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FORM 2

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 further hearing in the
4 Commission's investigation into 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 With me, Susan Colwell and I are the presiding officers.

8 I note the appearances of Erin Emmott and Steve
9 Augustino for Choice One, Focal, SNiP LiNK and XO; Robert
10 Barber and Mark Keffer for AT&T; Renardo Hicks for Penn
11 Telecom; Genevieve Morelli and Ross Buntrock for ARC
12 Networks, Broadview Networks, BullsEye Telecom, McGraw
13 Communications and MetTel; Michelle Painter for MCI
14 WorldCom; Kandace Melillo for the Commission's Office of
15 Trial Staff; Dan Clearfield for the Pennsylvania Carriers'
16 Coalition; Julia Conover, Suzan Paiva and Mary Coyne for
17 Verizon; Angela Jones for the Office of Small Business
18 Advocate; Philip McClelland and Joel Cheskis for the Office
19 of Consumer Advocate; and Sue Benedek for Sprint; and
20 Richard Stubbs for Cavalier Telephone.

21 Are there any preliminary matters we need to discuss
22 this morning?

23 Ms. Painter.

24 MS. PAINTER: Your Honor, I have one. I have two
25 copies of MCI responses to the Commission's Appendix A

1 discovery, and I was just wondering how I should mark it.
2 Would they be ALJ Hearing Exhibit 2?

3 JUDGE SCHNIERLE: Make them ALJ-2.

4 (Whereupon, the document was marked
5 as ALJ Exhibit No. 2 for
6 identification.)

7 MS. PAINTER: Okay. I'll present them to the court
8 reporter to be entered into the record.

9 JUDGE SCHNIERLE: Just to keep the record clear, MCI
10 included Intermedia; right?

11 MS. PAINTER: Yes. MCI would have included --
12 Intermedia at this time I don't believe has any customers in
13 Pennsylvania, but MCI did include all of its subsidiaries,
14 yes.

15 JUDGE SCHNIERLE: Okay. And that includes --
16 Intermedia was the only other named one Footnote 14?

17 MS. PAINTER: That is correct, yes. That is correct,
18 Your Honor.

19 JUDGE SCHNIERLE: All right.

20 MS. PAINTER: I actually went back and I checked on
21 that point to make sure that they were included, and they
22 are.

23 JUDGE SCHNIERLE: Okay. All right.

24 You're going to do AT&T's?

25 MR. BARBER: I'm sorry, Your Honor. There is one

1 other change. We don't have those right now. We'll have
2 them later in the day.

3 JUDGE SCHNIERLE: Okay. All right.

4 MS. BENEDEK: Your Honor, I have Sprint's, and before
5 our witnesses are ready to go up, I can admit the Sprint
6 responses to the PA PUC interrogatories.

7 JUDGE SCHNIERLE: Well, if you want to do that
8 through your witness, that's all right.

9 MS. BENEDEK: Okay.

10 JUDGE SCHNIERLE: All right. Any objection to ALJ-2,
11 being MCI's responses to the Commission's Initial Order?

12 (No response.)

13 JUDGE SCHNIERLE: It's admitted.

14 (Whereupon, the document marked as
15 ALJ Exhibit No. 2 was received in
16 evidence.)

17 MS. CONOVER: Your Honor?

18 JUDGE SCHNIERLE: Yes.

19 MS. CONOVER: I have another procedural matter.

20 JUDGE SCHNIERLE: Okay. All right.

21 MR. BARBER: There was one hangover from last night
22 with the cross-examination of Mr. Nurse and Mr. Kirchberger
23 that I think Verizon had raised that they wanted to put one
24 exhibit in.

25 MS. CONOVER: I believe we have it as soon as

1 Mr. Bachman gets here.

2 MR. BARBER: Okay. So we don't have it. The other
3 thing, I would just note for the record that Verizon has
4 offered to waive the cross-examination of Dr. Mayo on
5 Friday. He's the only witness scheduled on Friday. We're
6 willing to accept that offer. I didn't know whether the
7 Judges had some special desire to talk to Dr. Mayo on
8 Friday, but unless some party had cross-examination, which
9 I'll do a better job of polling, I would just note that for
10 the record, and we may be able to eliminate the Friday
11 hearing, Your Honor.

