

WITNESS INDEX

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

<u>WITNESSES</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
Keith A. Messner (By Mr. Lehman)	9 --	-- 14	-- --	-- --
Denise Breslin (By Mr. Lehman) (By Mr. Messner)	16 --	-- 33	39 --	-- 43

FORM 2

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

EXHIBIT INDEX

<u>NUMBER</u>	<u>FOR IDENTIFICATION</u>	<u>IN EVIDENCE</u>
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(None.)	--	--
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1 Services, Inc.?

2 MR. KAZEE: Yes, I am.

3 JUDGE MELILLO: Are you an in-house counsel?

4 MR. KAZEE: Yes.

5 JUDGE MELILLO: Good morning, everyone. This
6 hearing, while being held by telephone, is being
7 transcribed. There is a court reporter present in
8 Harrisburg, PA. So I ask all of you to please speak
9 clearly, slowly and loudly.

10 Also, Mr. Lehman, are you on a speaker phone?

11 MR. LEHMAN: Yes, I am, Your Honor.

12 JUDGE MELILLO: The court reporter has indicated to
13 me that she is having difficulty hearing you. So we're
14 going to see how this works out. It may be that you can't
15 be on a speaker phone in order for her to be able to
16 transcribe this.

17 MR. LEHMAN: Okay. Well, let me know.

18 JUDGE MELILLO: All right. Can you hear all right at
19 this point? The court reporter is indicating she can hear
20 at this point.

21 Now, I don't know whether the parties have had an
22 opportunity to discuss settlement. In my Prehearing Order
23 in this matter, I had directed the utility to endeavor to
24 contact the Complainant one week before the hearing.

25 Was there any settlement discussion prior to today?

1 MR. MESSNER: No, Your Honor, there was not. I
2 haven't heard from them.

3 JUDGE MELILLO: All right. Are the parties
4 interested in pursuing settlement discussions? If so, I can
5 leave the room, we will go off the record, and I can give
6 you a period of time to discuss settlement, and then I'll
7 return in ten minutes to check on your progress.

8 Are the parties interested in that?

9 MR. LEHMAN: Well, that's up to Mr. Messner. I guess
10 we can discuss it, sure.

11 JUDGE MELILLO: All right. Very well. I know it may
12 have been difficult for the parties to have gotten together
13 to discuss settlement prior to today. So why don't we go
14 off the record at this point?

15 (Discussion off the record.)

16 JUDGE MELILLO: Let's go back on the record.

17 We were off the record for a period of time to allow
18 for settlement discussions. Well, what happened? Were the
19 parties able to settle?

20 MR. LEHMAN: This is Mr. Lehman, Your Honor. No, we
21 were not able to settle. Obviously, we had discussions
22 about how the system works and the requirements that are
23 there. I believe Mr. Messner can speak for himself. He is
24 not happy with those requirements and wants to continue on
25 with the hearing.

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JUDGE MELILLO: Very well.

MR. MESSNER: May I say something, Your Honor?

JUDGE MELILLO: You may, Mr. Messner.

MR. MESSNER: What Mr. Lehman said about me not being happy with those requirements, that's not totally correct. I understand the requirements and I don't have a problem with the requirements. As I said to Mr. Kazee and Mr. Lehman and Ms. Breslin while we were off the record, my only problem is that we're getting billed for time that we can't use.

I mean, I understand the requirements and I do not have a problem with that. They're there for a reason. They need to be there. I understand all that. My point is and it comes down to very simply they're billing us for time that we cannot use.

JUDGE MELILLO: All right. Mr. Messner, this is information that you probably are going to want to have on the record, and then I would need to place you under oath.

MR. MESSNER: Okay.

JUDGE MELILLO: So just give me a moment and we'll get to your complaint.

Mr. Messner, you have the burden of proof in this matter, so you will go first in the order of presentation. You will present your case and I may be asking you some questions in that process for clarification. Please

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understand that I am not acting as your attorney. I need certain information in order to write my decision and the questions will help me to do that.

If you do not present sufficient evidence, including documentation, that you have been provided inadequate service as a result of the actions of Respondent, then you have not met your burden of proof.

After you have completed your direct case and I have asked my questions, the utility attorney will have the opportunity to ask you questions and you will have an opportunity for redirect after that. Then the utility will put on its witness. You may question the utility witness and I also may have questions.

After that, since you have the burden of proof, Mr. Messner, you will be permitted the opportunity to rebut the evidence presented by VSSI and can provide further testimony in response to VSSI's testimony.

Do you have any questions?

MR. MESSNER: No, Your Honor.

JUDGE MELILLO: All right. Does anyone have anything further before we proceed?

(No response.)

JUDGE MELILLO: All right. Very well. Hearing nothing, Mr. Messner, please raise your right hand.

MR. MESSNER: Okay.

1 Whereupon,

2 KEITH A. MESSNER

3 having been duly sworn, testified as follows:

4 JUDGE MELILLO: Please state your name and your
5 current address for the record.

6 DIRECT TESTIMONY

7 THE WITNESS: My name is Keith A. Messner, and my
8 current address is State Correctional Institutional at
9 Albion, 10745 Route 18, Albion, Pennsylvania.

10 JUDGE MELILLO: And you are an inmate of the State
11 Correctional Institution at Albion, Mr. Messner?

12 THE WITNESS: Yes, Your Honor, I am.

13 JUDGE MELILLO: And you're a user of the prison phone
14 system?

15 THE WITNESS: Yes, ma'am.

16 JUDGE MELILLO: And who is the service provider that
17 you use to make outgoing calls?

18 THE WITNESS: Verizon Select Services, Incorporated.

19 JUDGE MELILLO: And is your complaint about outgoing
20 calls?

21 THE WITNESS: Yes, it is, Your Honor.

22 JUDGE MELILLO: All right. Please describe your
23 complaint.

24 THE WITNESS: Well, my complaint is that throughout
25 the phone calls, they play required security announcements

1 that announce that the call comes from a correctional
2 institution. I think there are four or five of those that
3 air intermittently throughout the call.

4 Now, the problem is that the announcements interrupt
5 the call where you cannot talk over them nor can you hear
6 over them, yet we are billed for that time, Your Honor.
7 That's the essence of the complaint.

8 There are some other issues about dropped calls,
9 calls that were improperly disconnected, and then we have to
10 call back a second time and incur more charges, and it
11 happens on a frequent basis that calls are disconnected
12 improperly for no legitimate reason. I had one just happen
13 to me yesterday afternoon at 5:00. I had a call
14 disconnected. No custom calling features or anything on the
15 line. The call was just disconnected.

16 I'm sure Verizon can listen to the recordings of the
17 calls, because the institution records the calls, and
18 they'll see that the calls are being disconnected improperly
19 and I'm paying for them.

20 I told Mr. Kazee and Mr. Lehman when we were off the
21 record that I'm willing to forego the dropped calls. I know
22 that kind of stuff happens, but the billing for time during
23 the announcements that we can't use just doesn't seem fair
24 to me.

25 JUDGE MELILLO: All right. So you're complaint --

1 you've now narrowed your complaint to the frustration you're
2 experiencing with the recorded announcement that is
3 preempting conversation; is that correct?

4 THE WITNESS: Well, yes, because Mr. Kazee when we
5 were off the record said that he would have the people who
6 facilitate the telephone calls here at Albion get with
7 Verizon and take a look at these calls that are being
8 disconnected and try to work on that, and I'm very happy
9 with that and I appreciate his effort to do that.

10 JUDGE MELILLO: All right. Very well. What is the
11 time period that you're complaining about with respect to
12 the security announcements?

