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COMMONWEALTH OF PENNSYLVANIA  
PUBLIC UTILITY COMMISSION

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Incumbent Local Exchange Carriers :  
Investigation into the obligations of :  
Incumbent Local Exchange Carriers to :  
Unbundle Network Elements. :  
:  
Initial Hearing :  
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Docket No.  
I-00030099

Pages 30 through 249

Hearing Room No. 1  
Commonwealth Keystone Building  
Harrisburg, Pennsylvania

DOCUMENT

Monday, January 26, 2004

Met, pursuant to notice, at 10:25 a.m.

BEFORE:

MICHAEL C. SCHNIERLE, Administrative Law Judge  
SUSAN D. COLWELL, Administrative Law Judge

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

1  
2 ADMINISTRATIVE LAW JUDGE MICHAEL C. SCHNIERLE: This  
3 is the time and place set for a hearing in the matter of the  
4 Commission's investigation of the obligations of incumbent  
5 local exchange carriers to unbundle network elements. The  
6 docket number is I-00030099. My name is Michael Schnierle,  
7 and with me is Susan Colwell. We'll be presiding in this  
8 matter.

9 I note the appearances of Erin Emmott and Steve  
10 Augustino for Choice One, Focal, Snip Link and XO; Robert  
11 Barber and Mark Keffer for AT&T Communications of  
12 Pennsylvania; Renardo Hicks for Penn Telecom; Genevieve  
13 Morelli and Ross Buntrock for ARC Networks, Inc., d/b/a  
14 InfoHighway Communications, Broadview Network, BullsEye  
15 Telecom, McGraw Communications and MetTel of Pennsylvania;  
16 Michelle Painter for MCI WorldCom; Kandace F. Melillo for  
17 the Commission's Office of Trial Staff; Daniel Clearfield  
18 for the Pennsylvania Carriers' Coalition; Julia A. Conover,  
19 Suzan D. Paiva and Mary Coyne for Verizon; Angela Jones for  
20 the Office of Small Business Advocate; Philip McClelland and  
21 Joel Cheskis for the Office of Consumer Advocate; and Sue  
22 Benedek for Sprint Communications Company.

23 Have I missed anybody? Is there anybody here who  
24 hasn't signed the appearance sheet?

25 (No response.)

1 JUDGE SCHNIERLE: Preliminary matters. I think we  
2 have two outstanding motions for admission pro hac vice, Mr.  
3 Keffer and Charles Gerkin. Are there any objections -- I'm  
4 sorry; and Ms. Coyne. Are there any objections to any of  
5 those motions?

6 (No response.)

7 JUDGE SCHNIERLE: In that case, they're granted. We  
8 also have outstanding two motions to strike testimony; one  
9 filed by Verizon and one filed against Verizon. Frankly,  
10 we're not going to grant either one of those. Basically,  
11 the Commission is the ultimate arbiter of what comes in or  
12 doesn't come into the record of a proceeding.

13 I have no doubt that if we had more time, if we had  
14 granted those motions to strike, they would be appealed to  
15 the Commission and the Commission might agree with our  
16 ruling or might not.

17 In any event, if we were to grant either one today  
18 and the Commission were to decide later on that it wanted to  
19 hear the testimony and have the record, it would be too late  
20 given the time frame in which this case has to take place.

21 So, consequently, both of the motions to strike  
22 testimony are denied.

23 Are there any other preliminary matters we need to  
24 discuss this morning?

25 (No response.)

1 JUDGE SCHNIERLE: It's my understanding that we're  
2 going to start by hearing from Verizon witness Peduto and  
3 West.

4 MS. CONOVER: Yes. I'd like to call them to the  
5 stand right now.

6 JUDGE SCHNIERLE: Please stand and raise your right  
7 hands.

8 Whereupon,

9 CARLO MICHAEL PEDUTO, II

10 HAROLD E. WEST, III

11 having been duly sworn, testified as follows:

12 MS. CONOVER: I am providing to the court reporter  
13 two copies of both proprietary and expurgated versions of  
14 the testimony that was presented as prefiled by Mr. West and  
15 Mr. Peduto. In addition, Your Honor, I would just state for  
16 the record we made a blowup of a map literally for ease of  
17 discussion during the case, and I will explain a little bit  
18 about that map later. I just wanted to note that for the  
19 record right now.

20 Essentially, the map reflects what is in the rebuttal  
21 testimony, and I do have small copies that I can distribute  
22 if people would like a copy.

23 JUDGE SCHNIERLE: There are two things not really  
24 preliminary, but just to forewarn you. I'm anticipating  
25 that everybody who has filed responses to the Commission's

1 interrogatories will move them into the record in the course  
2 of whatever testimony they're going to give. I'm  
3 anticipating at the end we'll have some leftovers, and at  
4 the end, it is my intention that we'll move them in as a  
5 Judge's exhibit so that we have all the responses in the  
6 record. I think we told you that at the prehearing  
7 conference.

8 MS. CONOVER: Correct. Your Honor, we had understood  
9 that they were going to be part of the record, and I was  
10 actually going to inquire how that was going to be done.  
11 We'd be more than happy to provide those as exhibits. I  
12 don't believe we have them with us to do that today, but we  
13 can certainly do that later on today or tomorrow.

14 JUDGE SCHNIERLE: Well, if that's your preference,  
15 that's fine, but because they have been received by the  
16 Commission and, to my knowledge, have been placed in the  
17 document folder, albeit the confidential document folder,  
18 they're nominally in the record.

19 In order to insure that they're in the record  
20 officially, we will move them in at the end, whatever ones  
21 haven't come in in the meantime.

22 MS. CONOVER: Is it then necessary for us to provide  
23 a separate copy?

24 JUDGE SCHNIERLE: Well, I would say this. What is  
25 going to be moved in, for example, is whatever the

1 Commission has in the folder for like Telcove. If you've  
2 got something else from them that you received that you want  
3 in, that's a horse of a different color.

4 MS. CONOVER: I understand. I'm thinking in terms of  
5 our exhibits.

6 JUDGE SCHNIERLE: I'm not worried about yours, but  
7 I'm worried about the ones like Level 3 and the rest that  
8 didn't choose to participate. Those have to be in the  
9 record if the Commission has any intention of relying on  
10 them.

11 The other point -- well, that was the main point.  
12 You may proceed.

13 MS. CONOVER: Fine.

14 **DIRECT EXAMINATION**

15 BY MS. CONOVER:

16 Q. Mr. West, would you please state your name and  
17 business address for the record?

18 A. (Mr. West) My name is Harold E. West, and the  
19 business address is 540 Broad Street, Newark, New Jersey.

20 Q. And Mr. Peduto, would you do the same?

21 A. (Mr. Peduto) I am Carlo Michael Peduto, II. My  
22 business address is 515 Dearhorn Court, Millersville,  
23 Maryland.

24 Q. Do you have in front of you a document that is  
25 entitled Verizon Statement No. 1.0?

1 A. (Mr. Peduto) Yes, we do.

2 A. (Mr. West) Yes.

3 Q. First of all, Mr. West, this testimony was  
4 initially prepared by Debra M. Berry. Are you adopting this  
5 testimony here today?

6 A. I am.

7 Q. Is this testimony true and correct to the best  
8 of your knowledge, information and belief or do you have  
9 corrections that you would like to make at this time?

10 A. (Mr. West) I don't have any to the direct.

11 Q. So is it correct to the best of your knowledge,  
12 information and belief?

13 A. (Mr. West) Yes.

14 Q. And if you were asked the same questions today,  
15 would your responses be the same?

16 A. (Mr. West) Yes.

17 Q. Mr. Peduto, was this testimony prepared by you  
18 or under your direction and control?

19 A. (Mr. Peduto) Yes, it was.

20 Q. Do you have any corrections to make to Statement  
21 No. 1.0?

22 A. (Mr. Peduto) No.

23 Q. And is it true and correct to the best of your  
24 knowledge, information and belief?

25 A. (Mr. Peduto) Yes.

1 Q. Would you now turn to Verizon Statement No. 1.1,  
2 which is the Supplemental Direct Testimony of Harold E. West  
3 and Carlo Michael Peduto, II?

4 Mr. West, was this testimony prepared by you or under  
5 your direction and control?

6 A. (Mr. West) Yes.

7 Q. Do you have any additions or corrections to make  
8 at this time?

9 A. (Mr. West) I do have one on page 5 of the  
10 supplemental. There are a couple sentences starting on line  
11 19 running through line 21, and they allude to additional  
12 CLECs that we added to the trigger analysis.

13 Q. Correct.

14 A. (Mr. West) It turns out we only added one  
15 additional CLEC to the trigger analysis in the supplemental  
16 testimony. So I just want to change some of the plurals  
17 here to singulars.

18 So that sentence starting on line 19 of page 5 should  
19 say, "Moreover, there is one CLEC that is providing service  
20 to mass market customers using its own switching that  
21 Verizon did not identify in its own internal data."

22 Then the next sentence should say, "That CLEC is  
23 highlighted in Exhibit 1."

24 Q. And with those changes, are the portions of your  
25 testimony that you are responsible for true and correct to

1 the best of your knowledge, information and belief?

2 A. (Mr. West) Yes.

3 Q. Mr. Peduto, was the portion that you're  
4 responsible for in this testimony prepared by you or under  
5 your direction and control?

6 A. (Mr. Peduto) Yes.

7 Q. Do you have any corrections to make at this  
8 time?

9 A. (Mr. Peduto) Yes, I do.

10 Q. Would you make them?

11 A. (Mr. Peduto) Yes. I would like to call  
12 everyone's attention to Exhibit 7 to the testimony. On page  
13 1 of 1 of Exhibit 7, a little more than halfway down the  
14 list, 60 Walnut Street should be 601 Walnut Street.

15 I have one more change on page 2. The sixth building  
16 location down, 401 North Broad Street, over to column 6, the  
17 next-to-the-last column, there should be X's on the lines  
18 for the last two CLECs in that building.

19 MS. CONOVER: We're not identifying those, because  
20 those would be proprietary information, but it would be the  
21 last two CLECs.

22 JUDGE SCHNIERLE: I have X's there already. This is  
23 page 2 of 2 on Exhibit 7 that you're talking about?

24 WITNESS PEDUTO: That's correct; column 6.

25 JUDGE SCHNIERLE: Under DS-1 Wholesale Trigger?

1 WITNESS PEDUTO: Yes, sir.

2 MR. BARBER: Are you sure that's not DS-3 Wholesale  
3 Trigger?

4 WITNESS PEDUTO: I think that's DS-3 Wholesale  
5 Trigger. It's the sixth column, the next-to-the-last  
6 column.

7 JUDGE SCHNIERLE: All right. Next-to-the-last; all  
8 right.

9 WITNESS PEDUTO: Yes.

10 JUDGE SCHNIERLE: Got it.

11 WITNESS PEDUTO: Those are the only two changes.

12 BY MS. CONOVER:

13 Q. And with those changes, is this testimony true  
14 and correct to the best of your knowledge, information and  
15 belief?

16 A. (Mr. Peduto) Yes, it is.

17 Q. Now let me turn to Statement No. 1.2, Verizon  
18 Pennsylvania and Verizon North Statement No. 1.2, Rebuttal  
19 Testimony of Harold E. West and Carl Michael Peduto, II.

20 First of all, Mr. West, was the portion of the  
21 testimony that relates to the issues you're dealing with  
22 prepared by you or under your direction and control?

23 A. (Mr. West) Yes.

24 Q. Do you have any corrections to make at this  
25 time?

1 A. (Mr. West) I do. The first one is on page 11,  
2 line 1. The cite there is incorrect. It should be TRO at  
3 paragraph 501, not 316.

4 Then on page 15, line 8, this is in the center of the  
5 quote. Line 8 should read, "points out, dozens of CLECs  
6 serve business customers of such size." So mass market is  
7 not part of that quote. Substitute the word "business."

8 The next two I have in the text are numbers sitting  
9 in the middle of a proprietary passage. I don't know how  
10 you want to --

11 Q. And the number is proprietary?

12 A. (Mr. West) Yes.

13 MS. CONOVER: Your Honor, I think we'll have to go on  
14 the proprietary record to make this correction.

15 JUDGE SCHNIERLE: Is this in the text of your  
16 testimony?

17 WITNESS WEST: Yes.

18 JUDGE SCHNIERLE: Well, if you give us the numbers by  
19 page and line number and they're not related to anything,  
20 nobody is going to know what they are.

21 MS. CONOVER: It's not our proprietary data, so we're  
22 perfectly willing to live with that.

23 JUDGE SCHNIERLE: Well, let's try it.

24 WITNESS WEST: Okay. On page 33, line 18, at the end  
25 of that line, there is a number there that says 20,000; and

1 that number should be 129,000.

2 JUDGE SCHNIERLE: This is line 18?

3 WITNESS WEST: Right.

4 JUDGE SCHNIERLE: All right. Keep going.

5 WITNESS WEST: Similarly, on page 34, line 17, there  
6 is a number that says 20,000, and that should be corrected  
7 to be 129,000.

8 BY MS. CONOVER:

9 Q. Could you maybe explain briefly for the record  
10 the basis for that correction?

11 A. (Mr. West) This is data that appeared in this  
12 particular carrier's responses to the Commission's data  
13 requests.

14 Now, I have one more correction, and this is to  
15 Attachment 5, which is the profile of the trigger CLECs by  
16 MSA. With Your Honor's permission, what I'd like to do is  
17 just summarize these changes very briefly, and then we'll  
18 get you an updated version of the attachment, because these  
19 are spreadsheets, and if I were to go in and tell you  
20 specific numbers and where they are, they get added and  
21 added in several different places, and, you know, changing  
22 one number changes about nine different places each time in  
23 the spreadsheets.

24 JUDGE SCHNIERLE: All right. Go ahead.

25 WITNESS WEST: This is also proprietary.

1 JUDGE SCHNIERLE: All right. We're on the  
2 proprietary record.

3 (Whereupon, the following pages 48 through 51 were  
4 sealed and bound separately.)  
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FORM 2

1 BY MS. CONOVER:

2 Q. Looking at the portions of Statement 1.2 that  
3 you are responsible for, Mr. Peduto, were those answers  
4 prepared by you or under your direction and control?

5 A. (Mr. Peduto) Yes, they were.

6 Q. Do you have any corrections to make at this  
7 time?

8 A. (Mr. Peduto) Yes, I do. I'd like to call  
9 everyone's attention first of all to Exhibit 22 or actually  
10 Attachment 22. That attachment is currently comprised of  
11 two pages. It should have been comprised of four pages, and  
12 I believe we have copies of the new Exhibit 22 to hand out.

13 MS. CONOVER: Yes. Unfortunately, if I could state  
14 for the record, we left that back, so I'm going to have to  
15 bring it. We will get that this morning.

16 BY MS. CONOVER:

17 Q. Any other changes?

18 A. (Mr. Peduto) Yes.

19 JUDGE SCHNIERLE: Just to be clear, the other two  
20 pages are also printouts of the Web site?

21 MS. CONOVER: Yes.

22 WITNESS PEDUTO: Yes, Your Honor. I'd like to next  
23 call everyone's attention to page 55 of the testimony. Line  
24 6 begins, "Collocation arrangements and identified." Does  
25 everyone see that?

1 (No response.)

2 WITNESS PEDUTO: I'd like to insert "Begin  
3 proprietary information" after the word "identified." After  
4 the word "arrangements," "End proprietary information."

5 BY MS. CONOVER:

6 Q. Any other changes?

7 A. (Mr. Peduto) And on page 62, line 15, it  
8 currently reads, "Allegiance has also admits." It should  
9 read "Allegiance has also admitted."

10 Q. Are there any other changes?

11 A. (Mr. Peduto) No, there aren't.

12 Q. And with those changes, is this testimony true  
13 and correct to the best of your knowledge, information and  
14 belief?

15 A. (Mr. Peduto) Yes, it is.

16 Q. And if you were asked the same questions today,  
17 would your responses be the same?

18 A. (Mr. Peduto) Yes, they would.

19 MS. CONOVER: Your Honor, at this time, I would like  
20 to move into the record Verizon Statements Nos. 1.0, 1.1 and  
21 1.2, subject to cross-examination.

22 JUDGE SCHNIERLE: And all the associated exhibits?

23 MS. CONOVER: And all the associated exhibits?

24 JUDGE SCHNIERLE: Any objection?

25 MR. AUGUSTINO: Your Honor, Steve Augustino. Just to

1 note for the record, we had filed a motion to strike  
2 portions of that. I understand that you have denied that,  
3 but I merely want to note that objection for the record.

4 JUDGE SCHNIERLE: All right. Well, that's noted, and  
5 they're admitted subject to cross-examination.

6 (Whereupon, the documents were marked  
7 as Verizon Statements Nos. 1.0, 1.1  
8 and 1.2 with exhibits and  
9 attachments for identification, and  
10 were received in evidence.)

11 MS. CONOVER: Your Honor, your pleasure on this, but  
12 we do have a map. We have extra copies of the map. It  
13 essentially is a pictorial picture of what is in the  
14 rebuttal testimony. I have extra copies to pass around. If  
15 you would like us to mark it as hearing exhibit, I would be  
16 glad to do that, but it's really up to you.

17 JUDGE SCHNIERLE: Why don't you mark that and  
18 distribute it? That's not part of the package?

19 MS. CONOVER: It is not part of the package. An  
20 earlier version of this was included with our original  
21 direct testimony, but this essentially I can say reflects  
22 what is in the updated exhibits. It does not in any way  
23 change our request.

24 JUDGE SCHNIERLE: All right.

25 MS. CONOVER: So I'd like to mark now Verizon Hearing

1 Exhibit No. 1.

2 JUDGE SCHNIERLE: It may be so marked.

3 (Whereupon, the document was marked  
4 as Verizon Hearing Exhibit No. 1  
5 for identification.)

6 MR. BARBER: Is this going to be Verizon Hearing  
7 Exhibit something-or-other?

8 MS. CONOVER: Verizon Hearing Exhibit No. 1.

9 Your Honor, one other matter before cross-  
10 examination. I would like to state for the record that we  
11 would like to reserve the right to do oral surrebuttal if  
12 and when it is necessary. We would hope that it would not  
13 be, but should something come up during the hearing that we  
14 could address in very brief surrebuttal, we would like to  
15 reserve that right at that time. We wanted to bring that to  
16 your attention.

17 JUDGE SCHNIERLE: We'll cross that bridge when we  
18 come to it.

19 MR. CLEARFIELD: Your Honor, may I just add, I would  
20 note that if there's going to be oral testimony of that  
21 nature, it would be rejoinder rather than surrebuttal; it  
22 would be inappropriate otherwise. We are considering, for  
23 our witnesses, some short -- asking for permission to  
24 present some short surrebuttal. We're going to have  
25 conversations with Verizon to determine if we can stipulate

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to that.

JUDGE SCHNIERLE: All right. Well, as I say, we'll cross that bridge when we come to it.

MS. CONOVER: They are now available for cross-examination.

JUDGE SCHNIERLE: Did you move Verizon Exhibit 1?

MS. CONOVER: I'm sorry; I'd like to also move Verizon Hearing Exhibit No. 1 into the record.

JUDGE SCHNIERLE: Any objection?

(No response.)

JUDGE SCHNIERLE: It's admitted.

**(Whereupon, the document marked as Verizon Hearing Exhibit No. 1 was received in evidence.)**

JUDGE SCHNIERLE: Have the parties discussed the order of cross?

MR. BARBER: Your Honor, Mr. Augustino has got some personal reasons he needs to go first. I'm certainly willing to defer to him. He's got to get out of town.

JUDGE SCHNIERLE: All right. Go ahead.

MR. AUGUSTINO: I would appreciate the opportunity to go first, Your Honor.

JUDGE SCHNIERLE: That's fine.

MR. AUGUSTINO: Thank you.

**CROSS-EXAMINATION**

FORM 2

1 BY MR. AUGUSTINO:

2 Q. Good morning, Mr. West. Good morning, Mr.  
3 Peduto.

4 A. (West) Good morning.

5 A. (Peduto) Good morning.

6 Q. My name is Steve Augustino. I'm from Kelley,  
7 Drye & Warren. I'm here on behalf of a group of CLECs who,  
8 for convenience purposes, to sort out all the coalitions, we  
9 have been referring to as the Loop and Transport Carrier  
10 Coalition, or LTCC. I'd like to ask you a few questions  
11 today, principally about the loop and transport aspects of  
12 the case.

13 First of all, Mr. West and Mr. Peduto, you agree,  
14 don't you, that the best evidence about a carrier's  
15 facilities or its services comes from the carriers  
16 themselves, don't you?

17 A. (West) Yeah, I definitely agree with that.

18 Q. And Mr. Peduto?

19 A. (Peduto) I do, and I agree that that  
20 information can come from a wide variety of sources from the  
21 carrier.

22 Q. But it should come from the carrier themselves?

23 A. (Peduto) That's where the best and most  
24 knowledgeable information resides.

25 Q. In fact, Mr. Peduto, in several portions of the

1 rebuttal testimony that was filed on January 20, Statement  
2 1.2, you agree that if the information the CLEC had provided  
3 is correct, that Verizon would update its pairing reports as  
4 it related to transport.

5 A. (Peduto) Could you point me to one of those  
6 examples?

7 Q. I certainly could. I will refer you to page 61  
8 of Statement 1.2. Let me find the line here. It's right in  
9 the middle of the page, lines 8 through 11, and this is in  
10 non-proprietary section. You're referring to the carrier  
11 Allegiance and you say that if Allegiance had misunderstood  
12 the question, that you would agree that they should be  
13 removed from the pairing reports.

14 A. (Peduto) That's correct.

15 Q. And there is another section in your testimony,  
16 pages 53 to 54. Now, this is in the middle of a proprietary  
17 section, so I will not refer to the carrier, but again, in  
18 the carry-over there starting on line 16 at page 53, and  
19 carrying over to the first line on page 54, you agree that  
20 if that carrier's information is incorrect, Verizon agrees  
21 it would be removed. Is that correct?

22 A. (Peduto) The lines you're referring to, that's  
23 simply involved in the question there?

24 Q. I wanted to confirm that that's another instance  
25 where you agreed that if the CLEC provided information which

1 is the best evidence, if that's correct, you'll revise your  
2 pairing reports?

3 A. (Peduto) Yes; that's correct. I just want to  
4 make sure that I'm reading the proper lines. You're  
5 suggesting a question that begins with, "Cavalier asserts  
6 that"?

7 Q. It begins on that -- it's a proprietary portion  
8 of the testimony.

9 A. (Peduto) Okay.

10 Q. It begins at page 53, line 16.

11 A. (Peduto) Yes.

12 Q. Now, in addition, I have some more questions  
13 about the criteria that were used by Verizon to identify  
14 wholesale carriers on the transport side.

15 Mr. Peduto, am I correct that you are principally  
16 responsible for the loop and the transport sections?

17 A. (Peduto) That's correct.

18 Q. I will do my best to address my questions to you  
19 then.

20 First of all, one of the criteria that Verizon used  
21 is whether a CLEC is identified in the New Paradigm CLEC  
22 report; is that correct?

23 A. (Peduto) Yes.

24 Q. And that was a New Paradigm report, the 17th  
25 edition?

1 A. (Peduto) That's correct.

2 Q. The 2003 edition.

3 A. (Peduto) That's correct.

4 Q. Do you know when that was released?

5 A. (Peduto) If my memory serves me correctly,  
6 October of 2003.

7 Q. October of 2003?

8 A. (Peduto) I believe that's right.

9 Q. Do you know what time period the information was  
10 based upon?

11 A. (Peduto) I don't recall.

12 Q. Now, if I got this correct, if I understand this  
13 properly, the way that Verizon identified a carrier as being  
14 a wholesale provider under the New Paradigm report is that  
15 you look -- there's a section for each CLEC; correct? An  
16 individual few pages that are dedicated to each of the CLECs  
17 that are in the report; correct?

18 A. (Peduto) That's correct.

19 Q. And at one point there is a section that  
20 discusses services provided by the CLEC; correct?

21 A. (Peduto) That's correct.

22 Q. And there's one line there that says "dedicated  
23 access transport"; correct?

24 A. (Peduto) That's correct.

25 Q. And if New Paradigm reports that that carrier

1 reports the word "yes" in response to dedicated access  
2 transport, you count it as a wholesale provider; correct?

3 A. (Peduto) That's correct.

4 Q. Now, does that line, does that say which routes  
5 the carrier is on?

6 A. (Peduto) No, it does not. It describes the  
7 general operations of the carrier.

8 Q. And does it identify whether that carrier  
9 provides dedicated access transport at any particular  
10 capacity level?

11 A. (Peduto) No, it does not.

12 Q. And to your knowledge, does New Paradigm  
13 identify -- does it define dedicated access transport in  
14 that report?

15 A. (Peduto) I believe there's a definition in the  
16 general section of the New Paradigm report up front.

17 MR. AUGUSTINO: I would like at this time to mark a  
18 cross-examination exhibit.

19 MS. CONOVER: And this is being marked as --

20 MR. AUGUSTINO: This will be marked as the LTCC Cross  
21 Exhibit 1.

22 (Whereupon, the document was marked  
23 as LTCC Cross-Examination Exhibit  
24 No. 1 for identification.)

25 MR. AUGUSTINO: I brought ten copies, Your Honor; I

1 probably should have brought a few more. I thought that  
2 would suffice.