12 JUDGE SCHNIERLE: All right. Well, we don't need to
13 make a decision on that right at this minute.

14 You had something else?

15 MS. CONOVER: Yes, I do. I had sent around an e-mail
16 about this last night. We would like to present some very
17 brief surrebuttal by Mr. Peduto. That would essentially be
18 surrebuttal to some of the testimony that AT&T gave
19 yesterday. Specifically, it would be addressing some of the
20 changes in the testimony, which upon rereading it and
21 reflection were not merely typos and did make some
22 substantive changes.

23 In addition, there was a technical discussion
24 yesterday that we have some very brief surrebuttal on. We
25 want to ask permission to do that. We're willing to do it

1 this morning or today or at the end of the hearing, however
2 you would decide is most appropriate. We provided notice to
3 the parties in the thought that perhaps we would be most
4 likely to have some witness from AT&T be able to be present
5 today.

6 So I would make that request right now, and we'll
7 leave it up to you.

8 MR. BARBER: A couple things, Your Honor. I didn't
9 get online last night, so I didn't hear about this request
10 until I walked in this morning. I'll be the first to admit
11 the one change on I believe it was page 113 made a
12 substantive change. I would also note, however, that
13 Verizon also asked no questions about any part of that
14 testimony last night on cross-examination.

15 The other part they seem to want to do surrebuttal on
16 was colloquy apparently between you and the witnesses, Your
17 Honor. They again had plenty of opportunity to engage in
18 some cross-examination on that point.

19 I guess the one issue I'd raise is for purposes of
20 doing the oral surrebuttal, is Verizon conceding then that
21 they've got the burden of proof in this case?

22 MS. CONOVER: No, but I do believe that we have the
23 opportunity to present rebuttal, and essentially, we're
24 addressing substantive corrections to their testimony that
25 we otherwise would have been able to address in our

1 rebuttal.

2 JUDGE SCHNIERLE: Are your witnesses going to be here
3 tomorrow?

4 MR. BARBER: I know one of them will not be. I'm not
5 sure that the other one is planning on sticking around, Your
6 Honor. I mean, maybe one way -- I mean, would Verizon want
7 to reduce this to writing so we get a chance to look at it?

8 MS. CONOVER: We think it would be more expeditious
9 to do it orally.

10 MR. BARBER: It might be more expeditious, but we
11 don't know what you're even talking about.

12 MS. BENEDEK: Typically, Your Honor, this sort of
13 measure has only been allowed in a case where the proponent
14 that seeks the measure has the burden of proof. If they're
15 not willing to take that piece of it, then they certainly
16 shouldn't get the opportunity to at this point do a fourth
17 bite of the apple.

18 JUDGE SCHNIERLE: All right. Well, let's do it this
19 way. Let's go off the record.

20 (Discussion off the record.)

21 JUDGE SCHNIERLE: Let's go back on the record.

22 I'm going to allow it, but I may allow AT&T to
23 respond to it, depending on -- you know, this arguing over
24 the wording and trying to go through the witnesses with this
25 business of the regulations and everything, you can't

1 BY MS. COYNE:

2 Q. Mr. Peduto, do you have before you a copy of
3 page 114 of AT&T's testimony?

4 A. I do.

5 Q. Did the changes that AT&T made yesterday to page
6 114 of the testimony of Mr. Kirchberger and Mr. Nurse
7 materially change AT&T's testimony in your opinion?

8 A. Yes, and I'll tell you why I believe that to be
9 the case. On first reading of the direct testimony
10 presented by AT&T, there is a strong indication looking at
11 the language on page 114 that AT&T would have to make
12 substantial changes to its network.

13 In fact, the paragraph that makes up most of the page
14 114 is just chock full of equipment that would have to be
15 engineered, furnished, installed, product managed, you name
16 it, and it would lead one to believe and it led me to
17 believe that AT&T was operating a very, very different type
18 of network than one who is used to traditional telecom would
19 recognize.

20 I guess in the process of the changes what kind of
21 comes next is that the "would" changed to "could," "would,"
22 meaning all the time, every time, every route, to "could,"
23 meaning sometimes, maybe, might have to; and then the entire
24 paragraph in the central portion of the page was gutted of
25 much of the stuff that AT&T would allegedly have to have

1 fixed and basically only left with commensurate -- and
2 that's a word they added to the page yesterday --
3 augmentation applications for collocation arrangements.

