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COMMONWEALTH OF PENNSYLVANIA PUBLIC UTILITY COMMISSION

In Re: Investigation Regarding
Intrastate Access Charges and | Docket No.:
IntraLATA Toll Rates of Rural | I-00040105
Carriers and the Pennsylvania
Universal Service Fund |

Pages 1 - 86

Hearing Room 1
Keystone Building
400 North Street
Harrisburg, PA

Tuesday, August 12, 2008
Commencing at 1:05 p.m.

BEFORE:

SUSAN D. COLWELL, Administrative Law Judge
Andrew Showers, Staff Advisor

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1 P R O C E E D I N G S

2 -----
3 JUDGE COLWELL:

4 Okay. Let's go on the record. This is
5 the time and place set for a discovery dispute and
6 motions to compel filed by Verizon and MCA in the case
7 captioned Investigation Regarding Intrastate Access
8 Charges and IntraLATA Toll Rates of Rural Carriers and
9 the Pennsylvania Universal Service Fund at Docket
10 Number I-00040105. I am Administrative Law Judge
11 Susan Colwell, assigned to preside in this matter.
12 With me on the bench is my staff advisor, Andrew
13 Showers.

14 I note for the record the attendance of
15 the following Counsel. On behalf of the Office of
16 Consumer Advocate, Joel Cheskis, Barrett Sheridan and
17 Christy Appleby. On behalf of Comcast, John Dodge.
18 On behalf of Embarq Pennsylvania, Sue Benedek. On
19 behalf of the Pennsylvania Telephone Association,
20 Norman Kennard.

21 On behalf of the Office of Small Business
22 Advocate, Steven Gray. On behalf of AT&T, Michelle
23 Painter. On behalf of the Broadband Cable Association
24 of Pennsylvania, Pamela Polacek. On behalf of Sprint,
25 Ben Aron. On behalf of Verizon-Pennsylvania, Chris

1 Arfaa and Suzan Paiva. Is that everyone? Is there
2 anyone who has not signed the green sheet that should
3 have?

4 All right then. We all know what we're
5 here for. The basic rules we're going to try to use
6 are, identify yourselves, use your outside voices,
7 make sure you speak loudly enough so that everybody in
8 the room can hear you, including the court reporter on
9 the end.

10 First, we're going to do the OCA motions
11 because Mr. Cheskis has indicated he may have some
12 time constraints later in the afternoon. So Mr.
13 Cheskis, you're up first.

14 ATTORNEY CHESKIS:

15 Thank you, Your Honor, for the
16 opportunity to discuss our motion here this afternoon.
17 Without repeating what we've articulated in our Motion
18 to Compel and the companies have provided in their
19 Answer, essentially what I think we have here is the
20 OCA's attempt to respond to the Commission's request
21 or opportunity that they've presented the parties here
22 to provide economic cost studies in this proceeding.
23 And the companies' response is that such a study would
24 be either irrelevant or unduly burdensome or somehow
25 violating the Commission's customer privacy

1 provisions. In general, the OCA submits that each of
2 these arguments are without merit and should be
3 rejected.

4 To address the relevancy issues first,
5 both the PTA and Embarq somehow argue that the kind of
6 economic cost study that the OCA might submit in this
7 case through OCA's Set Three Interrogatories is not
8 the same type of economic cost study that the
9 Commission is somehow asking for or providing an
10 opportunity to provide in its order.

11 The PUC order specifically requires that
12 this investigation should address the appropriate
13 benchmark for rural telephone companies and for basic
14 local exchange companies while considering the
15 maintenance and enhancement of universal telephone
16 service in Pennsylvania. The FCC's synthesis model,
17 which the OCA Set Three interrogatories provided each
18 with data inputs for, could be used to establish that
19 appropriate benchmark by, among other things,
20 indicating whether or not basic local telephone
21 service is subsidized.

22 The companies, however, attempt to read a
23 limitation on that term, economic cost study, as
24 provided in the Commission's order when such a
25 limitation is not included in the Order. There is

1 nothing in the Commission's order that says that the
2 incremental cost study that the OCA would like to
3 present or was considering presenting in this
4 proceeding is not the kind of cost study that the
5 Commission allows the opportunity for in its order.

6 JUDGE COLWELL:

7 Can you tell me a little bit about the
8 cost study itself?

9 ATTORNEY CHESKIS:

10 The cost study, as we discussed in our
11 Motion to Compel, would be something that would allow
12 the Commission to determine what the expenses are for
13 the company in terms of providing basic local
14 telephone service for rural companies to their
15 customers. This incremental cost study is just one
16 type of an economic cost study that could be used in
17 this proceeding, for example, to determine whether or
18 not the basic local service rate in Pennsylvania is,
19 in fact, subsidized, which then could be used to
20 address what the appropriate benchmark is in this case
21 --- or benchmark rate is in Pennsylvania.

22 The PTA, however, argued that the FCC
23 synthesis model is not appropriate for rural
24 companies, and it cites the Commission's own --- the
25 FCC's own report as support for that. However, it's

1 my understanding that the only reason why the FCC's
2 report was limited to the nonrural carriers was
3 because the rural companies at that time hadn't
4 provided the necessary data to run that synthesis
5 model. The OCA here seeks that necessary data that
6 the FCC could have used back then to run that
7 synthesis model. And you know, using that necessary
8 input would then make the output of that model
9 appropriate for the rural companies.

10 Embarq had also made an argument in their
11 Answer to the OCA Motion to Compel that our Set Three
12 Interrogatories are irrelevant because Embarq is now
13 the subject of alternative rate making in
14 Pennsylvania. Certainly the OCA agrees with that.
15 But nonetheless, the Commission has created this
16 opportunity in this proceeding specifically to allow
17 the submission of economic cost studies, like the OCA
18 is considering doing in response to OCA Set Three. As
19 we stated in our Motion to Compel, had Embarq had any
20 concerns about the submission of economic cost studies
21 in this proceeding, then they should have raised it
22 with the Commission at the time of the Order and
23 certainly not here in terms of objection to discovery.

24 Finally, with regards to the relevancy of
25 OCA Set Three, I wanted to point out just last week

1 the Commission, in a separate proceeding involving the
2 complaints filed by Verizon against both BTI and CTSI,
3 pursuant to Section 3017(c) of Act 183, the
4 Commission, by motion of Vice-Chairman Cawley, is
5 asking for similar data, almost exactly identical
6 data, in that proceeding that the OCA would be
7 provided here as part of the Answer to OCA Set Three.
8 So I think it's very timely for that motion to have
9 come out to state that the Commission is looking at
10 these issues. The Commission wants the type of
11 information that the OCA is seeking through OCA Set
12 Three.

13 With regard to the burdensome issues
14 raised by PTA and Embarq, this seems to turn into a
15 case of he said/she said. If you read the company's
16 Answers, they're claiming that it would take hundreds
17 or thousands of employee hours to respond to these
18 discovery requests. But the OCA has strong reason to
19 believe that that might, in fact, not be the case. In
20 fact, the OCA is aware of other rural telephone
21 companies in other states that have responded to
22 similar questions. These questions were asked in a
23 Maine case involving Lincolnville, Oxford, Unitel and
24 Unitel telephone companies. I can give you the Maine
25 PUC docket numbers if you're interested. But those

1 companies in that proceeding were able to provide the
2 answers to virtually identical questions within 40
3 days. I'm sure it took them a long time to do that.
4 Forty (40) days is a little bit longer than the
5 discovery response period here, but we were willing to
6 work with the companies in this proceeding to give
7 them that extra time had they needed it.

8 The OCA also notes that the companies'
9 blanket statements that each and every interrogatory
10 is burdensome should be rejected outright. We
11 certainly recognize that some of these questions will
12 take time and a lot of legwork to be responded to. We
13 don't minimize that. However, as we've discussed in
14 our Motion to Compel, the companies' objections that
15 it will take hundreds of hours to provide an estimate
16 of cost of providing a business network interface
17 device in 2007, is certainly not something that should
18 be burdensome.

19 And finally, with regard to
20 burdensomeness, I would just point out that this is an
21 investigation case. These companies must be prepared
22 to provide the necessary information that this
23 Commission is seeking by instituting this proceeding
24 in the first place. The Commission needs the
25 information from these companies as, again, is evident

1 from the motion last week from Vice Chairman Cawley to
2 develop policies, and that's going to require work
3 from these companies. Any burden present here is not
4 undue. As I previously mentioned with regard to the
5 Motion to Compel, I think that the Commission is
6 interested in looking for this information.

7 Finally, I just want to briefly address
8 the PTA argument with regard to the privacy concerns
9 for the customers. We noted in our Motion to Compel
10 that there is obviously a protective order in this
11 case here and that any information that we receive in
12 response to discovery would be subject to that
13 protective order. However, on top of that, privacy
14 concerns for any individual customer are alleviated
15 because we're not asking for the names of each
16 customer as it pertains to the specific network
17 facilities, Mr. and Mrs. Smith who live at such and
18 such, and their facility costs X amount of dollars.
19 We're involved in a lot of proceedings at the OCA with
20 individual customer information, and frequently we're
21 able to black out the customer names but still get the
22 other necessary information that we need in response
23 to discovery. Obviously, we're not asking for the
24 companies here to black out every single name of their
25 customers, but we haven't even asked for that

1 information. So again, I think the PTA's privacy
2 concerns are without merit and should be rejected.

3 JUDGE COLWELL:

4 What are you asking about individuals,
5 particular customers? I thought you were asking for
6 names and addresses.

7 ATTORNEY CHESKIS:

8 We were asking for customer locations and
9 we were asking for street addresses, which we were
10 willing to negotiate on, to the extent that we weren't
11 able to get the data input, what they call V and H
12 coordinates information. They were willing to accept
13 a geo-coded version of the data. And there are other
14 information with regards to longitude and latitude,
15 which again we think, Commission, the companies should
16 have --- should be able to provide to us, based on the
17 experience of Maine. But at no point did we ever ask
18 for any specific customer's name that we may
19 associated with the relevant information that's being
20 provided.

21 JUDGE COLWELL:

22 Explain to me why you need that kind of
23 information for a customer.

24 ATTORNEY CHESKIS:

25 Because inputting that information is

1 going to enable us, through the use of this FCC
2 synthesis model, to have a more accurate determination
3 of the costs and distances associated with companies'
4 facilities. And while I don't have a Ph.D. in
5 economics and I rely on our consultant, Dr. Lobe,
6 regarding some of the details, with that information
7 we'll be able to use to determine whether or not, for
8 example, there's a subsidy in the basic local service
9 rate for these rural companies' customers, which we
10 then contend could be used to determine the
11 appropriate rural benchmark.