3 JUDGE SCHNIERLE: Well, try to share.

4 MR. AUGUSTINO: Your Honor, I should give the witness  
5 the reporter's copy, or --

6 JUDGE SCHNIERLE: Here, take one of ours.

7 BY MR. AUGUSTINO:

8 Q. Mr. Peduto, this Cross-Examination Exhibit 1 is  
9 titled "Glossary of Terms." Do you recognize this?

10 A. (Peduto) I do.

11 Q. And what does it appear to you to be?

12 A. (Peduto) Well, it's part of the New Paradigm  
13 report, the 2003 edition.

14 Q. And it's alphabetical, is it not?

15 A. (Peduto) Yes, it is.

16 Q. Would you look under dedicated access transport?  
17 Does that appear in the glossary?

18 A. (Peduto) No, it does not.

19 Q. I'll ask you again: do you know --

20 A. (Peduto) However, I might add that there is a  
21 definition for dedicated line on page 6 of 24, and there it  
22 talks about including such services as special access, end  
23 user/IXC special access private lines, collocated special  
24 access, collocated switched access, dedicated line may run  
25 directly from customer to their long distance carrier, those

1 sorts of things.

2 Q. Do you know if that is the definition that New  
3 Paradigm used?

4 A. (Peduto) I can't swear that that's the  
5 definition that they used for dedicated access transport,  
6 but there is this reference to dedicated line.

7 Q. You agree, do you not, Mr. Peduto, that the  
8 FCC's definition of dedicated transport is the only  
9 definition that matters for purposes of applying the  
10 transport triggers?

11 A. (Peduto) The definition in the Triennial Review  
12 Order is the one I rely on.

13 Q. Does this appear to be the definition that's in  
14 the Triennial Review Order?

15 A. (Peduto) Not on a word-for-word basis.

16 Q. Thank you. And sometimes, in answering that  
17 question, New Paradigm can be wrong, can they not?

18 A. (Peduto) I don't know.

19 MR. AUGUSTINO: I'd like to mark another exhibit,  
20 Cross-Examination Exhibit 2. This is a single page exhibit,  
21 Your Honor.

22 **(Whereupon, the document was marked**  
23 **as LTCC Cross-Examination Exhibit**  
24 **No. 2 for identification.)**

25 MR. AUGUSTINO: Your Honor, to save time, actually, I

1 should mark a Cross-Examination Exhibit 3.

2 JUDGE SCHNIERLE: It may be so marked.

3 (Whereupon, the document was marked  
4 as LTCC Cross-Examination Exhibit  
5 No. 3 for identification.)

6 MR. AUGUSTINO: Your Honor, before I begin this  
7 portion of the cross-examination, I'd like to seek some  
8 clarification. It would be more convenient if I could refer  
9 to the names of the carriers in these two exhibits.

10 JUDGE SCHNIERLE: Is this New Paradigm thing a  
11 publicly available document?

12 MR. AUGUSTINO: It is if you purchase the document,  
13 Your Honor.

14 JUDGE SCHNIERLE: In other words, anybody can go buy  
15 the document?

16 MR. AUGUSTINO: If you have a couple thousand  
17 dollars, you can get it, yes.

18 JUDGE SCHNIERLE: Refer to the name.

19 MR. AUGUSTINO: I'll be very brief then, Your Honor.

20 BY MR. AUGUSTINO:

21 Q. Mr. Peduto, I'd like to refer you to Cross-  
22 Examination Exhibit 2. This is regarding Allegiance  
23 Telecom. In that, if you look at the line "dedicated access  
24 transport," it reports no for Allegiance Telecom, does it  
25 not?

1 A. (Peduto) It does.

2 Q. Yet, if I am correct, Mr. Peduto, Verizon has  
3 classified Allegiance as a wholesale provider of transport;  
4 is that correct?

5 A. (Peduto) That is correct. And as I mentioned  
6 before, the information that we looked at that the CLEC says  
7 about itself can come from a wide variety of places. I'd  
8 like to, for example, here refer you to Attachment 11 of the  
9 rebuttal testimony, which is some pulls off of the  
10 Allegiance web page, Wholesale Telecom Solutions, and it  
11 goes on to talk, on this web page, about their willingness  
12 to provide wholesale services. In addition to that,  
13 Allegiance, I believe, has a tariff in Pennsylvania to  
14 provide services like dedicated access transport.

15 Q. Okay. We'll address each of those later in this  
16 cross-examination, but thank you for that.

17 But if you looked only at New Paradigm, you would not  
18 count Allegiance as a wholesale carrier?

19 A. (Peduto) If I relied solely on New Paradigm,  
20 that's correct.

21 Q. So this other evidence from the CLEC is better  
22 evidence than the New Paradigm evidence; is that correct?

23 A. (Peduto) I didn't say that. They're a  
24 collection of different items. Sometimes they don't  
25 completely agree with one another; however, the information

1 in New Paradigm did come from the CLEC, the information on  
2 the web page does come from the CLECs.

3 Q. But your testimony is that New Paradigm then got  
4 this wrong; is that correct?

5 A. (Peduto) That's correct.

6 Q. And then referring to Exhibit 3, this is for RCN  
7 Corporation, and they also -- under dedicated access  
8 transport, it reports no, and I believe Verizon has also  
9 classified RCN as a wholesale carrier; is that correct?

10 A. (Peduto) That's correct.

11 Q. And so your testimony is that New Paradigm got  
12 this wrong?

13 A. (Peduto) My testimony is that we relied on  
14 other information other than New Paradigm in the case of RCN  
15 to make that judgment about their willingness to wholesale.

16 Q. And referring back to New Paradigm -- we can use  
17 Exhibit 3 here -- is there anything in that line, dedicated  
18 access transport," that indicates whether the carrier is  
19 using its own facilities to provide that service?

20 A. (Peduto) You're referring to Exhibit 3?

21 Q. Exhibit 3, yes, to the single line that says  
22 "dedicated access transport." Is there anything that  
23 indicates whether they're using their own facilities?

24 A. (Peduto) No, there's not.

25 Q. And the New Paradigm report is not Pennsylvania

1 specific, is it?

2 A. (Peduto) No, it's not.

3 Q. And so there are a number of Pennsylvania  
4 carriers that are not in the New Paradigm report; is that  
5 correct?

6 A. (Peduto) That is correct.

7 Q. Including several of the ones that you have  
8 identified as wholesale providers?

9 A. (Peduto) That is correct.

10 MR. AUGUSTINO: And, Your Honor, the names of the  
11 carriers are not proprietary in this circumstance?

12 JUDGE SCHNIERLE: I'm sorry?

13 MR. AUGUSTINO: I just wanted to get a list and make  
14 clear that there are certain carriers that were identified  
15 as wholesale providers, but they're not in the New Paradigm  
16 report so they could not have been based upon this  
17 information.

18 JUDGE SCHNIERLE: They're not wholesale carriers,  
19 they're not --

20 MR. AUGUSTINO: I'm sorry, Your Honor. Verizon has  
21 alleged that these carriers are wholesale providers. Those  
22 carriers are not in the New Paradigm report at all, so the  
23 New Paradigm report cannot provide any evidence that those  
24 carriers are, in fact, wholesale providers.

25 JUDGE SCHNIERLE: Okay; you can go through the list.

1 MR. AUGUSTINO: Okay.

2 BY MR. AUGUSTINO:

3 Q. Mr. Peduto, Pennsylvania based carriers or  
4 carriers in Pennsylvania I have -- and see if I got this  
5 correct. You have listed the following carriers as  
6 wholesale providers and they are not in the New Paradigm  
7 report: City Signal, CTSI, DQE, Fibertech, Level 3, MFN,  
8 now AboveNet, and Sprint.

9 A. (Peduto) To the best of my knowledge, that is  
10 correct.

11 JUDGE SCHNIERLE: Just to be clear on this, in other  
12 words, if we look at the pages for those carriers that are  
13 comparable to LTCC Cross-Examination Exhibits 2 and 3, they  
14 would also have the word "no" opposite dedicated access  
15 transport?

16 MR. AUGUSTINO: No, Your Honor; I'm sorry. They're  
17 not even listed.

18 JUDGE SCHNIERLE: Oh, they're not even in the report?

19 MR. AUGUSTINO: I was going to try and save time, but  
20 allow me to mark an Exhibit 4, which is the table of  
21 contents from the New Paradigm report.

22 JUDGE SCHNIERLE: All right.

23 MR. AUGUSTINO: That will make it easier, I think.

24 **(Whereupon, the document was marked**  
25 **as LTCC Cross-Examination Exhibit**



1 Q. Fibertech?

2 A. (Peduto) Fibertech does not appear.

3 Q. Level 3?

4 A. (Peduto) Level 3 does not appear.

5 Q. MFN, either under its old name or its new name,  
6 AboveNet?

7 A. (Peduto) AboveNet does not appear.

8 Q. And Sprint?

9 A. (Peduto) Sprint does not appear.

10 Q. Now, I would like to move over -- you mentioned  
11 the web sites, the carrier web sites, and you did use that  
12 as a basis for classifying some carriers as wholesale  
13 carriers of transport; correct?

14 A. (Peduto) Yes, we did.

15 Q. Would you agree with me that sometime those web  
16 sites can be hard to interpret?

17 A. (Peduto) I didn't seem to have a lot of trouble  
18 interpreting most of those web sites. They seemed like  
19 promotional materials, for the most part, to me.

20 Q. But in at least one case you did make a mistake  
21 or you at least did revise your judgment, did you not?

22 A. (Peduto) We revised our judgment based on an  
23 interrogatory response in one case.

24 Q. And that, I believe, is the case of Choice One  
25 on pages 63 through 64 of your Statement 1.2; is that

1 correct?

2 A. (Peduto) That's correct.

3 Q. In fact, there you said that initially you  
4 classified Choice One as a carrier based on information on  
5 its web site; correct?

6 A. (Peduto) That's correct.

7 Q. But after hearing directly from the carrier, and  
8 the carrier's best evidence, you concluded that that was  
9 incorrect?

10 A. (Peduto) After hearing from the carrier,  
11 reviewing that response, and then going back to the web site  
12 to look at the strength of the material on the web site, we  
13 came to the conclusion that we would remove Choice One from  
14 the wholesale list -- list of wholesalers, I should say.

15 MR. AUGUSTINO: Just one more, if I can, to make  
16 this point. I want to mark as LTCC Cross-Examination  
17 Exhibit 5 a portion of a web site from AboveNet.

18 **(Whereupon, the document was marked**  
19 **as LTCC Cross-Examination Exhibit**  
20 **No. 5 for identification.)**

21 BY MR. AUGUSTINO:

22 Q. Now, Mr. Peduto, I'd like to refer you to LTCC  
23 Cross-Examination Exhibit 5. You would agree with me,  
24 that's a portion of the web site from AboveNet?

25 A. (Peduto) Yes, it is. It also appears as

1 Attachment 10 to our rebuttal testimony, 1.2.

2 Q. The web sites can change over time; is that  
3 correct?

4 A. (Peduto) Yes, that's correct.

5 Q. I just wanted to make sure I had the most  
6 complete one. That's why I marked this.

7 Now, if I understand Verizon's position right, you  
8 classify AboveNet as a wholesale provider because it offers  
9 a service identified as IP bandwidth; is that correct?

10 A. (Peduto) No, that's not really correct.

11 Q. Do you contend that the IP bandwidth is a  
12 transport service?

13 A. (Peduto) No, I don't. I would suggest to you  
14 that, as I mentioned before, there are a myriad of various  
15 sources by which we deduce that a particular carrier is  
16 willingly offering transport at wholesale on a widely-  
17 available basis. In the case of AboveNet, I believe that  
18 there are other carriers who have actually identified them  
19 as wholesalers.

20 Q. Of what type of service, Mr. Peduto? Dark  
21 fiber; am I correct?

22 A. (Peduto) Dark fiber, to the best of my  
23 knowledge; and I'd have to refresh my memory on that, if  
24 you'd like me to look beyond that.

25 Q. Yeah. I'm sorry; if you will bear with me just

1 a moment. I believe Verizon has made an allegation that  
2 AboveNet also provides lit services. If I'm not mistaken,  
3 that was the basis for your Exhibit 22.

4 A. (Peduto) DS-3 and DS-1 as well, yes.

5 Q. And as you noted, you've cited to this page, the  
6 IP bandwidth portion.

7 A. (Peduto) As part of the reason for that  
8 deduction, yes, that conclusion.

9 Q. I want to make sure that I understand this. Do  
10 you contend that IP bandwidth is a transport service that  
11 qualifies under the FCC triggers?

12 A. (Peduto) It may be a brand name of AboveNet's  
13 or a product of AboveNet's, but I don't believe you'll find  
14 that terminology in the TRO.

15 Q. In fact, this is a service that connects an IP,  
16 an internet service provider, to the internet; is that  
17 correct? Refer to the second sentence of Exhibit 5.

18 A. (Peduto) And it also --

19 Q. The second line, rather.

20 A. (Peduto) "Reliable IP connectivity to the  
21 internet within all major metropolitan areas over AboveNet's  
22 optical internet long-haul backbone." And I also believe  
23 that you'll find, further down on that particular page under  
24 "Direct Internet Access," they talk about connecting to a  
25 variety of POPs, including telco hotels. I mean, all that's

1 an indication that this product name is the equivalent of  
2 transport services.

3 JUDGE SCHNIERLE: Wait a minute. Do you have that  
4 page in front of you? That thing you just referred to,  
5 immediately in front of that it says, "giving you the  
6 ability to effectively control your Internet traffic" -- I  
7 guess a part of it was cut off -- "from a variety of POPs."  
8 What does internet traffic have to do with the dedicated  
9 transport that we're talking about here?

10 WITNESS PEDUTO: Well, typically, carriers will  
11 collect traffic at a particular location and then put it  
12 together in a large pipe to take it back to their central  
13 location, a switch or data location of some sort. That  
14 looks like transport service to me, it's dedicated to that  
15 particular provider and it carries collected traffic back to  
16 wherever it is they're taking it on their network.

17 BY MR. AUGUSTINO:

18 Q. Mr. Peduto, does it provide transport between  
19 two ILEC central offices or ILEC switches?

20 A. (Peduto) It does not say that here.

21 Q. Now, Mr. Peduto, you read a portion of that  
22 second line there, and it says, "AboveNet provides reliable  
23 IP connectivity to the internet within all major  
24 metropolitan areas." Is that literally true, all major  
25 metropolitan areas?

1 A. (Peduto) I don't know.

2 Q. Do you know if AboveNet -- I'm sorry. Would you  
3 consider Pittsburgh a major metropolitan area?

4 A. (Peduto) I would.

5 Q. Do you know if AboveNet provides any services in  
6 Pittsburgh?

7 A. (Peduto) May I -- I believe I have a ROG  
8 response from AboveNet that may be able to help with that  
9 question.

10 Q. Certainly. This might help. If you would look  
11 -- my question is: are all of the AboveNet routes that  
12 Verizon alleges are in LATA 228, which is the Philadelphia  
13 LATA, not the Pittsburgh LATA.

14 A. (Peduto) I'm sorry; please say that again.

15 Q. All of the routes on which Verizon alleges  
16 AboveNet is present are in the Philadelphia LATA, in LATA  
17 228.

18 A. (Peduto) That appears to be what AboveNet has  
19 reported on their response to interrogatories.

20 MS. CONOVER: I would just like to note for the  
21 record that the term "all major metropolitan areas" is what  
22 AboveNet made a representation of on the web site. That was  
23 their representation.

24 MR. AUGUSTINO: That's true.

25 BY MR. AUGUSTINO:

1 Q. And sometimes it may not be literally true.  
2 Would you agree, Mr. Peduto?

3 A. (Peduto) This is a piece of promotional  
4 material that I would expect would be generally correct.

5 Q. And am I correct also that the promotional  
6 material that AboveNet provides here is generalized and it  
7 does not limit its representation to particular routes?

8 A. (Peduto) That's correct.

9 JUDGE SCHNIERLE: I want to break in here for a  
10 minute. Are you familiar with Verizon's web pages at all?

11 WITNESS PEDUTO: I've been on those web pages, yes,  
12 Your Honor.

13 JUDGE SCHNIERLE: Does Verizon offer DSL service  
14 ubiquitously? Let me put it another way. Are there central  
15 offices where customers can't get DSL particularly if  
16 they're more than 18,000 feet from the central office?

17 WITNESS PEDUTO: I believe that we offer it in every  
18 central office, subject to check; however, I think that the  
19 18,000 foot distance limitation is, indeed, a limitation.  
20 So within almost every central office, likely there are some  
21 customers who cannot get DSL service.

22 JUDGE SCHNIERLE: If I go on the web site and just  
23 print out a page that says Verizon offers DSL service, is it  
24 fair for me to assume that it offers it to every customer?

25 WITNESS PEDUTO: Probably there will be a disclaimer

1 somewhere there that says there is a distance limitation,  
2 that some conditions or limitations do apply. But to answer  
3 your question, if it says only that it provides DSL  
4 ubiquitously across the state of Pennsylvania, that's not  
5 totally accurate.

6 JUDGE SCHNIERLE: All right. You may continue, Mr.  
7 Augustino.

8 MR. AUGUSTINO: Thank you. I'm going to move on,  
9 Your Honor, to another criterion that Verizon used. This is  
10 a carrier supplies services to Universal Access, and for  
11 convenience I would like to mark LTCC Cross-Examination  
12 Exhibit 5.

13 JUDGE SCHNIERLE: Is that 5 or 6?

14 MR. AUGUSTINO: I'm sorry; 6.

15 (Whereupon, the document was marked  
16 as LTCC Cross-Examination Exhibit  
17 No. 6 for identification.)

18 BY MR. AUGUSTINO:

19 Q. Now, Mr. Peduto, in your testimony you state  
20 that if a carrier is identified by Universal Access as a  
21 supplier, you counted them as a wholesale provider; is that  
22 correct?

23 A. (Peduto) Where is that in the testimony? If  
24 you will remind me.

25 Q. Certainly. If you go to your initial testimony,

1 Statement 1.0, and I would refer you to page 53, the top of  
2 53, the bullet point that begins on line 1 and ends at line  
3 9. Is it correct that you identified a carrier as a  
4 wholesale supplier if they were listed on the web site of  
5 Universal Access as a supplier?

6 A. (Peduto) Again, that was one of the several  
7 criterias that we used to understand -- to make a judgment  
8 about whether or not a carrier was willing to offer  
9 wholesale services on a widely available basis.

10 Q. But with respect to this criteria, Universal  
11 Access, the web site was the only information that you used;  
12 correct?

13 A. (Peduto) I'm sorry; I didn't understand that  
14 question.

15 Q. You have several criteria that were used to  
16 possibly identify a carrier as a wholesale provider. One of  
17 those was the carrier supplies transport facilities to  
18 Universal Access; correct?

19 A. (Peduto) That's correct.

20 Q. I want to focus solely on that part, not on the  
21 rest of the information you may have tried to collect.

22 A. (Peduto) Okay.

23 Q. But with respect to Universal Access, I'm  
24 correct, am I not, that you used solely the web site  
25 information to identify that?

1           A.   (Peduto)  If you're asking me if I used the  
2 information on Universal Access' web site about their  
3 suppliers to determine whether a carrier supplied Universal  
4 Access with transport, the answer is yes.

5           Q.   And Exhibit 6, do you recognize Exhibit 6?

6           A.   (Peduto)  Hearing Exhibit 6, your Exhibit 6 that  
7 you just handed to me?

8           Q.   Yes.  LTCC Cross-Examination Exhibit 6.

9           A.   (Peduto)  Yes, I do.

10          Q.   What is it, Mr. Peduto?

11          A.   (Peduto)  Basically, it's a page off of the  
12 Universal Access web site and it talks about suppliers, and  
13 it says that "Partnering with many of the industry's elite  
14 carriers has been key to providing the level of service our  
15 customers demand.  Following are just some of the suppliers  
16 that allow us to extend world-class service to our  
17 customers."  Then it lists a number of carriers.

18          Q.   And this web page is the basis for your  
19 classification as Universal Access; correct?

20          A.   (Peduto)  That's correct.

21          Q.   I have no further questions about that portion,  
22 and I don't believe I have any additional questions about  
23 the wholesale portion of your case, at this moment at least.  
24 I'd like to discuss loops for a moment, if we can.

25          A.   (Peduto)  Okay.

1 Q. With respect to the loop case, Verizon did not  
2 put on a loop case in its initial case, its Statement 1.0;  
3 is that correct?

4 A. (Peduto) I think what we said in 1.0 is that:  
5 Is Verizon presenting evidence? Not at this time. Verizon  
6 does not know the specific buildings to which other carriers  
7 have deployed high capacity loops. This information is in  
8 the hands of those carriers. Verizon may submit evidence on  
9 buildings meeting the high capacity loop trigger once it has  
10 received the necessary information through discovery, to  
11 paraphrase.

12 Q. So you were unable to do it because you didn't  
13 have the information?

14 A. (Peduto) That's correct.

15 Q. And then ultimately, in the supplemental  
16 statement, Statement 1.1, Verizon does add a loops case;  
17 correct?

18 A. (Peduto) That's correct.

19 Q. And subject to check, I believe Verizon  
20 identifies 63 buildings that it believes satisfy the  
21 triggers; is that correct?

22 A. (Peduto) I believe that's correct, subject to  
23 check, yes.

24 Q. See how fast I am here. Page 17 of then your --  
25 well, the number doesn't appear on that page. Let's assume

1 it's 63, and if I'm wrong, we can correct that. Mr. Peduto,  
2 to your knowledge, did Verizon review any of its records to  
3 see if it had provisioned unbundled loops to the CLEC to  
4 that building?

5 A. (Peduto) To the best of my knowledge, we did  
6 not.

7 MS. CONOVER: I didn't hear the question.

8 MR. AUGUSTINO: The question was whether, to the best  
9 of the witness' knowledge, Verizon reviewed any of its  
10 records to determine if it provided unbundled loops to the  
11 CLECs in those 63 buildings.

12 BY MR. AUGUSTINO:

13 Q. So it is possible that the CLEC is buying access  
14 from Verizon or buying a service from Verizon to serve  
15 customers in those 63 buildings; is that correct?

16 A. (Peduto) I don't think so, and let me answer  
17 that question by going back to, hopefully generically, the  
18 actual interrogatory questions, because I think that would  
19 preclude -- I think in Question I we asked the CLECs to  
20 provide a list of customer locations in Pennsylvania to  
21 which you have deployed your own high capacity loop  
22 facilities, including the address of each location.

23 Q. But the CLEC might also be buying services from  
24 Verizon. We don't know whether that's true.

25 A. (Peduto) I don't know whether that's true. I

1 don't see how that's at all germane to this issue. However,  
2 the ROG specifically asked for locations where they had  
3 deployed their own, for instance, and I think it was clear  
4 that we were looking for locations where the CLEC had  
5 deployed their own high capacity loop facilities. In  
6 another question, I believe we asked if they had purchased  
7 high capacity loop facilities at wholesale from another  
8 carrier.

9 Q. Did Verizon inspect any of these 63 buildings?

10 A. (Peduto) To the best of my knowledge, no.

11 Q. Now, on your transport case, I'm correct,  
12 Verizon inspected the collocation arrangements; correct?

13 A. (Peduto) That's correct.

14 Q. But on the loop side, you didn't inspect any of  
15 the 63 buildings that you're relying on?

16 A. (Peduto) To the best of my knowledge, that is  
17 correct.

18 Q. And to the best of your knowledge, did Verizon  
19 obtain any information from the owners of these 63  
20 buildings?

21 A. (Peduto) To the best of my knowledge, we did  
22 not.

23 Q. So you don't know what types of arrangements, if  
24 any, these carriers have with the owners of these 63  
25 buildings?

1           A.     (Peduto) We relied on the information provided  
2 by the CLEC responses in answering that question.

3           Q.     Mr. Peduto, is it possible, in your view, that  
4 the FCC triggers could be met but the CLECs are still  
5 impaired?

6           MS. CONOVER: I would object to that as really asking  
7 a legal question. He asked whether it was possible that the  
8 triggers are met but the CLECs are still impaired. I  
9 believe that the FCC has essentially determined that that is  
10 not the case.

11          MR. AUGUSTINO: I'm trying to understand Verizon's  
12 position. I'm trying to ask whether this witness is  
13 contending that the triggers could be met, yet impairment  
14 still exists.

15          MS. CONOVER: Again, I believe that calls for  
16 essentially an interpretation of the TRO.

17          MR. BARBER: Well, Your Honor, I would note that  
18 Verizon's -- all three pieces of testimony have  
19 interpretations of the TRO throughout them, and frankly,  
20 it's going to be very hard to litigate this case without --  
21 I can understand why the witnesses have put forward what  
22 they understand to be TRO standards and then trying to  
23 assess the data against it, but, I mean, frankly, having  
24 Verizon try to argue that these witnesses aren't capable of  
25 making a legal conclusion flies in the face of what's in

1 their testimony.

2 MS. CONOVER: Your Honor, I also believe that this is  
3 beyond the scope of their testimony. They presented  
4 testimony that we've met the triggers. I think it's  
5 implicit that we believe, and I'll state for the record that  
6 we believe if you meet the triggers, you're not impaired.  
7 In fact, there are many areas where you would not be  
8 impaired even if the triggers are not met. That is not the  
9 case we presented, however. But plainly, it is our reading  
10 of the FCC order, and it's our position, that if you meet  
11 the triggers you're not impaired, and I believe it's  
12 inappropriate to ask those kind of questions of these  
13 witnesses, because they are here to testify whether or not  
14 the triggers are met.

15 MR. BARBER: Which is a legal conclusion.

16 JUDGE SCHNIERLE: One second.

17 (Pause.)

18 JUDGE SCHNIERLE: I'll tell you, my reading of the  
19 Verizon testimony was that Dr. Taylor gave exactly that  
20 opinion at some point. I don't recall seeing it in these  
21 witnesses' testimony.