13 THE WITNESS: I'm not sure I understand your
14 question, Judge.

15 JUDGE MELILLO: In your complaint, Mr. Messner, you
16 indicated that beginning in October of 2003 and then till
17 October of 2005, which is when you filed your complaint.

18 THE WITNESS: Correct, correct.

19 JUDGE MELILLO: Now, there you say you were subject
20 to disconnections and you said that VSSI is willing to work
21 on that. I'm wondering about the remaining complaint that
22 you have which is with respect to the security
23 announcements, during what period of time are you
24 complaining about with respect to that particular issue?

25 THE WITNESS: The entire period, Your Honor. I mean,

1 it goes back even further than that, but the entire period,
2 because they've been there as long as -- you know, the
3 announcements have been on the phone as long as I've been
4 here.

5 JUDGE MELILLO: Okay. We're trying to pinpoint a
6 period of time, because it could be that different service
7 providers were involved in providing this service to the
8 prison. You started with October of 2003 with respect to
9 your complaint about erroneous disconnections. Is that also
10 would you say the period of time you're talking about, that
11 two-year period from October of 2003 to October of 2005,
12 with respect to the security announcements?

13 THE WITNESS: Yes, Your Honor.

14 JUDGE MELILLO: All right. Very well. Let me see if
15 I have any further questions. Please hold on a here, and
16 then the utility counsel will be permitted to cross-examine.

17 (Pause.)

18 JUDGE MELILLO: Mr. Messner, can you please describe
19 the system by which you are provided a certain I guess you
20 could call it a line of credit or something? It is my
21 understanding that you get some kind of credit through the
22 commissary that you can use then to purchase a block of time
23 for your calling with Verizon Select Services, Inc.

24 THE WITNESS: Yes, Your Honor. What happens is the
25 commissary will allow you to buy blocks of time in either

1 \$15.00, \$25.00 or \$50.00 increments. It's not like a
2 calling card, but what happens is that money that you
3 purchase at the commissary is placed on your telephone
4 account, and then you're able to make calls that aren't
5 collect with those dollar credits.

6 JUDGE MELILLO: All right. So you're saying that
7 when the calls that you make are interrupted with a security
8 message, you're paying for that and it's coming out of the
9 credit, I guess, that's established at the commissary for
10 you?

11 THE WITNESS: Yes, Your Honor; and just as well, if
12 you call collect, the person you call ends up paying for it.
13 So either way, with the commissary account or collect, we're
14 paying for it, yes, ma'am.

15 JUDGE MELILLO: All right. I guess I can ask
16 Verizon. I was wanting to have on the record that if it
17 were decided that there would be any rebate, how that would
18 happen, how that would be credited to your commissary
19 account if, in fact, you met your burden of proof and the
20 Commission agrees and you're entitled to any refunds on
21 this, but I guess I can ask Verizon regarding that.

22 All right. Mr. Lehman or Mr. Kazee, who will be
23 doing the cross-examination?

24 MR. LEHMAN: I will first, Your Honor. This is Mr.
25 Lehman.

1 JUDGE MELILLO: All right. Mr. Lehman, please keep
2 your voice up. You may have to stand right next to the
3 phone.

4 CROSS-EXAMINATION

5 BY MR. LEHMAN:

6 Q. Mr. Messner, you indicated that you are
7 complaining about paying for calls, paying for the recorded
8 messages on calls you're making from the institution there.
9 May I ask where are you calling? The calls you're
10 complaining about, where are those calls going to?

11 A. Well, several places. I call a lot of different
12 people. Calls go within Pennsylvania. ~~Calls go to Dallas.~~
13 ~~They go to Garland, Los Angeles, Mississippi.~~ I mean, I
14 make different calls to different people.

15 MR. LEHMAN: Your Honor, with regard to his testimony
16 that he makes calls interstate, the Commission -- it has
17 been held numerous times, obviously, that the Commission
18 does not have jurisdiction over interstate calls. That
19 issue has come up numerous times in these prisoner complaint
20 hearings, and those calls have not been looked at by the
21 Commission, obviously. They're interstate.

22 We can certainly talk about intrastate calls within
23 the State of Pennsylvania, but should any type of refund be
24 determined to be in order here, we would request, obviously,
25 that interstate calls not be considered in that matter.

1 JUDGE MELILLO: All right. So you're making a
2 motion, Mr. Lehman, to basically have the Commission not
3 consider the interstate calls?

4 MR. LEHMAN: Yes. I would make a motion to strike
5 that portion of the testimony dealing with interstate calls.

6 THE WITNESS: Your Honor?

7 JUDGE MELILLO: Yes, Mr. Messner.

8 THE WITNESS: I would be willing to stipulate that I
9 wouldn't even ask for a rebate for the interstate calls. I
10 would be willing to just go with the in Pennsylvania calls,
11 and I'd be willing to stipulate to that if it's okay with
12 Mr. Lehman and Mr. Kaze.

13 JUDGE MELILLO: Mr. Lehman?

14 MR. LEHMAN: That's fine.

15 JUDGE MELILLO: All right. Very well. Then that
16 particular testimony will be stricken and not considered
17 given that you have agreed that that's not going to be part
18 of your complaint.

19 THE WITNESS: It will just be in Pennsylvania calls?

20 JUDGE MELILLO: In Pennsylvania.

21 THE WITNESS: That's fine.

22 JUDGE MELILLO: Very well. Mr. Lehman, please
23 continue.

24 MR. LEHMAN: Your Honor, I have no further questions
25 at this time.

1 JUDGE MELILLO: All right. Mr. Kazee, do you have
2 anything?

3 MR. KAZEE: I do not. Thank you.

4 JUDGE MELILLO: All right. Very well. Mr. Messner,
5 do you have anything that you want to say in response to the
6 questions that were just asked of you by counsel for VSSI?

7 THE WITNESS: No, Your Honor, I do not.

8 JUDGE MELILLO: All right. Very well. Then we'll
9 have the utility present its case.

10 (Witness excused.)

11 MR. LEHMAN: Your Honor, I would like to call Denise
12 Breslin.

13 JUDGE MELILLO: Ms. Breslin, please raise your right
14 hand.

15 Whereupon,

16 DENISE BRESLIN

17 having been duly sworn, testified as follows:

18 JUDGE MELILLO: Very well. Is it Mr. Lehman or
19 Mr. Kazee that will be presenting the witness?

20 MR. LEHMAN: Mr. Lehman.

21 JUDGE MELILLO: All right. Mr. Lehman, please keep
22 your voice up, and you may continue.

23 MR. LEHMAN: Thank you, Your Honor.

24 DIRECT EXAMINATION

25 BY MR. LEHMAN:

FORM 2

1 Q. Ms. Breslin, could you please state and spell
2 your name for the record, please?

3 A. Yes; Denise Breslin. That's B-r-e-s-l-i-n.

4 Q. And by whom are you employed and in what
5 capacity?

6 A. I'm employed by Verizon Pennsylvania,
7 Incorporated, formerly the Corrections Product Line Manager
8 through December 19th of 2005.

9 Q. Could you please briefly describe the nature and
10 scope of your job responsibilities?

11 A. Yes. Formerly as the Manager of the Corrections
12 Product Line management team, my team was responsible for
13 product management, vendor relations, marketing, financial
14 results and planning, as well as requests for proposal
15 responses.