4 So, in effect, what occurred was what were
5 substantial, substantive, serious changes to their entire
6 network that would have been required all the time changed
7 to commensurate augmentation to collocation applications
8 sometimes in some places, and I think that's a substantive
9 change.

10 Q. Mr. Peduto, do the technical changes in AT&T's
11 testimony on page 114 affect your view of whether AT&T is
12 operationally capable of providing interoffice transport
13 services?

14 A. Yes, they do, and I'll tell you why. Quite
15 honestly, with the language that is left on 114, the
16 language that now exists on page 114, combined with Mr.
17 Nurse and Mr. Kirchberger's testimony yesterday, I no longer
18 believe that AT&T has some kind of an unknown or exotic
19 network that is incapable of easily connecting Verizon Wire
20 Center A to Verizon Wire Center B with dedicated transport.

21 It is apparent to me with even some of the
22 terminology and the equipment that they described that they
23 have digital cross-connect systems, that they make fiber
24 cross-connects, that they use multiplexing equipment to
25 break DS-1, DS-3, basic building block signals out of a

1 fiber optic cable and offer them to their switch, possibly
2 offer them to other transport links within the AT&T network,
3 and it's this same equipment, it's the same equipment that
4 was described in testimony in hearing here yesterday by Mr.
5 Nurse and Mr. Kirchberger that is right now operationally
6 capable of connecting a fiber optic link between the AT&T
7 switch and Verizon Wire Center A to a fiber optic link
8 between the AT&T switch and Verizon Wire Center B, thus the
9 creation of a route as described in the TRO.

10 Q. The last question, Mr. Peduto. There was some
11 discussion yesterday about whether AT&T would or could run
12 an OC-48 directly into a switch. Do you recall that?

13 A. I do.

14 Q. Do you have a response?

15 A. Yes. I think that, you know, to use a testimony
16 word, it was a red herring. It was a fog. To be honest
17 with you, Verizon doesn't believe and never believed that
18 AT&T would take an OC-48 into Class 4 or 5 circuit switch.
19 That's a laughable assumption.

20 JUDGE SCHNIERLE: So you agree they wouldn't do that?

21 THE WITNESS: Yes, Your Honor, I agree they wouldn't.
22 I mean, to kind of take that to its nth degree, I was even
23 amazed at the --

24 JUDGE SCHNIERLE: Okay. Stop for a minute. I think
25 I understand your position, and I'm going to try to

1 summarize it. It's Verizon's position then that even if
2 AT&T -- let's take the A to Z with the intervening wire
3 center example. If AT&T has an OC-48 in Verizon's Central
4 Office A, but doesn't have the proper equipment to pull off
5 dedicated service, and has the same thing in Wire Center Z,
6 but again does not have, necessarily have the proper
7 equipment to pull off dedicated service, and even if it does
8 not have digital cross-connects in its own switching center,
9 as long as it's got the OC-48's on either end and the fiber
10 optic cable between them on each side, Verizon contends
11 that's operationally ready?

12 THE WITNESS: No, Your Honor. May I explain?

13 JUDGE SCHNIERLE: Sure.

14 THE WITNESS: From the descriptions that we heard
15 yesterday and from the inference now included in page 114, I
16 believe that AT&T does have the digital cross-connect
17 systems, the ability to make cross-connects between fiber
18 optic cables, the ability to de-multiplex and multiplex
19 signals in their switching locations and in most of their
20 collocations.

21 Verizon does not dispute that AT&T might have to
22 make, as they say in their testimony, commensurate
23 augmentations to some collocation arrangements; and if
24 that's the case, if there's a route or two routes or 20
25 routes, that route could be exempted.

1 However, it would be unthinkable and inconceivable to
2 me that 100 percent of the routes described by Verizon would
3 require significant network additions or augmentations in
4 order to make connection between Verizon Wire Center A and
5 Verizon Wire Center B.

6 JUDGE SCHNIERLE: All right. Is AT&T, to your
7 knowledge, presently buying dedicated transport from Verizon
8 as that's defined in the TRO?

9 THE WITNESS: I don't know specifically, Your Honor.
10 However, I would assume that they are. It would be my best
11 judgment that they are.

12 JUDGE SCHNIERLE: Are they buying it between points
13 that you're claiming are routes, trigger routes?

14 THE WITNESS: Again, I don't know specifically, but
15 it's my best judgment that indeed those links do occur.

16 JUDGE SCHNIERLE: All right. Now, if you -- as I
17 understand your testimony at this point, you're saying AT&T
18 could do this even if it's not presently doing it?