22 Is Dr. Taylor going to testify later today?

23 MS. CONOVER: Yes, he will.

24 JUDGE SCHNIERLE: Hold the question.

25 MR. AUGUSTINO: Okay. I will move on then.

1 BY MR. AUGUSTINO:

2 Q. There's just a few more questions, Mr. Peduto.

3 With respect to the loops portion of the case, you  
4 would agree, would you not, that few, if any, carriers  
5 deploy fiber loop facilities to accommodate only a DS-1 or  
6 only a DS-3?

7 A. (Peduto) I'm not sure I can comment on the  
8 CLEC's intention or business plan at the time they deploy a  
9 fiber.

10 Q. Could you refer to Statement 1.1, that's your  
11 supplemental testimony on December 19, at page 24, lines 4  
12 through 5? You would agree with me it says there, "Few, if  
13 any, carriers deploy fiber loop facilities to accommodate  
14 only a DS-1 or only a DS-3"; correct?

15 A. (Peduto) That's what the testimony said, yes.  
16 Yes.

17 Q. And, in fact, the self-provisioning trigger does  
18 not even apply to DS-1s; is that correct?

19 A. (Peduto) That is correct.

20 Q. And would you agree that part of the reason for  
21 that is because a carrier is not going to be able to deploy  
22 a DS-1 solely to serve a customer?

23 A. (Peduto) Would you repeat that question? I'm  
24 not sure I understood that.

25 Q. Sure. Let me see if I can try it in English

1 this time.

2 Would you agree with me that it's not economical for  
3 a CLEC to deploy simply a DS-1 if it only has a DS-1's worth  
4 of traffic?

5 A. (Peduto) I'm not sure I know the economics  
6 surrounding the CLEC's business; however, I think the TRO  
7 speaks to the fact that typically carriers don't deploy  
8 fiber to a location to serve only a DS-1.

9 Q. In fact, if I'm a small carrier like a Focal or  
10 a Snip Link, I'm not going to deploy a facility to serve a  
11 DS-1 customer. In your opinion, would you think that they  
12 would serve that type of a customer?

13 A. (Peduto) In my opinion, those carriers that you  
14 mentioned wouldn't provide a facility to serve only a DS-1.

15 Q. And, in fact, you assert that generally the  
16 carriers that deployed loops, deployed loops at the OCN  
17 level; is that correct?

18 A. (Peduto) Yes.

19 Q. Would it be a reasonable assumption to assume  
20 that if they deployed an OCN, they had an OCN's worth of  
21 traffic?

22 A. (Peduto) No, I don't think that's a good  
23 assumption.

24 Q. Do you know what conclusion the FCC made about  
25 whether a carrier is impaired if it needs to deploy an OCN

1 facility?

2 A. (Peduto) I believe the TRO speaks to that.

3 MS. CONOVER: Do you have a reference?

4 MR. AUGUSTINO: I don't have it with me, but I hope  
5 we can agree.

6 BY MR. AUGUSTINO:

7 Q. The TRO concludes that carriers are not impaired  
8 if they're deploying OCN loops; correct?

9 A. (Peduto) I believe that's in the beginning of  
10 the loop section where it talks about, if you will, the OCN  
11 product, or speed, if you will.

12 Q. So if I've deployed an OCN, I've deployed it in  
13 a situation where I'm not impaired?

14 A. (Peduto) If you've deployed an -- would you  
15 repeat that, please?

16 Q. If I've deployed an OCN loop, I've deployed it  
17 because I'm not impaired in deploying an OCN facility.

18 A. (Peduto) I'm not sure I see the cause and  
19 effect, but I agree that the TRO says that carriers are not  
20 impaired in the area of OCN loops.

21 Q. I'll move on then. Let me come back to the  
22 record itself then.

23 Mr. Peduto, to your knowledge, has Verizon purchased  
24 wholesale transport in Pennsylvania from any of the carriers  
25 that it identifies as wholesale providers?

1           A.     (Peduto) To the best of my knowledge, no, they  
2 have not.

3           Q.     So Verizon is not presenting any direct evidence  
4 from its own experience that these carriers are selling  
5 dedicated transport to them?

6           A.     (Peduto) As a wholesale customer, Verizon has  
7 no evidence that it has purchased transport at wholesale  
8 from any of these carriers.

9           Q.     And there have been many times in which Verizon  
10 lacked facilities to provide transport between two certain  
11 central offices; correct?

12          A.     (Peduto) I don't know about many times, but I  
13 suppose I could agree that there are times when we may be  
14 temporarily out of facilities between two central offices.

15          Q.     And Verizon is not presenting any evidence that  
16 in those instances it turned to a wholesale carrier to buy  
17 that facility from?

18          A.     (Peduto) No, we're not presenting that  
19 evidence.

20          Q.     Now, Verizon has identified a number of carriers  
21 as wholesale providers who are not parties to this case; is  
22 that correct?

23          A.     (Peduto) That's correct.

24          Q.     They have not intervened and their counsel is  
25 not here today?

1 A. (Peduto) To the best of my knowledge, that's  
2 true.

3 Q. On the wholesale side -- I just want to confirm  
4 this -- City Signal is not a party to this case?

5 A. (Peduto) To the best of my knowledge, that's  
6 correct.

7 Q. And Verizon has identified it as a wholesale  
8 provider?

9 A. (Peduto) That's correct.

10 Q. And to speed up, I'll read the list then. You  
11 tell me if any of these are parties. CTSI, DQE, Fibertech,  
12 Level 3, MFN, Telcove and Williams.

13 A. (Peduto) I do know that we did receive  
14 discovery responses from Telcove and AboveNet.

15 Q. In fact, the LTCC asked for a subpoena to  
16 AboveNet to obtain that information; correct?

17 A. (Peduto) I don't know.

18 Q. And there also are a number of carriers on the  
19 self-provisioning side that Verizon has identified who are  
20 not parties to this case?

21 A. (Peduto) And they are?

22 Q. I have on my list CEI, City Signal, CTSI, D&E,  
23 DQE, Fibertech, Lightwave, MFN, PPL Telecom, Qwest, SBC,  
24 Telcove and Williams.

25 A. (Peduto) I don't believe we've identified

1 Williams as a self-provisioner.

2 Q. But with respect to the others, you identified  
3 them as self-provisioners, you believe?

4 A. (Peduto) That's correct.

5 Q. And I'm correct that Verizon believes that if  
6 these carriers had provided evidence, they would have  
7 provided evidence helpful to Verizon's case; correct?

8 A. (Peduto) That's correct.

9 Q. In fact, on December 19, in your supplemental  
10 testimony, I refer you to page 13. In the middle of the  
11 page -- there's a number of pieces of proprietary  
12 information here, so I'm going to try to do this without  
13 referring to the specific carriers, but if it's confusing,  
14 let me know -- Verizon identifies several carriers and says  
15 that it believes that if these carriers provided  
16 information, that it would be able to identify even more  
17 facilities that meet the triggers.

18 A. (Peduto) That's correct.

19 Q. Since December 19, has Verizon served subpoenas  
20 on any of these parties, any of these non-parties?

21 A. (Peduto) I'd have to get that information. I  
22 am not certain. I do recall a conversation about one  
23 subpoena, however, I don't believe that we've done more than  
24 one or two.

25 Q. So there are a number of these carriers that

1 Verizon identified, but it has taken no efforts to obtain  
2 direct evidence from those carriers?

3 A. (Peduto) Generally because we had some  
4 information provided from other sources that we thought was  
5 at least worthwhile.

6 Q. You would agree with me, though, that Verizon  
7 has the burden of proof to demonstrate that the triggers are  
8 met?

9 MS. CONOVER: Your Honor, again, that calls for a  
10 legal conclusion. I don't think this witness really would  
11 be appropriately asked that question.

12 JUDGE SCHNIERLE: What was the question again?

13 MR. AUGUSTINO: Whether he agrees with me that  
14 Verizon bears the burden of proof to demonstrate that the  
15 triggers are met.

16 JUDGE SCHNIERLE: Sustained. The objection is  
17 sustained.

18 MR. AUGUSTINO: I have no further questions at this  
19 time.

20 JUDGE SCHNIERLE: Is there anybody else who needs to  
21 get out in a hurry?

22 (No response.)

23 JUDGE SCHNIERLE: Mr. Barber?

24 MR. BARBER: I have a few questions, Your Honor.

25 JUDGE SCHNIERLE: All right.

## CROSS-EXAMINATION

1  
2 BY MR. BARBER:

3 Q. Good morning, Mr. Peduto.

4 A. (Peduto) Good morning.

5 Q. My name is Bob Barber. I'm attorney on behalf  
6 of AT&T, and since I understand you are responsible for  
7 dedicated transport, I'm going to let you sit and relax for  
8 a little while because I'm going to be talking to Mr. West  
9 first.

10 Good to see you again, Mr. West.

11 A. (West) Good to see you.

12 Q. Welcome back to Pennsylvania.

13 Let's turn to your rebuttal testimony.

14 A. (West) Okay.

15 Q. At page 4, and particularly line 9, actually,  
16 the sentence that starts on line 8, you talk about CLECs  
17 reading, and I quote, "limitations and qualifications into  
18 the... self-deployment trigger"; is that correct?

19 A. (West) Yes.

20 Q. Now, is it your testimony -- better put, is it  
21 Verizon's position that the Commission is not permitted to  
22 engage in any qualitative analysis of the companies that  
23 Verizon has identified as meeting the triggers in this case?

24 MS. CONOVER: Your Honor, I'm going to interpose an  
25 objection to that question as being close to the line as

1 asking for a legal conclusion.

2 JUDGE SCHNIERLE: No. Overruled. Not even close to  
3 the line.

4 WITNESS WEST: I don't know that it's impermissible  
5 for any of the carriers to introduce any qualitative  
6 information, but it's Verizon's position that the triggers  
7 are bright line, objective tests, and that if they're  
8 satisfied, then there is no impairment and this Commission  
9 must come to that conclusion, and we see it as a very  
10 straightforward counting exercise.

11 BY MR. BARBER:

12 Q. Let me restate the question. Is it your  
13 contention that Verizon having identified a particular  
14 company as a trigger candidate, the Commission is not  
15 permitted to engage in any qualitative analysis of that  
16 particular trigger candidate?

17 A. (West) I don't get to say what the Commission  
18 is or isn't allowed to do. I believe the FCC has directed  
19 this Commission to conduct a fairly objective analysis of  
20 the triggers; and I would say that 99.9 percent of the stuff  
21 that we're going to be talking about with respect to  
22 switching, it should be is there actual evidence of self-  
23 deployment by carrier X in MSA Y. If so, that counts as a  
24 trigger. If there is three of them in that MSA, then this  
25 Commission should find that there's no impairment for local

1 switching.

2 Q. Now, let's look at a couple provisions. Do you  
3 have the TRO in front of you?

4 JUDGE SCHNIERLE: Wait; I want to ask a question.  
5 I'm going to hopefully try to cut to the chase here. Let's  
6 say you find a switch and it's got nothing but DS-3s and  
7 OCNs attached to it. That doesn't count; right?

8 WITNESS WEST: That wouldn't be a switch serving mass  
9 market customers; right.

10 JUDGE SCHNIERLE: If I find a switch that's got OCNs  
11 and DS-3s attached to it and one DSO, is that a mass market  
12 switch?

13 WITNESS WEST: It is a switch serving a mass market  
14 customer, and it would count as a trigger.

15 JUDGE SCHNIERLE: So it's Verizon's position, if I  
16 found three of those in one market segment, the Commission  
17 should essentially cut off all residential UNE-P. If I  
18 found three switches, each with one DSO that might be  
19 serving, for all I know, the president of the company or  
20 something like that, or a fax machine, under the TRO, the  
21 Commission should essentially cut off all UNE-P to every  
22 residential customer in that market. That's Verizon's  
23 position?

24 WITNESS WEST: That's a very extreme hypothetical. I  
25 think that is consistent with Verizon's position, but it's

1 not consistent with the evidence that we present to show  
2 that there is no impairment to local switching.

3 JUDGE SCHNIERLE: Mr. Barber, you may continue.

4 MR. BARBER: Thank you, Your Honor.

5 BY MR. BARBER:

6 Q. Could you turn to Paragraph 440 of the TRO?

7 MS. CONOVER: I'm sorry. What paragraph?

8 MR. BARBER: 440.

9 (Pause.)

10 BY MR. BARBER:

11 Q. Are you there, Mr. West?

12 A. (Mr. West) Yes.

13 Q. I believe there is an associated footnote with  
14 this, Footnote 1352, that I believe you cite in your  
15 testimony related to whether an incumbent's affiliate  
16 counts.

17 But, again, going down to Footnote 1352, is it a fair  
18 reading that what the FCC was telling this Commission is  
19 that in the case, for example, of an incumbent's affiliate  
20 that, quote, "some of this competitive deployment could be  
21 considered;" correct?

22 Q. They didn't say must be considered; correct?

23 A. (Mr. West) No. The word "must" does not appear  
24 in that sentence.

25 Q. They didn't say all of this competitive

1 deployment will be considered; correct?

2 A. (Mr. West) Well, if you could consider some of  
3 it, you could consider all of it.

4 Q. It didn't mandate that all of it will be  
5 considered?

6 A. (Mr. West) Correct.

7 Q. The bottom line is the Commission is supposed to  
8 be exercising some judgment in this particular case as to --

9 MS. CONOVER: I would object to that as a conclusion  
10 to ask this witness. The Commission must follow the regs  
11 that the FCC determined, and I don't know that this witness  
12 should be asked to reach a conclusion about what the  
13 Commission can and cannot consider from this footnote.

14 MR. BARBER: Well, Your Honor, I would note, for  
15 example, on page 22 of the rebuttal testimony, that this  
16 witness testifies that in one particular case, and it's in  
17 the case of the cable telephony providers, the Commission,  
18 quote, "does not have the discretion to second guess the  
19 FCC's decision on this point," end quote.

20 So this witness has testified what this Commission  
21 can and cannot do under the TRO.

22 JUDGE SCHNIERLE: The objection is overruled.

23 MR. BARBER: Thank you.

24 BY MR. BARBER:

25 Q. Do you recall my question?

1 A. (Mr. West) No. Could you repeat it?

2 Q. Under this footnote, under Footnote 1352, this  
3 Commission is supposed to exercise its judgment as to  
4 whether particular competitive deployment in this case by  
5 affiliates of the independent companies should be counted  
6 toward the trigger; correct?

7 A. (Mr. West) I really interpret that footnote as  
8 switching provided by ILEC affiliates ought to count as  
9 triggers.

10 Q. When some of it could be considered?

11 A. (Mr. West) Speaking for Verizon, it should be  
12 considered and it should count as a trigger.

13 Q. So you've just rewritten the language in that  
14 footnote.

15 MS. CONOVER: I object to that; argumentative.

16 JUDGE SCHNIERLE: Sustained.

17 MR. BARBER: I'll move on.

18 BY MR. BARBER:

19 Q. Turn to Paragraph 500, TRO. The last sentence  
20 there -- I know this is a sentence that also received some  
21 treatment in your testimony. It's talking about the, quote,  
22 "key consideration to be examined by the State Commission."  
23 Then it goes on to talk about whether providers are  
24 currently offering and able to provide service and, quote,  
25 "are likely to continue to do so," end quote.

1 I read that right?

2 A. (Mr. West) Yes.

3 Q. Again, is it your contention that this doesn't  
4 give the Commission any room for examining whether a  
5 particular candidate should be, in fact, meet the trigger in  
6 this case?

7 A. (Mr. West) It's Verizon's position as reflected  
8 in my testimony that unless the CLEC has filed a notice to  
9 terminate service in this market, it ought to be counted as  
10 a trigger.

11 Q. And you're citing the Footnote 1556 in that  
12 particular instance?

13 A. (Mr. West) Yes.

14 Q. And that footnote begins, quote, "For instance,"  
15 end quote; correct?

16 A. (Mr. West) Yes.

17 Q. So, again, that wasn't suggesting that was the  
18 only criteria; correct? That was one example of a  
19 circumstance in which a trigger candidate would not be  
20 likely to continue.

21 A. (Mr. West) I'll agree with you it's one  
22 example, but it's probably the most telling example, and  
23 it's, in our view, the only one that the Commission ought to  
24 rely upon to disqualify a CLEC trigger.

25 Q. Has Verizon in your testimony or any of the

1 pieces of testimony submitted in this case provided any  
2 evidence regarding a particular trigger candidate's ability  
3 to continue to provide service?

4 A. (Mr. West) I don't think in this case it's  
5 Verizon's job to do that. We're presenting a triggers case.  
6 What we need to do is show that particular CLECs are  
7 actually providing service to mass market customers in MSAs.

8 To the extent that three or more of them are doing so  
9 in particular MSA, then the Commission should find that  
10 there is no impairment to local switching.

11 Q. What I just heard you say is as far as Verizon  
12 was concerned, provided it put data in front of this  
13 Commission that said a particular company was serving a  
14 particular line in a particular MSA, it's done all it needs  
15 to do; that Verizon has done all it needs to do.

16 A. (Mr. West) In a triggers case. This isn't a  
17 potential deployment case.

18 Q. Getting back again to the fact would it be fair  
19 to say that of the three pieces of testimony you filed in  
20 this case, Verizon hasn't submitted any evidence to this  
21 Commission that would assist them in providing a qualitative  
22 analysis of the companies that you've identified as meeting  
23 the triggers in this case.

24 A. (Mr. West) I think that's fair, because in our  
25 view, the qualitative analysis is outside the purview of the

1 trigger analysis. It's something that you would conduct if  
2 we failed the trigger analysis and then moved on to a  
3 potential deployment analysis.

4 Q. Just a couple more points along those lines.  
5 Paragraph 501, talking specifically about the self-  
6 provisioning trigger, there is again another associated  
7 footnote. You've got to love an Order where most of the  
8 stuff ends up in a footnote.

9 At Footnote 1560, it's talking about a company self-  
10 deploying loops; correct?

11 A. (Mr. West) Yes.

12 Q. And the second line, quote, "This evidence may  
13 bear less heavily on that company's ability to use a self-  
14 deployed switch;" is that correct?

15 A. (Mr. West) Sure. It says that, and then it  
16 ends with "Nevertheless, the presence of three competitors  
17 in a market using self-provisioning switching and loops  
18 shows the feasibility of an entrant serving the mass market  
19 with its own facilities."

20 Q. Right. But, again, the language made there less  
21 heavily suggests that this Commission needs to be examining  
22 and weighing the evidence; correct?

23 A. (Mr. West) I don't think so. I think in this  
24 case, I think it's the FCC that has done the weighing and  
25 they perhaps realize that as a single CLEC, in this context

1 that's not all that powerful a trigger, but they've done  
2 their own little decision calculus and have decided that if  
3 there are three of them together in one relevant market,  
4 that's enough to make a determination that there is not  
5 impairment.

6 Q. So that's not supposed to be providing any  
7 guidance to the State Commission?

8 A. (Mr. West) I don't think so, because I think it  
9 "we recognize" was the FCC, and then they were just sort of  
10 giving you some insight as to how they arrived at the number  
11 three for the trigger.

12 Q. Going to Footnote 1549 talking about intermodal  
13 carriers --

14 MS. CONOVER: 1549?

15 MR. BARBER: 1549.

16 BY MR. BARBER:

17 Q. Are you there?

18 A. (Mr. West) Yes.

19 Q. Quote, "In deciding whether to include  
20 intermodal alternatives for purposes of these triggers,  
21 states should consider to what extent services provided over  
22 these intermodal alternatives are comparable in cost,  
23 quality and maturity to incumbent LEC services." I got that  
24 right?

25 A. (Mr. West) Yes; and just like the case before,

1 the last sentence says, "In applying the triggers, states  
2 must consider packet switches to the extent they're used to  
3 provide local voice service to the mass market."

4 Q. Right. But intermodal carriers, this Commission  
5 is supposed to be examining in the case of any intermodal  
6 carrier that you have proffered as meeting the trigger, they  
7 are supposed to be examining whether the services provided  
8 by that particular carrier are comparable in cost, quality  
9 and maturity to your services; correct?

10 A. (Mr. West) The way I read the footnote, the  
11 only intermodal services that they kicked out were CMRS.

12 Q. Well, that they excluded, but that this  
13 Commission needs to be considering others; correct? This  
14 Commission is supposed to be applying criteria to examine  
15 the other intermodal candidates; correct?

16 MS. CONOVER: Your Honor, Mr. Barber is really  
17 getting into arguing over the meaning of a footnote that  
18 ultimately Your Honors and the Commission is going to have  
19 to interpret. I don't know how valuable that is anymore.  
20 Mr. West has already said how he interprets it.

21 JUDGE SCHNIERLE: I think you made your point.

22 BY MR. BARBER:

23 Q. RCN is one of the trigger candidates you've  
24 identified?

25 A. (Mr. West) Yes.

1 Q. Cable company; correct?

2 A. (Mr. West) That's correct.

3 Q. Intermodal carrier. Where would I find in your  
4 testimony an analysis of the cost, quality and maturity of  
5 the services they're providing in the MSAs in which you've  
6 identified them as a trigger candidate?

7 A. (Mr. West) Certainly no analysis. I know Dr.  
8 Taylor speaks to the substitutability of those services in  
9 his testimony.

10 Q. He speaks to them generically; correct?

11 A. (Mr. West) Yes.

12 Q. He doesn't do a specific analysis of RCN;  
13 correct?

14 A. (Mr. West) No; and, again, we're going to have  
15 this discussion a lot. Triggers are bright line objective  
16 tests. They are not the potential deployment case that  
17 Verizon could put on if it were to not succeed in the  
18 triggers case. This sort of analysis carrier by carrier  
19 that you allude to would be proper for the -- in our view,  
20 would be proper the potential deployment case, but is not  
21 correct to engage in when trying to assess whether these  
22 objective bright line triggers have been met.

23 Q. This needs to be aired out here. Again,  
24 Footnote 1549, when the FCC was talking about the analysis  
25 this Commission needs to do about intermodal carriers, that

1 sentence doesn't start out in deciding whether an intermodal  
2 carrier meets the potential competition test. It talks  
3 about in deciding whether to include intermodal alternatives  
4 for purposes of these triggers; correct?

5 A. (Mr. West) Well, it certainly doesn't speak to  
6 anything on a carrier specific basis. It does say, "In  
7 deciding whether to include intermodal alternatives for the  
8 purpose of these triggers, states should consider to what  
9 extent services provided over these intermodal alternatives  
10 are comparable in cost, quality and maturity to incumbent  
11 LEC services."

12 In our view, when you look at what's out there with  
13 respect to intermodal services, cable is one that meets that  
14 definition. Voice over IP probably meets that definition.  
15 Cellular does not meet that definition. I don't know that  
16 there is any other intermodal service on the table for  
17 consideration with respect to our triggers.

18 Q. Just to wrap this up, RCN again, you didn't  
19 provide any evidence to this Commission regarding the cost,  
20 quality or maturity of their services relative to yours;  
21 correct?

22 A. (Mr. West) No, but, I mean, some of that is  
23 implicit. They wouldn't have customers if the service  
24 didn't work; and, therefore, they wouldn't be trigger  
25 candidates. I mean, that kind of stuff gets rolled into the

1 triggers. That's why the triggers work.

2 Q. Did you provide any such analysis regarding  
3 Comcast?

4 A. (Mr. West) No.

5 Q. And to the extent that you're treating Adelphia  
6 in here as a cable company, and we'll be getting into that a  
7 little bit more, you didn't provide any such analysis  
8 relative to Adelphia either; correct?

9 A. (Mr. West) No.

10 Q. Let's look at Attachment 5 to your rebuttal  
11 testimony.

12 MR. BARBER: I realize this is heavily proprietary.  
13 I'm going to, to the extent possible, try and stay on the  
14 public record for the time being, Your Honor. I know  
15 eventually I'm going to have to get to proprietary.

16 BY MR. BARBER:

17 Q. Now, you have Attachment 5 in front of you?

18 A. (Mr. West) I do.

19 Q. Just to orient ourselves here, especially the  
20 first two pages, you've listed the -- is it eight different  
21 MSAs in which Verizon claims that the self-provisioning  
22 switching trigger is met; correct?

23 A. (Mr. West) Yes.

24 Q. And then for each of those MSAs, you've  
25 identified the particular CLECs that you believe meet the

1 triggers in that particular case; correct?

2 A. (Mr. West) Correct.

3 Q. And then there is a column called "Verizon  
4 Counts," and then "CLEC Counts"?

5 A. (Mr. West) Yes.

6 Q. Now, which column in Attachment 5, the Verizon  
7 count or the CLEC count, is the Commission supposed to rely  
8 upon in determining whether a candidate company here in fact  
9 meets the trigger?

10 A. (Mr. West) Well, they should rely on both.

11 Q. Notwithstanding the fact that the data in the  
12 two may be at significant variance?

13 A. (Mr. West) Absolutely. I mean, that's why it's  
14 not a bad thing to have both. Verizon has a way to assess  
15 whether these various carriers are participating in the mass  
16 market. We could as a matter of theory go forward with our  
17 case just with the Verizon counts, but we know the  
18 Commission is interested in hearing what the CLECs have to  
19 say. So the CLEC data is also important, and they're not  
20 working a cross purposes. It's just complementary data that  
21 helps us assess where individual CLECs are providing mass  
22 market service to customers.

23 Q. Well, if you've got a count, for example, in the  
24 Verizon column that attributes lines -- let's put it this  
25 way. If you have a particular MSA in which you have not

1 identified in your count and by your methodology any CLEC  
2 lines, but the CLEC has identified lines, under your  
3 analysis that CLEC would be an appropriate trigger  
4 candidate; correct?

5 A. (Mr. West) Sure; and when you get into the  
6 nitty-gritty of how we identified lines, there are scenarios  
7 where we would not have through our systems necessarily the  
8 wherewithal to identify the lines, but the CLECs do.