16 Q. And are you authorized to testify on behalf of
17 Verizon PA in this proceeding?

18 A. Yes.

19 Q. And have you reviewed the complaint filed in
20 this matter?

21 A. Yes.

22 JUDGE MELILLO: Could I interrupt just a moment?
23 This complaint deals with Verizon Select Services, Inc. I
24 don't see that Verizon PA, Inc., itself has been made a
25 party. Is your witness, Mr. Lehman, authorized to testify

1 on behalf of VSSI?

2 MR. LEHMAN: Yes, she is, Your Honor.

3 JUDGE MELILLO: All right. Could you please correct
4 that for the record?

5 MR. LEHMAN: Okay.

6 BY MR. LEHMAN:

7 Q. Are you authorized to testify on behalf of
8 Verizon Select Services, Inc., in this proceeding?

9 A. Yes, I am.

10 Q. And have you reviewed the complaint filed in
11 this matter?

12 A. Yes, I have.

13 Q. Were you present during the testimony of the
14 Complainant today?

15 A. Yes.

16 Q. For the record, could you please briefly
17 describe the arrangement for the provision of inmate
18 telephone service to the Department of Corrections?

19 A. Yes. Verizon Pennsylvania, Incorporated,
20 provides the inmate telephone service, both local and
21 intraLATA telephone services to the Pennsylvania Department
22 of Corrections.

23 JUDGE MELILLO: Could I interrupt just a moment? Ms.
24 Breslin, you're stating that Verizon Pennsylvania, Inc.,
25 provides services. I thought it was Verizon Select

1 Services, Inc. So can we be clear about this, because
2 otherwise we don't have the right party in this proceeding?

3 THE WITNESS: Yes, Your Honor; I'll be getting to
4 that.

5 JUDGE MELILLO: All right. Please do, because it's
6 confusing right now.

7 THE WITNESS: The contract is with Verizon
8 Pennsylvania, Incorporated. We have an affiliate agreement
9 with our subcontractor, Verizon Select Services. Again,
10 I'll start over.

11 JUDGE MELILLO: Please do.

12 THE WITNESS: Verizon Pennsylvania, Incorporated,
13 does provide the telephone service, both local and intraLATA
14 telephone services to the Pennsylvania Department of
15 Corrections. It's subject to the rules and regulations of
16 the Department of Corrections and the laws of Pennsylvania.

17 Our affiliate, that's Verizon Pennsylvania,
18 Incorporated's, affiliate, Verizon Select Services,
19 Incorporated, which is known as VSSI, provides the interLATA
20 telephone service and the remaining traffic at the
21 Department of Corrections facilities that are not within
22 Verizon Pennsylvania, Incorporated's, territory.

23 We have an additional subcontractor named Securus,
24 spelled S-e-c-u-r-u-s, which provides the inmate call
25 control system and its software that runs it.

1 MR. MESSNER: Your Honor, may I object?

2 JUDGE MELILLO: On what basis, Mr. Messner?

3 MR. MESSNER: It was my understanding that T-Netix is
4 providing the call control system and not Securus as she's
5 testified to. Mr. Kazee had said when we were off the
6 record that T-Netix is the company providing the call
7 control system. So which one is it?

8 THE WITNESS: I can explain that to you, Mr. Messner.

9 MR. MESSNER: All right.

10 JUDGE MELILLO: Please continue.

11 THE WITNESS: T-Netix was a company that merged with
12 another company and changed its name to Securus.

13 MR. MESSNER: Okay. Very good. Thank you.

14 THE WITNESS: Sure. Securus is T-Netix. They're
15 marketing and new company name is Securus, S-e-c-u-r-u-s.

16 MR. MESSNER: And they are still based in Fort Worth?

17 THE WITNESS: That's correct.

18 MR. MESSNER: Okay.

19 THE WITNESS: Verizon also has one final
20 subcontractor, Shawntech, spelled S-h-a-w-n-t-e-c-h, one
21 word. They are the physical site administrators at each
22 facility.

23 BY MR. LEHMAN:

24 Q. Could you please briefly describe the general
25 operation of the inmate call system and some of the

1 requirements that are placed on Verizon by the DOC?

2 A. Certainly. Inmates at the state correctional
3 facilities in Pennsylvania are given the privilege to make
4 phone calls which are subject to certain restrictions placed
5 on them not only by state law, but Department of Corrections
6 requirements.

7 Generally speaking, depending on their security
8 status, inmates are allowed to make 15-minute calls a day.
9 They use phones at the facility and are only allowed to
10 either make them collect or prepaid.

11 For prepaid calling, as Mr. Messner mentioned
12 earlier, they deposit money through a commissary transaction
13 at the facility into their telephone account. Also, inmates
14 must register telephone numbers that they want to call and
15 have them approved by the Department of Corrections. Once
16 they're approved, then they can only call those numbers on
17 their approved list.

18 All calls have an announcement which plays to the
19 called party that the call is being made from a correctional
20 facility and that it is subject to monitoring and recording.
21 If the call is accepted by the called party, smaller
22 messages then replay every few minutes during the
23 conversation. It's state law and the Department of
24 Corrections' contract requires those messages.

25 The Department of Corrections determined that for

1 safety reasons, if at any time during a call the inmate call
2 control system detects a tone or noise that it believes to
3 be a three-way call attempt, that the call would be
4 terminated.

5 Q. Thank you. At this time we're going to address
6 the call overlays that Mr. Messner has raised an issue with
7 in his complaint. Could you please explain what these
8 overlays are and why they're there?

9 A. Sure. The overlays are taped messages that
10 appear at the beginning of the call and then repeats during
11 the call. They appear between the second and third minute
12 and every fix to six minutes thereafter. The message is
13 five seconds long. So, during a full 15-minute call,
14 approximately 15 seconds would be it's state law and
15 Department of Corrections, our contract requires those
16 messages to be played. It informs the called party that the
17 call is originating from a correctional facility and that
18 it's subject to monitoring and recording.

19 Q. Is Mr. Messner charged for the initial message
20 at the beginning of the call?

21 A. No. The billing does not start until the called
22 party accepts the call.

23 Q. Is this true for both collect and prepaid calls?

24 A. Yes.

25 Q. Is Mr. Messner charged while the remaining

1 messages are played?

2 A. Yes, he is. He would be or the party that's
3 making it collect, that's accepting the call. Verizon is
4 carrying the call and incurring the expense to process the
5 call, which includes the time that these messages are being
6 played. The messages, again, are a requirement of the
7 Department of Corrections, plus the messages are five
8 seconds long.

9 So, within a 15-minute call, the total time would be
10 15 seconds.

11 Q. Could Verizon remove these messages even if it
12 wanted to?

13 A. No. As I stated earlier, the overlays are a
14 requirement of the state law and the Department of
15 Corrections contract. They cannot be removed. In fact, in
16 2004, Verizon made an inquiry to the Department of
17 Corrections regarding their policies regarding these
18 overlays, and the Department of Corrections responded in
19 December of 2004 to Verizon that under no circumstances
20 would the Department of Corrections change their policy
21 regarding the playing of these overlays.

22 MR. LEHMAN: Your Honor, at this time I have no
23 further questions. Maybe Mr. Kazee does.

24 MR. KAZEE: No, I don't. Thank you.

25 JUDGE MELILLO: All right. I have some questions, if

1 I may, Ms. Breslin, before Mr. Messner has an opportunity
2 also for cross-examination.

3 THE WITNESS: Sure.

4 JUDGE MELILLO: In an on-the-record hearing that was
5 held very recently here at the Commission, Dr. Shaffer,
6 Deputy Secretary of the Department of Corrections, was asked
7 about whether it was technologically possible to have the
8 message played in the background versus an overlay.

9 Are you familiar with the technology of whether it is
10 possible to have the message be in the background versus an
11 overlay?

