 (No response.)

11 Q. You don't know any single customer that doesn't
12 have local service across the loop but has only long
13 distance service across it?

14 A. Well, I don't know any single customer that buys
15 it simply for local service. That's a true statement. Your
16 question said, was it possible. Of course it's possible. I
17 mean, it's possible that somebody can use the loop for only
18 making local calls and never desires to make a toll call.

19 But again, that's a function of loops designed in
20 mass quantities for the entire market, which includes the
21 toll market, and not just simply for the local exchange
22 market.

23 Q. And in the situation in which the end user
24 customer elects not to have any toll service whatsoever but
25 only takes local service, you've testified that you are

1 cognizant of the fact that those circumstances exist, but
2 the contrary circumstance doesn't exist to your knowledge;
3 isn't that true?

4 (No response.)

5 Q. In other words, you know of circumstances where
6 a customer has only local service utilizing the loop but not
7 a single circumstance that you can cite to where they only
8 have long distance using the loop?

9 A. Actually, I think you totally mischaracterized
10 everything I said. What I said is, I'm not aware of any
11 customer that has bought service to only buy local service
12 or to only buy toll service. They buy it for a number of
13 services.

14 I'm not personally aware of any customer that has
15 bought it only for local service or only for toll service.
16 Now, there are in fact ways of doing that. There are
17 customers that have toll restrictions put on because they
18 can't pay their toll bills and they make too many toll calls
19 and so they're restricted from making toll calls, but that's
20 a different kind of argument. That's more of a welfare type
21 argument.

22 MS. MISTURAK-GINGRICH: Okay. I don't believe that's
23 what you testified to before, but I'm not going to argue
24 that with you.

25 (Pause.)

1 BY MS. MISTURAK-GINGRICH:

2 Q. In the circumstance where a customer would
3 choose only to have local service, is it your testimony then
4 that it's a more efficient utilization to construct a loop
5 that only contains one wire?

6 A. No. Again, what you're not hearing in the
7 question is that loops are designed en masse. They're
8 designed in terms of making them most efficient to the most
9 number of customers.

10 They're not designed for one single customer that
11 wants to have local exchange service. That would be
12 inefficient.

13 Q. I'm sorry, I didn't hear what you said at the
14 end.

15 A. That would be inefficient, to design it for one
16 customer, for one usage.

17 MS. MISTURAK-GINGRICH: I have no further questions
18 for this witness.

19 JUDGE FORDHAM: Mr. Povilaitis?

20 MR. POVILAITIS: No questions, Your Honor.

21 JUDGE FORDHAM: Does anyone else have any questions
22 for this witness?

23 (No response.)

24 JUDGE FORDHAM: Any redirect?

25 MS. JONES: I think so, Your Honor. I need to confer

1 with my witness.

2 JUDGE FORDHAM: Okay. We'll take five minutes.

3 (Recess.)

4 JUDGE FORDHAM: We're back on the record.

5 Ms. Jones?

6 MS. JONES: Yes. Thank you, Your Honor. Just a few
7 redirect.

8 **REDIRECT EXAMINATION**

9 BY MS. JONES:

10 Q. Mr. Buckalew, several parties, Verizon and I
11 believe MCI asked you questions, hypothetical scenarios
12 about the loop and local uses of the loop as compared to
13 toll uses of the loop. Do you remember those exchanges?

14 A. Yes.

15 Q. And those exchanges to my recollection had to do
16 with the expectation of the caller making calls. Is that
17 your recollection?

18 A. Yes. It was all in relationship to parties
19 calling out in terms of a customer that would only want to
20 call out. I think the other side of that argument is that
21 people call in, too.

22 So even though they may only make local calls, they
23 probably -- they can still receive toll calls. They can
24 receive a call from across the state, across the country or
25 across the world.

1 Q. And Mr. Buckalew, would a business, particularly
2 a small business customer, be concerned about calls in?

3 A. Oh, absolutely. I mean, a small business
4 customer wants as many calls from wherever he can get it to
5 increase his business.

6 MS. JONES: Thank you. That's all, Your Honor.

7 JUDGE FORDHAM: Thank you. Anything else from any of
8 the other counsel?

9 MR. BARBER: No, Your Honor.

10 MS. CONOVER: No, Your Honor.

11 JUDGE FORDHAM: We have the testimony of Mr. Buckalew
12 on behalf of the Office of Small Business Advocate, Revised
13 OSBA Statement No. 1. Any objection to the admission of
14 this document?

15 (No response.)

16 JUDGE FORDHAM: Hearing none, it's so admitted.

17 (Whereupon, the document marked as
18 Revised OSBA Statement No. 1 was
19 received in evidence.)

20 JUDGE FORDHAM: Thank you very much.

21 (Witness excused.)

22 JUDGE FORDHAM: This concludes the testimony. There
23 are some outstanding data requests. We agreed this morning
24 that they would be transmitted electronically so that we
25 could conclude and close the record by September 3rd.

1 We have previously drafted the schedule so that the
2 record would close on September 3rd. Main briefs would be
3 due September 16th and reply briefs due September 26th. Is
4 there anything else in this matter?

5 MR. BARBER: Could we go off the record briefly?

6 JUDGE FORDHAM: Yes.

7 (Discussion off the record.)

8 JUDGE FORDHAM: Back on the record.

9 The parties and the Judge have agreed to a revision
10 of the schedule. The record will still close on September
11 3rd, however the main briefs will be due on Thursday,
12 September 18th and the reply briefs due on Monday, September
13 29th.

14 I indicated we have a couple of outstanding data
15 requests, then we have one exhibit, Verizon Cross-
16 Examination Exhibit 10, which will be distributed and if
17 anyone has any objections, you can let me know by e-mail and
18 I'll make a decision on that.

19 I believe those are the only outstanding matters.
20 Can anyone else think of anything else that's outstanding?

21 MS. JONES: Your Honor, when can we anticipate the
22 written decision for the motion to strike?

23 JUDGE FORDHAM: It should be out by Thursday.

24 MS. JONES: Thank you, Your Honor.

25 JUDGE FORDHAM: You're welcome.

1 MR. POVILAITIS: Your Honor, in connection with the
2 very first in-hearing data request that was made, the notion
3 was that we'd get responses by Friday of this week. Is that
4 generally true of all the in-hearing data requests? Because
5 we are closing shortly.

6 JUDGE FORDHAM: Right. Does anyone have any problems
7 with that? I know that there were various data requests,
8 and I don't know whether you've had an opportunity to start
9 working on those.

10 MR. BARBER: We were hit with ours today, Your Honor,
11 so clearly we haven't had that chance yet. Hopefully we can
12 have them out by Friday.

13 MR. POVILAITIS: Counsel can work that out if there's
14 a problem.

15 JUDGE FORDHAM: Okay. If there is a problem with
16 having it out prior to Friday, would you let us know by
17 e-mail, everyone know by e-mail and we can deal with that.

18 Anything further?

19 (No response.)

20 JUDGE FORDHAM: If not, at this time, the hearing is
21 adjourned. As I indicated, there are some outstanding data
22 requests so the record will not officially close until the
23 third of September. Thank you very much.

24 (Whereupon, at 4:20, the proceedings were
25 concluded.)

C E R T I F I C A T E

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

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By: John A. Kelly

John A. Kelly,
Certified Verbatim Reporter

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