9 One very good example would be we used E-911 data,  
10 residence E-911 data, to get a handle on cable company line  
11 counts, because they're using their own loops, not UNE-Ls.  
12 So the UNE-L count that we did in the line count studies is  
13 not going to identify the lines associated with those  
14 particular cable CLECs.

15 Q. Okay.

16 A. (Mr. West) All right. But we did not use the  
17 residence E-911 data to go after other CLECs that might  
18 totally bypass our network. In other words, they're  
19 providing the loop and the switch.

20 If they come back to us and say in that scenario  
21 where we're providing the loop and the switch, and in this  
22 particular central office we do that 7,014 times for the  
23 mass market, then we went ahead and included that in the  
24 analysis. But the way we set out to calculate the Verizon  
25 counts, we would not have captured that data.

1 Q. Well, let's look at the opposite scenario.

2 JUDGE SCHNIERLE: Can I break in for a moment?

3 MR. BARBER: Sure.

4 JUDGE SCHNIERLE: As long as we're on this exhibit,  
5 to just put this in kind of a solid context, this is  
6 Attachment 5 to Verizon Statement 1.2. On page 1, half the  
7 way down you've got the Lebanon, PA MSA; and I'm not going  
8 to read the companies, but the first company there shows no  
9 lines under the Verizon count and some lines under the CLEC  
10 count. Then the last company there shows lines under the  
11 Verizon count but not under the CLEC count, and there are  
12 four companies.

13 Are you suggesting that we take -- is this like  
14 heads, we win; tails, you loose; that we take the numbers  
15 wherever they show a CLEC count and count it, or should I  
16 throw out the two that have the zero in either column,  
17 because in that particular instance, it makes a difference?

18 Do I have two or four by Verizon's count on that  
19 particular?

20 WITNESS WEST: Well, you've got four, and the reason  
21 is one of those companies didn't respond to the Commission's  
22 data requests. So if they don't respond, then we don't have  
23 any number to populate the field, but we have evidence to  
24 believe that they are serving mass market customers to the  
25 tune of the number that we put under Verizon count.

1 JUDGE SCHNIERLE: So Verizon's position is if I can  
2 find a number in either column, it counts as a trigger CLEC?

3 WITNESS WEST: If there is a number in either column,  
4 it does count as a trigger CLEC, and, typically, there is  
5 going to be a good reason why one or the other side, either  
6 the Verizon count or the CLEC count, is blank.

7 JUDGE SCHNIERLE: Let me ask you one other question.  
8 The Adelphia that is identified throughout these exhibits,  
9 is this the same company, to your knowledge, that is  
10 rendering service under the Commonwealth contract?

11 WITNESS WEST: I don't know that.

12 JUDGE SCHNIERLE: Mr. Barber is shaking his head. Is  
13 there a difference between Adelphia Business Solutions and  
14 Adelphia Cable Company and who they serve?

15 WITNESS WEST: For the purposes of this analysis,  
16 that I do know. I mean, they're both in here.

17 JUDGE SCHNIERLE: So the Adelphia in here means both  
18 companies?

19 WITNESS WEST: Yes. They've been rolled up into one  
20 so that we don't double count, but they are representative  
21 of both entities.

22 JUDGE SCHNIERLE: Okay. Well, probably nobody knows  
23 the answer. You may continue.

24 BY MR. BARBER:

25 Q. Just to circle back to what the Judge was

1 talking about, in circumstances in which Verizon has  
2 identified lines and attributed them to a particular CLEC  
3 and the CLEC has affirmatively come back and said that we  
4 don't have mass market lines in that particular area, what  
5 should the Commission do in those circumstances.

6 A. (Mr. West) I think that depends on a case by  
7 case basis. If the CLEC has, for instance, in response to  
8 one of the myriad interrogatories floating around in this  
9 case, said I don't market to mass market customers or I  
10 don't provide service to mass market customers, but in  
11 another half dozen interrogatories to either other parties  
12 or even different questions in the same set they provide  
13 evidence that they do, then Verizon is going to count that  
14 evidence as going towards that particular CLEC being a  
15 trigger candidate.

16 Q. You're going to exercise your judgment to  
17 include those lines?

18 A. (Mr. West) Well, the information comes to us.  
19 We sift through it. We're trying to be as objective as we  
20 can be, but to the extent that it's contradictory, you've  
21 got no choice but to sort through and make some sort of  
22 judgment.

23 Q. Let me ask this sort of generic question. On  
24 the Verizon counts column, is it Verizon's contention that  
25 all of the lines that it has included in the Verizon counts

1 column are mass market lines?

2 A. (Mr. West) Yes.

3 MR. BARBER: Your Honor, I'd like to get marked as  
4 AT&T Cross-Examination Exhibit 1 --

5 JUDGE SCHNIERLE: It may be so marked.

6 (Whereupon, the document was marked  
7 as AT&T Cross-Examination Exhibit  
8 No. 1 for identification.)

9 MR. BARBER: This is a proprietary exhibit, Your  
10 Honor.

11 BY MR. BARBER:

12 Q. Do you have AT&T Cross-Examination Exhibit 1 in  
13 front of you?

14 A. (Mr. West) I do.

15 Q. Have you seen this before?

16 A. (Mr. West) Yes.

17 Q. This is a data response from XO to the  
18 Commission's preliminary data requests; is that correct?

19 A. (Mr. West) Yes, it is.

20 Q. I don't want to get into the particular numbers,  
21 but what is reflected here are three columns, one indicating  
22 Total VGE, total voice grade equivalence; is that correct?

23 A. (Mr. West) Yes.

24 Q. And then a column that says DS-0 only; correct?

25 (No response.)

1 Q. And then one that says DS-1 and Above; correct?

2 A. (Mr. West) Yes.

3 Q. Is it Verizon's contention that customers being  
4 served via DS-1 lines and above are mass market customers?

5 A. (Mr. West) No. We view those as enterprise  
6 customers.

7 Q. So, in this particular case, XO has indicated  
8 that in every one of the wire centers that are reflected  
9 here, while it is given a total voice grade equivalent line,  
10 that in every case, the bulk of the lines it's describing  
11 are DS-1 lines and above; right?

12 A. (Mr. West) Right. But when we transported  
13 their data to the CLEC counts for Attachment 5, we only used  
14 the numbers under DS-0 only.

15 Q. All right. Well, you just told me that as far  
16 as you're concerned, all the numbers in the Verizon count  
17 are mass market lines; correct?

18 A. (Mr. West) Yes.

19 Q. And there is a significant variance between what  
20 you have attributed to XO as having mass market lines and  
21 what XO has told you are, in fact, being served by DS-1  
22 lines; correct?

23 A. (Mr. West) Well, again, we wouldn't use XO's  
24 DS-1 lines. We would just use the DS-0 only.

25 Q. Right. So to the extent there is a difference

1 between what you are attributing to XO as being mass market  
2 lines and what XO has represented to this Commission as  
3 being DS-0 lines, is any of that explanation in here?

4 A. (Mr. West) I'm sorry. Would you say that  
5 again?

6 Q. XO has represented to the Commission in its data  
7 responses that the majority of its lines are served via DS-1  
8 and above; correct?

9 A. (Mr. West) Correct.

10 Q. Not mass market; correct?

11 A. (Mr. West) If you're talking majority, that's  
12 right.

13 Q. And yet, fair to say that those lines, the non-  
14 mass market lines are, in fact, reflected in the Verizon  
15 counts?

16 A. (Mr. West) No. No. The Verizon counts are  
17 only DS-0's. There is no DS-1. So when you look to the  
18 data that we provide for Verizon, which largely comes from  
19 the line count study, that focused on UNE-Ls, which are  
20 DS-0's.

21 The numbers that the CLECs provide, to the extent  
22 they were good enough to give us the DS only breakout,  
23 that's what is represented under the CLEC count. So we  
24 would not for the purposes of trying to show that XO is a  
25 legitimate trigger CLEC, we would not rely on DS-1 and

1 above. We would say, look, XO provides lots of mass market  
2 lines at the DS-0 only level, and, therefore, for those  
3 particular central offices, they should count.

4 And if you roll up enough of that data inside the  
5 MSA, then they become a triggering CLEC.

6 Q. Again, without getting into the numbers, if you  
7 look at, for example, the Allentown MSA, you have, Verizon  
8 has in its count attributed a certain number of lines to XO;  
9 correct?

10 A. (Mr. West) Yes.

11 Q. And it is your contention those are mass market  
12 lines?

13 A. (Mr. West) Yes.

14 Q. XO has identified that it, in fact, has a  
15 certain number of total voice grade equivalents in that  
16 particular MSA, but the actual DS-0 number is substantially  
17 lower than what Verizon has identified.

18 A. (Mr. West) It is lower, and I would be  
19 absolutely drop-dead shocked if the numbers ever matched.  
20 I mean, there are timing considerations. There is how do  
21 people interpret the question considerations. There are a  
22 lot of reasons why the numbers between the Verizon count and  
23 the CLEC count might differ, but for the purposes of this  
24 bright line objective trigger test, the number that XO has  
25 for say the Allentown/Bethlehem/Easton MSA under Verizon

1 count or the number that we gleaned from their discovery  
2 response under CLEC count is enough either way to have them  
3 be identified as a trigger CLEC for that MSA.

4 Q. It's your contention here today that the  
5 difference between these two numbers is not attributable to  
6 the fact that some of the lines you counted are, in fact,  
7 DS-1 lines?

8 A. (Mr. West) We did not count DS-1 lines.

9 Q. Again, looking at AT&T Cross-Examination Exhibit  
10 1, there are several wire centers here where XO has not  
11 identified any DS-0 lines; correct?

12 A. (Mr. West) Yes.

13 Q. And I'll just take one as an example, and I'm  
14 not sure -- I don't think the identification of a wire  
15 center should be proprietary. For example, the Paoli Wire  
16 Center, which is in the Philadelphia MSA, do you have that?

17 A. (Mr. West) Okay.

18 Q. And I'm looking again at the second part of  
19 Attachment 5.

20 A. (Mr. West) Yes.

21 Q. And look at the Paoli Wire Center. Here,  
22 Verizon has counted or has a line count here for XO under  
23 Verizon counts; correct?

24 A. (Mr. West) Yes.

25 Q. And XO has identified no lines in that

1 particular wire center, correct, as DS-0's?

2 A. (Mr. West) No. I think they've identified --

3 Q. PAOLPAPA is the Paoli Wire Center; correct?

4 A. (Mr. West) I don't think so.

5 Q. It's in Density Cell 3 in the Philadelphia MSA.

6 A. (Mr. West) I think -- okay. That could be  
7 right.

8 Q. Right? We're in the same place here?

9 A. (Mr. West) Yes.

10 Q. Paoli Wire Center. It's about halfway down on  
11 AT&T Cross-Examination Exhibit 1.

12 A. (Mr. West) Right.

13 Q. And if you go across on AT&T Cross-Examination  
14 Exhibit 1, XO had identified a number of voice grade  
15 equivalents in that wire center; correct? Total voice grade  
16 equivalents; correct?

17 A. (Mr. West) Yes.

18 Q. And the next column, DS-0, it identified no DS-0  
19 lines in that wire center; correct?

20 A. (Mr. West) Okay.

21 Q. So when we go back to your Attachment 5 under  
22 the Paoli Wire Center, you got XO down under the Verizon  
23 count for a certain number of lines; correct?

24 A. (Mr. West) We do.

25 Q. And yet, XO has represented to this Commission

1 it's got no DS-0 lines here; correct?

2 A. (Mr. West) Right; and that's what we show for  
3 the CLEC count.

4 Q. Right. That's also the case in, for example,  
5 the Wayne Wire Center?

6 A. (Mr. West) Yes, the same situation.

7 Q. And there is actually another wire center, the  
8 PHLA -- it's another Philadelphia wire center -- PHLAPAPE.

9 A. (Mr. West) I think that one is -- I'm sorry.  
10 Which one?

11 Q. PHLAPAPE. I forget what the exact name of that  
12 one is.

13 (Pause.)

14 Q. It's the Pennypacker. That's in Density Cell 1,  
15 one of the downtown exchanges.

16 A. (Mr. West) Yes, same situation.

17 Q. Again, you've identified a certain number of  
18 lines for XO. They deny that they have any DS-0 lines.

19 A. (Mr. West) Yes.

20 JUDGE SCHNIERLE: Are you almost done?

21 MR. BARBER: I have a long way to go, Your Honor, but  
22 I have one more question on this point, and then maybe it  
23 would be a good point to break.

24 JUDGE SCHNIERLE: All right.

25 BY MR. BARBER:

1 Q. ALJ Schnierle brought this up. Do you know who  
2 has the state contract here in Pennsylvania?

3 A. (Mr. West) No, I don't.

4 Q. Would you believe that a state government or any  
5 form of government would be a mass market customer?

6 A. (Mr. West) I would say typically that would be  
7 an enterprise customer.

8 Q. Is it fair to say that probably the Pennsylvania  
9 state government is an enterprise customer?

10 A. (Mr. West) Yes.

11 Q. Will you accept subject to check that the  
12 company that has the state government contract is Adelphia?

13 A. (Mr. West) I'll accept that subject to check,  
14 yes.

15 Q. So when you, for example, in the Harrisburg MSA,  
16 went from a Verizon count of some number of hundred lines to  
17 one that is about 75 times that, did that raise any  
18 questions at all for Verizon as to whether these were lines  
19 attributable to the state contract?

20 A. (Mr. West) No. If they were reported by  
21 Adelphia as DS-0's and not enterprise, then --

22 JUDGE SCHNIERLE: Do you know what the population of  
23 Harrisburg is relative to 45,000?

24 (No response.)

25 JUDGE SCHNIERLE: Let's put it this way. Do you know

1 how many lines Verizon claims to provision in the City of  
2 Harrisburg relative to 45,000?

3 WITNESS WEST: No, I do not, Your Honor.

4 JUDGE SCHNIERLE: You might want to take a look at  
5 that. I'd be real surprised if it isn't a comparable number  
6 at best.

7 BY MR. BARBER:

8 Q. Did you talk to Telcove, the parent company, at  
9 all about the significance of these large number of lines  
10 that you added in under the CLEC counts?

11 A. (Mr. West) I personally did not speak to  
12 Telcove.

13 Q. In virtually in every case in these MSAs, you  
14 went from a fairly small number under the Verizon count to a  
15 much larger number under the CLEC count; correct?

16 A. (Mr. West) Yes.

17 Q. And as you're sitting here today, you've got no  
18 way of knowing how many of these lines are attributable to  
19 the state government contract; correct?

20 A. (Mr. West) No. We did not try to trace back  
21 information provided by the CLECs to the Commission as to  
22 which individual customers they serve.

23 Q. You do know that none of the Adelphia lines are  
24 residential lines; correct?

25 A. (Mr. West) I'm not sure that that's true.

1 Q. Didn't Adelphia provide you an affidavit to that  
2 effect?

3 A. (Mr. West) We have residential E-911 listings  
4 for Adelphia.

5 Q. You have them. Has Adelphia affirmatively  
6 represented to you that they do not market to residential  
7 customers?

8 A. (Mr. West) Well, again, we have a situation  
9 here where there is more than one Adelphia floating around,  
10 and to the extent that Adelphia Cable is serving customers  
11 but didn't respond to discovery, that data would be captured  
12 under the Verizon count.

13 JUDGE SCHNIERLE: You don't know if Adelphia Cable  
14 and Adelphia Business Solutions are still owned by the same  
15 party?

16 WITNESS WEST: Right. We acknowledge that they may  
17 no longer be affiliated, but because we don't precisely know  
18 whether they're separate enough to count as two, to err on  
19 the side of safety and to be conservative, we rolled them up  
20 as one potential CLEC trigger.

21 BY MR. BARBER:

22 Q. Whose safety were you erring on?

23 A. (Mr. West) Well, I mean, the Order is pretty  
24 clear that you shouldn't double count entities and switches.  
25 So, in order not to do that, we treat Adelphia as one

1 entity, whether it is Adelpia Business Solutions or  
2 Adelpia, the cable company.

3 MR. BARBER: This probably would be a good time for a  
4 break.

5 JUDGE SCHNIERLE: We'll break. I'm going to say this  
6 before we break. You better take a look at those Adelpia  
7 numbers, because I don't think there is any way in the world  
8 Adelpia serves 45,000 DS-0's in the City of Harrisburg. I  
9 think the City of Harrisburg population is maybe 60,000  
10 people, and looking at your thing, it's 35,000 in the  
11 Harrisburg central office alone or wire center. It's not  
12 possible, in my opinion.

13 MR. AUGUSTINO: Your Honor, if I could request your  
14 indulgence on two housekeeping matters. I believe when I  
15 finished my cross-examination, I did not move our cross-  
16 examination exhibits into evidence. It was LTCC Cross-  
17 Examination Exhibits 1 through 6.

18 JUDGE SCHNIERLE: Any objection?

19 MS. CONOVER: No objection.

20 JUDGE SCHNIERLE: They're admitted.

21 (Whereupon, the documents marked as  
22 LTCC Cross-Examination Exhibits Nos.  
23 1 through 6 were received in  
24 evidence.)

25 MR. AUGUSTINO: Secondly, I just want to express my

1 appreciation to the parties for allowing me to go first on  
2 this. For personal reasons, I'm not going to be here this  
3 afternoon or tomorrow. As they said in Groundhog Day, I'm  
4 trying to get to Pittsburgh ahead of the weather. So thank  
5 you.

6 JUDGE SCHNIERLE: Let me elaborate a little bit more  
7 on that for the witnesses' benefit, because I think counsel  
8 knows this for Verizon. Adelpia Business Solutions won the  
9 state contract, and under the state contract, they have to  
10 render service to every state facility and also things like  
11 school districts and municipal buildings under comparable --  
12 I don't know what the exact term is, but it's comparable  
13 rates or something like that. The idea was to make a volume  
14 buy.

15 You know, looking at those numbers for Harrisburg,  
16 there's no way. Maybe you can argue that -- maybe Verizon  
17 could argue that service to, I don't know, the Camp Hill  
18 Borough Hall, if they've only got three or four voice grade  
19 lines, counts as mass market, but I don't think you can  
20 count the thousands of lines that come into the buildings  
21 here as mass market. I mean, however Adelpia counts them,  
22 I mean, it's got to be enterprise.

23 All right. We're off the record. Be back in an  
24 hour.

25 (Witnesses temporarily excused.)

1 (Whereupon, at 12:40 p.m., the hearing was adjourned,  
2 to be reconvened at 1:40 p.m., this same day.)

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FORM 2

AFTERNOON SESSION

(1:45 p.m.)

JUDGE SCHNIERLE: We're back on the record.

Whereupon,

CARLO MICHAEL PEDUTO, II

HAROLD E. WEST, III

having previously been duly sworn, testified further as follows:

JUDGE SCHNIERLE: Mr. Barber.

MR. BARBER: Thank you, Your Honor.

FURTHER CROSS-EXAMINATION

BY MR. BARBER:

Q. Are you settled in, Mr. West?

A. (Mr. West) I'm ready.

Q. All right. Welcome back. Turning to page 14 of Verizon Statement 1.2, I have a couple questions about the cross-over point.

You basically begin a discussion there of one reference to the fact that AT&T witnesses Kirchberger and Nurse agree with Verizon that for purposes of counting or determining the cross-over point in this case, it is really the customer and the CLEC that should decide; correct?

A. (Mr. West) Right.

Q. And in that circumstance, basically, if a customer orders service and wants to be served and the CLEC

FORM 2

1 decides to serve that customer via UNE-L lines, no matter  
2 how many UNE-L lines, DS-0 lines, that would appropriately  
3 be considered a mass market customer. Is that your view of  
4 that?

5 A. (Mr. West) That's our view, yes.

6 Q. Would you also agree that for purposes of  
7 consistency, the Commission should be applying a common  
8 definition of the geographic market in this case, of the  
9 product market in this case?

10 A. (Mr. West) If I may ask a question. Common to  
11 transport, common to loops, common to unbundled switching or  
12 --

13 Q. For purposes of determining unbundled switching,  
14 a consistent market definition?

15 A. (Mr. West) I'm sorry. I don't know what a  
16 consistent market definition --

17 Q. Well, let me boil it down. Does Verizon agree  
18 that should the Commission determine that the triggers  
19 aren't met, that the same definition that is applied for the  
20 mass market here for UNE-L also should apply to UNE-P? That  
21 is if a CLEC wants to order a larger number of UNE-P  
22 arrangements in order to provision a particular customer, it  
23 should be permitted to do so.

24 A. (Mr. West) It strikes me as being a very tricky  
25 legal question complicated by the fact that there is already

1 a rule out there about the top 50 MSAs.

2 Q. You're talking about the four line limit?

3 A. (Mr. West) The four lines. As a lay person, I  
4 don't know when that one leaves us and the Commission's new  
5 one joins us and how that -- if there's a transition and  
6 whether they overlap.

7 That's a long of saying, I don't know.

8 Q. Okay. Bearing in on that, I don't necessarily  
9 want to ask for a legal opinion in this particular case.  
10 What I'm asking for is does Verizon have a position as to  
11 whether there should be -- whether the four line limit would  
12 apply in those circumstances for UNE-P?

13 A. (Mr. West) I really don't know.

14 Q. You talk in the same area of your testimony  
15 about what you believe is a contradiction in Mr. Nurse and  
16 Kirchberger's testimony regarding some analysis of the UNE-L  
17 data that they've done here.

18 A. (Mr. West) Yes.

19 Q. Is it Verizon's position that -- well, would you  
20 agree that if you're talking a customer that is receiving in  
21 excess say of four lines UNE-L, that more likely than not  
22 you're talking about a business customer in those cases?

23 A. (Mr. West) I'm tempted to agree with you, but I  
24 have to emphasize that in either case, the lower probability  
25 that it's a residence customer and a greater probability

1 that it's a business customer. It is nevertheless a mass  
2 market customer.

3 Q. We'll get into that in a minute. Well, how  
4 about in excess of ten lines? More likely than not a  
5 business customer?

6 A. (Mr. West) Right. As you add lines, obviously,  
7 the probability of business goes up and residence goes down,  
8 but my same answer holds.

9 Q. We're starting to get into, and you just touched  
10 on this, starting on page 15 of your rebuttal testimony and  
11 following on that, it's whether a mass market trigger  
12 company in this particular case should be counted if it  
13 serves only business customers or whether it's required to  
14 serve both bus. and res. customers; correct?

15 A. (Mr. West) That's an issue, yes.

16 Q. And it's Verizon's position as articulated in  
17 your testimony here that a CLEC that is serving only  
18 business customers is an appropriate trigger candidate;  
19 correct?

20 A. (Mr. West) Only mass market business customers.

21 Q. Only mass market business customers; and we went  
22 through that with the data earlier.

23 As a matter of fact, on page 16 -- I want to make  
24 sure I have this language correct -- at line 24, quote,  
25 "There simply is no such requirement anywhere in the TRO,

1 and this Commission does not have the discretion to create  
2 such a requirement in apply the trigger." Is that correct?

3 A. (Mr. West) Yes.

4 Q. Now, can you turn to Paragraph 127 in the TRO?  
5 Are you there?

6 A. (Mr. West) I am.

7 Q. The very first line in that paragraph, quote,  
8 "Mass market customers consist of residential customer and  
9 very small business customers," end quote; correct?

10 A. (Mr. West) That's what it says, yes.

11 Q. Turn to Footnote 1402.

12 MS. CONOVER: 1402?

13 MR. BARBER: 1402.

14 BY MR. BARBER:

15 Q. Are you there?

16 A. (Mr. West) Yes.

17 Q. Quote, "Mass market customers are residential  
18 and very small business customers," end quote; correct?

19 A. (Mr. West) Yes.

20 Q. In both cases, we have the FCC defining mass  
21 market as residential and very small business customers;  
22 correct?

23 A. (Mr. West) Right. They are both mass market  
24 customers.

25 Q. And what I'm hearing Verizon say is that that

1 "and" is an "or." It's residential or very small business  
2 customers for purposes of applying the triggers.

3 A. (Mr. West) Well --

4 Q. Is that correct?

5 A. (Mr. West) It's not an "or." I mean, the word  
6 is an "and," but for applying the triggers, residence  
7 customers are mass market customers and business customers  
8 serving at the DS-0 level are also mass market customers.

9 Q. What is the bulk of Verizon's mass market in  
10 Pennsylvania? What constitutes the majority of your  
11 customers? Residential?

12 A. (Mr. West) I would say res., but I don't have  
13 the numbers right at my --

14 MR. BARBER: Is the actual number lines proprietary?

15 MS. CONOVER: The exact number of lines.

16 MR. BARBER: I've got an approximate number.

17 MS. CONOVER: Approximate would not be proprietary.

18 BY MR. BARBER:

19 Q. Approximately, 4 million residential retail  
20 lines in Pennsylvania?

21 A. (Mr. West) I've seen numbers like that, yes.

22 Q. Any idea of the number of lines that are  
23 attributable to retail services provided to small business  
24 customers?

25 A. (Mr. West) I don't have that data with me.

1 Q. Do you believe it would be significantly less  
2 than 4 million?

3 A. (Mr. West) I'm certain it's less than 4  
4 million. I don't know how much less than 4 million.

5 Q. Where are the bulk of Verizon's UNE-L lines  
6 being provided? In the residential or small business  
7 market?

8 A. (Mr. West) Well, I'm not sure that we know how  
9 to split out UNE-L lines between residence and business.

10 Q. The data that you've obtained from other  
11 carriers in discovery subsequent to the Order to Compel on  
12 this issue, does that reflect that the majority of the UNE-L  
13 lines that you are provisioning are, in fact, being provided  
14 to business customers?

15 A. (Mr. West) I know we provided AT&T with some  
16 surrogates for that split.

17 Q. But would you accept subject to check that, in  
18 fact, the majority of your UNE-L arrangements are being  
19 provided to service business customers?