12 THE WITNESS: I can tell you the knowledge that I
13 have of the Securus system, that it's not technologically
14 feasible. I'm not an expert, because I don't work for
15 Securus. They're a subcontractor of ours. They would be in
16 a better position to explain why their system
17 technologically has to work the way it works.

18 If we could play it in the background, we would.
19 It's just not technologically feasible at this time.

20 JUDGE MELILLO: All right. In response to questions
21 posed to you by counsel for Verizon Select Services, Inc.,
22 you mentioned Verizon several times, and I wanted to be
23 clear about that. Now, you said Verizon PA, Inc., I guess,
24 is -- are you saying they're the parent company and VSSI is
25 a subsidiary?

1 THE WITNESS: Verizon Pennsylvania, Incorporated, we
2 have the contract with the Department of Corrections.

3 JUDGE MELILLO: We, being Verizon PA, Inc.?

4 THE WITNESS: Yes. I'm an employee of Verizon
5 Pennsylvania, Incorporated.

6 JUDGE MELILLO: All right. You have the contract
7 with DOC, in other words?

8 THE WITNESS: Yes, ma'am.

9 JUDGE MELILLO: All right. Well, then how does VSSI
10 fit into this picture?

11 THE WITNESS: They provide the long distance.
12 Verizon Select Services is an affiliate of Verizon, our
13 parent company. They provide the long distance telephone
14 services, the interLATA calling, as well as at the
15 facilities that are out of franchise, that are not within
16 Verizon Pennsylvania's local service area, they handle all
17 calls in those areas.

18 JUDGE MELILLO: So they would provide intraLATA
19 calling?

20 THE WITNESS: In our out-of-franchise where Verizon
21 Pennsylvania, Incorporated, is not the LEC, VSSI would
22 handle local intra/inter, all of the calling.

23 JUDGE MELILLO: Okay. So when you were responding to
24 your counsel and you said Verizon in response, at some
25 points in your response, what were you -- were you referring

1 to Verizon being VSSI or Verizon PA, Inc., the parent?

2 THE WITNESS: Verizon Pennsylvania, Inc.

3 JUDGE MELILLO: When VSSI provides the intraLATA
4 service to Mr. Messner, is that the entity that is playing
5 these security messages because the Department of
6 Corrections is requiring it or who actually is involved in
7 the service complaint that Mr. Messner has, which is these
8 security messages?

9 THE WITNESS: The messages are programmed and run
10 through Securus' system. It is our subcontractor, Securus.
11 It's the inmate call control system and the software that
12 runs it that interjects these messages, plays them, and
13 determines at what point randomly when these have to be
14 played.

15 JUDGE MELILLO: All right. Well, where does VSSI fit
16 into this whole picture, because this complaint is against
17 VSSI? Are they the ones -- when you mentioned Securus, I
18 think Securus came into being fairly recently; right?

19 THE WITNESS: Securus is T-Netix. T-Netix has been
20 in business over 20-some years. They merged with another
21 company and changed their name to Securus.

22 JUDGE MELILLO: When did that happen?

23 THE WITNESS: I would say maybe about two years ago.

24 JUDGE MELILLO: Okay. I thought that happened fairly
25 recently, because I know we've had some T-Netix cases here.

1 THE WITNESS: Quite often, they just kept their
2 T-Netix name, but the actual merging of their company
3 happened about two years ago.

4 JUDGE MELILLO: Well, I'm still not clear here. This
5 complaint that we have before us today is Keith Messner
6 versus VSSI, and Mr. Messner in his testimony now has
7 narrowed his complaint down to the security messages that
8 are overlaid on calls that he's making, and he has narrowed
9 his complaint to calls made in Pennsylvania, and I take it
10 that at least some of those calls would be the intraLATA
11 calls that are, I guess, carried by VSSI. Is that correct?

12 THE WITNESS: That would be correct.

13 JUDGE MELILLO: Well --

14 THE WITNESS: The recorded messages are a feature
15 function of Securus' system that we have at each of the
16 facilities. It's the Department of Corrections'
17 requirement, and we subcontract it out to Securus in their
18 system that's programmed to play these on all calls.

19 JUDGE MELILLO: So VSSI has to play that message,
20 too, on the calls that they carry for Mr. Messner?

21 THE WITNESS: Right, right. That message would be
22 played whether it's a local call, intra or interLATA call.

23 JUDGE MELILLO: And that's because VSSI is subject to
24 the Department of Corrections contract which requires the
25 security messages to be played; is that correct?

1 THE WITNESS: Yes, ma'am.

2 JUDGE MELILLO: But the software that handles the
3 messages, I guess, is provided by this Securus now that we
4 are talking about?

5 THE WITNESS: T-Netix, Securus, yes.

6 JUDGE MELILLO: All right. Well, I guess the
7 complaint isn't necessarily about the software. I guess he
8 would prefer that the software not work right.

9 MR. MESSNER: Well, no, that's not true, Your Honor.

10 JUDGE MELILLO: Well --

11 MR. MESSNER: It does need to be there.

12 JUDGE MELILLO: Well, no. I'm saying that you don't
13 like the fact that it's there. That's the --

14 MR. MESSNER: No, no, no, Your Honor.

15 JUDGE MELILLO: That's not true; all right. What is
16 your complaint then, Mr. Messner?

17 MR. MESSNER: My complaint, Your Honor, first of all,
18 let me say that the announcements are there for a reason,
19 and I don't have a problem with that.

20 JUDGE MELILLO: All right.

21 MR. MESSNER: I have a problem with the fact that I'm
22 being billed for talk time in a call that I can't use.

23 JUDGE MELILLO: All right. Now, you heard Ms.
24 Breslin say that you're not charged for the initial security
25 message.

1 MR. MESSNER: No, the initial announcement, but I
2 think -- I don't know if Ms. Breslin is aware. The initial
3 announcement -- when you make a call, there's a lengthy
4 announcement until the party accepts. They press zero to
5 accept the call. Then you get an announcement saying, "Go
6 ahead with your call, please," and the call is connected.
7 Sometimes it takes maybe a second to get connected.

8 So we don't get charged for that, but then there are
9 five announcements, five security announcements throughout
10 the call, as Ms. Breslin said, and they're five seconds
11 each, and we're charged for that.

12 Now, you know, if you make two phone calls a day or
13 three phone calls a week or whatever, in a two or three-year
14 period, that adds up, and it comes out of the money that we
15 pay, and I don't understand why Verizon cannot make some
16 sort of compromise here where we're not getting billed
17 during those announcements.

18 JUDGE MELILLO: All right. I understand that. I'm
19 glad you clarified that. So your complaint is about the
20 charge?

21 MR. MESSNER: Yes, ma'am.

22 JUDGE MELILLO: All right. Ms. Breslin, with respect
23 to the charge, is there anything that can be done about that
24 or is that subject to subcontract where those minutes have
25 to be charged? How is that all handled? Can anything be

1 done about that?

2 THE WITNESS: Well, as you know, our rates are
3 tariffed and they're per minute, and if we were to change,
4 we would have to re-tariff. We would simply have to -- we
5 incur the cost of the call, and we've asked to have those
6 recordings play in the background. The Department of
7 Corrections and technologically, it's just not going to
8 happen.

9 We can't eliminate that. We're going to incur the
10 cost. We have to pass the cost on. If we change anything,
11 if you don't want it within the per-minute, it would have to
12 be on the surcharge. We would have to pass that expense on
13 somewhere. Rather than the per minute, it would go on the
14 surcharge and we'd have to re-tariff.