12 I did note in our Motion to Compel that
13 the scope of discovery is broad enough that the
14 evidence doesn't necessarily need to be admissible.
15 But the scope of discovery is broad enough that we
16 should still be able to seek this information and we
17 should still be able to run the model. Quite frankly,
18 we have no idea what the results of that are going to
19 be. So to the extent that those results say one thing
20 or the other will help determine the extent that they
21 would be used in this proceeding.

22 JUDGE COLWELL:

23 Well, let me get this straight then. The
24 information that you have requested is the information
25 necessary to run this FCC model?

1 ATTORNEY CHESKIS:

2 Yes. Each OCA Set Three Interrogatory is
3 a necessary data input into this FCC synthesis model.

4 JUDGE COLWELL:

5 What would happen if you didn't have a
6 piece of that, like the names?

7 ATTORNEY CHESKIS:

8 Well, we didn't ask for the names.

9 JUDGE COLWELL:

10 Okay. What else?

11 ATTORNEY CHESKIS:

12 Various costs. My understanding is that
13 each and every OCA Set Three Interrogatory is a
14 necessary input into this FCC synthesis model. So
15 based on that, this is sort of an all-or-nothing type
16 of thing.

17 JUDGE COLWELL:

18 Okay.

19 ATTORNEY CHESKIS:

20 Just to wrap up, unless you have any
21 other questions, I wanted to respectfully request that
22 Your Honor grant the OCA Motion to Compel, dismiss the
23 companies' objections to our OCA Set Three
24 Interrogatory, keeping in mind again that the scope of
25 discovery in Pennsylvania is broad, and the companies'

1 arguments that the OCA Set Three Interrogatories are
2 somehow irrelevant or unduly burdensome or violate the
3 Commission's customer privacy regulations, should be
4 rejected.

5 We've attempted to resolve this matter
6 informally on several occasions. And the OCA requests
7 that these companies be directed to respond to OCA Set
8 Three in an expedited fashion because, quite frankly,
9 at this point, by the time we get the information and
10 the time we actually need to run the model, I do have
11 concerns, now that we're already in the middle of
12 August, that we'll be able to use the results in time
13 for our direct testimony due at the end of next month.
14 Thank you very much.

15 JUDGE COLWELL:

16 All right. Well, who wants to go first?

17 ATTORNEY BENEDEK:

18 I think, Your Honor, Embarq is going to
19 go first. We're going to try to address it, but
20 limit it as much as possible.

21 JUDGE COLWELL:

22 I'm going to ask you to speak up a little
23 bit more.

24 ATTORNEY BENEDEK:

25 We're going to limit as much as possible

1 the response so that we're not repetitious.

2 JUDGE COLWELL:

3 Okay.

4 ATTORNEY BENEDEK:

5 I'd like to respond first to the
6 questions regarding the FCC synthesis model. It is
7 Embarq's understanding that the use of the FCC's
8 synthesis model is not applicable in this case because
9 that model, which was first introduced in October of
10 '97 and last updated by the FCC in 2003, is largely
11 obsolete and is in need of updating. It is also
12 grossly inapplicable to rural companies. The model
13 itself relies upon inputs that do not fairly
14 characterize the geographic and cost characteristics
15 of a rural company. So outside of the burdensome
16 nature of the request and the questions regarding
17 relevancy and the admissibility, I seriously question
18 whether the model itself is appropriate for the use in
19 this proceeding.

20 I'd like to respond a little bit to ---.

21 JUDGE COLWELL:

22 Let me ask you this, though. What you're
23 objecting to is the model itself. If they were going
24 to a different model, would that be a reason to object
25 to the interrogatories?

1 ATTORNEY BENEDEK:

2 No, because --- here's the reason. We
3 don't view the Order, the October 24th Order, the way
4 OCA does. We do not view the Order as requiring that
5 cost studies be run in this proceeding. In reference
6 to the economic cost studies that are in the Order, as
7 our response to the Motion to Compel states, it is
8 limited to the appropriate benchmark, not to determine
9 whether a bottoms-up analysis should be undertaken for
10 each company, meaning the cost of providing rural
11 service which the OCA admits is the reason for seeking
12 the information.

13 JUDGE COLWELL:

14 Why would that be a bad thing?

15 ATTORNEY BENEDEK:

16 It's extremely burdensome. It's not
17 within the scope of the Order. And we are all in PA.
18 It's beyond the scope of the Order, Your Honor.

19 JUDGE COLWELL:

20 Would it be better to have each of the
21 companies do its own cost study bottoms-up analysis?

22 ATTORNEY BENEDEK:

23 We don't think that that's what's
24 required.

25 JUDGE COLWELL:

1 It's not required, but it certainly is
2 possible. As I read the Order, it encourages cost
3 studies. It does not require them.

4 ATTORNEY BENEDEK:

5 It does not require them. We would agree
6 with you. I think relative to --- the only provision
7 I was able to find that talks about the needs rates
8 test, it talks about cost studies at some future point
9 in time.

10 JUDGE COLWELL:

11 What paragraph?

12 ATTORNEY BENEDEK:

13 I'm looking at page 23, Your Honor.

14 JUDGE COLWELL:

15 I actually have taken those paragraphs
16 and put them in something else. So the paragraphs
17 themselves are what I'm looking at.

18 K. The appropriate benchmark for the
19 rural residential rate taking into account the
20 statutory requirements for maintaining and enhancing
21 universal telecommunication services at affordable
22 rates. Participating parties are encouraged to submit
23 appropriate studies and testimony, including economic
24 cost studies, that can provide the necessary
25 information for the establishment of the appropriate

1 residential benchmark rate for maintaining and
2 enhancing universal telephone service across
3 Pennsylvania.

4 ATTORNEY BENEDEK:

5 And we would submit, Your Honor, that a
6 fair reconciliation of the conditions in this Order
7 would enable OCA in this proceeding to present its
8 viewpoint regarding the application of the model that
9 it seeks to introduce. And that at some future point
10 in time, a nonspeculative point in time, if its
11 position is adopted, that model could be run for any
12 company seeking to go above that residential cap and
13 to seek money out of the fund.

14 We submit --- Embarq submits that's a
15 fair reconciliation of the various provisions of this
16 Order, not that the cost studies be undertaken in this
17 proceeding, but that the parties be given the
18 opportunity, as OCA says, to develop the process,
19 formulas and methodology by which to determine support
20 from the Fund in the event in the future --- and I'm
21 looking at page 23 --- if a company request to recover
22 the basic service costs above the cap from the USF. I
23 think that provision we submit reconciling it with the
24 language in conjunction with the use of the phrase
25 economic cost studies, does not entail actually

1 running, as OCA requests in this case, the cost
2 studies. They have the opportunity and remedy of
3 addressing the merits of why the model applies, and
4 then we can rebut that testimony. That's the remedy
5 that we would view it in the scope of this Order
6 relative to the cost study.

7 JUDGE COLWELL:

8 Well, I don't see that. I don't see that
9 written anywhere in the Commission's Order.

10 ATTORNEY BENEDEK:

11 And Your Honor, we respectfully disagree.
12 We view the Order as not explicitly requiring cost
13 studies.

14 JUDGE COLWELL:

15 I agree. It doesn't require them, but it
16 does encourage them. Do I have any other parties who
17 are willing to run cost studies? Are you going to do
18 them?

19 ATTORNEY BENEDEK:

20 No.

21 JUDGE COLWELL:

22 Is PTA going to do one?

23 ATTORNEY KENNARD:

24 No.

25 JUDGE COLWELL:

1 So nobody except OCA wants to actually
2 run one. You don't actually want them to do it?

3 ATTORNEY BENEDEK:

4 It's burdensome. We believe it's unduly
5 expensive. We believe it's outside the scope of the
6 Order with the reference --- in consideration of what
7 you just noted, and we submit that it's not relevant.

8 JUDGE COLWELL:

9 It's not relevant because ---?

10 ATTORNEY BENEDEK:

11 Because it's outside the scope of the
12 Order.

13 JUDGE COLWELL:

14 We're looking for information that will
15 help set the benchmark for the residential rates.

16 ATTORNEY BENEDEK:

17 Right, for some future point in time,
18 which for the company, my company, hasn't come. We
19 haven't sought this remedy and we view other portions
20 of this Order as addressing that eventuality, but not
21 to have a record, a stale record, developed in the
22 hope of potential speculation of some future event
23 that may or may not occur. That is part of the
24 burdensome objection that we continue to maintain.

25 JUDGE COLWELL:

1 Okay. So are you telling me that you're
2 afraid that the Commission won't act soon enough on
3 the data as it stands and will use it sometime in the
4 future when the data will have changed but the cost
5 study will still be there, and you don't like that?
6 That's what you're saying?

7 ATTORNEY BENEDEK:

8 No, not necessarily. With all due
9 deference, Your Honor, what we're saying is that the
10 Order talks about a future point in time if a company
11 comes in, it's not what the Commission intends to do.
12 And so therefore the application of this proceeding
13 could be years from now relative to the company. It
14 could be tomorrow, but it could be years.

15 JUDGE COLWELL:

16 Okay. But then how are we going to
17 address the appropriate benchmark for the rural area
18 residential rate for basic local exchange service, if
19 we don't have the economic cost study?

20 ATTORNEY BENEDEK:

21 We will have studies available, Your
22 Honor, as to the affordability of the rates, as to the
23 competitive benchmarking for that rate, but we don't
24 view it as a bottoms-up, cost-driven analysis. Again,
25 you may differ, but that's not our construction of the

1 Order, and the various provisions, the economic cost
2 studies to a needs-based test.

3 And then once again, I just want to
4 reiterate that the unduly oppressive nature of the
5 request is also an issue. It's isn't just that it's
6 not relevant, in our view, and not likely to lead to
7 admissible evidence.

8 JUDGE COLWELL:

9 Okay. You say that. Point to me exactly
10 where the oppression is.

11 ATTORNEY BENEDEK:

12 I think we addressed some of this in the
13 Answer to the Motion to Compel.

14 JUDGE COLWELL:

15 Right.

16 ATTORNEY BENEDEK:

17 What happens in the FCC synthesis
18 model here --- again, various versions of it. I'm not
19 sure which one they're running, but various versions
20 of it require input based on facilities. And for
21 rural companies there are a lot of them because of the
22 rural nature of the territory. So that piece of it,
23 you know, it's not just a tandem switch or something.
24 There is a lot of facilities at issue, plus the
25 customers are geographically dispersed. So the

1 burdensome nature and the oppressive nature come into
2 play. Many of the subparts, and I've highlighted a
3 few on there, but the actual street address, billing
4 code, longitude and latitude, straight-type indicator,
5 best estimates, which we question the probative value
6 of that, by the way. And almost every single one of
7 these questions, I mean, they're black and white.
8 It's all or nothing from OCA. We view it somewhat the
9 same way. We talked about the cost of a line guard.
10 These are intensely --- the man hours required to
11 respond to the request in order for OCA to run a
12 model, the question we ask is about the applicability
13 and datedness of it. It's questionable, and we object
14 to that. So it's --- it's almost in every question.