20 A. (Mr. West) Just perusing the table that we  
21 provided you, there would be seem to be more mass market  
22 business UNE loops that residence UNE loops.

23 Q. And where are the majority of your UNE-P  
24 arrangements being utilized? In the residential or business  
25 market?

1 A. (Mr. West) It's my understanding that the  
2 carriers use UNE-P more for residence than business.

3 Q. Just so I understand Verizon's position on this  
4 then, if it came to an analysis in a particular geographic  
5 market that the candidates involved were all using UNE-L to  
6 provide only business services, they would still be  
7 sufficient to meet the mass market trigger, mass market  
8 switching trigger, in this particular case and eliminate  
9 UNE-P; correct?

10 A. (Mr. West) Yes. I mean, again, that's an  
11 extreme example, but it's not without precedent that  
12 Commission's have looked at this issue and ruled that you do  
13 not bifurcate the market into res. mass market and bus. mass  
14 market. In my rebuttal, we cite the Ohio PUC, which  
15 basically said if it's a DS-0 res. or a DS-0 bus., it's a  
16 mass market.

17 Q. And that decision was rendered very early in  
18 that case; correct? I mean, it's a long way before the Ohio  
19 Commission finally determines whether the triggers have been  
20 met there; correct?

21 A. (Mr. West) Right. I think that --

22 MS. CONOVER: I --

23 WITNESS WEST: I'm sorry.

24 MS. CONOVER: I would object to asking this witness  
25 about where this is in terms of the Ohio Commission.

1 MR. BARBER: He cited to it.

2 BY MR. BARBER:

3 Q. It was an Interlocutory Order; correct?

4 A. (Mr. West) I don't know about Interlocutory  
5 Order, but I think I do understand that they set their  
6 proceeding up first to define the market and then they were  
7 going to invite people to either do a trigger analysis or  
8 show a potential deployment analysis.

9 Q. Let's turn to page 18 leading onto 19 of your  
10 rebuttal testimony. You're talking about the exclusion for  
11 enterprise switching.

12 A. (Mr. West) Yes.

13 Could I have a moment here?

14 JUDGE SCHNIERLE: While you're looking, let me ask a  
15 couple questions here. In your listings of the number of  
16 DS-0 lines, do you know if those lines are being used by  
17 businesses that have four lines or less as opposed to large  
18 business that may have multiple fax lines and analog modem  
19 lines coming into the business?

20 WITNESS WEST: When we did the line count study, we  
21 broke it down by all line counts going from 1 to 24 and then  
22 24 and greater. So the answer to your very first question  
23 is yes. We have some sense for where these things fell in  
24 the 1 to 4 zone, 5, 6, 8, 10.

25 JUDGE SCHNIERLE: Uh-huh.

1           WITNESS WEST: In terms of trying to make sure that  
2 they are voice grade DS-0's, we excluded lines that belong  
3 to, say, Covad, which was obviously using data applications,  
4 and we excluded lines that were somehow treated so that they  
5 would be more capable to handle data transport.

6           So what's left is the best cut at the universal we  
7 can arrive at of just pure vanilla POTS.

8           JUDGE SCHNIERLE: Well, let me give you an example.  
9 In this building here, I know, for example, all these phones  
10 are ISDN phones, and we also have in just our little part of  
11 the building here one fax line and also a number of lines --  
12 as a matter of fact, I think there's one in every courtroom  
13 where we can plug in an analog speaker phone.

14           What you're telling me is that those aren't broken  
15 out separately. I mean, those are counted as DS-0 mass  
16 market lines in your line count.

17           WITNESS WEST: Yeah. Based on the carrier, we can  
18 infer whether it's going to be a data application. Based  
19 whether it has been conditioned, we can infer whether it's a  
20 data application. But if you're content to use a POTS line  
21 for something like a fax machine, it's going to be in the  
22 count.

23           JUDGE SCHNIERLE: Thank you. You may continue, Mr.  
24 Barber.

25           BY MR. BARBER:

1 Q. Just following up on the Judge, you agree that  
2 in order to provide fax service, for example, you would need  
3 an analog POTS line; correct?

4 A. (Mr. West) Yes.

5 Q. So to the extent that those kinds of lines are  
6 in the mass market -- a better way of putting it is your  
7 data in Attachment 5 would include, for example, analog  
8 lines being used to provide fax services.

9 A. (Mr. West) There's no question there is a  
10 little bit of that in there. There's no way to route it  
11 out. If there was --

12 Q. Whether it's a little or a lot --

13 JUDGE SCHNIERLE: Well, in fact, whether there is a  
14 little bit of that or a lot of that, if you don't know how  
15 much there is, isn't that the case? I mean, if you don't  
16 know, you don't know.

17 WITNESS WEST: I mean, to me, it's just intuitive  
18 that the overall ratio in life of fax lines to regular lines  
19 that people use for voice conversations is relatively small.

20 JUDGE SCHNIERLE: You may continue, Mr. Barber.

21 BY MR. BARBER:

22 Q. Again, talking about the enterprise -- and this  
23 bears somewhat on this -- the issue here is whether an  
24 enterprise switch should count toward the trigger; correct?

25 A. (Mr. West) No. I think the issue is if a mass

1 market customer is being served from a switch that serves  
2 mostly enterprise customers or is predominantly enterprise  
3 customer oriented, should those mass market DS-0's count  
4 against the trigger.

5 Q. Well --

6 A. (Mr. West) In my testimony, I know we concede  
7 that if the switch is exclusively an enterprise switch, it  
8 doesn't count; and the reason it doesn't count, consistent  
9 with the FCC Order, is that it probably would have to be  
10 modified to provide analog service. But once a switch has  
11 been modified, and we know it has been modified if we can  
12 demonstrate that it is already serving mass market DS-0  
13 lines, then those mass market DS-0 lines, in our view, ought  
14 to count.

15 Q. You got to the word "exclusively" and you've got  
16 it italicized in your testimony at page 19. I mean, you  
17 agree, do you not, that the TRO, for example, in Paragraph  
18 508 indicates, quote, "Switches serving the enterprise  
19 market do not qualify for the triggers described above"?  
20 Correct?

21 A. (Mr. West) Absolutely.

22 Q. Can you show me where in 508 the word  
23 "exclusively" is?

24 A. (Mr. West) Well, it's the same as saying  
25 switches that serve the mass market should qualify for the

1 triggers as well; and if the switch does both, in our view,  
2 the lines coming out of that switch, no matter what the  
3 percentage of enterprise customers are, count towards the  
4 trigger.

5 Q. A CLEC has come and deployed an enterprise  
6 switch, and in the course of providing service out of that  
7 enterprise switch, it determines that one of its customers  
8 needs a fax line, an analog fax line. It does what it needs  
9 to provision that analog fax line out of that enterprise  
10 switch. Is that now a mass market switch?

11 A. (Mr. West) It's not a mass market switch, but  
12 it certainly now has demonstrated with an actual DS-0 line  
13 the capability to serve the mass market. So in that sense,  
14 it should count towards the triggers.

15 Q. By the fact that it's serving one line?

16 A. (Mr. West) It has demonstrated through an  
17 actual experience on the ground serving arrangements a DS-0  
18 mass market customer, so it should count as one of the  
19 triggers.

20 Q. I know you desperately want to say it has shown  
21 the potential to do that.

22 A. (Mr. West) No; potential --

23 Q. I can hear it. I can just hear it. In other  
24 words, the word "exclusively" isn't in 508. This is a  
25 reading by implication; correct?

1 A. (Mr. West) I'll look at 508.

2 Q. Sure.

3 A. (Mr. West) I don't know what a reading by  
4 implication means.

5 (Witness perusing document.)

6 A. (Mr. West) I don't see the word "exclusive."

7 Q. I mean, you cited other paragraph in the TRO in  
8 this context. Is the word "exclusively" in any of those  
9 paragraphs, 435, 437, 441?

10 (Witness perusing document.)

11 A. (Mr. West) No.

12 Q. In this context, on page 20, Footnote 3 to your  
13 testimony -- and I'm sure OCA's counsel will be getting into  
14 this, but I was very interested here. I see a sentence here  
15 -- and you're rebutting something that the OCA witnesses  
16 have talked about in terms of a de minimis qualification in  
17 terms of percentage, but you respond, and part of this is  
18 bolded, that "OCA would have the Commission decline to apply  
19 the triggers unless CLECs were serving, quote, at least 9  
20 percent of mass market customers in a given market."

21 Now, you've got that bolded.

22 A. (Mr. West) Yes.

23 Q. Why do you have that underscored and italicized?

24 A. (Mr. West) Because three carriers times 3  
25 percent would be 9 percent.

1 Q. And 9 percent is a lot?

2 A. (Mr. West) It's bolded because what that is  
3 indicative of is a market share test, and the triggers are  
4 not a market share test.

5 Q. I understand that, but you seem to be reacting  
6 in some outrage to the fact that the Commission shouldn't be  
7 influenced by the fact that they would be eliminating UNE-P  
8 in a circumstance where you still got 91 percent of the  
9 market.

10 A. (Mr. West) Well, I mean, I would react negative  
11 to that because there is no market share test, and I'm sure  
12 Dr. Taylor could expound on this a lot better than I can,  
13 but suffice it to say that when I reviewed the TRO, nowhere  
14 did it say if Verizon is sitting on 91 or 92 percent of the  
15 mass market, the triggers automatically fail.

16 Q. Well, how many loops aren't enough? Is there  
17 any number of loops that would disqualify a particular CLEC  
18 from being a trigger candidate under your analysis?

19 A. (Mr. West) In a theoretical construct, no, but  
20 as a practical matter, the data that Verizon has shown is  
21 quite robust. I mean, we've shown many MSAs where there are  
22 three, four, five, six, nine serving CLECs. So it's a  
23 little disingenuous to say that what we've done is found one  
24 mass market line with one CLEC, one mass market line with  
25 another CLEC, one mass market line with a third CLEC and

1 said -- come to this Commission here; you know, we satisfy  
2 the triggers.

3 As a practical matter, that's just not feasible and  
4 we wouldn't do it, but our case is a good deal stronger than  
5 that.

6 Q. Do you have Attachment 5 in front of you?

7 A. (Mr. West) Yes.

8 Q. Looking at the Reading MSA --

9 A. (Mr. West) Okay.

10 Q. I mean, you've got one trigger candidate down  
11 there that's got one line; correct?

12 A. (Mr. West) Yes.

13 Q. And they're still a trigger candidate?

14 A. (Mr. West) Yes, they are.

15 Q. Scranton; trigger candidate with two lines.

16 A. (Mr. West) Before we move to Scranton, there's  
17 four others there. It's not a case where the carrier with  
18 the one line is the third carrier.

19 Q. Well, of the four others -- believe me, we'll be  
20 getting into this in a little more detail. But one of those  
21 carriers you originally didn't ascribe any lines to;  
22 correct? Under the Verizon count, there's zero lines there.

23 A. (Mr. West) Correct.

24 Q. And as we learned earlier today, there may be  
25 substantial question as to whether the lines that you

1 included in there in the CLEC count are mass market lines;  
2 correct?

3 A. (Mr. West) I'm not willing to say correct to  
4 that. I don't know what you mean.

5 JUDGE SCHNIERLE: Adelpia.

6 BY MR. BARBER:

7 Q. The whole discussion this morning about the  
8 state contract this morning with Adelpia.

9 A. (Mr. West) This is Reading; right?

10 Q. Yes, Reading. They're applying the state  
11 contract throughout the state; correct?

12 A. (Mr. West) I don't know the scope of the state

13 --

14 Q. You don't know what you don't know. Again,  
15 we'll be getting into some of the detail in there.

16 Now, page 21.

17 JUDGE SCHNIERLE: I want to ask one more question.  
18 Where it says on Exhibit 5 or Attachment 5, "Commonwealth  
19 Comm," is that CTSI?

20 WITNESS WEST: Yes.

21 BY MR. BARBER:

22 Q. We'll get there in a minute. Actually, go to  
23 page 24. We might as well go right there. We're already  
24 talking about cable.

25 Starting on page 24, there is a discussion of the

1 issue raised by a number of parties in this case concerning  
2 whether it is appropriate to include an affiliate of an  
3 independent company in this analysis; correct?

4 A. (Mr. West) Yes.

5 Q. You, in fact, quote Paragraph 440 or at least  
6 quote parts of Paragraph 440 and Footnote 1352 in that  
7 discussion; correct?

8 A. (Mr. West) Yes.

9 Q. Now, we had this discussion earlier, but I want  
10 to make sure we're all on the same page here. When you're  
11 talking about 1352, what seems to be missing from your  
12 discussion in page 24 are the words "some of the competitive  
13 deployment could be considered;" correct?

14 A. (Mr. West) Well, I mean, we definitely say  
15 "could be considered."

16 Q. You say, "In particular, the FCC found," quote,  
17 "that competitive deployment." The "some" qualifier is  
18 missing from that. You do have the "could be considered."

19 A. (Mr. West) Right.

20 Q. Now, there are at least three affiliates of ICOs  
21 that are implicated by the data here; correct?

22 (No response.)

23 Q. Do you understand which companies are ICO  
24 affiliates in this case?

25 A. (Mr. West) Yeah. At least three. Yes; I see

1 at least three.

2 Q. Let's start with one. Penn Telecom?

3 A. (Mr. West) That's one of them.

4 Q. That's an affiliate of North Pittsburgh  
5 Telephone Company; correct?

6 A. (Mr. West) Uh --

7 Q. You don't know?

8 A. (Mr. West) That I don't know.

9 Q. Is it your contention that the lines that you're  
10 attributing to Penn Telecom in this case for purposes of  
11 applying the mass market switching trigger are being  
12 provided out of Penn Telecom's own switch, a switch that  
13 Penn Telecom owns?

14 A. (Mr. West) My understanding is that the switch  
15 belongs to its parent.

16 Q. So they're leasing capacity from North  
17 Pittsburgh?

18 A. (Mr. West) Yes.

19 Q. Do you know anything about North Pittsburgh?

20 A. (Mr. West) I've never been to North Pittsburgh.

21 Q. Understand, that is an independent company. It  
22 has enjoyed over the past several years a rural exemption.

23 A. (Mr. West) Okay. I'll accept that.

24 Q. It's not subject to any unbundled loop or, for  
25 that matter, any form of UNE competition within its service

1 territory. Do you understand that?

2 A. (Mr. West) Yes.

3 Q. So it's your contention, Verizon's contention  
4 then in this case that Penn Telecom, using its affiliate  
5 switch behind its independent territory and its rural  
6 exemption, is, in fact, an indicator of the ability of other  
7 CLECs to come in and provide competition in the Pittsburgh  
8 MSA?

9 A. (Mr. West) Well, it is a switch that qualifies  
10 for the trigger analysis per the FCC Order. Again, whether  
11 it is as strong as another kind of switch offered by another  
12 CLEC is something that the FCC took into account when it set  
13 the trigger level at three.

14 I mean, the FCC had before it this huge record with  
15 all these arguments already made, and they realized that  
16 this ILEC switch is one of the things that has to be worked  
17 into their decision calculus, and when they set that trigger  
18 at three, they did so with their eye on that as well as a  
19 number of the other variables that we already discussed this  
20 morning and this afternoon.

21 Q. Now, quoted Footnote 1352 in your discussion  
22 here, but did you read Paragraph 440, which is what Footnote  
23 1352 references?

24 A. (Mr. West) Yes.

25 Q. In Paragraph 440, the FCC was dealing with the

1 fact that the data that was being presented to it showed  
2 that the bulk of the competition, that the box Verizon was  
3 asserting showed that there was sufficient competition to  
4 eliminate UNE switching, involved either cable companies or  
5 affiliates of independent companies; correct?

6 A. (Mr. West) Yes. Those are the two sort of  
7 carriers that are discussed in Paragraph 440.

8 Q. Right. They find that that was the majority of  
9 the data being presented to them, and then they find in the  
10 ultimate sentence in Paragraph 440 that that deployment did  
11 not demonstrate that competitors have successfully self-  
12 deployed switches as a means to access the incumbent's local  
13 loops; correct?

14 A. (Mr. West) And overcome the difficulties  
15 inherent in the hot cut process. So the way I interpret  
16 that is that when they made this overall national  
17 determination of impairment, that's one of the things that  
18 went into that determination. But then to analyze markets  
19 where perhaps that determination is too broad, they allowed  
20 that where there are three CLECs providing service to mass  
21 market customers, that in that relevant market area, there  
22 should be a finding of no impairment.

23 So, is this a factor? Yes. But it's a factor in  
24 setting the number at three. Once the number is set at  
25 three, then any number of flavors of CLEC that are serving

1 mass market customers in traditional ways or maybe  
2 intermodal ways qualify as triggers.

3 Q. You would agree that the ultimate objective of  
4 the triggers is to show that in a particular market, a new  
5 entrant would be able to overcome these barriers to entry  
6 or, in fact, the barriers to entry have been sufficiently  
7 reduced that a CLEC would be able to come in and offer  
8 service; correct? I mean, it's shorthand way of getting to  
9 that answer.

10 A. (Mr. West) It is a shorthand way of getting to  
11 the question is there impairment without providing local  
12 switching as a UNE.

13 Q. Well, how does a new entrant replicate what Penn  
14 Telecom did to enter the Pittsburgh market?

15 A. (Mr. West) I think that's the point. There is  
16 no that I can find in the TRO requirement that CLECs follow  
17 any given formula for entry to count as triggers. If their  
18 presence is felt in sufficient number serving mass market  
19 customers, then the trigger analysis would in an objective  
20 sense yield an answer of no impairment.

21 The individual trigger candidates don't need to  
22 follow any specific business plan.

23 Q. But in the case of an independent company, the  
24 FCC -- or an ICO affiliate -- the FCC is telling the  
25 Commission in Footnote 1352 to analyze whether some of that

1 deployment may be considered.

2 MS. CONOVER: Your Honor, I'm going to object to this  
3 point. He has gone over and over and over this same issue.

4 JUDGE SCHNIERLE: It's beating a dead horse at this  
5 point.

6 BY MR. BARBER:

7 Q. All right. We talked about Penn Telecom. D&E  
8 is mentioned in several different MSAs as a trigger  
9 candidate. Which D&E affiliate are you talking about in  
10 those particular cases?

11 A. (Mr. West) Two of them. One is D&E Systems,  
12 and the other is CEI Network; and as I understand it, D&E is  
13 the parent to both of those CLECs.

14 Q. Let's talk about CEI real fast. What switch  
15 does CEI own in Pennsylvania?

16 A. (Mr. West) I'm not sure. I have a data  
17 response where they indicated three switches.

18 Q. Would you accept subject to check that the only  
19 switch that CEI has identified that it owns in Pennsylvania  
20 is in State College?

21 A. (Mr. West) I mean, I'll accept it subject to  
22 check.

23 Q. It's in their response to the Public Utility  
24 Commission's preliminary data request number 6.

25 (Pause.)

1           A.   (Mr. West) Okay. That is one of the three that  
2 they answered affirmatively to in question 1 of the  
3 Commission's --

4           Q.   And they also indicated that they are leasing --  
5           MR. BARBER: Actually, Your Honor, I think this gets  
6 into proprietary data.

7           JUDGE SCHNIERLE: All right.

8           (Whereupon, the following pages 148 through 149 were  
9 sealed and bound separately.)

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1 BY MR. BARBER:

2 Q. The third carrier you identify that is an  
3 independent company is Commonwealth; correct?

4 A. (Mr. West) Right.

5 Q. Do you know whether the issue of Commonwealth or  
6 CTSI -- CTSI is the CLEC affiliate; correct?

7 A. (Mr. West) Yes, it is.

8 Q. Do you know whether that issue has previously  
9 come up before the Commission in terms of whether that  
10 should properly count as a competitive alternative?

11 A. (Mr. West) I do not.

12 Q. I want to read something to you and see if you  
13 agree with this as a general principle. Actually, I want to  
14 show you --

15 MS. CONOVER: Would you show the witness a copy of  
16 what you're reading from?

17 MR. BARBER: Yes.

18 (Pause.)

19 WITNESS WEST: Okay.

20 BY MR. BARBER:

21 Q. Do you need to see the entire document?

22 (Document handed to witness.)

23 MR. BARBER: What I've shown the witness is an  
24 excerpt from a recommended decision that involved a Verizon  
25 request for competitive classification of its business

1 market.

2 BY MR. BARBER:

3 Q. Would it be fair to say that in that case, based  
4 on the recommended decision, Verizon had put forward CTSI as  
5 a company that showed that there was competition for  
6 business customers in certain areas of Pennsylvania?

7 Correct?

8 A. (Mr. West) Right. We held them out as a  
9 company competing for small business customers.

10 Q. And what the record in that case reflected was  
11 that CTSI was using switching capacity purchased from  
12 Commonwealth Telephone, its affiliated ILEC; correct?

13 A. (Mr. West) Yes.

14 Q. And the decision quotes, "CTSI is assisted in  
15 providing service because it does not need to purchase a  
16 costly switch outright and can share a switch with an ILEC,"  
17 end quote. Correct?

18 A. (Mr. West) Correct.

19 Q. And based on that record, the decision  
20 recommended that CTSI -- that the Commission not issue a  
21 positive determination on Verizon's request on the basis of  
22 CTSI because, quote, "the presence of CTSI does not  
23 establish that, in general, the purchase of unbundled loops  
24 for connection to a CLEC switch is a viable method of  
25 competing for rural customers," end quote. Correct?

1 A. (Mr. West) Correct.

2 Q. Is Verizon taking a contrary approach in this  
3 particular case?

4 A. (Mr. West) Yes. I mean, with all due respect  
5 to this Commission, it appears to me when I read TRO that  
6 the FCC has found otherwise.

7 Q. And that was the recommended decision of Judge  
8 Schnierle in the business services on July 24, 1998, Docket  
9 No. P-00971307.

10 JUDGE SCHNIERLE: Interesting. I don't remember that  
11 particular point.

12 MR. BARBER: I think that's a no vote, Your Honor.

13 BY MR. BARBER:

14 Q. Turning to page 27 of your rebuttal, this gets  
15 into the question of CLECs actively providing service;  
16 correct?

17 A. (Mr. West) Correct.

18 Q. According to your testimony on page 27, looking  
19 at line 17 -- actually, the sentence beginning on line 15  
20 and continuing. The word that strikes me there, you're  
21 talking about what the Commission can look at in determining  
22 whether a CLEC is likely to continue providing service. And  
23 I guess it's important to go back to Paragraph 500 of the  
24 TRO for providing some context.

25 The last sentence of Paragraph 500 talks about,

1 quote, "The key consideration to be examined by state  
2 commissions is whether the providers are currently offering  
3 and able to provide service and are likely to continue to do  
4 so," end quote. Correct?

5 A. (Mr. West) Yes.

6 Q. And as I read your statement on page 27, and  
7 particularly at line 17, you indicate, "the Commission may  
8 look only at whether a CLEC has affirmatively indicated that  
9 it is exiting the market altogether."

10 What is the source for your claim that that is the  
11 only thing that the Commission can look at?

12 A. (Mr. West) Well, it has its roots in Footnote  
13 1556.

14 Q. Which says, "For instance" --

15 A. (Mr. West) "States should review whether the  
16 competitive switch provider has filed a notice to terminate  
17 service in that market."

18 Q. It doesn't say states only should review; right?

19 A. (Mr. West) Well --

20 Q. It says, "For instance." That's one example;  
21 correct?

22 A. (Mr. West) You're right, but the point here is  
23 they should only review things that are that definite in  
24 terms of making a determination that they're somehow that  
25 going to be actively providing service.

1            Things they shouldn't be looking at are a carrier's  
2 preference to use UNE-P versus UNE-L or a carrier who is  
3 losing market share or any other set of subjective variables  
4 that might be used to try to paint a picture of the  
5 particular carrier being weak.

6            The idea is if it's in there today providing service,  
7 absent definitive knowledge that it's not going to be there  
8 continuing to do so, like there's a notice of termination,  
9 then that particular CLEC is a candidate for the trigger  
10 analysis.

11           Q.    Well, what if a company, for example, says that  
12 it is affirmatively not marketing its services in a  
13 particular MSA?

14           A.    (Mr. West) To me, the marketing of services  
15 falls under this sort of business plan analysis, and it is  
16 not the sort of thing that the bright line objective trigger  
17 ought to look at.

18           If the CLEC is serving mass market customers in the  
19 relative market area per the FCC's trigger formulation, it  
20 ought to count.

21           Q.    So if it's got some residual amount of legacy  
22 lines, a CLEC has just some residual amount of legacy lines  
23 in a particular geographic market, notwithstanding the fact  
24 that it's got no intention of marketing its services there,  
25 it's still an appropriate trigger candidate?

1           A.   (Mr. West) I mean, this is exactly the point.  
2 To decipher whether a carrier has intentions or no  
3 intentions or trying to figure out why it has this many  
4 lines and not that many lines is precisely the sort of thing  
5 you would do in a full blown potential deployment analysis.

6           If you're going to maintain the sanctity of the  
7 triggers and keep them as something that you could  
8 administratively apply in a relatively simple fashion, you  
9 have to set that stuff aside, which means you're not  
10 permitted to speculate on why carrier X has nine lines.

11           If it has nine lines serving mass market customers in  
12 the relevant market area, it counts in the trigger analysis.

13           Q.   But is that an economically rational reading of  
14 how the trigger should be applied?

15           MS. CONOVER: Your Honor, I would object to that  
16 question. It goes beyond the scope.

17           BY MR. BARBER:

18           Q.   Let's give a concrete example. Look at the  
19 Allentown MSA on Attachment 5.

20           A.   (Mr. West) Okay.

21           Q.   Is the identify of a CLEC that claims its not a  
22 trigger candidate a --

23           MR. BARBER: Maybe, Your Honor, for purposes of  
24 safety, we'll go on the proprietary record.

25           JUDGE SCHNIERLE: All right. We're on the

1 proprietary record.