15 JUDGE MELILLO: All right. Your tariffs that you're
16 talking about, are they on file with the Pennsylvania Public
17 Utility Commission?

18 THE WITNESS: Yes, ma'am.

19 JUDGE MELILLO: All right. So you say you're
20 following your tariff when you're charging for these
21 minutes?

22 THE WITNESS: Yes, ma'am.

23 JUDGE MELILLO: Now, you also said something about
24 you're incurring a cost. Can you explain that; that you're
25 incurring a cost, too, so you're passing it along?

1 THE WITNESS: Right. Any phone call at the facility
2 there, at the Department of Corrections, we have dial tone.
3 We have the inmate call control system. We have the
4 software. We have personnel out there, the site
5 administrators. Those are all costs that are incurred. As
6 soon as -- the phone. As soon as the inmate goes to the
7 phone, it's not just when he picks up the phone, it's having
8 that phone there and maintained in working order.

9 There are costs, and it's built into our tariff. If
10 you use the phone, you have to share in the expense of the
11 system. If you don't use the phone, you don't have to then
12 incur the cost.

13 JUDGE MELILLO: All right. Now, Mr. Messner just
14 said that there were five interruptions. I think you said
15 there were three -- two in -- I guess three in a 15-minute
16 call. Is that right?

17 THE WITNESS: They are programmed to be random. You
18 would hear one within the second to third minute, every five
19 to six minutes thereafter. So --

20 MR. MESSNER: Your Honor, can I object to that,
21 because they're not random?

22 JUDGE MELILLO: You will have an opportunity to rebut
23 the testimony.

24 MR. MESSNER: Okay.

25 JUDGE MELILLO: Right now I'm just trying to get some

1 information on the record to help me with this matter.

2 MR. MESSNER: All right. Thank you.

3 JUDGE MELILLO: All right?

4 MR. MESSNER: Okay.

5 JUDGE MELILLO: In fact, let me just check, because
6 we may be ready for you to ask questions, Mr. Messner.

7 MR. MESSNER: Okay.

8 JUDGE MELILLO: I just want to make sure. As you can
9 see from the testimony today, there are different entities
10 being discussed.

11 MR. MESSNER: Yes.

12 JUDGE MELILLO: And when I sit down and I look at
13 this transcript and I try to figure out where we are with
14 this, who's providing what, and whether anything can be
15 done, whether you've met your burden of proof here, I have
16 to have some information. So that's what I'm doing here.

17 MR. MESSNER: Okay, Judge.

18 (Pause.)

19 JUDGE MELILLO: All right. Mr. Messner, before you
20 asked your questions, there were a couple other things that
21 I thought of while I have you here.

22 I take it you do make intraLATA calls in
23 Pennsylvania. Is that correct, Mr. Messner?

24 MR. MESSNER: Yes, Your Honor, I do.

25 JUDGE MELILLO: Do you have any -- because I haven't

1 gotten any documentation in this case. I got no proposed
2 exhibits. You don't have anything that you've provided to
3 me to tell me what we would be talking about in terms of the
4 numbers of calls during the period of time in question that
5 are intraLATA that would be provided by VSSI and that would
6 involve the overlay.

7 MR. MESSNER: Well, Your Honor, the reason for that
8 is that I requested that information basically through the
9 Department of Corrections, and I haven't gotten it yet. I'm
10 still waiting on that. Had I had it, you would have had it,
11 Judge. I'm still waiting on it.

12 JUDGE MELILLO: All right. Mr. Messner, you may ask
13 some questions of Ms. Breslin at this time.

14 MR. MESSNER: All right. Thank you.

15 CROSS-EXAMINATION

16 BY MR. MESSNER:

17 Q. Ms. Breslin, I just have a couple question.
18 Now, I'm correct in my assumption that we are billed for
19 those announcements?

20 A. You are billed.

21 Q. Okay. Now, are you aware that when the call is
22 accepted -- you know, as I said, you get a lengthy recording
23 in front announcing the call is from a correctional facility
24 and who's calling and tells the party what to do, how to
25 accept the call.

1 Once they press zero to accept the call, then they
2 get another recording saying, "Go ahead with your call,
3 please." Are we billed during that?

4 A. No, you're not. The initial message, as you
5 said, is 18 seconds long. You cannot speak to the called
6 party. It does tell -- you know, it tells them that they've
7 got a call from an inmate at the state correctional
8 institution where you're at. It tells them that it's
9 subject to monitoring and recording, custom calling features
10 are not allowed during the conversation, and it does give
11 them the cost of the call if it is collect.

12 If you chose to use the prepaid calling feature, it
13 would inform the called party that it is a prepaid call,
14 that they would not incur, and then it thanks them for using
15 Verizon; after it tells them if it's collect, how much, and
16 then it tells them what to do to accept the call, push zero,
17 push one.

18 After they do that, it does say, "Go ahead with your
19 call." Once the voice path is opened, when you speak and
20 they speak, that's when the timing of your call begins.

21 Q. Okay. Now, with regard to the security
22 announcements, before you hear the recorded voice, it cuts
23 in and interrupts the call and it's just a brief
24 interruption. Are you aware if we're charged for that or
25 does it just not start charging until you actually hear the

1 announcement?

2 A. You're timing of your call begins at the very
3 beginning once the voice path is opened --

4 Q. No, no. I guess I wasn't clear. I'm talking
5 about the security announcements throughout the call.

6 A. Yes, you're charged for that.

7 Q. Right. But what I'm saying is, as they come on,
8 like the call will be interrupted, like you'll be talking
9 and you don't even realize and it will go dead and there
10 will be like a brief pause and then you'll hear the
11 announcement.

12 My question to you is, are we charged during that
13 brief pause or not until the announcement starts?

14 A. You're charged for that, sir.

15 Q. Okay. We are; okay. And you said that they are
16 five seconds each, so it comes out to about 15 seconds per
17 call?

18 A. For a 15-minute call.

19 Q. Okay. Now, you said Verizon is incurring costs
20 here.

21 A. Yes, sir.

22 Q. I got information recently that Verizon is
23 passing on a large portion of the profits of these calls to
24 the Department of Corrections. Do you have knowledge that
25 that's correct?

1 A. It's a contractual obligation between Verizon
2 Pennsylvania and the Department of Corrections, yes.

3 Q. And the figure that I've been given is that
4 Verizon is passing on -- and I don't know if it's correct,
5 but the figure I've been given is 80 percent of the profits
6 to the Department of Corrections.

7 A. I at this point would not be able to validate
8 that yes or no.

9 Q. Okay. But they are passing on a portion of the
10 profit?

11 A. There is a revenue sharing, yes.

12 Q. Okay. So you're incurring a cost, but you're
13 still passing on revenue to the Department of Corrections?

14 A. Correct.

15 Q. Okay. Would it be possible for Verizon not to
16 bill us during these announcements? Would it be possible
17 for the billing not to be passed on during those
18 announcements?

19 A. Not at this time.

20 Q. And you say that you are not familiar with the
21 technical aspects of the system?

22 A. No. Again, I do not work for Securus. Their
23 technology is their patented system, state of the art. They
24 are the experts of their equipment.

25 Q. You say their system is patented?

1 A. Yes, it is, sir.

2 Q. Okay. And Securus is the people who are saying
3 that it's not technologically possible?

4 A. That's correct.

5 Q. Are you aware that there are correctional
6 facilities, county correctional facilities, throughout the
7 state who run these announcements in the background of the
8 calls?

9 A. I would have no knowledge of that.

10 MR. MESSNER: That's all I have, Your Honor.

11 JUDGE MELILLO: All right. I guess I did have one
12 additional question, and it was something I had brought up
13 with Mr. Messner.