15 The aerial fiber, question number 12, the
16 cost per foot by cable site, that requires digging
17 into the invoices associated with the vendors that we
18 purchased them from for all of our territories, which
19 requires some sort of average cost. What do they mean
20 by cost? Let me see. What else do I have? I ran
21 through this with my witness. We sort of went through
22 --- literally there are other ones in here, too. If
23 you dig into these questions, it's not seemingly ---
24 oh, there's just a cost --- you just take a cost out
25 of a book. It isn't that way. You've got to dig into

1 the invoices to get the costs, to get that, you know,
2 assembled to provide it. It isn't just taking
3 something off a ledger somewhere.

4 JUDGE COLWELL:

5 Are you telling me Embarq doesn't keep
6 this information?

7 ATTORNEY BENEDEK:

8 No, we keep information, Your Honor. But
9 in the manner requested, no. We don't have --- for
10 example, poles, number 19, there's a request. What
11 type of poles? What costs associated with those
12 poles? Aerial? You know, there's a lot of
13 information in each one of these requests. Do we keep
14 some information? Sure. Do we keep the information
15 as requested at the tip of our fingers? No, we don't
16 do that. No. It's just not retained in the normal
17 course of business.

18 JUDGE COLWELL:

19 Every one of these items that's being
20 asked for has an account number on it. That's for tax
21 purposes.

22 ATTORNEY BENEDEK:

23 For the depreciation piece of it, yes.
24 For 19, that's true. But later on they ask for poles
25 and pole information. The best estimate of the

1 installed cost --- one of the reasons the best
2 estimate is being requested is because you have to go
3 get the invoices, pull out the cost, then average
4 them, and then get to an estimate. Even doing an
5 estimate is difficult because it requires man hours to
6 put it together.

7 JUDGE COLWELL:

8 I'm going to have to ask you to go
9 through them one at a time because I look at that one,
10 19, and all I see is information you should already
11 have on your tax returns.

12 ATTORNEY BENEDEK:

13 And we can probably provide some
14 depreciation account information, you know, to the
15 extent that we have some of this information in the
16 account numbers requested, sure. But that 19 is just
17 one example.

18 JUDGE COLWELL:

19 Okay. Let's go to 18.

20 ATTORNEY BENEDEK:

21 Eighteen (18). Best estimate of the
22 average monthly installed cost of cross connect boxes.
23 That would require that we go through each and every
24 invoice that we pay to vendors to determine what the
25 cost was, add them up, take the average, and then

1 presumably get a best estimate that complies with the
2 request. It requires somebody going through invoices.
3 This is just a manual process.

4 JUDGE COLWELL:

5 How many are we talking about? How many
6 were installed?

7 ATTORNEY BENEDEK:

8 You know, I'm not sure, Your Honor. I
9 don't have that specific information.

10 JUDGE COLWELL:

11 Well, then how do I know that that's
12 burdensome?

13 ATTORNEY BENEDEK:

14 It's burdensome in the nature of the fact
15 that this isn't just one question. It's numerous
16 questions.

17 JUDGE COLWELL:

18 One at a time. On 19, I don't see your
19 argument at all. Eighteen (18)?

20 ATTORNEY BENEDEK:

21 Eighteen (18), they're asking for
22 estimates of size, so we have to actually go and get
23 the invoices for the sizes. We have to go figure out
24 the size. Then we have to figure out what's
25 associated with each cross connect box.

1 JUDGE COLWELL:

2 How many boxes would that be?

3 ATTORNEY BENEDEK:

4 I don't know.

5 JUDGE COLWELL:

6 Then I can't tell if it's burdensome.

7 Let's go to the next one, Number 17. Distribution
8 terminals installed in 2007.

9 ATTORNEY BENEDEK:

10 Right. You know, there's --- we have a
11 BFR program in place, Your Honor. We have to go
12 through those invoices. We have to go through our
13 capital records. We have to go through our budgets
14 --- not budgets but our account records, and average
15 --- produce an average of the installed costs, again,
16 averaging invoices.

17 JUDGE COLWELL:

18 How many distribution terminals would
19 have been installed in this period?

20 ATTORNEY BENEDEK:

21 I don't particularly know.

22 JUDGE COLWELL:

23 One? Two hundred?

24 ATTORNEY BENEDEK:

25 I'm sure it's more than one. I'm sure

1 it's not --- I'm not sure that it's 200, 300 or 400,
2 but I know it's not an easy request. We don't keep
3 information in the manner requested. We don't keep
4 --- you know, we don't say in 2007, for cross connects
5 or distribution terminals, here's what we put in and
6 here's the average cost, and here's how much --- you
7 know, the size of those cross connects. We don't keep
8 it that way. It requires that we go through various
9 records to get to the point of complying with the
10 request in the question. So do we have --- do we
11 know what we installed? Sure, we have records. But
12 it isn't just about going to one thing and pulling
13 that one thing out.

14 Embarq is not certain whether in each
15 instance the words on the page are what is requested.
16 We would need to meet with OCA to get into each one of
17 these questions in terms of the cost of the particular
18 facilities requested.

19 JUDGE COLWELL:

20 I'm sure you can pick up the phone.

21 ATTORNEY BENEDEK:

22 It's not one call. It's many calls.
23 It's many hours. That's where we get the 700-plus
24 hours, Your Honor.

25 JUDGE COLWELL:

1 Once again, I can't tell really how that
2 is because you aren't giving me anything concrete
3 enough for me to judge.

4 ATTORNEY BENEDEK:

5 All I know, Your Honor, is what I've
6 asked our folks to do. And if you had to replicate,
7 end quote, run this model, it would require well over
8 \$40,000 to complete for the questionable result or the
9 use of the model. We're not debating whether the
10 model is correct to used it. We are actually running
11 that model. We are. Not OCA, we are. And that we
12 question whether for each one of these, you've got
13 probative value. The burdensome nature of it is
14 particularly difficult, Your Honor.

15 JUDGE COLWELL:

16 I mean, there's burdensome and then
17 there's relevance.

18 ATTORNEY BENEDEK:

19 With regard to the relevancy issue, we go
20 back to the scope of the Orders. And on the
21 burdensome nature, in our view it would take at least
22 \$40,000 for Embarg to complete the request as sought,
23 which would include up front discussion with OCA. It
24 would cost us 700-and-some hours, as we put in our
25 Answer in the Motion to Compel. It is not an easy

1 task. The information requested is not held in a
2 convenient spot where we can pull it out and put ten
3 people on it for one day. It just doesn't work that
4 way. It's a complicated complex model we're seeking
5 to run and never, at least in my mind and from what I
6 understand, run for a rural company by the FCC. It's
7 been used for nonrural companies. And there's a
8 reason for that. It's a very complicated model,
9 particularly for a company that has a very
10 geographically dispersed service territory.

11 I think PTA is going to address the CTI
12 records, as well as any other points they wish to
13 address, if you don't have any further questions.

14 JUDGE COLWELL:

15 Mr. Kennard?

16 ATTORNEY KENNARD:

17 Yes, Your Honor. Good afternoon. I
18 apologize for being here. I know from past experience
19 it's one of your least favorite aspects of a case.
20 It's ours, too. Please know that Embarq, PTA and the
21 OCA have had many phone calls trying to resolve these
22 issues. We're not opposed to providing information to
23 the parties. We provided stacks of information so far
24 in this case.

25 We basically have three objections to Set

1 Three. The first is, we're not directed by the
2 Commission to do. It's burdensome. The result is of
3 doubtful value. There's only a single reference in
4 the Commission's order to an economic cost. The
5 Commission describes that as one that sheds light on
6 the affordability issue, which is what the Commission
7 is investigating. Is the \$18 affordable, or more
8 specifically, is a higher rate affordable? The issue
9 is, therefore, affordability, not cost. The cost
10 really doesn't have anything to do with the
11 affordability of the current \$18 rates or the
12 affordability of a potentially a higher rate.

13 Certainly all cost studies have a basis
14 in economic theory, but that doesn't make all cost
15 studies an economic study. I think a better
16 interpretation of the representative cost study is one
17 that addresses economic silo costs. What's the silo
18 cost, the economic cost of not providing affordable
19 service in Pennsylvania. This is an opportunity cost
20 we're talking about. If you have to spend \$20 on your
21 telephone bill, what else do you forego and what's the
22 cost to society? That's clearly an economic cost
23 study. It's clearly one that bears on the issue of
24 affordability. But an economic cost study is not an
25 accounting study, an accounting cost study, which is

1 what the OCA is --- they're not seeking economic
2 costs. They're seeking accounting costs.

3 Let's talk about the --- well, let me
4 back up. As Your Honor well knows, as one of the
5 sitting judges in those two select access cases, the
6 issue is the cost of access, it is the issue under
7 3017. What is the cost of access? That case has
8 nothing to do with this case, but the cost of access,
9 which we'll explore in the next segment of this
10 presentation, is not at issue. The Commission
11 discusses economic costs as you'll recall the motion
12 last Thursday. It doesn't mention this particular
13 study or the application of it. It talks about a
14 whole host of different kinds of studies, embedded
15 costs, incremental costs. I don't think it talks
16 about this particular study. It addresses the topic
17 generally and doesn't call it an economic --- it calls
18 it an incremental cost study. So the relevance
19 between this case and that case is really --- is lost
20 on me.

21 The study that the OCA seeks to undertake
22 is what's called a hypothetical cost study, a forward
23 looking, as if everything was blown up and the system
24 was rebuilt today, incremental costing. So if you go
25 through discovery, what the OCA is asking --- they're

1 not asking specifically about the embedded costs to
2 the company or what it actually takes to operate.
3 What they want to know is for each one of, in my case,
4 31 individual companies, where's your central office?
5 Where is it located? That's number one. How many
6 lines do you serve out of it? So we'll take a whole
7 map of Pennsylvania and we'll locate the central
8 offices. That's the first exercise.