2 (Whereupon, the following pages 157 through 179 were  
3 sealed and bound separately.)  
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FORM 2

1 BY MR. BARBER:

2 Q. When Verizon was identifying particular routes  
3 that it believed met the self-provisioning trigger for  
4 dedicated transport, what it did was send some of its people  
5 out to do a survey of various collocation sites; correct?

6 A. (Peduto) Well, Verizon went out and inspected,  
7 in its own central offices, collocation sites in those  
8 central offices.

9 Q. And so it sent these people out and they go to  
10 the central office and they look in the collocation cage,  
11 and if they saw digital line carrier equipment that had been  
12 self-provisioned by the CLEC in that particular cage, and  
13 then self-provisioned fiber, they identified that as one  
14 particular end of a route; correct?

15 A. (Peduto) Well, I think the FCC test -- and  
16 that's what our inspectors looked for -- was fiber brought  
17 into an operational collocation cage.

18 Q. So you'd go to collo cage A and you'd see that  
19 AT&T, for example, had digital loop carrier and AT&T fiber  
20 running out of that collocation cage, and you'd have wire  
21 center B, you'd look in there, see that there was digital  
22 loop carrier and self-provisioned fiber, and what Verizon  
23 then identified on the basis of an assumption was that from  
24 A to B was a route, a self-provisioned route; correct?

25 A. (Peduto) Not exactly. Verizon went into both

1 those central offices as you described and validated that we  
2 had fiber optic cable coming into the collocation cage, also  
3 validated that that fiber optic cable could be traced  
4 through the building and out of the cable vault to the  
5 outside world. We also validated that that collocation cage  
6 was powered and operationally -- in other words, in  
7 operation. When that collocation cage in central office A,  
8 with an operational fiber optic cable connected to the  
9 CLEC's network, and operational collocation cage in central  
10 office B connected to the CLEC's network, with both things  
11 connected to the CLEC's network, it's -- the CLEC is in a  
12 sense, right at that moment, operationally ready to  
13 establish a connection between A and B.

14 Q. Now, again, under your analysis and assumptions,  
15 it does not matter in this case that A&T says that "we don't  
16 have a route that runs directly from point A to point B, but  
17 that point A, for example, runs back to our switch";  
18 correct?

19 A. (Peduto) I guess I'd like to point you back to  
20 the definition of a route. As discussed in my testimony, a  
21 route may connect Verizon wire centers or switches that are  
22 not directly connected to one another. And if you go to TRO  
23 paragraph 402 and Note 1246, it explains that.

24 Q. The issue in dispute is whether the fact that  
25 AT&T's traffic may run from that collocation back through

1 its switch, under Verizon's reading of the TRO, the fact  
2 that it does that still means that under the TRO's  
3 application of dedicated transport, that is still a route  
4 for purposes of the self-provisioning trigger? I'm just  
5 trying to get some clarification.

6 A. (Peduto) That is correct. And I guess I'd like  
7 to point you to the section in the TRO where I believe  
8 that's well covered.

9 (Pause.)

10 A. (Peduto) I'd like to call your attention to  
11 Note 1246 in the TRO. In my copy that's page 251.

12 Q. Mine, too.

13 A. (Peduto) By the way, it says, "By a link, we  
14 mean a direct connection between two incumbent LEC switches  
15 or wire centers without passing through any intermediate  
16 wire centers or switches." And so, to me that means that  
17 you could trace a wire from central office A to central  
18 office B through the countryside, if you will, and that in  
19 tracing it, it would pass through no other intermediate wire  
20 centers or switches.

21 "On the other hand," it says, this is continuing to  
22 read on Note 1246, "On the other hand, a route may connect  
23 wire centers or switches that are not directly connected to  
24 one another." And in that regard, it seems to me that if  
25 your fiber cable leaves -- if the AT&T fiber cable leaves

1 central office collocation A, goes through the AT&T switch  
2 location and continues on to collocation B, that that  
3 constitutes a route between A and B.

4 Q. Are you reading from the TRO that as part of  
5 that transit through the switch, that there is actual  
6 switching capability being employed on the traffic?

7 A. (Peduto) I don't know that it says that there  
8 is or there isn't. I don't know that it provides a  
9 requirement that says, you know, there can be no switching.

10 Q. Does Verizon offer a dedicated transport  
11 product?

12 A. (Peduto) I don't understand your question.

13 Q. Does Verizon offer dedicated transport to  
14 customers?

15 MS. CONOVER: If I can just object for a point of  
16 clarification. The dedicated transport is a term of art  
17 defined in the TRO. It may be very different from the  
18 question you're asking him. So I would like you to clarify  
19 precisely what --

20 WITNESS PEDUTO: And I might add that what I'm  
21 talking about here is dedicated transport as defined in the  
22 TRO.

23 BY MR. BARBER:

24 Q. Okay. Well, does Verizon offer private line  
25 services?

1 A. (Peduto) Yes.

2 Q. Is there a switching component to those private  
3 line services?

4 MS. CONOVER: Your Honor, I question the relevance of  
5 that. There is a very specific definition of dedicated  
6 transport in the TRO.

7 JUDGE SCHNIERLE: Overruled.

8 WITNESS PEDUTO: I would say in today's network, it's  
9 difficult to see the clear distinction between switch and  
10 transport that we've known for years and years. In  
11 Verizon's network today, as far as I know, point-to-point  
12 connections are done without going through any type of  
13 equipment that we would commonly call a switch; however, as  
14 the distinction between switching and transport starts to  
15 blur with things like packet switching, ATM transfer, it is  
16 very possible that that circuit may not be a physical  
17 connection but may have in part a virtual connection  
18 somewhere along that transit between A and B.

19 BY MR. BARBER:

20 Q. Under the TRO, a connection from a switch --

21 JUDGE SCHNIERLE: Hold on just a second. I want to  
22 jump in here for a second on this footnote 1246. 1246 says,  
23 "By a link, we mean a direct connection between two  
24 incumbent LEC switches or wire centers without passing  
25 through any intermediate wire centers or switches. On the

1 other hand, a route may connect wire centers or switches  
2 that are not directly connected to each other."

3 Now, you're reading the word "switches" there to mean  
4 also CLEC switches. Am I understanding you right?

5 WITNESS PEDUTO: I don't see -- let's see. "We  
6 considered but declined to adopt a test based on a link  
7 between two incumbent LEC central offices."

8 JUDGE SCHNIERLE: Then you get to 1246. It says, "By  
9 a link, we mean a direct connection between two incumbent  
10 LEC switches or wire centers."

11 WITNESS PEDUTO: And I think that part is clear that  
12 a link would be from central office A directly to central  
13 office B.

14 JUDGE SCHNIERLE: Because the word "LEC" is there,  
15 you concede that they're talking in that phrase LEC switches  
16 or wire centers?

17 WITNESS PEDUTO: Incumbent LEC --

18 JUDGE SCHNIERLE: Switches. And then what you're  
19 doing is reading the next phrase where it says, "without  
20 passing through any intermediate wire centers or switches"  
21 to include -- you're implying that between intermediate and  
22 wire centers is the word "CLEC" or "ILEC".

23 (No response.)

24 JUDGE SCHNIERLE: Am I correct, that's how you're  
25 getting your whole interpretation on this thing?

1 WITNESS PEDUTO: Well, I don't see that it's defined  
2 when it comes to route, Your Honor. I basically see that a  
3 CLEC may have to build their network very differently than  
4 Verizon or any ILEC has ever built their network and may  
5 indeed have to take it back through their switch location in  
6 order to get to point B. Whereas if they're neighboring  
7 wire centers, for instance, it would be very likely that  
8 Verizon would have a link between those two wire centers.

9 JUDGE SCHNIERLE: Well, can you tell me -- you're  
10 implying that the words "ILEC" or "CLEC" follow on the rest  
11 of that footnote, in the rest of that footnote where they're  
12 talking about wire centers or switches. It's Verizon's  
13 argument that if a route goes back through a CLEC switching  
14 center, we can -- if a route is from a Verizon wire center  
15 to a CLEC switch and back to another Verizon wire center,  
16 that's a route.

17 WITNESS PEDUTO: Yes, Your Honor.

18 JUDGE SCHNIERLE: And they're arguing it's not  
19 because it's going through a CLEC switch. Do I understand  
20 the issue correctly?

21 WITNESS PEDUTO: I believe you do, Your Honor.

22 JUDGE SCHNIERLE: All right. And to get there, your  
23 argument is on footnote 1246 that the part of the sentence  
24 after the comma where it talks about passing through  
25 intermediate wire centers or switches, and then the next

1 sentence, "a route may connect wire centers or switches that  
2 are not directly connected to each other," with respect to  
3 the balance of that, you're implying that instead of just  
4 applying to ILEC wire centers or switches, the rest of the  
5 thing applies to either CLEC or ILEC?

6 WITNESS PEDUTO: Well, --

7 MS. CONOVER: Your Honor, if I could just bring to  
8 your attention, there is also a definition of dedicated  
9 transport in the rules themselves, which is 27 of the rules  
10 (inaudible).

11 JUDGE SCHNIERLE: You may continue, Mr. Barber.

12 BY MR. BARBER:

13 Q. Mr. Peduto, what's an entrant's facility, to  
14 distinguish that from a dedicated transport?

15 A. (Peduto) Well, an entrant's facility would run  
16 from the CLEC switch to the collocation site in a Verizon  
17 central office.

18 Q. And what Verizon is saying is that -- well, I  
19 guess, arguably, what Verizon is indicating is that when  
20 that traffic runs from the collocation back to the CLEC  
21 switch, there is some non-switching activity going on,  
22 there's a DACS, there's some kind of cross-connect that then  
23 hooks it on to the other collocation in order to make that a  
24 route?

25 A. (Peduto) I'm not certain that that's what

1 Verizon is arguing.

2 Q. Well, is it Verizon's contention that under the  
3 FCC's definition of dedicated transport, there is actual  
4 switching activity going on at the CLEC switch on that  
5 route?

6 A. (Peduto) I don't believe that the TRO precludes  
7 that from occurring.

8 Q. Would it make sense to you -- I mean, obviously,  
9 one of the issues here under the FCC's definition is whether  
10 a CLEC is operationally capable. I think that's one of the  
11 provisions under the trigger, operationally ready to provide  
12 dedicated transport?

13 A. (Peduto) That's right. And I think in our  
14 testimony on page 36, we talked about that.

15 Q. Would it make sense -- assuming you found these  
16 two collocations and that there's some idea that this is  
17 running through the CLEC switch, would it make sense for a  
18 CLEC that is operationally capable of providing itself  
19 dedicated transport to nevertheless purchase special access  
20 from Verizon between those two collocations?

21 A. (Peduto) I don't know.

22 Q. Well, when you had your people, when Verizon had  
23 its people out reviewing or checking out the various  
24 collocation sites at which they were identifying one end of  
25 a route and then the other end of a route, did Verizon have

1 its people go back and check its own records at all to  
2 determine whether Verizon was, in fact, providing special  
3 access to the trigger candidate between those two routes?

4 A. (Peduto) To the best of my --

5 Q. Between those two wire centers. I'm sorry.

6 A. (Peduto) To the best of my knowledge, we did  
7 not. To the best of my knowledge, I don't think we checked  
8 UNE transport either. I'm not sure that there was a belief  
9 that that was germane to this decision as to whether the  
10 CLEC was operationally ready to provide transport between  
11 two points.

12 Q. Special access purchased from Verizon would be  
13 more expensive than the CLEC providing dedicated transport  
14 to itself, wouldn't it?

15 A. (Peduto) I don't know. I don't know.

16 MR. BARBER: Your Honor, I'd like to have marked two  
17 exhibits, AT&T Cross-Examination Exhibit 3 and AT&T Cross-  
18 Examination Exhibit 4. I would note, Your Honor, although  
19 unfortunately it hasn't been marked that way, these are both  
20 proprietary exhibits.

21 JUDGE SCHNIERLE: All right. Are you going to  
22 question about them?

23 MR. BARBER: Yes.

24 JUDGE SCHNIERLE: We're on the proprietary record.

25 MR. BARBER: I'm not sure I'm going to be asking

1 proprietary questions.

2 JUDGE SCHNIERLE: Oh, okay. All right. Then we'll  
3 wait.

4 MR. BARBER: I'm just trying to make the point that  
5 we didn't --

6 (Whereupon, the documents were marked  
7 as AT&T Cross-Examination Exhibits  
8 Nos. 3 and 4 for identification.)

9 MR. BARBER: What I would represent is that Exhibit 3  
10 is a listing of wire centers. The first column is the first  
11 wire center, the second is the second wire center in the  
12 Philadelphia MSA, and which, when you combine the two, these  
13 are areas in which Verizon has identified AT&T as a trigger  
14 candidate for self-provisioned dedicated transport. And  
15 Exhibit 4 is a similar run-down of wire centers in the  
16 Pittsburgh MSA.

17 MS. CONOVER: Mr. Barber, what's the source of these  
18 documents?

19 MR. BARBER: Your billing records. We'll be getting  
20 into that.

21 MS. CONOVER: I'm not sure that this witness can  
22 substantiate your representation as to what these documents  
23 are, so unless you have a witness to essentially verify this  
24 -- but I'll let you try and make your own foundation.

25 BY MR. BARBER:

1 Q. Mr. Peduto, do you recognize the wire centers in  
2 columns 1 and 2 in Exhibits 3 and 4 as routes in which  
3 Verizon, I'm assuming you, have identified AT&T as a trigger  
4 candidate for self-provisioned dedicated transport.

5 MS. CONOVER: Your Honor, I'm going to object. Mr.  
6 Barber has to provide some foundation that Mr. Peduto has  
7 ever seen or can in any way authenticate these documents.

8 MR. BARBER: Well, he can attest to columns 1 and 2,  
9 Your Honor, because he --

10 MS. CONOVER: All he can say is that those are CLLI  
11 codes for --

12 JUDGE SCHNIERLE: Your objection is premature.  
13 Answer the question.

14 WITNESS PEDUTO: And your question is?

15 BY MR. BARBER:

16 Q. Do you recognize these as routes on which  
17 Verizon has identified AT&T as a self-provisioned trigger  
18 candidate for dedicated transport?

19 A. (Peduto) I can't do that from memory. If you'd  
20 like me to check one or several or all of them, I'll be glad  
21 to do that.

22 Q. Or do you want to accept subject to check?

23 JUDGE SCHNIERLE: We'll take a ten-minute break and  
24 you can take a look.

25 (Recess.)

1 JUDGE SCHNIERLE: Back on the record.

2 Did you resolve anything?

3 BY MR. BARBER:

4 Q. Mr. Peduto, --

5 (Pause.)

6 MR. BARBER: We're back on the record, Your Honor?

7 JUDGE SCHNIERLE: Yes; we're back on the record.

8 BY MR. BARBER:

9 Q. I guess just to get back where we were, Mr.  
10 Peduto, have you had a chance to look at either Exhibit 3 or  
11 4, AT&T Cross-Examination Exhibits 3 or 4, and determine  
12 whether in fact the wire centers identified in there are  
13 wire centers that Verizon has identified as routes in which  
14 it asserts that AT&T is a trigger candidate?

15 A. (Peduto) I looked at several on Exhibit 3 and  
16 one on Exhibit 4.

17 Q. And these are, in fact, routes in which you've  
18 asserted AT&T is a trigger candidate for self-provided  
19 dedicated transport?

20 A. (Peduto) On the first route described on  
21 Exhibit 3, that route is not a trigger -- it's not a trigger  
22 candidate.

23 Q. It isn't?

24 A. (Peduto) No, that is not.

25 Q. That's the one that's ALTWPAAL to --



1 as AT&T Cross-Examination Exhibits  
2 Nos. 1 and 2 were received in  
3 evidence.)

4 JUDGE SCHNIERLE: Ms. Benedek, do you have cross?

5 MS. BENEDEK: I do, but I think OCA might be going  
6 next.

7 JUDGE SCHNIERLE: Mr. McClelland?

8 MR. McCLELLAND: If I may, Your Honor?

9 JUDGE SCHNIERLE: Go ahead.

10 By the way, who else has cross of these?

11 (Show of hands.)

12 JUDGE SCHNIERLE: I'm thinking we should have made  
13 this for two weeks.

14 MS. CONOVER: It's going to speed up.

15 MR. McCLELLAND: I don't have a lot of cross.

16 JUDGE SCHNIERLE: Okay; go ahead.

17 **CROSS-EXAMINATION**

18 BY MR. McCLELLAND:

19 Q. Good afternoon. I'm Philip McClelland from the  
20 Office of Consumer Advocate.

21 A. (West) Good afternoon.

22 Q. First of all, I want to try to be clear about  
23 the locations where Verizon believes that the mass market  
24 switching targets have been met, and I would ask you to look  
25 at Verizon Statement 1.1 at page 6, I believe.

1 A. (West) Okay.

2 Q. Would you accept there that you're saying  
3 Verizon has met the mass market switching targets in cells  
4 1, 2 and 3 in a number of MSAs, and that the PUC should make  
5 a finding of no impairment in each of these markets?

6 A. (West) Yes.

7 Q. And then in the footnote you indicate that  
8 Verizon seeks relief in, for example, cells 1, 2 and 3 in  
9 the Harrisburg MSA. Do you see that?

10 A. (West) The footnote is about -- when we filed  
11 the direct, Harrisburg, Carlisle and Lebanon were one MSA,  
12 and now they're something called a combined statistical area  
13 and they really consist of two MSAs, one is the  
14 Harrisburg/Carlisle and the other one is Lebanon. So we  
15 satisfied -- we showed in the direct that we satisfied for  
16 the old Harrisburg/Carlisle/Lebanon, and now if you split  
17 that into two MSAs, we still satisfy each of the MSAs. So  
18 the territory isn't different, it's just the nomenclature is  
19 a little different because now we're really saying there's  
20 two markets there.

21 MR. McCLELLAND: Your Honor, if I could approach the  
22 chart? I'd also like to use I believe it's Verizon Hearing  
23 Exhibit 1.

24 JUDGE SCHNIERLE: Yes.

25 BY MR. McCLELLAND:

1 Q. If you look at the Hearing Exhibit 1, --

2 A. (West) Okay.

3 Q. -- would you agree that this also shows where  
4 Verizon believes the self-provisioning triggers for mass  
5 market have been met?

6 A. (West) Yes.

7 Q. And the geographic areas, have they changed  
8 since your original filing? Now, I know the MSAs have  
9 changed, but have the geographic areas changed?

10 A. (West) No, I don't think so.

11 Q. And let me just try to illustrate, for example,  
12 in the Pittsburgh MSA, --

13 A. (West) Okay.

14 Q. -- you have I'll call them a series of reddish  
15 rings in the middle, and these are cell 1, 2 and 3, and that  
16 represents where Verizon submits that the triggers have been  
17 met?

18 A. (West) Correct.

19 Q. And then also you have other Verizon service  
20 territory in a yellow color here, and there is no claim for  
21 the triggers in those yellow areas?

22 A. (West) Right. A couple points to make.  
23 Anywhere where there's the cross-hatch, there are three or  
24 more CLECs providing mass market switching, so that would be  
25 enough to show that there's no impairment. But the yellow

1 consists of density cells 3 and 4 --

2 Q. Isn't the yellow just cell 4?

3 A. (West) I'm sorry -- no. There's cases where --  
4 in MSAs that we're not seeking relief, there's density cell  
5 3 territory in some of those MSAs, but they're still yellow  
6 because we're not seeking relief there. So that's a little  
7 subtle. So everywhere that's yellow is not just 4. Yellow  
8 is other Verizon territory where we don't meet the triggers  
9 for 1, 2 and 3 inside the MSA.

10 Q. In the MSAs where you are making claims, the  
11 yellow --

12 A. (West) I'm sorry?

13 Q. In the MSAs where you are making trigger claims,  
14 the yellow areas would all be cell 4?

15 A. (West) Yes. That's right. If it's one of the  
16 ones we're trying to make the triggers case for, we have  
17 shown, for density cells 1, 2 and 3, to the extent they  
18 exist in that MSA, that we qualify.

19 Q. I'd like to move to your page 13 of your  
20 Statement 1.2. I believe there is a statement you make  
21 there, and I'll quote it, "Mass market customers are those  
22 customers that are actually being served with one or more  
23 voice grade DS-0 circuits, while enterprise customers should  
24 be those customers actually being served by DS-1 or higher  
25 capacity loops." Is that correct?

1 A. (West) Yes.

2 Q. Does a DS-1 contain 24 equivalents of DS-0  
3 service?

4 A. (West) I believe so, yes.

5 Q. Would you generally agree that a DS-1 is a  
6 telecommunications circuit with much greater capacity than a  
7 DS-0?

8 A. (West) Right, hence it can take the place of 24  
9 DS-0s.

10 Q. I understand you're saying if a customer has  
11 DS-0, it's a mass market customer, if a customer has DS-1,  
12 it's an enterprise customer. If a customer purchases a DS-1  
13 and a DS-0, would that customer then qualify as applying the  
14 mass market trigger?

15 A. (West) In our view, that's a hybrid customer  
16 and he's showing characteristics of both, and to the extent  
17 that that customer is purchasing DS-0s, we would use the  
18 DS-0s, if we can discern them, to try and satisfy the  
19 trigger.

20 Q. And recollecting back to His Honor's question,  
21 and again, hypothetically or not, would you accept that the  
22 Commonwealth receives CLEC service and has a very large  
23 number of lines, and if the Commonwealth weren't receiving  
24 many services on DS-1s and DS-3s, and then in addition,  
25 there was a DS-0 for fax service, that would then qualify

1 said service for the mass market trigger?

2 A. (West) Well, you know, this goes back to a  
3 conversation that I had this morning with Mr. Barber. The  
4 whole notion of not using enterprise switches, as we see it,  
5 is predicated on the enterprise switch not today being ready  
6 to serve DS-0 customers. There's this notion that something  
7 would have to be done to it before it would be DS-0 capable.  
8 But once you can show that it is DS-0 capable because it is,  
9 indeed, serving DS-0 customers, then that switch, in our  
10 view, should count as satisfying the mass market triggers  
11 because it is now out there on the ground providing mass  
12 market service in competition with Verizon and the other  
13 CLECs.

14 JUDGE SCHNIERLE: Wait a minute. Wait a minute.  
15 Even if the company that has the switch isn't advertising  
16 for DS-0 customers? I mean, the fact that Adelphia serves  
17 the Commonwealth doesn't prove that they're willing to serve  
18 every Tom, Dick and Harry who comes long.

19 WITNESS WEST: I think your point is well taken, but  
20 all the CLECs that we use for showing that we satisfy the  
21 trigger analysis, we close the loop and check to see if they  
22 offer themselves out as serving mass market customers.

23 BY MR. McCLELLAND:

24 Q. May I say, practically, you seem to draw no  
25 distinction between offering to serve mass market customers

1 and offering to provide DS-0 service. It seems to be the  
2 same.

3 A. (West) We define a mass market customer as one  
4 that subscribes to DS-0 services. Not four, not six,  
5 regardless of the number, if in dealing with its particular  
6 CLEC, it makes the economic choice that DS-0 is right for  
7 it, then we believe it's a mass market customer. If it  
8 makes the choice or the CLEC convinces it that DS-1 is the  
9 way to go, then the pure economics of that situation would,  
10 in that case, indicate that that customer is now an  
11 enterprise customer. So this gets at how should you or  
12 would you set a break point, and in our view it's easier to  
13 just let the actual experience of the CLECs and the  
14 customers, as it exists today, make that determination.

15 Q. But would you recognize that some very large  
16 customer, such as the Commonwealth of Pennsylvania, may  
17 still decide that, for various reasons, they want to buy  
18 DS-0s even though they generally buy very large capacity  
19 service? Isn't that also true?

20 A. (West) I mean, that's possible, yes.

21 Q. Just a second.

22 (Pause.)

23 Q. On page 33 of Statement 1.2, do you see a  
24 reference there -- sorry.

25 MR. McCLELLAND: Your Honor, this may be a

1 proprietary issue. If I may go on the proprietary record?

2 JUDGE SCHNIERLE: All right; we're on the proprietary  
3 record.

4 (Whereupon, the following pages 202 through 203 were  
5 designated proprietary and were sealed and bound  
6 separately.)

FORM 2

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1 WITNESS WEST: If my math is right, it's 237 lines.

2 BY MR. McCLELLAND:

3 Q. Pardon?

4 A. 237 lines.

5 Q. 237. That was the grand total of all the CLEC  
6 lines?

7 A. (Mr. West) That we added this morning, yes.

8 Q. All right. Thank you.

9 I also wanted to ask you or discuss with you  
10 something about His Honor made a point concerning Camp Hill,  
11 Pennsylvania.

12 A. (Mr. West) Okay.

13 Q. Do you recall that?

14 A. (Mr. West) I do recall.

15 Q. First of all, I believe as Your Honor pointed  
16 out, would you take subject to check that Adelphia does have  
17 a contract with state government to provide services to  
18 various state government facilities?

19 A. (Mr. West) That has been made abundantly clear  
20 to me today.

21 Q. Thank you. Would you also take subject to check  
22 that the State Correctional Institution at Camp Hill is in  
23 Camp Hill, Pennsylvania?

24 A. (Mr. West) I suppose I could find that out,  
25 yes. Hopefully, not through personal experience.

1 Q. Good enough. Would you consider prisons part of  
2 the telecommunications mass market?

3 A. (Mr. West) You know, to the extent that it's a,  
4 quote, "business entity" that subscribes to DS-0's, yes.

5 MR. McCLELLAND: No further questions, Your Honor.

6 JUDGE SCHNIERLE: Ms. Benedek.

7 MS. BENEDEK: Thank you, Your Honor.

8 CROSS-EXAMINATION

9 BY MS. BENEDEK:

10 Q. Good afternoon, Mr. West and Mr. Peduto. My  
11 first line of questioning will go to Mr. West. My name is  
12 Sue Benedek. I am from Sprint Communications Company, LP.