19 THE WITNESS: I'm suggesting, Your Honor, that what's
20 required for AT&T to actually create a route between A and B
21 is within the confines of normal network modifications, the
22 kind described in the regs, by the way -- I think it's Rule
23 No. 9 or something in the back -- to which Verizon or ILECs
24 are typically held regarding what we're required to do to
25 provision a UNE.

1 JUDGE SCHNIERLE: But if they're not presently doing
2 it, they're not self-provisioning, are they?

3 THE WITNESS: I thought the test was operationally
4 ready to do so, Your honor.

5 JUDGE SCHNIERLE: All right. You may continue.

6 MS. COYNE: I have no additional questions for Mr.
7 Peduto.

8 JUDGE SCHNIERLE: Mr. Barber?

9 MR. BARBER: Just a couple, Your Honor.

10 CROSS-EXAMINATION

11 BY MR. BARBER:

12 Q. Picking up on what the Judge was talking about,
13 if AT&T were operationally capable of providing transport,
14 dedicated transport between the routes that you've
15 identified, would you agree that it would be less expensive
16 for AT&T to, in fact, self-provision that transport rather
17 than purchase it from Verizon?

18 A. I don't know the answer to that question. I
19 don't claim to be an expert on the economics of CLEC
20 networks. I don't know.

21 Q. Well, in Verizon's case, I mean, you would
22 agree, once you've got that network set up and it's
23 operationally capable, the incremental cost of providing
24 transport over that kind of route would be next to zero or
25 de minimis; correct?

1 A. There may be other reasons that those links
2 purchased from Verizon are in place rather than self-
3 provisioned.

4 Would you like me to offer some reasons for that,
5 Your Honor?

6 JUDGE SCHNIERLE: Yes, I would.

7 THE WITNESS: One of the reasons is that the links
8 have probably and likely been in place since the beginning
9 of the world of wholesale telecom and that they're in use
10 and they've got active customers working on them every day,
11 and that in a sense it's a form of the legacy of the
12 network, and that it's just there and it's working and
13 nobody stepped up to rearranging it. Everyone's maybe a
14 little more focused on growth of the network and prospective
15 new customers.

16 Another reason that some carriers may keep things
17 like that in place is a form of diversity to allow for
18 continuous of service in the event of an outage on another
19 part of the network.

20 BY MR. BARBER:

21 Q. Did you hear Mr. Nurse --

22 MR. BARBER: No more questions, Your Honor.

23 MS. BENEDEK: Your Honor, may I?

24 MR. BARBER: If you have questions.

25 MS. BENEDEK: I have clarifying questions.

1 JUDGE SCHNIERLE: Pardon me.

2 MS. BENEDEK: I have clarifying questions.

3 JUDGE SCHNIERLE: Okay. Go ahead.

4 CROSS-EXAMINATION

5 BY MS. BENEDEK:

6 Q. Mr. Peduto, how many routes does AT&T -- that
7 Verizon claims AT&T has that meet the trigger according to
8 this -- actually, in the case, how many routes total?

9 A. I don't know the number. I apologize. I know
10 that it's 600 and change I think across the State of
11 Pennsylvania, I believe. I don't have my testimony here
12 right with me, but I don't know on how many of those routes
13 AT&T is involved.

14 Q. Okay. Now, relative to this testimony that
15 you're submitting today, how many of those routes are you
16 now claiming are operationally capable or readily available?

17 A. Well, let me answer your question this way, and
18 that is that at this moment, I firmly believe that every
19 route in the Verizon case that involves AT&T is basically
20 included in that group in which AT&T is operationally ready
21 to provide that transport link.

22 Q. Every single route?

23 A. In the Verizon case, because --

24 Q. So 600 and some and change, as you put it?

25 A. No, because AT&T is not involved in all of the

1 routes. Okay? So it's somewhat less than that.

2 I could be wrong about some of those routes. I would
3 think that it would be very much an exceptional basis where
4 AT&T could not provide the appropriate connections to
5 provide linkage between Wire Center A and B on any of those
6 routes, but there may be some; and if there are indeed some,
7 those are the kinds of things that on an exception basis, in
8 my opinion, AT&T needs to step forward and say I would have
9 to make a significant commensurate augmentation to this
10 collo site in order to create a route between A and this
11 wire center, B and this wire center, whatever.