14 Ms. Breslin, about the whole refund system, how would
15 that happen? If the Commission would decide that an inmate
16 should be provided a refund, would that be somehow a credit
17 that would come back to the commissary account of that
18 particular inmate?

19 THE WITNESS: If it was a prepaid call, yes, that is
20 very simply done. If it was found Verizon or Securus was
21 able to identify that, yes, there was a problem, if it was
22 prepaid, if the inmate paid for it through a prepaid
23 account, it would simply be the amount of time, the money
24 that was taken. It would be put back in as a debit into
25 their account and then able to use for another call.

1 If it was a collect call, if there was an error, then
2 the called party would have to -- we'd have to work with
3 their companies -- it could be a multitude of phone
4 companies; not just Verizon; whoever they use -- to provide
5 credit.

6 JUDGE MELILLO: All right. Also, Mr. Messner had
7 specified at the time period that he was complaining about
8 -- because he filed his complaint in October of 2005. So he
9 was complaining about the two-year period beginning in
10 October 2003 to October 2005. During that period of time,
11 was VSSI providing intraLATA service in Pennsylvania to
12 inmates?

13 THE WITNESS: Yes, ma'am.

14 JUDGE MELILLO: So they would have been providing the
15 service during that period of time to Mr. Messner?

16 THE WITNESS: Yes.

17 JUDGE MELILLO: All right. Very well. Mr. Lehman,
18 do you have any redirect?

19 MR. LEHMAN: No, I don't, Your Honor.

20 JUDGE MELILLO: Mr. Kazee?

21 MR. KAZEE: Actually, Judge, could Mr. Lehman and I
22 have maybe just a couple of minutes to discuss possible
23 redirect?

24 JUDGE MELILLO: You can, but you'll have to go on
25 another line, because I don't want to disconnect this line.

1 MR. KAZEE: That's fine. I think we each have a cell
2 phone.

3 JUDGE MELILLO: Very well. How much time do you
4 need?

5 MR. KAZEE: No more than five minutes.

6 JUDGE MELILLO: All right. At this point we're going
7 to be off the record. We're going to take a five-minute
8 recess. Everybody just stay put. We'll be back on the
9 record at approximately 11:25 a.m.

10 (Recess.)

11 JUDGE MELILLO: Let's go back on the record.

12 This is the time for redirect of the witness, Ms.
13 Breslin, by counsel for Verizon Select Services, Inc.

14 MR. LEHMAN: Yes, Your Honor. I have just a couple
15 redirect questions, if I may.

16 JUDGE MELILLO: All right. Is this Mr. Lehman?

17 MR. LEHMAN: Yes, it is.

18 JUDGE MELILLO: All right. Please keep your voice
19 up. Please continue.

20 REDIRECT EXAMINATION

21 BY MR. LEHMAN:

22 Q. Ms. Breslin, regarding the refund, given the
23 random nature of the overlays that play, would it be
24 possible to calculate with any type of precision what type
25 of refund would even be available?

1 MR. MESSNER: Your Honor, I want to object to that.

2 JUDGE MELILLO: On what basis, Mr. Messner?

3 MR. MESSNER: Well, on the basis that the overlays
4 are not random. They come at the same interval in every
5 call. They're not random by any means.

6 MR. LEHMAN: Your Honor, I believe the testimony of
7 my witness is that they are random. Therefore, she would
8 like to respond to her testimony.

9 MR. MESSNER: Your Honor, that's not what she
10 testified to. She did not testify that they are random.
11 She said that there was an initial one between two and three
12 minutes into the call and then another one every six
13 minutes. That's not random, Your Honor.

14 JUDGE MELILLO: All right. Here's what we're going
15 to do. Mr. Messner, as I said, you will have an opportunity
16 to rebut the witness, Ms. Breslin, but let's get some
17 clarification on this point.

18 MR. MESSNER: All right.

19 JUDGE MELILLO: Ms. Breslin, is it your position that
20 the security announcements that we're speaking of today are
21 random?

22 THE WITNESS: They are. They play between the second
23 and third minute and between the fifth and sixth minute
24 thereafter until the call is terminated.

25 JUDGE MELILLO: All right. So you're saying that

1 they're random with respect to the time that they're played
2 within that particular minute?

3 THE WITNESS: Correct.

4 JUDGE MELILLO: But that they are played at some
5 point in that minute?

6 THE WITNESS: Between the second and third and then
7 the fifth and sixth.

8 JUDGE MELILLO: All right. So your testimony with
9 respect to the randomness has to do with the time period
10 that those messages would be played within that particular
11 minute?

12 THE WITNESS: It either hits the second minute or the
13 third minute or the fifth and the sixth minute and then the
14 tenth or eleventh minute. The way that the Securus system
15 operates is that it cannot automatically every second minute
16 hit, every fifth minute. That's how their system is
17 designed. It randomly plays, you know, and it depends on
18 how long a call.

19 So, if it's a 15-minute call, it should have three
20 five-second interruptions.

21 JUDGE MELILLO: All right.

22 THE WITNESS: It's random between the second and
23 third, fifth and sixth.

24 JUDGE MELILLO: But you're saying they always are
25 played at some point three times in a 15-minute call that

1 the inmate would be billed for?

2 THE WITNESS: Approximately, yes, ma'am.

3 JUDGE MELILLO: All right. I think you said they're
4 not billed for the initial announcement?

5 THE WITNESS: No.

6 JUDGE MELILLO: Because the billing doesn't start
7 until after that announcement is made?

8 THE WITNESS: Correct.

9 JUDGE MELILLO: All right. Go ahead, Mr. Lehman,
10 with your redirect.

11 MR. LEHMAN: Yes, Your Honor.

12 BY MR. LEHMAN:

13 Q. The rates that are charged to Mr. Messner, they
14 are tariffed; is that correct?

15 A. Yes.

16 Q. And the rate that is charged Mr. Messner is in
17 accordance with the approved tariff rate on file with the
18 Commission; is that not correct?

19 A. Yes.

20 MR. LEHMAN: Your Honor, I have nothing further at
21 this time.

22 JUDGE MELILLO: All right. Now, Mr. Messner, this is
23 your opportunity to ask further questions in a recross
24 nature.

25 MR. MESSNER: I just a few, Your Honor.

1 JUDGE MELILLO: All right. Please continue.

2 RE-CROSS-EXAMINATION

3 BY MR. MESSNER:

4 Q. Ms. Breslin, do you know what the tariff rate is
5 that we're being charged?

6 A. Yes, I do.

7 Q. And what is that?

8 A. The per minute call for a collect call local,
9 it's unlimited. The per minute for an intraLATA is
10 15 cents per minute. Prepaid is 15. The --

11 Q. Prepaid is 15?

12 A. Yes.

13 Q. The collect interLATA is 27 cents per minute,
14 and the prepaid is 22 cents.

15 Q. Okay. Now, when you say local, what range does
16 that encompass?

17 A. You have no local calls on your call record,
18 sir.

19 Q. No, I do not.

20 A. So there would be a surcharge of \$2.00 and
21 unlimited calling. There is not a per minute in our tariff
22 associated with a local call if you made a call.

23 Q. What do you consider a local call from say this
24 area? Local would just be the Erie area; am I correct?

25 A. I'd have to have the tariff pulled. It's

1 mileage band, sir.

2 Q. Okay.

3 A. But on your calling record, you made no local
4 calls.

5 Q. Okay. Now, I want to go back to this random
6 thing for a minute. You say it's between the second and
7 third minute?