13 A. (Mr. West) Good afternoon.

14 Q. When you prepared your testimony, did you  
15 utilize the TRO inclusive of Appendix B, meaning the Part 51  
16 rules? And this question is to Mr. West.

17 A. (Mr. West) Yes. I have the Part 51 rules with  
18 me.

19 Q. Did you use the Part 51 rules in preparing your  
20 testimony?

21 A. (Mr. West) There are some references to the  
22 rules in the testimony, so yes.

23 Q. Okay. Could you please turn to page 19 of  
24 Appendix B to the TRO referenced as Part 51 rules?

25 A. (Mr. West) Okay.

1 Q. Would you agree with me that this particular  
2 section beginning at page 19 through 27, part of 27, regards  
3 the unbundling requirements for local circuit switching as  
4 they appear in the Part 51 rules?

5 A. (Mr. West) Yeah. I agree with that. It's  
6 covering the whole fate of certain unbundled elements.

7 Q. When Verizon says that this is only a triggers  
8 case, what portion of these rules has Verizon relied upon  
9 when it says that the Commission need only look at a trigger  
10 analysis? Do you know?

11 A. (Mr. West) Yeah. There's an Order prescribed  
12 by these rules and how you should approach this issue of  
13 impairment, and the rules will say something like to  
14 determine whether requesting telecommunications carriers are  
15 impaired without access to local circuit switching on an  
16 unbundled basis, a state commission shall perform the  
17 inquiry set forth in Paragraphs D(2)(iii)(A).

18 When you go to (A), it says, "A state commission  
19 shall find that a requesting telecommunications carrier is  
20 not impaired without access to local circuit switching on an  
21 unbundled basis in a particular market where either the  
22 self-provisioning trigger set forth in Paragraph  
23 D(2)(iii)(A)(1) or this section of the competitive wholesale  
24 facilities trigger set forth in Paragraph D(2)(iii)(A)(2) of  
25 this section is satisfied."

1           We're not trying to do the wholesale trigger, but we  
2           are trying to do the self-provisioning trigger, and that one  
3           says, "To satisfy this trigger, a state commission must find  
4           that three or more competing providers not affiliated with  
5           each other or the incumbent LEC, including intermodal  
6           providers of service comparable in quality to that of the  
7           incumbent LEC, each are serving mass market customers in the  
8           particular market with the use of their own local circuit  
9           switches." So that's (A). That's D(2)(iii)(A).

10           You go to (B). "If neither of these triggers  
11           described in the paragraph has been satisfied, then the  
12           Commission shall find that the requesting telecommunications  
13           carriers are not impaired without access to unbundled local  
14           switching in a particular market where the state commission  
15           determines that self-provisioning of local switching is  
16           economic based on the following criteria."

17           Q. Mr. West, may I interrupt?

18           A. (Mr. West) Sure.

19           Q. My question was, when Verizon says it has done a  
20           triggers case, what part of these rules apply?

21           MS. CONOVER: Your Honor, I think it has been asked  
22           and answered. He essentially went right to the provisions  
23           of the regs that talk about the local switching triggers and  
24           the self-provisioning triggers that is on page 21 of the  
25           rules, and he cited those.

1 BY MS. BENEDEK:

2 Q. Okay. So is the witness' testimony that the  
3 Commission analysis when it does a triggers analysis stops,  
4 according to this particular case that Verizon has  
5 presented, at (iii)(A)(1), which is the local switching  
6 self-provisioning trigger, and that the additional  
7 information appearing at subpart B of that section does not  
8 apply?

9 A. (Mr. West) Right, because it says "if neither  
10 of the triggers described in D(2)(iii)(A) has been  
11 satisfied. That's the clause.

12 Q. Okay. So, just to make clear, when you say it's  
13 a triggers case only, what you're doing -- what Verizon is  
14 doing is it's applying only this subpart (iii)(A) and  
15 particularly (A)(1); correct?

16 A. (Mr. West) Yes.

17 Q. Can you please turn to pages 18 through 33 of  
18 Verizon Statement 1.0?

19 MS. CONOVER: I'm sorry. What is the reference?

20 MS. BENEDEK: Statement 1.0, which is the direct  
21 testimony, and it's the section having to do with page 18  
22 through 33.

23 WITNESS WEST: Okay.

24 BY MS. BENEDEK:

25 Q. It's referenced as "Evidence of Actual

1 Deployment in Pennsylvania." Wouldn't that come under B(1),  
2 or is Verizon claiming that it comes under some other parts  
3 of the rules?

4 A. (Mr. West) This is, at least in our view, the  
5 way you satisfy the trigger analysis is to show that there  
6 is actual deployment of mass market customers being served  
7 by CLECs where they use their own switching.

8 Q. Well, then it would seem to me that Verizon is  
9 utilizing Section (iii)(B)(1), evidence of actual  
10 deployment; is that correct?

11 MS. CONOVER: Your Honor, I'd like to object to this.  
12 I believe he answered her question. Now she's citing  
13 another provision of the regs. It really is asking for a  
14 legal interpretation.

15 MS. BENEDEK: Your Honor, he has presented a piece of  
16 --

17 JUDGE SCHNIERLE: Well, you brought that on yourself  
18 by the fact that the testimony is filled with legal  
19 interpretation.

20 MS. BENEDEK: As well as the section of 1.0 which has  
21 to do with actual deployment for Verizon. It appears as if  
22 they've chosen to apply (B)(1) relative to this, quote,  
23 unquote, triggers analysis that Verizon is undertaking.

24 JUDGE SCHNIERLE: I'll let you continue, but it's  
25 getting late, and I think we got the idea.

1 MS. BENEDEK: Okay. Well, I don't believe I got an  
2 answer from the witness on this.

3 BY MS. BENEDEK:

4 Q. So it appears to me reading your testimony that  
5 Verizon has offered what it believes to be evidence related  
6 to subpart (iii)(B), additional state authority governing  
7 actual deployment by CLECs.

8 A. (Mr. West) And the way I would respond to that  
9 is we have attempted to put on a triggers only case here;  
10 and to satisfy the triggers, we need to show that CLECs  
11 using their own switches are serving mass market customers,  
12 three of these kind of CLECs, in each of the MSAs where  
13 we're seeking relief, and that is done by showing  
14 substantial deployment of CLEC-owned switches in  
15 Pennsylvania and showing that those switches serve mass  
16 market customers.

17 I kind of agree with you that if we were to fail in  
18 our attempt to satisfy the triggers and then moved on to a  
19 potential deployment case, it seems the logical kickoff  
20 point for the potential deployment case would be what is  
21 actually here today. So we would start there, and then this  
22 binder would probably be about yea high (indicating),  
23 because that would just be the starting point, and, you  
24 know, we keep wailing away on what people could do or what  
25 we think they could do or, you know, just getting into the

1 entire -- the litany of all the economic issues that would  
2 surround a potential deployment case. But since we're  
3 showing actual deployment, we're confining ourselves to a  
4 triggers only case, we only need to show what's going on  
5 today, and deployment of CLEC-owned switches and use of  
6 UNE-L and demonstrations that mass market customers are  
7 being served by these sorts of CLECs in the MSAs where we  
8 seek relief is not only germane; it is the way that you  
9 satisfy these triggers.

10 So I would say everything we've done is (A), and I  
11 would kind of agree with you that if we got denied (A) and  
12 had to do (B), we would do everything that is here and a  
13 whole lot more.

14 Q. So in answer to the question, as part of the  
15 triggers analysis, you have included what you believe to be  
16 information that supposedly satisfies (B)(1)?

17 A. (Mr. West) It wouldn't satisfy (B)(1). See,  
18 that's the problem. (B)(1) is about potential. This is  
19 about actual; and my point is if you were going to have a  
20 reasonably intelligent discussion about potential, you'd  
21 have to start somewhere, and I guess you'd start with  
22 actual, but it would be a much more comprehensive,  
23 complicated and difficult thing to demonstrate than the  
24 objective bright line triggers that are described in (A).

25 Q. With regard to the MSA density cell issue and

1 what is the appropriate relevant geographic area, am I  
2 correct that Verizon's position on this is actually an  
3 alternative position, meaning if the Commission were to  
4 award relief on an MSA basis, fine; but in the alternative,  
5 if not, look within the density cells in order to grant the  
6 relief Verizon requests? Correct?

7 A. (Mr. West) I mean, we presented the data so  
8 that we could make either case. It's kind of interesting  
9 because the way it turns out, our data is so good that when  
10 we show that we pass in all these density cells in these  
11 MSAs, it's the same thing as showing that we pass in the  
12 MSAs of which the density cells are a part. So they  
13 actually kind of run together.

14 I know Dr. Taylor is more responsible in this  
15 proceeding for fielding the questions on why we think the  
16 MSA is the relevant market, but you are correct. I mean, we  
17 have shown an alternative to the Commission to MSA.

18 Q. Well, going to the direct testimony, pages 11  
19 through 13, you discuss MSAs. I have no cross-exam  
20 questions relative to the use of MSAs. My question actually  
21 has to do with density cells.

22 Is the rationale utilized in one, two and three  
23 reasons for selecting MSAs applicable to the use of density  
24 cells in the alternative relief requested by Verizon?

25 A. Yes. The Commission sets down three criteria

1 that you need to meet when you define these markets, and we  
2 would argue that those three criteria are met whether you  
3 choose MSA or density cells. Our preference is MSA, but in  
4 the alternative we'd look at the density cells.

5 Q. At page 12 of the direct, you cite newspaper,  
6 radio and television ads as supportive of an MSA geographic  
7 market definition. Can you provide one CLEC newspaper ad  
8 utilizing density cells?

9 A. (West) I think this is one of those --

10 Q. It's a yes or no, Mr. West. Is it a yes or no?

11 A. (West) Well, yes, I can, and I think this is  
12 one of those situations where, when you cover an MSA with  
13 mass market advertising, you cover the density cells that  
14 make up that MSA.

15 Q. But my question was specific to density cells.  
16 Can you point me to, provide proof of, give me a copy of  
17 newspaper ad or radio script or other form of television  
18 advertising that is done on a density cell basis only, CLEC  
19 ad?

20 A. (West) No, I don't think you can. And my point  
21 is, the density cells are embedded in the MSA. When you  
22 advertise to the MSA, you advertise to the density cells.  
23 You cause yourself a little bit of discomfort if you're  
24 going to advertise something and not necessarily be willing  
25 to offer it throughout that MSA. That's why the MSA is the

1 preferable of the two.

2 Q. Okay. I don't want to get into further cross.  
3 Back to discussion that occurred earlier regarding the  
4 multi-line DS-0 loop crossover, and specifically I was  
5 looking at Statement 1.2, page 12 --

6 JUDGE SCHNIERLE: Hold it. I think we're still on  
7 the proprietary record, and we oughtn't be.

8 MS. BENEDEK: Oh, we need not be on the proprietary  
9 record. I don't believe anything that I asked would have  
10 been --

11 JUDGE SCHNIERLE: All right. In any event, if we  
12 weren't off before, we're off now.

13 MS. BENEDEK: I did not thus far ask any questions on  
14 the proprietary record.

15 JUDGE SCHNIERLE: Okay. Sorry. That was my  
16 bookkeeping error.

17 BY MS. BENEDEK:

18 Q. Am I understanding Verizon's position correctly,  
19 what you're saying or what Verizon's testimony says is the  
20 Commission need not make a separate independent economic  
21 finding relative to that DS-0 to DS-1 crossover; rather,  
22 what the Commission should do is rely upon the economic  
23 determinations made by CLECs in the field?

24 A. (West) Yes. That's an accurate summary.

25 Q. So Verizon is not asking that there be any sort

1 of additional or supplemental economic analysis done beyond  
2 that which is alleged to be done by the CLECs, correct?

3 A. (West) Right. The CLECs and their customers  
4 have done the economic analysis for us.

5 JUDGE SCHNIERLE: I think this is kind of clear, but  
6 to be sure, so if the Commonwealth of Pennsylvania takes any  
7 DS-0 for fax modems and stuff, it's a mass market customer?

8 WITNESS WEST: No, it's not a mass market customer.  
9 It's ostensibly an enterprise customer that has some mass  
10 market characteristics, and why that gets to be important is  
11 because the switching that it's using --

12 JUDGE SCHNIERLE: But the reality of this rule, the  
13 way you're applying this rule is that somebody that's got  
14 one DS-0, even if they're taking OC-48 service, the DS-0  
15 gets counted as a mass market line? I think that's what you  
16 said. I mean, that's the reality of the way Verizon's  
17 applying the rule.

18 WITNESS WEST: If we could discern it, we would count  
19 it, yes.

20 JUDGE SCHNIERLE: You may continue.

21 BY MS. BENEDEK:

22 Q. Just a point of clarification. Can you go to  
23 Statement 1.2, rebuttal testimony, footnote two that appears  
24 at pages 19 into 20? That might be an electronic copy. Do  
25 you see the reference at the end of that to Attachment 2?

1 (No response.)

2 Q. Attachment 2 is the Ohio order.

3 A. (West) I think it says "direct," right?

4 Q. And in rebuttal, Attachment 2. I assumed the  
5 Attachment 2 referred to rebuttal.

6 MS. CONOVER: What attachment are you looking at?

7 MS. BENEDEK: I have as Attachment 2 to the rebuttal  
8 testimony the Ohio order, and that's referenced -- I'm just  
9 asking the witness if that's correct, or if there's a typo  
10 there in the footnote.

11 WITNESS WEST: Oh, I think you're right. It should  
12 be four, you're right -- or five.

13 BY MS. BENEDEK:

14 Q. Okay, thank you for the clarification. Now,  
15 please turn to Attachment 1 to that same rebuttal testimony,  
16 Verizon Statement 1.2.

17 A. (West) Okay.

18 Q. Let me make sure I -- do you have it?

19 A. (West) Yes.

20 Q. Let me make sure I'm reading this correctly.  
21 Let's take the Allentown wire center, which is the first  
22 wire center depicted on Attachment 1.

23 A. (West) Okay.

24 Q. The way to read this is, in that first Allentown  
25 wire center, Verizon provides 3,875 single analog loops for

1 DS-0's to CLECs, correct?

2 A. (West) CLECs use 3,875 unbundled loops to serve  
3 customers that had that as their only line.

4 Q. So this is specific address?

5 A. (West) Specific location, yes. It's more  
6 detailed than even address.

7 Q. So let's take the 24 DS-0's at the very end of  
8 that, same wire center, the Allentown wire center.

9 A. (West) Right.

10 Q. So one address is served by a CLEC with 24  
11 DS-0's, correct?

12 A. (West) Right. That's just -- you know, one  
13 customer has 24 DS-0's.

14 Q. Okay. And this information is not broken down  
15 by the CLECs, the switching candidate CLECs that Verizon  
16 claims in the case, correct? This is just by line?

17 A. (West) Well, I mean, this part of it is by  
18 line, but we do know which CLECs belong to which unbundled  
19 loops.

20 MS. BENEDEK: Your Honor, I'd like to have marked for  
21 identification -- may I approach the witness?

22 JUDGE SCHNIERLE: Sprint Cross 1?

23 MS. BENEDEK: Sprint Cross 1.

24 JUDGE SCHNIERLE: It may be so marked.

25 (Whereupon, the document was marked

1 as Sprint Cross-Examination Exhibit  
2 No. 1 for identification.)

3 BY MS. BENEDEK:

4 Q. This has been marked as -- it's actually a  
5 Verizon response to Interrogatory Sprint Set I, No. 2.

6 MS. CONOVER: This is CLEC proprietary.

7 MS. BENEDEK: It is CLEC proprietary so I will try  
8 not to refer to the specific numbers, but I would like the  
9 record to reflect that it is a proprietary exhibit.

10 BY MS. BENEDEK:

11 Q. First of all, have you seen this response? It  
12 is co-authored by Ross Riddles.

13 A. (West) Okay. I'm not sure that I've seen this  
14 exact cut of the data before, but that's fine.

15 Q. Okay. Now, do you have any reason to doubt that  
16 the information in here is correct?

17 A. (West) No.

18 Q. It doesn't indicate what period applies to the  
19 information. Is it as of June 30, 2003 or some other date?

20 A. (West) I can't -- my information is, the line  
21 count study was done in September, and I'm sure that what  
22 you just showed me is an extract. It's just another way of  
23 reformatting the same data.

24 Q. And just to make sure we're apples to apples  
25 here, the Attachment 1 is also as of September 30th?

1 A. Yes, as of September, '03.

2 Q. Correct. Now, on Sprint Cross-Exam Exhibit No.  
3 1, the information is broken out by CLEC and these are UNE  
4 loops just to be clear about that as well, correct?

5 A. (West) Yes.

6 Q. So these are loops provided to CLECs, UNE-L's  
7 provided to CLECs in the representative categories that  
8 Sprint requested, correct?

9 A. (West) Yes.

10 Q. So it is possible that of the 24 you've listed  
11 in Attachment 1, that there were 24 -- it just so happens to  
12 work out this way in the Allentown exchange -- that of 24  
13 DS-0's, that it's possible that some of those are being  
14 provided by one carrier only, or two.

15 A. (West) The 24 that we talked about in Allentown  
16 would, with almost a hundred percent certainty, be served by  
17 one carrier. What that indicates is there's a customer out  
18 there who's subscribing to 24 DS-0's.

19 There's a location where, from a carrier, one of the  
20 CLECs, a customer is getting 24 DS-0's. If you look at  
21 those numbers, they're always a multiple of the heading.

22 Q. So what kind of circumstance could that be?  
23 One, a CLEC carrier has a municipal building; would that be  
24 correct? Could that fit under a 24 DS-0 example?

25 A. (West) Sure, it could. This doesn't, again,

1 attempt to trace back -- I mean, we look at the locations to  
2 make sure that they're unique, but we haven't looked at the  
3 locations to see what's being served.

4 Q. Okay. And Sprint Cross-Exam Exhibit 1 takes  
5 that information and provides it per the CLECs that have  
6 been identified by Verizon?

7 A. (West) Right, because, again, we do know which  
8 CLEC is using the particular unbundled loop.

9 Q. Can you turn to page 42, lines 11 to 13 of your  
10 rebuttal testimony, 1.2? Is this a question directed to you  
11 or Mr. Peduto?

12 A. (West) It's got the "collocation" word in it.  
13 Whoa.

14 (Laughter.)

15 Q. Okay. Mr. Peduto, good afternoon.

16 A. (Peduto) Yes.

17 Q. You see that reference, lines 11 through 13?  
18 You say, "None of these carriers has challenged Verizon's  
19 evidence concerning the carriers' own network for even a  
20 single wire center?" Are -- do you see that reference?

21 A. (Peduto) Yes, I do.

22 Q. Are you implying or stating that Sprint, for  
23 example, agrees with Verizon's interpretation of what it  
24 means under the TRO to have a collo arrangement in  
25 non-Verizon fiber?

1           A.   (Peduto) No. I'm basically saying that in our  
2 supplemental testimony, we presented routes that met the  
3 self-provisioning and wholesale triggers and that we  
4 displayed which carriers were counted against those routes.

5           I'm saying that these carriers did not challenge, I  
6 think is the word we used, Verizon's evidence for any of  
7 those routes and their involvement in any of those routes.

8           Q.   And this rebuttal testimony was submitted after  
9 the direct testimony submitted by CLECs and other parties,  
10 correct, non-Verizon parties, correct?

11          A.   (Peduto) I don't recall, but -- yes, I'm  
12 certain that's the case.

13          Q.   It would have to be.

14          A.   (Peduto) Yes.

15          Q.   One final question. Can you turn to your  
16 supplemental testimony -- and I believe this might be for  
17 Mr. Peduto as well -- page 20. This is the discussion as to  
18 loops and customer location or not.

19          A.   (West) This is in the rebuttal?

20          Q.   It is in the supplemental.

21          A.   (Peduto) It would be for me.

22          Q.   I believe it's Mr. Peduto, lines 11 through 17.  
23 To make sure I understand this, are you contending that the  
24 information was provided by the CLECs and therefore it  
25 somehow satisfies the TRO as interpreted by Verizon?

1           A.   (Peduto) Let's make sure we're reading the same  
2 sentence. The sentence I'm looking at is, "The FCC  
3 distinguishes between customer locations and individual  
4 units within that location." Is that --

5           Q.   Right. And then at the very end of the  
6 paragraph, you say, "CLECs provided the addresses of  
7 specific buildings." Let me cut to the chase. You took the  
8 information provided by the CLECs without making any  
9 additional verification of the information provided by the  
10 CLECs, correct?

11          A.   (Peduto) I think I testified to that earlier  
12 today, that the loop triggers information presented in the  
13 supplemental testimony was solely on the basis of, at least  
14 the locations, solely on the basis of discovery response  
15 provided by the CLECs.

16          MS. BENEDEK: No further questions, Your Honor.

17          MS. CONOVER: Your Honor, can I just ask if we think  
18 we'll finish with these witnesses today? Dr. Taylor  
19 actually has an argument tomorrow. It doesn't look like  
20 we'll be able to get to him.

21                Is there any thought that maybe, if there's not that  
22 much cross-examination for Dr. Taylor, that we could get him  
23 on and off today?

24          JUDGE SCHNIERLE: Off the record.

25                (Discussion off the record.)

1 JUDGE SCHNIERLE: Back on the record. You wish to  
2 move --

3 MS. BENEDEK: Sprint Cross-Exam Exhibit No. 1 into  
4 the record.

5 JUDGE SCHNIERLE: Any objection?

6 MS. CONOVER: No objection.

7 JUDGE SCHNIERLE: It's admitted.

8 (Whereupon, the document marked as  
9 Sprint Cross-Examination Exhibit  
10 No. 1 was received in evidence.)

11 JUDGE SCHNIERLE: At this point, we're going to, by  
12 agreement, postpone the further cross-examination of these  
13 two witnesses and bring Dr. Taylor up and hope to get him  
14 done.

15 (Witnesses temporarily excused.)

16 Whereupon,

17 WILLIAM E. TAYLOR

18 having been duly sworn, testified as follows:

19 JUDGE SCHNIERLE: Ms. Conover?

20 MS. CONOVER: I'd like to call Dr. William Taylor to  
21 the stand on behalf of Verizon.

22 JUDGE SCHNIERLE: He's been sworn.

23 **DIRECT EXAMINATION**

24 BY MS. CONOVER:

25 Q. Dr. Taylor, do you have in front of you Verizon

1 Pennsylvania and Verizon North Rebuttal Statement No. 2.0?

2 A. Yes, I do.

3 MS. CONOVER: Your Honor, we have provided two copies  
4 of Rebuttal Statement No. 2.0 to the court reporter. I  
5 would note that the version we provided the court reporter  
6 has the updated C.V., that the OCA brought to our attention  
7 that there were some missing dockets, so we had updated it  
8 and then provided it to the court reporter. Otherwise, it's  
9 the same as the original.

10 BY MS. CONOVER:

11 Q. Dr. Taylor, was Statement No. 2.0 prepared by  
12 you or under your direction and control?

13 A. Yes.

14 Q. Do you have any corrections to make at this  
15 time?

16 A. No, I don't.

17 Q. If you were asked the same questions today,  
18 would your responses be the same?

19 A. They would.

20 Q. And are those responses true and correct to the  
21 best of your knowledge, information and belief?

22 A. Yes, they are.

23 MS. CONOVER: At this point, I'd like to move into  
24 the record Verizon Statement No. 2.0 of Dr. William E.  
25 Taylor, subject to cross-examination.

JUDGE SCHNIERLE: Any objection?

MR. BARBER: No, Your Honor.

JUDGE SCHNIERLE: It's admitted.

(Whereupon, the document was marked as Verizon Statement No. 2.0 for identification and received in evidence.)

JUDGE SCHNIERLE: Ms. Painter?

**CROSS-EXAMINATION**

BY MS. PAINTER:

Q. Good afternoon.

A. Good afternoon.

Q. My name is Michelle Painter. I represent MCI in this case. Do you have before you the testimony of Mr. West and Mr. Peduto, and in particular Attachment 5?

A. Yes, I believe I do.

Q. Before we turn to that, just to be clear, it is your position that the MSA is the proper geographic market definition for Pennsylvania; is that correct?

A. That's correct.

Q. Are you aware of whether all of the wire centers in Attachment 5 are broken out for every single density cell in every single MSA in Attachment 5?

A. My understanding is that they aren't, that is Density Cell 4 in the wire centers that Verizon is asking

FORM 2

1 for relief in are not broken out in Attachment 5.

2 Q. Okay. So if the Commission were to adopt  
3 Verizon's preferential definition of the MSA as a market  
4 definition, would that mean that the UNE-P would be  
5 unavailable even in the wire centers that are not identified  
6 here or in the Density Cell 4 wire centers?

7 A. That's correct, because the rule does not say,  
8 and the FCC explicitly doesn't say that a qualifying CLEC  
9 must provide service geographically ubiquitously throughout  
10 the market.

11 Q. In terms of your definition of the geographic  
12 market being throughout an entire MSA, one of the things you  
13 talk about is advertising by carriers throughout the entire  
14 MSA; is that correct?

15 A. Yes.

16 Q. Which CLECs that are identified as trigger  
17 companies in this case advertise throughout the entire MSA  
18 including Density Cell 4?

19 A. Well, I haven't looked at the specific  
20 advertising in Pennsylvania so I can't answer that question.  
21 Advertising is cited by the FCC in its market definitions  
22 where it, in the Bell Atlantic-NYNEX merger, cited the  
23 geographic reach of advertising as the reason why it picked  
24 large geographic areas like an MSA as the appropriate  
25 geographic market.