12 And if there are those routes in place that I don't
13 understand the subtlety of that particular situation, data
14 that only they would know, they need to step forward and say
15 on that route, we can't do this without significant
16 argumentation.

17 MS. BENEDEK: I have no further questions.

18 MR. AUGUSTINO: Your Honor, if I may?

19 JUDGE SCHNIERLE: Yes.

20 MR. AUGUSTINO: Just a couple questions.

21 **CROSS-EXAMINATION**

22 BY MR. AUGUSTINO:

23 Q. In fact, Mr. Peduto, I'd like to follow up on
24 that last piece of that. I just want to clarify and make
25 sure I understand your testimony right.

1 Is your testimony that if AT&T has to augment its
2 collocations, that that route cannot count as a transport
3 route for purposes of the triggers?

4 A. I just want to make sure I'm not using AT&T's
5 words in a way that they're not intended. To me, a collo
6 augmentation means bringing in frames and racks and bolting
7 them into your collocation space and connecting things to
8 power, and, certainly, I think that is more than normal
9 network modifications, as we generally understand that in
10 the telecom arena.

11 Q. There may be some other types of changes that
12 may be required to be operationally ready as the triennial
13 review requires; correct?

14 A. I'm not sure what they would be.

15 Q. But it's possible there might be other changes
16 that go beyond normal network modifications.

17 A. There may be some. I can't think of any off the
18 top of my head as a good example right at this moment.

19 Q. You mentioned the normal network modifications
20 and the language in the TRO about that. To your knowledge,
21 has Verizon started to follow the TRO's directions with
22 respect to normal network modifications?

23 A. To the best of my knowledge, those were -- and
24 I'm using a term here that I'm not sure I totally
25 understand, but those were self-executing, if you will,

1 rules, and that's -- I don't know.

2 Q. I wish I were negotiating TRO amendments with
3 you, Mr. Peduto, because I don't believe that's Verizon's
4 position with respect to the amendments.

5 A. Okay. I may not be aware of that. I probably
6 am not aware.

7 Q. I think I only have two more questions for you.
8 Going back to page 114 and the change that were made by
9 AT&T.

10 A. Yes.

11 Q. Is there anything in that change that indicates
12 that AT&T in fact at the moment is providing transport
13 between any two of the central offices that were identified
14 on Verizon's list?

15 A. Let me make sure I understand your question.
16 You're saying is there anything in the language presented on
17 page 114 as it now stands after the changes that makes me
18 believe that AT&T is actually providing?

19 Q. Is there anything in the language that says that
20 AT&T is now providing?

21 A. No. There is nothing in the language that says
22 they're actually providing. It says to me that they're
23 operationally ready to provide.

24 Q. Okay. Is there anything in the language that
25 says that AT&T is providing it at wholesale to other

1 carriers?

2 A. I see nothing in that language that speaks to
3 that.

4 MR. AUGUSTINO: I have no further questions.

5 JUDGE SCHNIERLE: I have one question. What is a
6 wire center?

7 THE WITNESS: A wire center is a segment of geography
8 in which local loops are brought back to, if you will, a
9 central point from all of the far reaches and near reaches
10 of that piece of geography, brought back to a central point
11 where, if you will, all the wires come together, and
12 generally, that particular spot in the wire center would be
13 the main distributing frame and from that point can connect
14 to equipment throughout the wire center building.

15 JUDGE SCHNIERLE: And does the wire center
16 necessarily have a switch located there?

17 THE WITNESS: Your Honor, I don't know of any wire
18 center that does not have a switch of some sort. It may be
19 a remote switch homed on a host that's in another area, but
20 it is a switch of some sort.

21 JUDGE SCHNIERLE: Okay. All right. Thank you.

22 MS. COYNE: Can I ask one final sort of cleanup
23 question?

24 REDIRECT EXAMINATION

25 BY MS. COYNE:

1 Q. Mr. Peduto, we've been discussing what in your
2 view is not normal network maintenance and you gave a couple
3 examples, but could you give us a couple examples of what in
4 your view would be normal network maintenance at collos?