9 The next one is where are the customers
10 located? When we worked with OCA, we mentioned they
11 originally asked for lat and long. We don't have the
12 lat and long. We have street address. The OCA's
13 consultants said, well, we can work with that to the
14 extent we have specific street address. I can use
15 that or go to Google and locate it. So now I have
16 central office and all the customer locations. And
17 number two, they want to know each customer location.
18 Street addresses, not names, but a street addresses
19 and certainly can be obtained off of street addresses.
20 How many lines go there, what services do they have
21 and that type of thing? What this model is going to
22 do is it's going to shoot out a bunch of lines. This
23 is how it's served. This is how forward looking, all
24 blown up yesterday. It's being rebuilt today. Here's
25 where the lines are. Here's where the certain

1 customers are located. Okay? And then to postulate
2 the cost of this for the network, the OCA then goes
3 into --- the consultant goes into a series of costs.
4 Okay. Well, so you have 5,000 customers. That's
5 5,000 NIDs. How much did you spend in 2007? Okay.
6 That's the NID cost of this model. We're looking at
7 incremental cost. Okay. How many various sizes ---
8 what did a particular size of cable cost you in 2007?
9 Okay. This is what this is going to cost you in this
10 model.

11 What we come away with, Your Honor, has
12 nothing to do with the cost to these companies
13 providing service. It's the hypothetical, forward-
14 looking incremental cost of providing service.

15 JUDGE COLWELL:

16 What about account information, number
17 18, the depreciation?

18 ATTORNEY KENNARD:

19 Well, depreciation is a cost of providing
20 service. They want to know what the original cost was
21 of that NID for example, and then they want to know
22 what the depreciation cost of the NID. So if there's
23 5,000 customers, 5,000 NIDS, 2007 costs and the
24 depreciation is ten years for a NID, then one-tenth of
25 that would be the depreciation cost.

1 JUDGE COLWELL:

2 So what part is missing that would make
3 this accurate from your point of view?

4 ATTORNEY KENNARD:

5 It's got no real --- it's got no real net
6 worth. It's got no real costs. I mean, it's got real
7 costs in the sense of in 2007, here's what was paid.
8 But obviously, these companies have been in business
9 for hundreds of years, and have purchased over a long
10 period of time. And I guess I'd reverse the question
11 on the OCA, to say what do we have coming out of this?
12 What does it do to advance the ball while addressing
13 affordability? We didn't do anything to address that
14 ball.

15 The FCC, to the best of my knowledge,
16 never imposed this on rural companies. It is designed
17 --- the FCC says that it's designed --- adopted by the
18 FCC for nonrural carriers. So it doesn't apply to
19 rural carriers, which is what we're trying to do in
20 this case. Other jurisdictions have rejected it. We
21 have a judge's decision in this jurisdiction that has
22 rejected it. And I find myself in disagreement with
23 Mr. Cheskis on the issue of, well, the problem was we
24 didn't have the data. I don't agree. When I view the
25 materials, it looks to me that the discussions is

1 whether or not methodology is corrupt in and of
2 itself, not whether or not the information is
3 available. Further, I can't speak to what happened
4 with Lincoln (sic). This is the first I've heard of
5 it. I don't know what Lincoln had, what it was asked
6 to do and what they could provide, what they were
7 doing --- what they were providing within 40 days.

8 I can't speak to the burden question, but
9 we did forthrightly attempt to try to talk to OCA on
10 this, go back to the membership and say, what is the
11 burden of doing this on individual companies. The
12 biggest burden is in OCA Number Two of Set Three,
13 which is all customer locational information by street
14 address, where they're located, what their service is,
15 how many lines they have. The services are coming
16 across those lines. We object to this.

.. 17 We gave the OCA specific company
18 information. Windstream, one of the bigger companies
19 in this group, operates 250 remotes. They say it will
20 take an hour a person, 250 hours just to do this.
21 Consolidated, which is the old North Pittsburgh
22 system, they said --- it's a little smaller company.
23 They said it will take us about 120 hours just to do
24 the locational information, give the OCA what they
25 need for this model to suddenly populate all these

1 routes. Denver and Ephrata, a medium-sized company,
2 it's about a thousand hours.

3 I can't do any better than Ms. Benedek
4 can, to go through each one, and say what's each one
5 is going to cost. But you heard Mr. Cheskis say, this
6 is all or nothing. This is a complete set of
7 interrogatories designed to achieve the costing. If
8 anything's missing --- it's all for naught. So what I
9 can give you, Your Honor, is a statement of what it's
10 all going to take to provide this information on a
11 per-company basis, but I can't go through and say this
12 one will take this; this will take that. I'll just
13 say what the whole job is going to cost the phone
14 companies.

15 So I'd ask the Commission to start with
16 an order, where it's easily interpreted, to be
17 consistent with the outcome of this case, the focus of
18 this case. We think it's extremely burdensome on us
19 to ask us to turn over full individual invoices from
20 2007. We have the information. You take those
21 invoices, stick them in a box someplace, and then you
22 put them in your accounting system as you go forward.
23 That was your cost in 2007 of everything you purchased
24 in that particular account. But to have to go back
25 and dig out the boxes, pull up the invoices, look at

1 each one, and the average them --- go through the
2 exercise of averaging, and how valuable this is at the
3 end of the day is really doubtful. This is a very
4 controversial study that's not been applied to rural
5 carriers before. So our question is, why are we doing
6 this?

7 On the question of confidentiality, the
8 way I read it, and maybe I'm reading it wrong, I'm
9 surprised that in view of all the conversations we've
10 had it looks to me like it's street address, services,
11 lines. It's not names but addresses. So 45
12 Countryside Lane, they're going to get all my lines,
13 all my services. It's not ours to waive. It's the
14 customers' information. The customer provides that
15 information. It's not ours to release. It's the
16 customers' to release.

17 So with that, Your Honor, I thank you. I
18 know I've talked fast. You didn't get a chance to
19 question me, so if you have questions for me ---?

20 JUDGE COLWELL:

21 Well, here's the question I do have. And
22 I believe I brought it up when Ms. Benedek was
23 talking. If you're not going to allow this study to
24 be run, then what are you going to do to come up with
25 the appropriate benchmark for the rural residential

1 rate, local exchange service?

2 ATTORNEY KENNARD:

3 We'll do what the Commission did in 1999,
4 the global order. And what is done, as always been
5 with this issue is ask the question, what's the
6 affordability benchmark? What's the point in setting
7 the rates at which penetration starts to fall off
8 because the rate isn't affordable, the objective being
9 the universal availability of voice service in
10 Pennsylvania.

11 So what the OCA has done in the past is
12 brought in economists to talk about the costs of not
13 having complete penetration. Somebody can't call
14 9-1-1 with a health crisis. They can't call the
15 grocery store, so they drive around, looking for
16 objects to buy, because they can't call stores to find
17 out if they have them in stock. And that's how
18 traditionally it's established.

19 JUDGE COLWELL:

20 But aside from just the affordability, I
21 think what the Commission wants to see is how much it
22 actually costs to provide that service, whether or not
23 it's justified to keep the Universal Service Fund
24 going, how much of it should any company be entitled
25 to. This is all interactive, and the cost that the

1 company itself has is an integral part of that. How
2 do you take that out and still come up with the
3 results that the Commission is looking for?

4 ATTORNEY KENNARD:

5 The paragraph talking about that aspect
6 of the case, the Commission said this is very narrow,
7 very defined. I don't believe that access charges or
8 the support they provide to local service, the cost
9 providing local service or that \$32 million that's in
10 the fund today that's being generated year after year
11 to this day. That issue has been stayed, because it's
12 so intertwined with the federal access issues, and
13 this Commission is reluctant --- and we agree with
14 that reluctance, to draft regulations, with the
15 federal result that they don't want to go there, so
16 all we're looking at are two issues, the \$18 rate
17 issue, and whether or not companies should --- or
18 whether the fund should be used in a completely
19 different way. For rate increases that the companies
20 need to maintain financial viability.

21 The Commission makes it pretty clear in
22 their order, I think, that access rates are going to
23 be changed as a result of this case. The Universal
24 Service Fund, as it currently exists, is not going to
25 be affected as a result of this case. All that's at

1 issue is what's --- we haven't looked at affordability
2 for a couple years. Let's look at that again. And
3 should companies who can't get revenue from access,
4 from local, from toll, be allowed to go to the fund
5 incrementally to receive those rate increases?
6 There's a whole different use of the fund than what
7 the Commission has historically addressed in its
8 global order.

9 JUDGE COLWELL:

10 Okay. When you're looking at the one
11 issue that the Commission set forth as follows,
12 whether the overall financial health of the rural
13 ILECs may continue to get both PaUSF and federal USF
14 support to play a role in continuing to receive PaUSF
15 support distributions, you're saying that the
16 individual costs to the companies can't come into
17 play? That seems to be integral to that particular
18 issue.

19 ATTORNEY KENNARD:

20 You go through these two steps to
21 determine what the cost to the company is, the
22 company's overall cost of service and its revenue.

23 JUDGE COLWELL:

24 That's the first thing you do?

25 ATTORNEY KENNARD:

1 Then you go on to the rate design.

2 JUDGE COLWELL:

3 Right.

4 ATTORNEY KENNARD:

5 What's the cost --- class cost of service
6 study and all that stuff. We never get to that second
7 step in this scenario. What the Commission is saying
8 is design a test for us and, I don't know, on a
9 financial need basis, and if the company comes to us
10 and presents us with the data and passes that test,
11 we'll let them draw on the Universal Service Fund.

12 JUDGE COLWELL:

13 I don't see that.

14 ATTORNEY KENNARD:

15 You don't?

16 JUDGE COLWELL:

17 No.

18 ATTORNEY KENNARD:

19 Where I get it from, Judge, is starting
20 on 1A, the investigation is open for the express and
21 limited purpose of addressing the dollar cap, and
22 whether funding should be increased on the basis of a
23 needs test for rural carriers.

24 JUDGE COLWELL:

25 That's definitely there. And so is what

1 I've read. How are you going to get to the rest of
2 this if you don't know what the companies are up to?
3 It seems to me that if you can see what the companies
4 --- what their cost of running are, ---

5 ATTORNEY KENNARD:

6 Right.

7 JUDGE COLWELL:

8 --- then you can move into the next step,
9 which is how much help do they need from Universal
10 Service. Well, I would say that's the benchmark that
11 the Commission has clearly asked for.