8 A. Uh-huh.

9 Q. And then between the fifth and sixth minute?

10 A. It's every five to six minutes thereafter.

11 Q. But it does -- the announcement does come within
12 that same time frame in each call. So, for example, say
13 you're making a 15-minute call. Those three announcements
14 that we're getting billed for are going to come in the same
15 period, whether it be the second minute or the third minute,
16 fifth and sixth minute, they're going to come in the same
17 period in every call; am I correct?

18 A. They should come on between those calls, yes.
19 Those are the requirements of the Department of Corrections.

20 MR. MESSNER: That's all I have, Your Honor.

21 JUDGE MELILLO: All right. I guess I'm thinking
22 here, too, is the Verizon Pennsylvania, Inc., intraLATA
23 rate, was that declared to be a competitive service by the
24 Commission? I'm trying to recall the intraLATA rates that
25 are -- are they actually considered a competitive rate and

1 therefore not regulated with respect to rates by the
2 Commission? I think they're regulated with respect to
3 service.

4 MR. LEHMAN: Your Honor, are you saying inter?

5 JUDGE MELILLO: Intra, intraLATA.

6 THE WITNESS: I do not know that answer.

7 JUDGE MELILLO: Do you know, Mr. Lehman or Mr. Kazee?

8 MR. LEHMAN: I believe that interLATA rates were
9 declared competitive.

10 JUDGE MELILLO: But not intraLATA?

11 MR. LEHMAN: IntraLATA, I do not know that, Your
12 Honor.

13 JUDGE MELILLO: All right. Well, I certainly can
14 look that up, but, of course, there is still the issue with
15 respect to service, which is subject to -- I know that's
16 subject to the Commission's jurisdiction at this point.

17 All right. Anything further then for Ms. Breslin?

18 MR. LEHMAN: No, Your Honor, I have nothing. This is
19 Mr. Lehman.

20 JUDGE MELILLO: All right. Ms. Breslin, thank you
21 very much. You're excused.

22 (Witness excused.)

23 JUDGE MELILLO: All right. Mr. Messner, this is your
24 opportunity for rebuttal. You can rebut the evidence that
25 you've heard today from Ms. Breslin.

1 MR. MESSNER: Your Honor, I have nothing further.

2 JUDGE MELILLO: All right. So you don't want to
3 present anything about -- I know you had indicated that you
4 thought the security announcements were not random. You
5 don't want to present anything in that regard?

6 MR. MESSNER: Well, Your Honor, as far as the
7 randomness, you know, she's saying that they either come in
8 the second or third minute and then every six minutes after
9 either during the fifth or the sixth minute, and all I'm
10 saying is during a 15-minute call, which are the length of
11 our phone calls, those three announcements or four
12 announcements -- there are four announcements, three that
13 we're billed for -- they do come at the same time in every
14 call. They come in the same time period, either the second
15 or third minute.

16 So that doesn't seem random to me, because you know
17 where they're coming. You know where they're placed. It's
18 not like in one call, it's in the first minute, and in the
19 second call, it's in the eighth minute. I don't see that
20 it's random is all I'm saying.

21 JUDGE MELILLO: All right. Do you have anything
22 further in response to the testimony of Ms. Breslin, Mr.
23 Messner?

24 MR. MESSNER: No, Your Honor, I don't.

25 JUDGE MELILLO: All right. Do you have any further

1 cross-examination, Mr. Lehman or Mr. Kazee?

2 MR. LEHMAN: No, I don't, Your Honor.

3 MR. KAZEE: No, I don't. Thank you.

4 JUDGE MELILLO: Is there anything further then for
5 the evidentiary record?

6 MR. LEHMAN: No, Your Honor. Mr. Lehman; no.

7 JUDGE MELILLO: All right. Mr. Messner, do you have
8 anything further? I think you said something about waiting
9 for something from the Department of Corrections.

10 MR. MESSNER: Yes. I requested some documentation
11 from the Department of Corrections regarding phone calls. I
12 haven't gotten it yet. I wanted to know if Your Honor would
13 like me to forward it to you and to Mr. Lehman and Mr. Kazee
14 when I do receive it.

15 JUDGE MELILLO: So you're waiting for a listing of
16 your calls; is that correct?

17 MR. MESSNER: Exactly, yes, ma'am.

18 JUDGE MELILLO: Did you request it for the period of
19 time of October 2003 through October 2005?

20 MR. MESSNER: Yes, ma'am, I have.

21 JUDGE MELILLO: Well, here's the difficulty I have.
22 I cannot keep the record open forever. We did send out the
23 Prehearing Order in this case back in November. So we've
24 had probably at least 60 days that we've given notice.

25 What is your position, Mr. Lehman, with respect to

1 Mr. Messner's desire to put in a listing of the calls that
2 he has made?

3 MR. LEHMAN: Well, is there a -- I guess for what
4 purpose?

5 JUDGE MELILLO: I suspect that his purpose would be
6 to -- I guess it would fit into his position that he wants
7 to be reimbursed for the security message time.

8 MR. KAZEE: Your Honor, this is Bruce Kazee. Those
9 records are not going to show how much time for any of those
10 calls was devoted to the playing of this taped message.

11 MR. MESSNER: Your Honor, may I interject something
12 here?

13 JUDGE MELILLO: You can respond.

14 MR. MESSNER: Ms. Breslin testified how the message
15 played and the length of them. So if you look at the call
16 records and you see that 15-minute calls have been made,
17 it's obvious from her testimony that there are 15 seconds
18 worth of security messages in each 15-minute call. So the
19 record would establish that.

20 MR. KAZEE: Yeah. I guess I grant you that point.
21 If it's a 15-minute call, I don't think we dispute the fact
22 that 15 seconds may have been devoted to the message. But
23 if the call duration is something other than that, I don't
24 think there is any way of knowing whether the message played
25 two or three times.

1 MR. MESSNER: Right, and I'd stipulate to that. I'm
2 talking only about a completed 15-minute call.

3 JUDGE MELILLO: Would the listing of calls that you
4 made, though, have the duration of the call?

5 MR. MESSNER: I would think they would, Your Honor,
6 but I'm not positive.

7 JUDGE MELILLO: That's going to be a difficulty
8 there. The other thing that I have to address is whether
9 the actual rate for the intraLATA calls has been declared
10 competitive for Verizon PA. If that's the case, then that's
11 going to also impact what I can do.

12 MR. MESSNER: Your Honor?

13 JUDGE MELILLO: Yes, Mr. Messner.

14 MR. LEHMAN: Well, Your Honor, certainly, should the
15 final decision, the final Order in this case come down in
16 favor of Mr. Messner finding that we have not provided
17 reasonable service or should you order a refund, we can
18 certainly provide a list -- we can certainly get together
19 with Mr. Messner at that time and provide a list of his
20 prepaid calls, the 15-minute long prepaid calls, and attempt
21 to figure out some type of refund should that be the ruling.

22 MR. MESSNER: That would be fine with me. And if I
23 may, regarding the collect calls during that period, I would
24 ask that if a refund is ordered, that Verizon would work
25 with the parties that I had to call collect, if they'd be

1 willing to do that if a refund is ordered.

2 JUDGE MELILLO: I'm going to have to consider whether
3 we can do anything in that regard. I have to look at the
4 record and assess it.

5 MR. MESSNER: Your Honor, I do have one more thing
6 that I just want to say, if I may, on the record.

7 JUDGE MELILLO: Yes.

8 MR. MESSNER: Mr. Kazee had said when we were off the
9 record that he would work, Verizon would work, with the
10 institution and the people who are out here on site to deal
11 with this dropped call issue and investigate if these calls
12 are being disconnected improperly, and I just wanted to make
13 sure that that is on the record and they follow up on that.