5 A. Yes. Normal network rearrangements and
6 maintenance would include things like running a fiber cross-
7 connect, provisioning a cross-connect through a digital
8 cross-connect system, bringing a fiber into a multiplexer and
9 multiplexing the contents or the cargo of that fiber to DS-
10 3, DS-1 and even DS-0 transmission levels.

11 That activity may include provisioning activities
12 such as manipulating through a software basis the MUX
13 itself. It may also include sliding in circuit packs,
14 optioning circuit packs with dip switches, those sorts of
15 things, to create the proper options for the circuit pack to
16 operate to affect the de-MUXing or MUXing that you need
17 done.

18 MS. COYNE: Thank you, Mr. Peduto.

19 JUDGE SCHNIERLE: So, just to kind of summarize this,
20 basically, having listened to AT&T's testimony yesterday,
21 you contend that they're operationally ready even if they
22 would have to do that sort of thing and they don't. They
23 contend they're not operationally ready because they have to
24 do that sort of thing.

25 THE WITNESS: I contend, Your Honor, that those

1 things I just listed for Ms. Coyne are normal network
2 operations and maintenance items that are germane to
3 provisioning activities on a network basis and that any
4 carrier that can do those and create a link is operationally
5 ready to create that link.

6 JUDGE SCHNIERLE: Mr. Barber.

7 MR. BARBER: No further questions for this witness,
8 Your Honor.

9 JUDGE SCHNIERLE: I guess you're done. Thank you.

10 THE WITNESS: Thank you, Your Honor.

11 (Witness excused.)

12 JUDGE SCHNIERLE: You want to call Mr. Nurse?

13 MR. KEFFER: Your Honor, we'd like to put Mr.
14 Kirchberger and Mr. Nurse back on for a very brief response.

15 JUDGE SCHNIERLE: You're still under oath.

16 **Whereupon,**

17 **ROBERT JAMES KIRCHBERGER**

18 **and**

19 **E. CHRISTOPHER NURSE**

20 **having previously been duly sworn, testified further as**
21 **follows:**

22 **DIRECT EXAMINATION**

23 **BY MR. KEFFER:**

24 Q. Mr. Kirchberger and Mr. Nurse, you were present
25 here in the room during Mr. Peduto's additional testimony

1 this morning?

2 A. (Kirchberger) Yes.

3 A. (Nurse) Yes.

4 Q. You heard him say that it is a very easy matter
5 of no consequence whatsoever for AT&T to link its fiber
6 facilities from collo arrangement A and collo arrangement Z
7 at wire center X. Did you hear that testimony?

8 A. (Nurse) Yes.

9 Q. And indeed, if it were easy to do that, AT&T
10 would implement that for all of its traffic between wire
11 centers A and Z, would it not?

12 A. (Nurse) I would certainly think so, because
13 once the facility is in place, -- I mean the order says
14 what's true -- you have a big, sunken fixed cost to plow the
15 street up, put the fiber in and then put the electronics on
16 each end. And say you put on one circuit, to add one more
17 circuit to that, the incremental cost would be near zero.

18 Q. Mr. Peduto had no opinion on the incremental
19 cost of transporting traffic between collo A and collo Z in
20 the example if AT&T had the facilities in place. Do you
21 have an opinion on what the incremental cost would be?
22 Maybe you just stated it.

23 A. (Nurse) It would be nearly zero.

24 Q. Given that, are you aware of any circumstances
25 where, on the routes that Verizon has identified as

1 potential trigger routes, AT&T is not using its own
2 facilities but rather is buying special access arrangements
3 from Verizon?

4 A. (Kirchberger) We have taken a look at our
5 carrier access bills from Verizon on these routes and there
6 is a significant number and amount of carrier access that we
7 are -- dedicated transport carrier access that we are
8 purchasing from Verizon between two points there, so we are
9 paying their access price for that. To the best of my
10 knowledge, we are also not purchasing any dedicated
11 transport UNEs.

12 Q. Are you able to identify the routes that you
13 just described?

14 A. (Kirchberger) Yes. If I had my list in front
15 of me, as I did yesterday, but possibly counsel can help me.

16 Q. Let me show you a document which may refresh
17 your recollection.

18 (Document handed to witness.)

19 A. (Kirchberger) Yes.

20 MR. KEFFER: Let me provide this to --

21 MR. BARBER: You have to get this marked.

22 MR. KEFFER: I've done this before, Bob.

23 (Laughter.)