12 ATTORNEY BENEDEK:

13 Well, Your Honor, may I ask a question?

14 JUDGE COLWELL:

15 You have to say it louder than that.

16 ATTORNEY BENEDEK:

17 In terms of the cost analysis, is it
18 OCA's intention to deconstruct that \$18? Because if
19 that's the case, then I think it is outside the scope
20 of the Order. It has to be. The Order talks about
21 increases beyond the \$18. It does talk about
22 deconstructing the cost to determine whether that \$18
23 is too much. But the \$18 was a legal order. It's
24 etched in stone, for lack of a better phrase. And the
25 Order 1A does not talk about whether corresponding

1 capital should be raised, whether that \$18 should
2 remain, not whether you should deconstruct that \$18
3 based on some bottoms-up cost analysis, based upon
4 average invoices for a certain period of time to get
5 to a hypothetical cost. That's why Embarq
6 respectfully disagrees with how reconciliation of this
7 paragraph can give undue weight to the cost, because
8 that would undermine that \$18 cap, which has been in
9 place for so long. And express parts of the Order
10 talk about going above that and not deconstructing
11 that \$18.

12 JUDGE COLWELL:

13 Well, perhaps Mr. Cheskis, what's the
14 point of your cost study?

15 ATTORNEY CHESKIS:

16 What we stated in our motion, and I
17 believe I stated previously, was that we'd like to
18 find out, to the extent that basic local service in
19 Pennsylvania by these rural companies is being
20 subsidized in any way. To the extent that there is a
21 subsidy present in there, if developed an incremental
22 cost study, then we can then take that information and
23 determine whether or not the rural benchmark is
24 appropriate, whether it needs to be addressed. I
25 would be the first one to admit to you that if we do

1 prevail on our motion and if we do get the information
2 in a timely manner, I don't know what the result is
3 going to be here, but I still think that it's within
4 our scope of discovery to get this information, to run
5 the cost model and see what it says.

6 I think what the companies are trying to
7 do here is to say what the economic cost study is that
8 the Commission is looking for. And there's nothing in
9 the Commission's order that says, yes, this kind of an
10 economic cost study and, no, not this economic cost
11 study. And to the extent that the companies are
12 arguing that this case is somehow limited or narrow, I
13 think narrow is the term that was used, I just don't
14 see that. We're not on a fishing expedition. We're
15 responding to what the Commission is specifically
16 giving the parties an opportunity to address. And I
17 hope that answered your question.

18 JUDGE COLWELL:

19 While you're up there, you heard Ms.
20 Benedek and you heard Mr. Kennard talk about how many
21 hours and how much it would cost these companies to
22 give you all this detailed information. Is that what
23 you intend? Do you think that that's justified?

24 ATTORNEY CHESKIS:

25 We have been willing on several occasions

1 to compromise on the ultimate end result here. As we
2 indicated in our Motion to Compel, we're willing to
3 limit this to what are called cost companies in
4 Pennsylvania. These are companies that are not going
5 to have to start from scratch to do this. They've
6 already provided this data in other regulatory arenas.

7 JUDGE COLWELL:

8 Do we have those?

9 ATTORNEY CHESKIS:

10 We do not have those, no.

11 JUDGE COLWELL:

12 Does Pennsylvania have those?

13 ATTORNEY CHESKIS:

14 Some of that information, for example, is
15 provided to 9-1-1, and we don't get that information
16 from 9-1-1. So in that regard, we'd be willing to
17 work with the companies to come to some type of a
18 resolution here. And to be honest with you, I'm a
19 little bit offended by having the fact that we're
20 willing to compromise on getting best estimates used
21 against us. We're trying to make this as reasonable
22 as possible. We're not trying to bury these
23 companies. We're not trying to impose additional
24 costs. And by agreeing to allow for best estimates
25 and having that thrown back in our face, you know,

1 quite frankly, I'm offended by that. And if the
2 company has any argument, for not providing us with
3 best estimates. That that's not good enough. Well,
4 fine. Let them give us the real thing. That's fine.

5 Ms. Benedek has also argued here that
6 they have a lot of questions about what types of poles
7 that we're looking for, pole data. The companies have
8 known about these interrogatories for --- they were
9 formally served on July 9th. We provided it to them
10 before --- well before that, just in terms of getting
11 the discussion going. To the extent that they had any
12 questions about what type of pole data we were looking
13 for, they could have asked that a long time ago. They
14 can still ask that. I'd like to go back to my
15 consultant and provide that --- the answer to that
16 information. But that's not sufficient to say this is
17 unduly burdensome.

18 So you know, again, I don't think the
19 companies are in a position here to pick and choose
20 which cost studies we can provide. If they have a
21 problem with that, that's for the Commission. That
22 issue was done a long time ago, not to us here
23 carrying out our statutory duty to provide the second
24 cost study in this case. And you know, quite frankly,
25 I never worked for a phone company before. I don't

1 know how they keep their books. But these companies
2 in Maine did it, and they're a lot smaller than
3 Embarq. So if those companies can do it, then I don't
4 see why Embarq can't do it and why some of these other
5 PTA companies can't do it.

6 And I guess the last thing that I'll say,
7 probably not the last thing, is you're right, this is
8 --- some of this information we're seeking is
9 accounting data that they need to provide or just that
10 any business would provide as part of keeping their
11 books in the normal course of business. The
12 depreciating data is broken out by accounts. That
13 should be something that should be fairly easy to get.
14 Asking for the estimate of the NIDs that were
15 installed last year --- I guess I do have some
16 concerns if the company doesn't know how many NIDs
17 they installed last year.

18 Mr. Kennard asked what is the purpose
19 here? Where do we advance the ball? How is our cost
20 study advancing the ball? That's for those guys over
21 there to talk about. Those guys asked for it --- and
22 I'm talking about the Commissioners. They asked for
23 an economic cost study. We would like to give it to
24 them. We're willing to pay our consultant to do that.
25 This is not an easy thing to run. It's not an Excel

1 spreadsheet that we can just type in a couple of
2 numbers and then that's it. It's going to cost a lot
3 of money to do that. And we want to give it to the
4 Commission so that they can decide what they want to
5 do with it.

6 JUDGE COLWELL:

7 That brings up another question. Ms.
8 Benedek said that Embarg was going to have to run
9 that. You're telling me that you're running it.
10 Who's running it?

11 ATTORNEY CHESKIS:

12 Well, that was news to me when she said
13 that she was going to run it. If she wants to run
14 that, that's fine with me because that's less money
15 we'd have to pay our consultant to do it. But my
16 understanding is that these questions are asking ---
17 each input that we are going to put --- once we get
18 the responses, we'd ask it, for example, in Excel
19 format so that we can then take that information and
20 put it into the FCC's model and then we would run it.
21 If Embarg wants to run that model for us, then we'd be
22 willing to talk about that. I would have to consult
23 my expert, but ---.

24 JUDGE COLWELL:

25 Ms. Benedek?

1 ATTORNEY BENEDEK:

2 At footnote 14, for example, we noted one
3 of the problems ---.

4 ATTORNEY CHESKIS:

5 Footnote 14 of what?

6 ATTORNEY BENEDEK:

7 Of our answer to a Motion to Compel, we
8 noted that it isn't just about an input. Input sounds
9 like a simple thing. It's important to understand the
10 input methodology. What does the request require
11 related to sales tax? It isn't just getting the box,
12 and pulling in the invoices. It's making sure that
13 complies with the request as sought, so there is ---
14 we need to understand the input methodology as part
15 and parcel of that effort and understanding. Whatever
16 version of the synthesis model OCA requires, that
17 requires work. It isn't just pulling something off an
18 accounting ledger. I have to object that this is just
19 an accounting matter, an accounting issue. And if I
20 misspoke about running the model, what I meant to say
21 was we effectively have to understand the input
22 methodology in order for us to apply --- pull,
23 assemble and provide information as requested to the
24 OCA. It's a huge effort. I couldn't agree more with
25 Mr. Cheskis. It's not a spreadsheet. We'd have to

1 create documents in order to provide the information
2 requested by OCA because we'd have to understand the
3 input methodology. We have an example of that in
4 Footnote 14 of our Answer. And Your Honor, I would
5 just like to note that I know Mr. Cheskis answered
6 your question. Nowhere did I hear him say we're not
7 going to deconstruct the \$18 cap. But there's express
8 words in the order that do discuss that \$18 cap, not
9 deconstructing it. I have nothing further.

10 JUDGE COLWELL:

11 Mr. Cheskis, do you agree that Embarg
12 would have to do all that work in order to give you
13 the answers that we're looking for?

14 ATTORNEY CHESKIS:

15 I agree that Embarg and the other PTA
16 companies will have to do work to give us that. This
17 is not something that is going to float around in the
18 air and fall into an envelope and get sent to us.
19 There will be work that's required to answer these
20 questions. That's not the question when it comes,
21 though, to the scope of discovery, whether their
22 burdensome objection is valid or not. The question is
23 whether it's unduly burdensome. And this is an
24 investigation case. They've had these questions for
25 several weeks now. It wasn't until the Friday before

1 that their Motion to Compel was due that they told me
2 that they were going to file a motion. They could
3 have been working on this this whole entire time. And
4 now we're not going to be able to use this information
5 likely in our direct testimony because of their delay.
6 So yes, work needs to be done. I'm sorry the
7 Commission instituted its investigation seeking this
8 information. We're just carrying out the dictate of
9 the Commission, and that requires the companies to
10 provide the company-specific material that we're
11 looking for with these answers.

12 JUDGE COLWELL:

13 All right. Thank you. Mr. Kennard,
14 anything else?

15 ATTORNEY KENNARD:

16 Your Honor, one more thing on the issue
17 of burden. We appreciate OCA's attempts to work with
18 us to try to diminish the scope. And the OCA
19 identified early on one avenue here was based on their
20 belief that the companies had this information. We
21 have this information that cost companies provide all
22 the information later on in the interrogatories, in
23 the example that we used previously. But in terms of
24 the network, in terms of this network design, they
25 need one and two from all the companies. So we're

1 very specific in our claims of burden to ask what is
2 the cost of Set Three Interrogatory Number Two, which
3 is all those customer locations, the street address
4 and services provided. So it's not like we don't want
5 to work. We're trying to look specifically to see
6 what the level of time and position on a clients'
7 part, to accommodate that. And it's still extremely
8 heavy, so I just wanted you to know we do appreciate
9 what they offered.

10 JUDGE COLWELL:

11 All right. Thank you. All right. Then
12 let's move on to the Verizon issue. Ms. Paiva, you're
13 on next.

14 MS. PAIVA:

15 Your Honor, I'll start with the good
16 news, which is that right before the hearing started
17 we were able to work out with Embarq three objections
18 that were Embarq only. So that was Verizon's Number
19 Two, Number Four and 30, 31.