1           It's hard to think how you can advertise with mass  
2 market media at a level less than an MSA; that is, an MSA is  
3 constructed roughly to correspond to mass media boundaries.  
4 It's where television stations reach. It's where radio  
5 stations reach. It's where newspaper circulation reaches.

6           Q.   And you're assuming that every one of the CLECs  
7 identified as a trigger company is doing that type of  
8 advertising?

9           A.   No. I'm assuming that that's a characteristic  
10 of the market. If they wish to do mass market advertising,  
11 that's the area in which they reach. I can say that no CLEC  
12 I'm aware of, equally, ever targets anything at an  
13 individual wire center. In fact, most people, certainly  
14 most customers don't know what wire center they're in.

15          Q.   Did you read Penn Telecom's testimony in this  
16 case?

17          A.   I'm sorry, did I read their --

18          Q.   Did you read Penn Telecom's testimony in this  
19 case?

20          A.   No. I have seen their web site. If you wish to  
21 ask some questions about them, I know what they've said  
22 about themselves on their web site.

23          Q.   Well, do you know in their testimony that they  
24 stated that they determine whether to enter a market on a  
25 wire center by wire center basis?

1           A.    Oh, that's a common statement, but it doesn't  
2 answer the question.  Yes, I assume every CLEC puts down a  
3 switch, invests in essentially sunk costs at the level of  
4 the MSA to decide that they want to serve Pittsburgh or  
5 Philadelphia or whatever, and then begins to roll out their  
6 service wire center by wire center because they have to, if  
7 they're doing a UNE-L arrangement, collocate wire center by  
8 wire center.

9           That doesn't tell you that the wire center is the  
10 proper economic market.  If the wire center were a proper  
11 economic market, it would stop there.  You'd build a switch,  
12 drop it in the wire center and that would be it.  Nobody  
13 does that.

14          Q.    On page 11 of your testimony, you state, looking  
15 in particular at lines 9 through 12, you state that it is  
16 possible and indeed likely that CLECs have entered markets  
17 using UNE-P even though UNE-L entry was sustainable simply  
18 because UNE-P is more profitable.

19          A.    Yes.

20          Q.    Have you done an analysis of the markets in  
21 Pennsylvania in particular to determine where UNE-P is more  
22 profitable than UNE-L?

23          A.    No, but I can use the actual market evidence to  
24 tell me that, that is we see that UNE-P demand -- and this  
25 is just measured in the FCC local competition reports --

1 increases steadily over time since UNE-P has been available  
2 in Pennsylvania and since its price has gone down. UNE-L  
3 and resale have not. They're not growing at the same rate.

4 Q. And it's your assumption that that's solely on a  
5 profitability analysis?

6 A. Well, unless CLEC are eleemosynary institutions,  
7 yes. That's why CLECs picked those particular methods of  
8 entry. I assume it's because it's profitable.

9 Q. Have you seen any of the testimony in particular  
10 on behalf of MCI talking about the operational barriers to  
11 entry of UNE-L?

12 A. Oh, I understand that. I trust that that's part  
13 of your, MCI's calculus when it calculates what's profitable  
14 and what's not.

15 Q. Turning to page 31 of your testimony?

16 A. Yes.

17 Q. You discuss particularly at the end of that,  
18 lines 15 to 17, you talk about Verizon demonstrating that  
19 competitors' switches serve in multiple wire centers because  
20 to do so allows them to take advantage of the scale and  
21 scope economies.

22 You emphasize this theme throughout your testimony,  
23 that if a carrier deploys a switch, it would not make sense  
24 to serve a low number of markets.

25 A. To serve a small number of wire centers.

1 Q. Right.

2 A. Yes.

3 Q. Well, how do you explain the incident, for  
4 instance, in the Philadelphia MSA where CTSI is only serving  
5 two wire centers out of 69 in that MSA?

6 A. Two possible reasons. One, I don't know --  
7 well, first, I should say I don't know the exact  
8 circumstances, but remember, Philadelphia is one of the two  
9 markets where we have Density Zone 1, and a CLEC can  
10 conceivably in a very, very dense downtown area expect to  
11 get enough customers to fill the switch. That's number one.

12 Number two is that the game isn't over yet. As you  
13 explained to me, the pattern seems to be that CLECs enter  
14 wire center after wire center. The data that you see in  
15 front of you is just one cut in time.

16 Is the CLEC that you mentioned going to stop there?  
17 Considering that they're in the Philadelphia MSA, they are  
18 advertising to the entire Philadelphia market, they've got  
19 customer care facilities in place, they've got marketing  
20 facilities in place in downtown Philadelphia, it seems to me  
21 it would be a natural next thing to serve the next wire  
22 center in downtown Philadelphia.

23 Q. Well, how do you explain the fact that for  
24 instance CTSI has four customers in one wire center and  
25 they're only in two wire centers in the entire MSA?

1           A. Well, I can't explain it because I don't know  
2 what their exact circumstances are, but as I say, this is a  
3 slice in time that we're looking at and I don't know that  
4 that's exactly where their business plan is going to end.

5           The important thing is, they've shown by the fact  
6 that they're in Philadelphia MSA that they're not impaired  
7 from entry. That's what the test is supposed to look at.  
8 They managed to get in. They managed to collocate or  
9 however they're providing the service, so they are evidence  
10 that they are not impaired with the absence of ILEC  
11 switching.

12          Q. And would you consider serving two wire centers  
13 and four customers in an MSA as large as Philadelphia to be  
14 actively providing service to the market?

15          A. Yes. They have customers. They are providing  
16 service. Actively, I'm not sure what that means. When you  
17 have a customer, you have providing service. It doesn't  
18 mean actively marketing. That's a separate thing.

19          And as I say, what's important for the trigger test  
20 that we're looking at here is that they entered the market.  
21 They were not impaired from market entry in either of those  
22 wire centers and certainly not in the MSA.

23          Q. Turning to page 40 of your testimony, looking in  
24 particular at around line 14 through 20, there you discuss  
25 the fact that if the ILEC raises rates in a certain area,

1 that the CLEC could move to that wire center in order to  
2 compete with that ILEC; is that correct?

3 A. Could expand, yes.

4 Q. Are you aware of how long the collocation  
5 process takes?

6 A. Not specifically in Pennsylvania, no.

7 Q. Are you aware of how much it costs?

8 A. Again, not specifically.

9 Q. Are you aware of the fact that Verizon at this  
10 time does not even know how much collo space is available in  
11 Pennsylvania?

12 MS. CONOVER: I would object to that as being a fact  
13 not in evidence.

14 MS. PAINTER: Fine.

15 (Pause.)

16 MR. BARBER: MCI Cross 1?

17 MS. PAINTER: Yes. Your Honor, I'd like this marked  
18 as MCI Cross-Examination Exhibit 1.

19 JUDGE SCHNIERLE: It may be so marked.

20 (Whereupon, the document was marked  
21 as MCI Cross-Examination Exhibit  
22 No. 1 for identification.)

23 MS. PAINTER: And this is Verizon's response to MCI  
24 Interrogatory Set I, No. 9.

25 BY MS. PAINTER:

1 Q. Have you had an opportunity to look at this?

2 A. Yes.

3 Q. And do you see that Verizon does not know the  
4 amount of unused space for collocation?

5 MS. CONOVER: I think the interrogatory speaks for  
6 itself.

7 THE WITNESS: Yes. I don't think it says  
8 specifically that Verizon doesn't know. It says doing a  
9 study is a difficult issue.

10 And I notice what it doesn't say is that there are  
11 offices in which it does not permit collocation, that its  
12 collocation is exhausted.

13 My understanding of where this issue fits into the  
14 triggers is that if Verizon passes the trigger test in some  
15 MSA and in that MSA there are circumstances -- the FCC cites  
16 one such circumstance as being exhaustion of collocation --  
17 that would prevent expansion of CLECs into wire centers or  
18 more CLECs into existing wire centers, that those are  
19 grounds on which this Commission can petition the FCC for a  
20 waiver of the rule. That's if anything where collocation  
21 information fits into the trigger study.

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

23 JUDGE SCHNIERLE: Mr. Clearfield?

24 MS. PAINTER: Except, I'd like to move for the  
25 admission of MCI WorldCom Cross-Examination 1, please.

1 MS. CONOVER: If I may just state, I notice that this  
2 is actually factually sworn to by Mr. Peduto, and I think I  
3 would prefer if we moved it in when he's on the stand. I  
4 don't necessarily have an objection, but it's not something  
5 -- it was the basis of your questions of Dr. Taylor, but it  
6 really is not something that he has sworn to.

7 JUDGE SCHNIERLE: We'll hold it until tomorrow  
8 morning.

9 MS. PAINTER: That's fine.

10 JUDGE SCHNIERLE: Mr. Clearfield?

11 **CROSS-EXAMINATION**

12 BY MR. CLEARFIELD:

13 Q. Dr. Taylor, just a few questions.

14 A. Sure.

15 Q. Good afternoon. Page 16, line 10 of your  
16 Statement 2, you state there that in Pennsylvania CLECs have  
17 deployed their own switches to serve Philadelphia,  
18 Pittsburgh, Harrisburg, Allentown, Reading, Scranton,  
19 Wilkes-Barre and Lancaster MSAs.

20 Now, when you say that, you're not saying that in  
21 each instance and for each switch that the CLEC is currently  
22 providing service throughout the MSA to all the wire centers  
23 in each of those MSAs, are you?

24 A. No. I guess what I'm saying, and you can see it  
25 as well as I from the map, is that in all of the Density

1 Cells 1, 2 and 3 wire centers in each of these MSAs, there  
2 are at least one CLEC that is providing switched based  
3 service to mass market customers with two tiny exceptions.

4 Q. And with respect to the network of the CLECs --  
5 you're not an engineer and you're not testifying as one, is  
6 that -- it's a compound question. Is it yes to both?

7 A. Yes to both.

8 Q. And you I take it haven't made any physical  
9 inspection of any of the CLEC networks to determine whether  
10 those networks are operationally capable of expanding to  
11 serve the rest of the MSA in which the switch resides?

12 A. Not the specific networks here in Pennsylvania.  
13 My comment is based upon what I know about the optimal size  
14 of switches.

15 Q. And with respect to CLECs in Pennsylvania, have  
16 you had any discussions with any executives of a  
17 Pennsylvania CLEC to determine whether it's economically  
18 feasible to expand into the entire MSA? That's in  
19 Pennsylvania.

20 A. The short answer is no. I have not talked to  
21 CLECs in Pennsylvania.

22 Q. And either your original or your revised  
23 curriculum vitae is very impressive, of course. I note that  
24 at no time have you ever served as an executive for a  
25 competitive local exchange carrier; is that correct?

1 A. That's correct.

2 MR. CLEARFIELD: That's all I have.

3 **CROSS-EXAMINATION**

4 BY MR. HICKS:

5 Q. Mr. Clearfield asked the last couple of  
6 questions I had in mind, but just a few, Mr. Taylor. My  
7 name is Renardo Hicks and I represent Penn Telecom. Are you  
8 familiar with Penn Telecom, sir?

9 A. Just what I read on your web site.

10 Q. What are you familiar with about Penn Telecom?

11 A. Let's see, roughly where you're located is  
12 Pittsburgh. You serve what looks to me like roughly the  
13 MSA, and that's about it. I have in front of me pages from  
14 your web site.

15 Q. Okay. That's good enough. And I heard you say  
16 to Mr. Clearfield that you've never worked for a CLEC  
17 before; is that correct?

18 A. Correct.

19 Q. Does that mean that you've never developed a  
20 CLEC business plan before?

21 A. I've never developed one, that's correct. I've  
22 read a lot of them, but I never developed one.

23 Q. Does it also mean you've never had to decide or  
24 participate in the decision making process about whether or  
25 not a switch is to be deployed?

1 A. For a CLEC, no, I have not done that.

2 Q. Does that also mean that you have never had to  
3 make a determination about what type of switch might be  
4 appropriate to deploy?

5 A. I've never done that for a CLEC. I've second-  
6 guessed CLECs in various locations.

7 Q. But you've never had to do that for a CLEC. And  
8 do you have any sense of the different economic restraints  
9 on a large CLEC versus a small CLEC?

10 A. By large and small, you mean capitalization, or  
11 do you --

12 Q. Yes, capitalization.

13 A. Just that -- yes, I think I understand some of  
14 the difficulties in getting financing, particularly in the  
15 last couple of years. Aside from that, I guess not, and I'm  
16 not sure where that fits into the issue here.

17 Q. Would you accept that those financial issues are  
18 more obvious for a small CLEC than they are for a large  
19 CLEC?

20 A. Well, no. As an economist, I don't like to do  
21 that in the sense that it seems to me an extra dollar is of  
22 just as much value to a huge company as it is to a small  
23 company, even though it may not --

24 Q. Let's try it another way. Would you accept that  
25 the opportunity to secure a large customer will make a

1 significant difference in a CLEC's decision whether or not  
2 to deploy a switch?

3 A. Yes.

4 Q. And would you accept that the opportunity to  
5 host a large customer will also impact the type of switch  
6 that a CLEC will deploy?

7 A. It conceivably could under some circumstances.  
8 It would be a risky business for a CLEC to risk sunk  
9 investment on a single customer, but that's a choice  
10 sometimes that CLECs have to make.

11 Q. And would you accept that the opportunity for  
12 growth in a particular market also impacts on the type of  
13 switch that a CLEC would deploy?

14 A. Oh, absolutely, type and size particularly.

15 Q. And the decision whether or not to deploy a  
16 switch?

17 A. Or to enter the market in the first place, yes.

18 MR. HICKS: I have no further questions.

19 JUDGE SCHNIERLE: Mr. McClelland?

20 MR. McCLELLAND: No questions for Dr. Taylor.

21 JUDGE SCHNIERLE: Anyone else?

22 (No response.)

23 JUDGE SCHNIERLE: I've got a couple here. Looking at  
24 page 39 of your testimony, first at lines 19 and 20, you  
25 say, "From an economic perspective, the fact that a CLEC in

1 a particular MSA has not yet reached every wire center does  
2 not imply that the natural presumption is that there are  
3 economic barriers to further expansion."

4 And then further down, starting on line 25 and  
5 lapping over to the next page, you say, "The fact that in  
6 any given MSA there are pockets of unserved areas does not  
7 mean that it's necessarily unprofitable for a CLEC to serve  
8 those wire centers."

9 Have you looked at the testimony on the switching  
10 here?

11 THE WITNESS: Yes.

12 JUDGE SCHNIERLE: You don't suggest that there are  
13 only pockets of unserved areas in these MSAs?

14 THE WITNESS: Well, in the MSAs, no, I wouldn't  
15 describe Density Cell 4 in these MSAs, in every MSA as being  
16 a pocket. It's a pocket in some of the MSAs. Philadelphia,  
17 for example, what's unserved is a pocket. In others, it is  
18 not.

19 In the areas for which Verizon is asking for relief,  
20 Density Cells 1, 2, 3, yes, it is a pocket.

21 JUDGE SCHNIERLE: Okay. Do you understand the  
22 request as being, if granted on an MSA basis, that the  
23 relief will be for the entire MSA?

24 THE WITNESS: Yes, that's correct.

25 JUDGE SCHNIERLE: Including four?

1 THE WITNESS: Absolutely.

2 JUDGE SCHNIERLE: All right. I'm curious, having  
3 read your -- you were here this morning, I guess, weren't  
4 you? I think I saw you sitting back there.

5 THE WITNESS: Yes.

6 JUDGE SCHNIERLE: Is your answer the same as the  
7 other two Bell witnesses? If I've got three CLECs that each  
8 have one analog line in a market, it meets the trigger?

9 THE WITNESS: One, yes, that does literally meet the  
10 trigger, so that's the FCC's decision. But two, it makes  
11 economic sense.

12 What are we using the trigger for? It's not to  
13 measure the degree of competition in the retail market in  
14 the area we're talking about.

15 We're asking about impairment. That's what the  
16 trigger is being used for, to ask if there are barriers to  
17 entry that have been overcome, that we have actual physical  
18 evidence on the ground of having been overcome.

19 And there are three instances. The FCC TRO says in  
20 one place, all you need is one.

21 JUDGE SCHNIERLE: All right. And if those DS-0's are  
22 things like fax lines or modem lines that are provided to  
23 otherwise enterprise customers, you still come to that  
24 conclusion?

25 THE WITNESS: I do, one, because the FCC TRO tells me

1 to, but number two, it makes sense economically, again.  
2 We're asking whether an ordinary copper POTS line service  
3 can be provided or can be purchased, can be served by a CLEC  
4 without requiring Verizon switches.

5 And the answer is, even for a mass, what is a large  
6 customer, for example for the State of Pennsylvania, even  
7 though when the State of Pennsylvania lets its contract that  
8 certainly isn't a onesie-twosie, what we would think of as  
9 mass market contract -- they didn't reply to an  
10 advertisement in the newspaper -- nonetheless, when it comes  
11 to deployment, to actually implementing the service, what  
12 happens?

13 In that contract, all across the State of  
14 Pennsylvania, in dribs and drabs, there are DS-0's. There  
15 are DS-0's in this building. How are those DS-0's  
16 furnished? Well, they're furnished by UNE-Ls, and UNE-Ls,  
17 in order to do that, the CLECs who provide them manage to  
18 get through the hot cut process and all of that and are in  
19 there serving those DS-0's.

20 Now, I grant you that the marketing aspect of mass  
21 market is very different for either a fax line as part of  
22 IBM's package or the DS-0's in this building as part of the  
23 state's.

24 The idea of mass market doesn't really apply from the  
25 marketing perspective. But the point is, it does from the

1 implementation perspective and from the perspective of  
2 getting through the hot cut process that we would have to  
3 have if CLECs couldn't depend upon Verizon's switch.

4 JUDGE SCHNIERLE: Well, not that this is in this  
5 case, but wouldn't you agree that it's a whole lot easier to  
6 hot cut a few DS-0's for an enterprise customer than to hot  
7 cut tens or hundreds of thousands on a regular basis for --

8 THE WITNESS: Well, as you say, that's a different  
9 issue. The question of scalability, it may actually be  
10 easier in bulk cases where you have a single building, for  
11 example, hot cutting, just because that can be scheduled.

12 Most of the wires in question are in the same area of  
13 the frame and doing that for one customer is probably easier  
14 than the same number of hot cuts for different customers.  
15 But that's about all I know on hot cuts.

16 JUDGE SCHNIERLE: On page 45 and 46 of your testimony  
17 starting at line 16, would it be fair to summarize that in  
18 this section of your testimony you're opining that if the  
19 Commission grants Verizon the requested relief here on the  
20 switching triggers, the customers who are presently taking  
21 service by UNE-P will simply be able to obtain the same  
22 service by UNE-L?

23 THE WITNESS: Well, by UNE-L or by other choices. As  
24 I understand it, if the Commission decides in some region  
25 switching is no longer required, after approximately three

1 years, we will have migrated all UNE-P customers to  
2 something else.

3 UNE-L is one simple thing. Another simple thing is  
4 ordinary resale, and a third is whatever other switching  
5 alternative Verizon chooses to offer at whatever the market  
6 rates might be.

7 So it's really a question of money. It's not a  
8 question that's deeper than that. The same facilities will  
9 be available to CLECs. The price will be different.

10 JUDGE SCHNIERLE: And if the price is higher and --  
11 well, let me put it this way. If customers migrate to  
12 UNE-L, Verizon will receive less money per customer than  
13 they're receiving under UNE-P; is that correct?

14 THE WITNESS: Certainly on the recurring revenue,  
15 that's correct.

16 JUDGE SCHNIERLE: And if they migrate to resale,  
17 Verizon will receive more than they receive from UNE-P; is  
18 that correct?

19 THE WITNESS: Well, that's a little difficult. I  
20 think perhaps again in the ordinary recurring revenue, the  
21 answer may be yes, but I'm worried because for residential  
22 service, the resale rates are very low even based on the  
23 retail rate. And if that's below the UNE rate -- I'm not  
24 sure that's the case here -- that rate may be lower.

25 What drives the decision, particularly the CLECs'

1 decision for resale isn't so much the rate they pay for  
2 resale, it's the fact that they no longer collect carrier  
3 access charges. That's the big money issue.

4 JUDGE SCHNIERLE: Right. Well, would it be fair to  
5 say Verizon is not expecting to lose money if they win this  
6 proceeding?

7 THE WITNESS: My economic sense tells me that  
8 generally they go in the direction of higher profits rather  
9 than lower.

10 JUDGE SCHNIERLE: So you would think that it's  
11 Verizon's expectation that they'll either drive everybody to  
12 resale or back to them as retail customers?

13 THE WITNESS: No, or resale or UNE-L or buying  
14 combined switching as they buy today, but at a higher price.

15 JUDGE SCHNIERLE: Anybody else? Mr. Barber?

16 MR. BARBER: Just one question in light of yours,  
17 Your Honor.

18 **CROSS-EXAMINATION**

19 BY MR. BARBER:

20 Q. Dr. Taylor, Bob Barber from AT&T. What evidence  
21 do you have that the lines Adelpia that we're assuming are  
22 ascribed to the state contract went through a hot cut  
23 process?

24 A. Well, these are UNE-L lines.

25 Q. They are? What evidence do you have that

1 they're UNE-L lines?

2 A. Well, I guess that may be something that you  
3 should ask the other panel. I don't have the full list of  
4 what came out of the line study that Verizon did.

5 Q. For example, if Verizon did a line study and in  
6 a particular MSA found no lines in its internal data base  
7 for Adelphia, and then Adelphia subsequently identified  
8 lines attributed --

9 A. Oh, yes, I'm sorry, you're right. What that  
10 means is that Adelphia -- if that's correct, and I'm not the  
11 witness to tell you that it is -- if that's correct, that  
12 means that Adelphia is serving its state customers in the  
13 contract using both their own lines and their own switches,  
14 and of course the FCC tells us that's an even better  
15 statement of what non-impairment is about.

16 Q. If the lines are DS-0 lines, correct?

17 A. If they're serving mass market lines, yes.

18 Q. If the lines are DS-1 lines, they don't count,  
19 correct?

20 A. That's correct.

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

23 **FURTHER CROSS-EXAMINATION**

24 BY MR. CLEARFIELD:

25 Q. Dr. Taylor, the statement you made about

1 products that Verizon might offer if in fact they are  
2 successful in this proceeding, are you assuming that there  
3 would be some kind of UNE-P offered in some new  
4 manifestation or a stand alone switching product?

5 A. Well, again, I'm the wrong person to ask. I'm  
6 not privy to any of Verizon's decisions in any of this.

7 Q. Yeah, but you're the one who said it.

8 A. Yes. Well, I'll tell you what I meant, but I  
9 won't commit, I can't commit Verizon or anyone else to this.  
10 What I meant was, one option that an ILEC has in this  
11 circumstance is to continue to offer what looks like UNE-P  
12 today but to offer it at commercial rates, market based  
13 rates. That's one option.

14 I don't know that Verizon is going to do that option  
15 or any other option.

16 MR. CLEARFIELD: All right.

17 JUDGE SCHNIERLE: To clarify, by commercial, you mean  
18 non-TELRIC based?

19 THE WITNESS: Correct.

20 MR. CLEARFIELD: That's all I have.

21 JUDGE SCHNIERLE: Anyone else?

22 (No response.)

23 JUDGE SCHNIERLE: Redirect?

24 MS. CONOVER: I have redirect, just a couple  
25 questions.

## REDIRECT EXAMINATION

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BY MS. CONOVER:

Q. Dr. Taylor, you were asked a number of questions about hypothetically, if we had a market where there were three trigger providers, each one with only one line, would that comply with the FCC's order. Do you recall that?

A. Yes.

Q. Based upon your review of the evidence in Pennsylvania, is there any situation that's even close to that hypothetical?

A. No. In the seven MSAs that you can see on the board, all of the potentially qualifying CLECs are serving far more than one line or at least there are three in every MSA serving far more than one line.

Q. Is it your understanding -- this is refers to a question that I believe Ms. Benedek was asking -- is it your understanding that the TRO requires that trigger switching providers must provide service throughout the entire market?

MR. BARBER: Who asked that question?

MS. BENEDEK: I didn't ask a question.

MR. BARBER: Ms. Benedek didn't even do cross.

MS. CONOVER: Well, I'm sorry, Ms. Painter I believe asked the question.

THE WITNESS: Yes. I think I even opined on it, so somebody certainly asked the question. The answer is

1 no. The TRO most explicitly does not, and in fact in the  
2 errata went out of its way to change or to correct a  
3 misapprehension that people can get. I think I'm talking  
4 about Paragraph 499.

5 BY MS. CONOVER:

6 Q. Correct.

7 A. And the net result of that is, the FCC says,  
8 says it very clearly in its brief to the D.C. Court where  
9 it's explaining what it means by all this, that what 499  
10 means is that you don't have to serve every area in the  
11 geographic market in order to qualify.

12 What you have to do is hold yourself out, I think  
13 that's the phrase that it uses, the FCC uses in the D.C.  
14 brief. And this is all quoted in my testimony. So no, you  
15 don't have to serve ubiquitously, and that's sensible  
16 economics, too. No competitor has to serve everyone in a  
17 market to be an effective competitor.

18 MS. CONOVER: I have no further redirect.

19 JUDGE SCHNIERLE: Recross?

20 (No response.)

21 (Witness excused.)

22 JUDGE SCHNIERLE: All right. We're adjourned for the  
23 day. We'll start tomorrow morning at nine.

24 (Whereupon, at 5:20 a.m., the hearing was adjourned,  
25 to be reconvened at 9:00 a.m., in Harrisburg, Pennsylvania.)

C E R T I F I C A T E

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

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By: John A. Kelly

John A. Kelly,  
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