24 MR. BARBER: I forget what number we're up to, Your
25 Honor.

1 JUDGE SCHNIERLE: AT&T, you had -- Exhibit 1 was
2 corrected page 114, and 2 was corrected page 133.

3 JUDGE COLWELL: They had three and four but they
4 didn't offer them.

5 JUDGE SCHNIERLE: Yeah, that's right. No, those were
6 -- 3 and 4 were cross exhibits.

7 MR. BARBER: Right, which we never offered.

8 JUDGE SCHNIERLE: This will be AT&T Exhibit 3.

9 MR. KEFFER: Your Honor, can we mark for
10 identification purposes AT&T 3 and AT&T 4?

11 JUDGE SCHNIERLE: Three will be the one starting with
12 Ambler.

13 MR. KEFFER: The one that has the Ambler wire center
14 in the upper left-hand corner is AT&T 3, and the one that
15 has a wire center denoted CRAFTACR as AT&T 4.

16 (Whereupon, the documents were marked
17 as AT&T Exhibits Nos. 3 and 4
18 for identification.)

19 BY MR. KEFFER:

20 Q. Mr. Kirchberger, Mr. Nurse, one of you, do want
21 to start with AT&T 3 and describe for the Judges the
22 information that's on this exhibit?

23 JUDGE SCHNIERLE: The stuff on the exhibit is
24 proprietary. Do we need to be on the proprietary record?

25 MR. KEFFER: I don't intend to get into any

1 proprietary information, Your Honor.

2 JUDGE SCHNIERLE: All right.

3 WITNESS KIRCHBERGER: Your Honors, basically what we
4 did is we took the Verizon Exhibit No. 6-A and looked at the
5 routes where AT&T was identified as meeting the transport
6 trigger, and we went back to our carrier access billing
7 records, which we are sent by Verizon themselves, and
8 checked routes between wire centers 1 and wire centers 2 on
9 those Exhibit 6-A potential trigger routes or AT&T claims to
10 have met the trigger candidate for those routes; and we've
11 indicated the type of access service, the volume and the
12 dollar amounts that we pay on a monthly basis on that.
13 That's Exhibit 3.

14 On Exhibit 4, we did that for the Pittsburgh area,
15 and we did the same thing.

16 BY MR. KEFFER:

17 Q. Mr. Kirchberger, let me direct your attention to
18 the bottom of the column labeled "Expense" on AT&T Exhibit
19 3. That number is not proprietary. It's \$105,524. What is
20 that?

21 A. (Kirchberger) That's the monthly bill that we
22 pay for dedicated access service to Verizon in this
23 Philadelphia MSA, as identified here by the wire centers,
24 along with the \$153,096 in Pittsburgh. This is on a monthly
25 basis, and if you annualize that, then you can see it's not

1 a trivial amount that we're paying for access between those
2 two locations.

3 MR. KEFFER: Your Honor, we move the admission of
4 AT&T Exhibits 3 and 4, and I have no further questions for
5 these gentlemen.

6 JUDGE SCHNIERLE: Any objections?

7 (No response.)

8 JUDGE SCHNIERLE: They're admitted.

9 (Whereupon, the documents marked
10 as AT&T Exhibits Nos. 3 and 4
11 were received in evidence.)

12 JUDGE SCHNIERLE: Ms. Coyne?

13 MS. COYNE: I have no questions. Thank you, Your
14 Honor.

15 JUDGE SCHNIERLE: Just one point of clarification.
16 You're purchasing the services, special access, at retail
17 rates not UNE transport rates; is that correct?

18 WITNESS NURSE: Yes, at the access rates.

19 WITNESS KIRCHBERGER: At the access rates, correct,
20 term and volume access rates.

21 JUDGE SCHNIERLE: Do these represent the entire
22 universe of routes?

23 WITNESS NURSE: No. This is just the routes on which
24 we're named as a trigger candidate.

25 JUDGE SCHNIERLE: All right, but what I'm asking is:

1 is this the universe -- does this represent all of the
2 routes?

3 WITNESS NURSE: Not all the routes that Verizon is
4 seeking to --

5 JUDGE SCHNIERLE: Does it represent all the routes on
6 which AT&T is --

7 WITNESS NURSE: Yes.

8 JUDGE SCHNIERLE: In other words, there's no -- I
9 can't go to Exhibit 6 and find a route that's not on your
10 lists here?