20 JUDGE COLWELL:

21 Hold on a second. Number Two, Number
22 Four --- and what else?

23 ATTORNEY PAIVA:

24 Thirty (30) and 31.

25 JUDGE COLWELL:

1 Thirty (30) and 31.

2 ATTORNEY PAIVA:

3 Having done that, that basically whittles
4 the dispute down to four issues. And these are common
5 objections by PTA and Embarq for the most part, so I'm
6 just going to go through them one by one.

7 And the first set of issues here relates
8 to Verizon, 18 and 19. These ask about access revenue
9 rates and volumes. Eighteen (18) is intrastate and 19
10 is interstate. Basically, the position of the
11 objecting parties is that the Commission has partially
12 stayed this case. They are not looking to reduce our
13 access rates, so therefore you don't need to know what
14 revenues we're getting from access. You don't need to
15 know our rates or our volumes.

16 But unfortunately, that does not answer
17 the whole question. Just because you're not
18 considering reducing the rate does not mean that this
19 information isn't relevant to what you're looking at.
20 And I think you actually said it very well yourself a
21 minute ago when we were talking about what the
22 Commission is looking at ultimately is how much help
23 do these carriers need from the Universal Service
24 Fund.

25 We can't look at that question unless you

1 know what are they already getting. Part of what
2 they're getting is their revenue from basic service,
3 residential service, business service. Part of what
4 they're getting is their revenue from access services,
5 which are paid for by other carriers. And the
6 Commission has pretty well settled that part of that
7 is used to cover the cost of local service. So unless
8 you can look at the whole picture, unless you can look
9 at all the revenue they're getting, you can't really
10 conduct this needs-based test or even formulate what a
11 needs-based test is supposed to look like.

12 And actually --- this is sort of
13 theoretical, but in a way they've already partially
14 admitted this information is relevant because PTA at
15 page nine of its Answer to Verizon's Motion to Compel
16 admits that at least access revenues overall are a
17 relevant component of a needs-based test. So I guess
18 they're still taking issue with maybe providing us
19 further details that we've asked for, but the question
20 is a question that should be answered.

21 On page nine, when they make that
22 statement, PTA says, well, you can find some of that
23 information in some of the interrogatories we've
24 already answered and provided to OCA, but they don't
25 point us exactly to where we might find that access

1 revenue information, the rates or volumes.

2 As for the years, well, we agreed to
3 scale back in our Motion to Compel and suspend the
4 2003, 2004, but we do want to take that forward,
5 mainly to just see if there's a trend over the years
6 about having one year, using one year, and being told
7 that's an anomaly. So we tried to come up with a fair
8 representation of years.

9 So PTA has admitted to us, well, this
10 information is relevant to a needs-based test, but go
11 out there and find it in what we've already answered.
12 I looked and I could not pick out that information for
13 each company. And similarly, Embarq answered the
14 question partially, subject to their objection, they
15 say see this on its web site, where we've reported
16 some information. But I looked beyond its web site
17 and it's just a page where you put in inputs and try
18 to generate a report to get information out of it.
19 But I couldn't find anything related to Embarq to say
20 that this is Embarq Pennsylvania's intrastate/
21 interstate access charges. So I think where this
22 would leave you is, what kind of record do you want to
23 have when you submit the testimony. Because the best
24 way to do it.

25 And I think the reason why the Commission

1 allowed a period for discovery is so that we can have
2 the companies tell us some essential information about
3 themselves, what is their access revenue, what are
4 their rates, and then we can attach that to our
5 testimony. And there's really no dispute that this is
6 the factual information. If you don't do that, if we
7 are forced go to the web site and figure things out,
8 pull a number here and there, put that in our
9 testimony, then they come back and do rebuttal
10 testimony and they say, well, you know, you didn't
11 pull the right number.

12 That's only part of it. Then you end up
13 with a record that really isn't that useful. First of
14 all, the information is relevant because you can't do
15 a needs-based test and understand what the company
16 needs, and whether it needs more from the Universal
17 Service than it's already getting, unless you know
18 what the company is already getting from its other
19 sources.

20 Second of all, they should answer the
21 questions squarely and give us the numbers that we can
22 use and be assured that these are the numbers that the
23 company has agreed to rather than us going out and
24 fishing around and putting something in our testimony
25 that could be a cause of controversy and disputes as

1 to whether that's the right number.

2 Do you want me to go through all the
3 categories of our motion and then have them respond?

4 JUDGE COLWELL:

5 Yes. Go ahead.

6 ATTORNEY PAIVA:

7 The second category is somewhat related
8 to this. It's Number 26, and that is a question where
9 we asked for access cost studies. Now, we're not
10 asking for them to run a cost study, and we're not
11 proposing running a cost study ourselves. We're just
12 asking for any studies that they might have of the
13 cost of providing that service. The reason we're
14 asking that question is because, to the extent the
15 information exists, it would be a relevant and
16 interesting fact for the Commission to know the extent
17 to which the company is getting more in access revenue
18 than the cost of providing the service because they're
19 getting this revenue from other carriers. So in
20 effect, the revenue that they're getting above their
21 cost is another form of subsidy. In addition to the
22 Universal Service Fund, an explicit form of subsidy,
23 you have this implicit form of subsidy. So if they
24 have the information readily available, cost studies
25 that they have performed that can show us that

1 differential portion of their access revenue is
2 providing a subsidy, that is information that would be
3 relevant to consider. If they don't have it, if they
4 haven't performed such a study, that's the answer to
5 the question, an easy answer to give.

6 PTA raised the nuance in its objection
7 that some of our companies may not have their own cost
8 studies, but NECA, the national organization, may have
9 performed some cost studies that would bear on these
10 companies' costs in Pennsylvania. We don't want to
11 have to go to NECA to get those cost studies. I think
12 that if there's a study that bears on the cost of a
13 company in Pennsylvania, if they can get it from NECA,
14 they should get it and they haven't articulated any
15 great burden to getting that. In addition to that,
16 they haven't come straight out and said this is the
17 situation for all the companies. It may well be that
18 some companies have their own cost studies done in
19 Pennsylvania, if they have those they should produce
20 those, regardless of this issue.

21 JUDGE COLWELL:

22 I understand that issue better than the
23 others.

24 ATTORNEY PAIVA:

25 Okay. The next issue is number 27. This

1 issue has to do with the identity of the owners of ten
2 percent or more of each of these companies. And the
3 reason we ask that question is because in the
4 Commission's order one of the relevant issues that
5 they look at for the needs-based test is the overall
6 financial health of each ILEC as a factor in deciding
7 whether they should continue to receive USF support or
8 whether they're in need of increased USF support. And
9 a companies argue, well, you only need to look at our
10 companies in Pennsylvania. But I submit that the
11 standard for discovery is broad. At least it's
12 possible to discover information that will lead to
13 relevant evidence to ask who owns these companies.
14 For example, it might look differently if it has
15 limited USF funds to distribute to companies, one of
16 which is a mom-and-pop company, not really owned by
17 anyone else, the other ones are owned by Microsoft or
18 some conglomerate, the Commission may consider that to
19 be a relevant factor in deciding how to go about
20 distributing USF funds because, after all, why should
21 Verizon and AT&T or the other carriers be subsidizing
22 a company that's owned by Microsoft, when Microsoft
23 can well afford to subsidize it itself.

24 JUDGE COLWELL:

25 If it has the ability, it have to pay for

1 itself.

2 ATTORNEY PAIVA:

3 If you're looking at rate setting, that
4 may be. But if you're looking at Universal Service
5 Fund and creating it, which is something of a another
6 animal, creating it, it has to be able to have other
7 carriers, subsidized carriers in the state. I think
8 what you want to look at is a factor in deciding
9 whether you should increase it, and who should be
10 getting less, look at it a little bit broader than
11 what you look at a traditional rate case, for example.

12 JUDGE COLWELL:

13 I don't see how. What I agree with you
14 is that the ownership of the company should be
15 available to you, absolutely. But it's the company
16 --- the regulated utility, that you're entitled to the
17 records of, not the parent corporation. I don't see
18 how that ---.

19 ATTORNEY PAIVA:

20 We have actually asked for records of the
21 parent corporation. We asked them to identify the
22 parent corporation or the owner corporation. And to
23 the extent that it's publicly traded, we would go out
24 and find public FCC reports. We're not asking for
25 non-public information.

1 JUDGE COLWELL:

2 Well, you asked for production of a major
3 owner's balance sheet and periodic financial reports
4 for the past five years, does not require special
5 investigation of these parent documents. So
6 apparently you did ask for that. And whenever you
7 went like that for the company is one thing, but the
8 parent corporation --- I'm not sure I'm understanding
9 how that may be bearing at all on this case.

10 ATTORNEY PAIVA:

11 Your Honor, you do agree that we should
12 identify the parent corporation.

13 JUDGE COLWELL:

14 Sure, identify, absolutely, and see how
15 much they own. That should be on record with the
16 Commission anyway, so I'm fine with that.

17 ATTORNEY PAIVA:

18 And then we've already conceded that to
19 the extent that we could find the balance sheets in
20 the public record.

21 JUDGE COLWELL:

22 So why is it in there? I'm not sure I
23 understand what you're looking for.

24 ATTORNEY PAIVA:

25 I think they --- well, Embarg answered

1 the question.

2 ATTORNEY BENEDEK:

3 We answered that Embarq ---.

4 JUDGE COLWELL:

5 I cannot hear you.

6 ATTORNEY PAIVA:

7 Embarq is a hundred percent owned by
8 Embarq Corporation. Embarq Corporation is publicly
9 traded. We can go to the FCC web site and we can get
10 the information.

11 JUDGE COLWELL:

12 All right.

13 ATTORNEY PAIVA:

14 They don't want to tell us the revenues.
15 They don't want to tell us the owners. They want us
16 to go try to figure that out ourselves. But again,
17 that may lead to confusion down the road with
18 testimony, where we might surmise that some company is
19 the owner of one of these small ILECs and then they
20 tell us in their rebuttal testimony, no, that's not
21 the owner.

22 JUDGE COLWELL:

23 I agree that you should know the
24 ownership of the companies.

25 ATTORNEY PAIVA:

1 That's what we're asking for.

2 JUDGE COLWELL:

3 Fair enough.

4 ATTORNEY PAIVA:

5 And the last category you see here is
6 question 32. And this one, we were kind of surprised
7 to get an objection because we thought we had close
8 paraphrased one of the sub-issues in the Commission's
9 order, which is issue E-4, where they talk about the
10 use of assets for regulated and non-regulated
11 services. And we basically asked them if any of their
12 assets are used for regulated and non-regulated
13 services, and they're objecting to answer that
14 question. The Commission wants us to address whether
15 the use of such assets for regulated and non-regulated
16 services is relevant to the analysis. I don't see how
17 we can answer that question for the Commission without
18 even knowing first are there assets being used in that
19 manner and to what extent.