14 JUDGE MELILLO: All right. Mr. Lehman and Mr. Kazee,
15 is that a commitment that you've made on behalf of your
16 client?

17 MR. KAZEE: This is Bruce Kazee. What I explained I
18 think to Mr. Messner was to that effect; that to the extent
19 that Mr. Messner is submitting discrepancy forms to the site
20 administrator, that we would insure that the site
21 administrator is investigating the discrepancy forms in
22 accordance with our requirements; and if they find that
23 there is a reason to believe that a refund may be
24 appropriate, that they insure that they bring it to our
25 attention so that we have an opportunity to evaluate it and

1 effect a refund or a credit where appropriate.

2 I did give Mr. Messner my assurance that we would
3 undertake that effort.

4 MR. MESSNER: Your Honor?

5 JUDGE MELILLO: Yes, Mr. Messner.

6 MR. MESSNER: And that is what he said, and I
7 appreciate that. There is one thing regarding that. When
8 we fill out the discrepancy forms here, recently the
9 Department of Corrections had issued a policy that they
10 would not authorize or issue any refunds regarding the
11 telephone service. So how does that play into what Mr.
12 Kazee has just said?

13 MR. KAZEE: That's not inconsistent with what I said,
14 because the Department of Corrections as well as the site
15 administrator are not authorized to effect refunds, because
16 what we're talking about are refunds of Verizon or VSSI
17 charges. So those issues have to be brought back to Verizon
18 and/or T-Netix for evaluation, and they've got the
19 responsibility for making the decision, but we will insure
20 that the site administrators are apprised of what our
21 requirements are and are working in accordance with those
22 requirements.

23 MR. MESSNER: Very good. That's very good, Mr.
24 Kazee. I really appreciate that.

25 JUDGE MELILLO: All right. Very well. Is there

1 anything -- I guess what we'll do with respect to the
2 listing of -- we don't know whether that's going to provide
3 any timing on those calls and we don't know at this point
4 that it would be received, and I can't keep the record open
5 indefinitely.

6 So I think what we'll do is we'll take the record and
7 we'll see whether there is a finding that's going to be made
8 for refunds; and if that's the case, then the parties can
9 get together, I guess, and work that out since I guess that
10 information would be available to VSSI. Is that correct?

11 MS. BRESLIN: Yes, ma'am.

12 MR. MESSNER: Your Honor?

13 JUDGE MELILLO: That was Ms. Breslin talking. All
14 right. Ms. Breslin, you're still under oath, so we can take
15 that as part of the testimony.

16 Yes. Is that Mr. Lehman speaking?

17 MR. MESSNER: No, Your Honor. Would Ms. Breslin know
18 if the call record that she has available would show if the
19 calls were completed in 15 minutes? Does she have that
20 information?

21 JUDGE MELILLO: I don't know whether she would. We
22 don't have that information in front of us today.

23 MR. MESSNER: But I want to know does she have access
24 to that?

25 MS. BRESLIN: I have access to your prepaid calling

1 records.

2 MR. MESSNER: Okay.

3 MS. BRESLIN: And I do know the length of your calls.

4 MR. MESSNER: Okay. That's satisfactory for me,
5 because I haven't gotten a lot of cooperation here trying to
6 get those. In fact, I was going to ask to subpoena them,
7 Your Honor, if it was necessary. But if Ms. Breslin has
8 access to that and if it comes to that, if she'd be willing
9 to provide me with a copy, I'm fine with that.

10 JUDGE MELILLO: All right. Very well. VSSI has that
11 information. Unfortunately, it wasn't requested in
12 discovery, because that, I guess, would have been the party
13 that would have had the information.

14 I have some legal issues to deal with, obviously, and
15 certainly there have been some factual issues presented, and
16 I will take everything and render a decision.

17 Do the parties wish to file briefs?

18 MR. LEHMAN: Mr. Lehman, Your Honor. No. However, I
19 do have one more legal issue to bring up.

20 JUDGE MELILLO: All right.

21 MR. LEHMAN: That's with regard to Mr. Messner's
22 request that collect calls be included should you decide
23 that refunds are necessary. I'd like to request that
24 collect calls not be included, only prepaid calls, for the
25 reason that, obviously, Mr. Messner has not been harmed by

1 the collect calls, the payment there.

2 He has no standing to argue on behalf of -- not only
3 personally, he has not been harmed, but he also has no
4 standing to argue or adjudicate or raise that issue on
5 behalf of anybody he might have called. They can do that on
6 their own should that need to be done.

7 However, for those reasons, I would request that only
8 prepaid calls be considered.

9 MR. MESSNER: Your Honor?

10 JUDGE MELILLO: Yes, Mr. Messner.

11 MR. MESSNER: Mr. Lehman is correct. I'll stipulate
12 that he's absolutely correct.

13 JUDGE MELILLO: All right. Very well. And I do
14 agree; that would have to be something raised by the party
15 who is being assessed for the calls.

16 All right. It does not appear that the parties wish
17 to file briefs. I'm not going to require them. Therefore,
18 here's what is going to happen. The record will not close
19 today. The record will close upon the receipt of the
20 transcript, and I will issue an Order accordingly.

21 Then after the record has closed, I have 90 days to
22 issue what's called an Initial Decision. The parties will
23 be provided a copy of that. With that Initial Decision,
24 there will be instructions as to what the parties can do if
25 they wish to file Exceptions, and there probably will be an

1 opportunity for Reply Exceptions.

2 If there are Exceptions filed, the Commission will
3 consider them at a Public Meeting, and, of course, the
4 Commissioners can also request review on their own of this
5 matter, and eventually then there would be a Final Decision.
6 It's going to be up to the Commission to decide with respect
7 to this case in a Final Decision. Either they would accept
8 my decision or render their own.

9 Are there any questions?

10 MR. MESSNER: No, Your Honor, none from me.

11 MR. LEHMAN: I would just like to know the name of
12 the recorder there, the recording service.

13 JUDGE MELILLO: The recording service is Commonwealth
14 Reporting service, and they have asked me to ask of the
15 parties whether anyone wishes a copy of the transcript of
16 this proceeding.

17 MR. MESSNER: I do, Your Honor.

18 JUDGE MELILLO: And who is that speaking?

19 MR. MESSNER: Mr. Messner.

20 JUDGE MELILLO: Mr. Messner?

21 MR. MESSNER: Yes, ma'am.

22 JUDGE MELILLO: How is that done? Because the court
23 reporting service has a charge for that.

24 MR. MESSNER: I understand that, Your Honor. That's
25 fine. If they can let me know the charge, I'm more than

1 happy to pay it.

2 JUDGE MELILLO: All right. Now, you have provided an
3 address, I guess, to the court reporter.

4 MR. MESSNER: Yes.

5 JUDGE MELILLO: All right. How about Mr. Lehman or
6 Mr. Kazee?

7 MR. LEHMAN: Not at this time, Your Honor.

8 MR. KAZEE: No, Your Honor.

9 JUDGE MELILLO: All right. Would there be anything
10 further for today?

11 MR. MESSNER: Not from me, Your Honor.

12 JUDGE MELILLO: Okay. Very well. Thank you very
13 much, everyone, for your participation. We are off the
14 record.

15 (Whereupon, at 11:50 a.m., the hearing was
16 adjourned.)

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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 proceedings were taken stenographically by me, and thereafter reduced to typewriting by me or under my direction; and that this transcript is a true and accurate record to the best of my ability.

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