20 JUDGE COLWELL:

21 So as I understand it --- I have to
22 admit, I'm somewhat confused here because you keep
23 saying an explanation. Part of it was withdrawn. Why
24 don't you document that? So I'm trying to understand
25 exactly what it is you're looking for. Your

1 Interrogatory Number Two is taken care of. Your
2 Interrogatory Four is taken care of. Five is not
3 taken care of.

4 ATTORNEY PAIVA:

5 Five. In Embarq's Answer to our motion
6 they say Four and Five are both taken care of.

7 JUDGE COLWELL:

8 All right. We're jumping to Number 16;
9 correct?

10 ATTORNEY PAIVA:

11 Right. Sixteen (16) they answered. This
12 is very confusing when it comes up in this manner with
13 dual motions. In Embarq's Answer to our Motion to
14 Compel we're going to answer 16, and they did.

15 ATTORNEY BENEDEK:

16 We just tried to limit the issues.

17 JUDGE COLWELL:

18 I perceived that. But it's all here, and
19 now I'm confused by it. So that's why I'm going
20 through it, trying to cross off what I don't have to
21 respond to. So now we're taking that off as well. So
22 we're looking at Interrogatory 17.

23 ATTORNEY PAIVA:

24 That's the same. She answered it. And
25 they provided us answers on the same day.

1 JUDGE COLWELL:

2 Okay. Eighteen (18) and 19 are still on
3 the table.

4 ATTORNEY PAIVA:

5 Eighteen (18) and 19 are still on the
6 table. Those are the questions on access revenues and
7 rates.

8 JUDGE COLWELL:

9 Number 20 is still on the table. No?

10 ATTORNEY PAIVA:

11 You answered that one? It's the same.
12 They answered that.

13 JUDGE COLWELL:

14 Okay. Twenty-four (24) was also
15 withdrawn?

16 ATTORNEY PAIVA:

17 Yes.

18 JUDGE COLWELL:

19 Okay. Twenty-five (25) and 26, still on
20 the table?

21 ATTORNEY PAIVA:

22 Twenty-six (26) is still on the table.
23 Twenty-five (25) they answered by saying that they
24 have no ---.

25 JUDGE COLWELL:

1 Okay. And 27?

2 ATTORNEY PAIVA:

3 Twenty-seven (27) is the ten-percent
4 owners, which Embarq has answered. We still have a
5 dispute with PTA.

6 JUDGE COLWELL:

7 Thirty (30) and 31 are not on the table?

8 ATTORNEY PAIVA:

9 Thirty (30) and 31, Embarq has agreed to
10 answer those with the modifications we've agreed to.

11 JUDGE COLWELL:

12 Thirty-two (32).

13 ATTORNEY PAIVA:

14 Thirty-two (32) is the access regulated
15 and non-regulated services. That's still disputed.

16 JUDGE COLWELL:

17 And 33 is withdrawn?

18 ATTORNEY PAIVA:

19 Right. I think it's 35 through 40 you
20 originally raised, and they agreed to provide answers.
21 Thirty-five (35) through 40 I think were mentioned in
22 our motion, but they agreed to convert their objection
23 to an answer acceptable to us.

24 JUDGE COLWELL:

25 All right. So that's actually very

1 clean.

2 ATTORNEY PAIVA:

3 Right. So we really only have 18, 19,
4 26, 27 and 32.

5 JUDGE COLWELL:

6 Thank you, Ms. Paiva. Ms. Painter?

7 ATTORNEY PAINTER:

8 Thank you, Your Honor. I'm going to be
9 very brief. AT&T agrees with what Ms. Paiva said
10 about the Verizon Motion to Compel. As you know, AT&T
11 supports Verizon's questions, especially with respect
12 to access. I wanted to read a portion of the
13 Commission's order that specifically applies to the
14 access questions.

15 On the top of page 25 the Commission
16 states that the investigation should address whether
17 the potential availability of Pennsylvania universal
18 service support distributions to those rural ILECs
19 that appears to be an appropriate benchmark rate for
20 their respective annual Chapter 30 --- annual revenue
21 increases any anti-competitive or other adverse
22 effect, especially with respect to the currently-
23 established Pennsylvania USF support contribution
24 mechanism and its participating telecommunications
25 carriers. That includes AT&T. That includes Verizon.

1 The issue of whether those current carriers are
2 already subsidizing PTA companies is specifically
3 relevant to this issue. In order to know whether
4 they're subsidizing them, we need to know their
5 revenue and charges and potentially costs as well.
6 They have that information.

7 As you know, discovery is broad in
8 Pennsylvania. If PTA --- all the parties understand
9 that the Commission has already said we cannot argue
10 that the access rate should be reduced as part of this
11 case. We know that. We're not asking for the
12 information for that purpose. If the PTA and Embarq
13 believe that in our testimony we used information we
14 that we received from discovery, in such a way as to
15 use it in some inappropriate way that's outside the
16 scope, they certainly had the opportunity at that time
17 to ask that the testimony be stricken.

18 However, discovery is broad. We have a
19 right to give the information and use it in this case.
20 Rate caps and Universal Service Fund and access are
21 three sources of revenue for this company, and they're
22 all relevant in this case, not to reduce the access
23 rates, but simply as part of the full picture the
24 Commission needs in order to establish whether the
25 benchmark on the residential rates should be increased

1 and whether the Universal Service Fund should be
2 increased. That certainly impacts AT&T. AT&T has a
3 right to talk about whether there are anti-competitive
4 impacts in the subsidies that are already being
5 provided. That's all I have.

6 JUDGE COLWELL:

7 All right. Thank you. Ms. Benedek and
8 Mr. Kennard, who wants to go first? Before that, does
9 anyone else want to speak in support of anyone else,
10 or in support of Verizon motion?

11 ATTORNEY ARON:

12 Ben Aron for Nextel. Very briefly, we
13 are generally supportive of Verizon's request for
14 access data. I apologize that I did not receive
15 notice of this earlier or I might have filed it with
16 the Commission, but on August 1st, 2008, Embarq filed
17 a petition for a waiver of the FCC's price cap rules.
18 And the purpose --- or let me rephrase that. What
19 Embarq proposes to do in its waiver request is to move
20 a portion of its intrastate access charges to the
21 federal side. Essentially if the FCC would grant the
22 waiver condition, what Embarq would do, according to
23 its petition, is to ask the Pennsylvania Commission
24 for Embarq to lower its intrastate access charges. I
25 raise this because the Commission, specifically in

1 this proceeding, has the opportunity in that case to
2 collect access data if we're to understand --- and I
3 don't want to get too deeply into it because it's just
4 been filed. But if we're to understand Embarq's point
5 in this petition, Embarq would then ask the Commission
6 to reduce its intrastate access charges.

7 Today we have an opportunity, Your Honor
8 has an opportunity, to introduce access data, which I
9 believe is relevant anyway. But the relevance of this
10 material is accentuated by the potential for Embarq,
11 if granted this waiver, to come back to the Commission
12 and presumably re-open, request to re-open this
13 proceeding for access. So I ask the Commission, I ask
14 Your Honor to take notice of this request petition.
15 It's a publicly-available document. It's on the FCC's
16 web site. And I'd be more than happy to provide you
17 with the link to it, as well as the rest of the
18 parties. I have copies of the document with me. In
19 case anybody wants it, I'd be happy to distribute it.

20 JUDGE COLWELL:

21 All right. Thank you. Anybody else want
22 to speak in support of Verizon? All right. Then
23 we'll go to the other side.

24 ATTORNEY KENNARD:

25 Thank you, Your Honor. As we reviewed

1 previously in discussions with Mr. Cheskis regarding
2 OCA interrogatories, again, there's still just two
3 issues in this case. One is the \$18 cap and the other
4 is whether or not there should be incremental revenues
5 given to the rural companies if they have a financial
6 need, and if they're up against the residential
7 benchmark. Neither one of these issues has anything
8 to do with access rates, nothing to do with access
9 cost of service and nothing to do with interest
10 service subsidies. So in its Interrogatories 18, 19,
11 26, I'll go into great detail about access cost
12 studies and these interrogatories are written broadly.
13 My clients do participate in a federal access charge
14 administration program. National Exchange Carriers
15 Association files their tariffs. They do it on the
16 basis of a cost study of all the companies across the
17 nation. We told Verizon that. They said it has
18 nothing to do with the cost in Pennsylvania
19 specifically. It's a constituent part, but it's not
20 particularly relevant to Pennsylvania or Pennsylvania
21 rate making. We told Verizon that, and still they
22 won't back off and relinquish that. We don't think it
23 has any relevance, and we would object to it on those
24 grounds. The last cost study that was done in
25 Pennsylvania was in 1998 by the Commission, and the

1 topic has not been studied since.

2 The second issue envisions use of funds
3 well outside of current application. In other words,
4 they're not investigating the current operation fund.
5 The Commission has made that clear. They're
6 investigating USF distributions as an incremental
7 source funds of money from companies that have
8 financial need. The current fund is based upon access
9 charge deductions taken in 2000 and 2003. Access
10 charges went down by \$32 million, approximately, and
11 the Universal Service Fund of \$32 million was created
12 for that purpose.

13 Now, what the Commission is saying is on
14 top of that should we allow a company that has a
15 financial need to come to the Fund irrespective of
16 what's subsidizing what and what services carry its
17 cost but because the company, on an ongoing entity
18 basis, has a need for additional revenue. The
19 Commission's order expressly rejects AT&T's request
20 the Commission resume this proceeding with the
21 objective of removing subsidies. The Commission talks
22 about any competitive effect, so very clearly related
23 to this incremental piece that is under discussion by
24 the Commission whether the potential availability of
25 USF support distributions because of respective

1 Chapter 38 filings have any anti-competitive or other
2 adverse effective, not whether or not access rates
3 have any competitive effect, but whether allowing the
4 companies, because they have financial needs, to come
5 into the fund is anti-competitive. I don't see any
6 other way.

7 Part of the wrong headedness of the
8 positions taken by Verizon and AT&T, is the tautology
9 of, well, how can we add additional subsidy if we
10 don't know what's being subsidized now? But that
11 presumes that the need for increased revenues is
12 access driven, and it's not. What the Commission is
13 saying is, let the company come to us, show all their
14 sources of revenue, all their costs. If you need
15 additional money, then maybe the Fund should provide
16 it.

17 It's driven by the entire operation of
18 the company, not whether this services is providing
19 enough or this service is providing enough. It's a
20 factual determination of how much is being provided,
21 not whether it's right or whether it's wrong, whether
22 it's subsidized, just simply how much is being
23 provided.

24 And in that regard it's illogical to say,
25 well, we need to know the revenue. Obviously, the

1 Commission needs to know the revenues, and we've
2 provided the revenues. And on page nine we said you
3 need the revenues. That's obvious. We gave them the
4 revenues. But that's not the same as saying, oh, well,
5 sure, that means, too, you can look at every access
6 rate. You get to know how many units there are, how
7 many miles there are and what revenues come from each
8 element. They get \$100 in access. It doesn't matter
9 if \$5 comes from transport and \$10 comes from
10 switching. It's an historic revenue source and it's a
11 total amount. And it's not the same as looking at the
12 billing details.

13 It's disingenuous for Verizon to stand
14 here and tell you that we're telling them to fish
15 around or they're not going to have a complete record.
16 I've yet to get a call from Verizon saying we didn't
17 like your Interrogatory responses you gave us. All I
18 got from Verizon is we want this information that you
19 won't give us. I think the Court correctly described
20 and identified most of the Interrogatories, where you
21 could find it. The OCA came in and asked for
22 financials in their Set One. Verizon came forward and
23 we gave them balance sheets, total company balance
24 sheets, total company income statements. We gave them
25 access --- we told them where to go find the tariffs.

1 We told them where everything is. I'm completely
2 befuddled to find out now that Verizon's been
3 hamstrung in developing a record on total revenues, or
4 what the rates are, generally speaking what the rates
5 are, and take a tariff. As far as I know, we answered
6 all these Interrogatories. And if there truly is a
7 dispute, I'd be glad to sit down and talk with Counsel
8 from Verizon and answer any questions, legitimate
9 questions, they might have.

10 Now, going on to Questions 27 and 28.
11 The scope of those is a little different. It's not
12 about access charges. Rather it's about the needs
13 test. On 32 the question is not what was represented
14 by Verizon. Does the responding company use the access
15 facilities for both regulated and unregulated
16 services. The Interrogatory in the second sentence
17 says, and if you do, describe in detail each asset and
18 how it's used for the provision of non-regulated and
19 regulated services. Everybody has assets they use for
20 both.

21 If you look at the Commission's inquiry
22 on that issue it says --- the question is whether it's
23 relevant that there are joint uses. The Commission
24 has asked us to devise a test. I would ask that the
25 companies --- they're not asking for 32 rate cases.

1 What they're asking for is, please design a test for
2 us, that which we run the company through, if they
3 come to us and ask us for additional monies from the
4 Fund. So whether all the sources of revenue is
5 relevant to the USF revenue sources. We followed that
6 up. Should we allocate costs between competitive and
7 non-competitive? Should we jurisdictionalize
8 revenues? They're asking us to design a formula, not
9 to design a formula, and then run all the companies
10 through it. It only becomes necessary to do that if
11 the company comes forward and asks for those revenues.

12 So it's one thing to say in the first
13 sentence, do you have such facilities? Sure, I can
14 answer that one. But it's the second one I'm
15 objecting to. It's the one that says in detail each
16 asset or facility and how it's used. I'm not going to
17 go around to 32 companies and ask all this detailed
18 information that's really not relevant to this case,
19 unless Your Honor directs me to do so.

20 And the same is true with respect to
21 Number 27. In a rate case, as I think Your Honor
22 recognized, it's a stand-alone utility entity. It
23 doesn't make any difference if it's owned by
24 Microsoft, you don't get anything. Each company is
25 entitled to make money on its own under the rate-

1 making formula. And again, I'm not objecting to
2 identifying the entity. I'm objecting to ten percent
3 because that's way too low, and I told Verizon that.
4 The Commission standard is 20 percent. And every time
5 you change control you have to come before the
6 Commission to do that. Now, I wouldn't object to
7 telling them what the 20 percent was, but that's not
8 what they want. What I'm objecting to is providing
9 the entity's balance sheet. It's none of their
10 business, it's not relevant, and we're not running
11 these companies through a rate case.

12 So I'd ask Your Honor for clarity in this
13 case. There are two petitions for reconsideration
14 pending to lift the stay. The stay has not been
15 lifted. Access charges, access charge units, any
16 specifics about access charges or access charge costs
17 is irrelevant to this case. It's just simply the two
18 major funders who don't like funding it. I'm not
19 going to rail against them for that, wanting so badly
20 to get involved in all those issues and being
21 frustrated by the stay and trying to find circuitous
22 ways around it.

23 We ask that this proceeding follow the
24 very narrow and limited focus the Commission directed
25 us to observe.

1 JUDGE COLWELL:

2 Okay. You said you've already given them
3 the total number of revenue from access charges?

4 ATTORNEY KENNARD:

5 Yes.

6 JUDGE COLWELL:

7 But it hasn't been broken down in any
8 way.

9 ATTORNEY KENNARD:

10 Well, it's broken down into inter- and
11 intrastate.

12 JUDGE COLWELL:

13 Okay.

14 ATTORNEY KENNARD:

15 With all the math

16 JUDGE COLWELL:

17 Is that good enough, Ms. Paiva?

18 ATTORNEY PAIVA:

19 Well, Your Honor, I was actually going to
20 ask you if I could speak to this issue because they
21 have not given us an answer to 18 and 19. They have
22 only given us an objection to those questions. In
23 their Answer to our motion they say they've given us
24 this information, but in a footnote they say the
25 information was provided through responses to the 30

1 Verizon Set One Interrogatories, as well as the
2 discovery conducted by OCA. They don't say where it
3 is or what the number is. So the issue that I raised
4 about us trying to find the right numbers and
5 including them in our testimony is not going to be
6 solved by some general reference that says everything
7 that was produced.

8 We've asked questions and we're entitled
9 to specific answers to the questions we've asked. And
10 it sounds like he agrees that the information is
11 relevant. So why can't he answer the questions?

12 ATTORNEY KENNARD:

13 This is so backwards. You're not going
14 to get it by answering 18 and 19 either. You're going
15 to get a whole bunch of other stuff. That's why I'm
16 objecting. I mean, if you go through the discovery,
17 you've got annual reports for the Commission. You've
18 got income statements and balance sheets that you
19 asked for it in your own discovery. Don't you read
20 this stuff? I shouldn't be directing it to you. If
21 you want the information, we'd be glad to provide it.
22 But we're not here to argue on a Motion to Compel;
23 we're here arguing about whether or not 18 or 19 stand
24 on their own.

25 ATTORNEY PAIVA:

1 Your Honor, if those questions were
2 directed at Verizon, I could answer them by saying,
3 see everything I produced. See our balance --- my
4 income statements. Or I could provide a table that
5 says Verizon's interstate access revenue, intrastate,
6 number of lines and give the information. And I don't
7 see why they can't do that.

8 JUDGE COLWELL:

9 Okay. Mr. Kennard, would you agree to
10 give a document that contains the access charge
11 revenues broken down by interstate and intrastate to
12 Ms. Paiva?

13 ATTORNEY KENNARD:

14 Yes. I'll point out to the Court that
15 I've already done that.

16 JUDGE COLWELL:

17 With that fact, are you satisfied?

18 ATTORNEY PAIVA:

19 Except for the part that we've already
20 done that, I would agree.

21 ATTORNEY KENNARD:

22 I'll give it. We've already given it to
23 them. I'll point out where. And if we have it, I'll
24 be happy to give it to them.

25 ATTORNEY PAIVA:

1 And the question asks for the number of
2 lines and the number of minutes used. If you would
3 answer the whole question in the format of a table,
4 we'll take it.

5 ATTORNEY CHESKIS:

6 No, Your Honor. That's where it breaks
7 apart. It's the total revenue that's relevant. You
8 can break it down inter- and intrastate. But to start
9 to get into individual elements, how many miles, how
10 many minutes going here, going there. It has nothing
11 to do with this case. That's why we're objecting to
12 18 and 19.

13 ATTORNEY PAIVA:

14 What I said, total access to me means the
15 total number of lines on which the access revenue is
16 calculated to match up with the revenues given. You
17 need that in order to make an argument on how much of
18 an access --- how much revenue you're getting on
19 access per line, for example.

20 JUDGE COLWELL:

21 So you need both interstate and
22 intrastate.

23 ATTORNEY PAIVA:

24 And we need also the number of lines.

25 ATTORNEY KENNARD:

1 Average revenues per minute has no
2 relevance to this case. It doesn't matter. What's the
3 average rate of access? Is it 2.5 cents, 4.5 cents?
4 It doesn't matter in this case. Access is not in this
5 investigation. The revenues may be, but the specifics
6 of access are not.

7 ATTORNEY PAIVA:

8 Your Honor, I think under the
9 Commission's standard of discovery this information is
10 relevant to argue our case.

11 JUDGE COLWELL:

12 I understand. Your point is taken.

13 Anything else?

14 ATTORNEY BENEDEK:

15 I'm going to make it real quick, Your
16 Honor. First, a response to AT&T. We do not share
17 the interpretation presented by AT&T at page 25,
18 paragraph four, of the listing of issues as in any way
19 trumping the literal expressed words of the Commission
20 in the Order, paragraph 1B regarding the stay of the
21 access procedure.

22 So we don't think you could use the words
23 of the Order which don't even mention access, to
24 somehow trump the rest of the wording of the
25 paragraphs.

1 We concur with the statements made by PTA
2 regarding the individual questions. I'm not sure
3 about why you can't get to the web site. I will check
4 that and then eventually get back to Ms. Paiva
5 promptly.

6 I would like to respond to the Sprint
7 comment about PA filing. What Sprint completely
8 failed to mention was that there have been several
9 filings, including one by this company, including one
10 by AT&T or its parent, including one --- a promised
11 one by Verizon's parent.

12 And the increased and accelerated
13 activity at the FCC does not demonstrate that this
14 Motion to Compel is valid. Actually, what it
15 demonstrates is why there's a need to continue this
16 proceeding, given the activity at the FCC. It doesn't
17 go to discovery. It goes to why this proceeding should
18 continue. And I realize that's not an issue that you
19 are addressing here today, but that is our response.

20 And I have nothing further, Your Honor.
21 If you have any questions ---. Thank you.

22 JUDGE COLWELL:

23 I think I understand the issues on this
24 one. Thank you. Does anybody have anything to add
25 before we close today's proceeding? Hearing nothing,

1 thank you very much. I'll get the Order out as soon
2 as I can.

3 * * * * *

4 HEARING CONCLUDED AT 2:43 P.M.

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C E R T I F I C A T E

I hereby certify, as the
stenographic reporter, that the foregoing
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