11 WITNESS KIRCHBERGER: No. You probably will. What
12 we did is we asked our access billing folks to take Exhibit
13 6 and then scrub that against our monthly access bills -- I
14 think we used December access bill -- and where we are
15 paying access, indicate the volume, the dollar amounts, the
16 type of access for them two wire centers. What we did not
17 do is to reflect links or routes that Verizon claimed we
18 were a trigger candidate but we were not able to find --

19 JUDGE SCHNIERLE: The access costs.

20 WITNESS KIRCHBERGER: -- access that we're paying.
21 It's just -- this points out the fact that if we were
22 operational ready and it was really no cost to us to put
23 this together, why would we go out and spend \$100,000 a
24 month in that area on access routes?

25 JUDGE SCHNIERLE: All right.

1 Mr. Barber?

2 (No response.)

3 JUDGE SCHNIERLE: Ms. Coyne?

4 (No response.)

5 JUDGE SCHNIERLE: Anyone else?

6 (No response.)

7 JUDGE SCHNIERLE: Thank you.

8 (Witnesses excused.)

9 JUDGE SCHNIERLE: Back to Sprint.

10 MS. BENEDEK: Thank you, Your Honor. As a
11 housekeeping matter, we're going to have marked Sprint's
12 responses to the Commission Data Requests. I think we're
13 going to follow the suit started by MCI and we're going to
14 mark this as ALJ Exhibit 3.

15 JUDGE SCHNIERLE: That's fine.

16 (Whereupon, the document was
17 marked as ALJ Exhibit No. 3
18 for identification.)

19 MS. BENEDEK: Let the record reflect that I have
20 previously given to the court reporter two copies of what is
21 now marked as ALJ Exhibit 3. These are our responses to the
22 PUC.

23 JUDGE SCHNIERLE: We're off the record.

24 (Discussion off the record.)

25 JUDGE SCHNIERLE: Back on the record.

1 First off, is there any objection to admission of ALJ
2 Exhibit 3, being the Sprint responses to the Commission's
3 initial order?

4 MR. BARBER: No, Your Honor.

5 JUDGE SCHNIERLE: It's admitted.

6 (Whereupon, the document marked
7 as ALJ Exhibit No. 3
8 was received in evidence.)

9 JUDGE SCHNIERLE: Ms. Benedek.

10 MS. BENEDEK: Thank you, Your Honor. We would like
11 to call Mr. Peter N. Sywenki as a witness in this matter.

12 JUDGE SCHNIERLE: Please stand and raise your right
13 hand.

14 Whereupon,

15 PETER N. SYWENKI

16 having been duly sworn, testified as follows:

17 JUDGE SCHNIERLE: Please be seated.

18 MS. BENEDEK: Thank you, Your Honor.

19 DIRECT EXAMINATION

20 BY MS. BENEDEK:

21 Q. Mr. Sywenki, would you please state and spell
22 your name for the record?

23 A. My name is Peter N. Sywenki, S-y-w-e-n-k-i.

24 Q. Mr. Sywenki, are you the same Peter Sywenki that
25 submitted direct testimony which has been pre-marked as

1 Sprint Statement No. 1.0, and rebuttal testimony which has
2 been pre-marked as Sprint Statement 1.1?

3 A. Yes, I am.

4 Q. And on whose behalf are you authorized to
5 testify here today?

6 A. Sprint Communications, L.P.

7 Q. And that's the competitive local exchange
8 provider in Pennsylvania?

9 A. That's correct.

10 Q. Have you reviewed the testimony and exhibits
11 submitted by the other intervenors in this proceeding?

12 A. Yes, I have.

13 Q. Including the testimony of Verizon?

14 A. Yes.

15 Q. And the pleadings of Verizon; correct?

16 A. Yes, I have.

17 MS. BENEDEK: Your Honor, please let the record
18 reflect that we have previously marked and submitted two
19 copies to the court reporter of what has been marked as
20 Sprint Statement 1.0 and Sprint Statement 1.1.

21 JUDGE SCHNIERLE: Yes.

22 (Whereupon, the documents were marked
23 as Sprint Statements Nos. 1.0 and
24 1.1 for identification.)

25 BY MS. BENEDEK:

1 Q. Mr. Sywenki, if I were to ask you the questions
2 that are included in Sprint Statement 1.0 and Sprint
3 Statement 1.1, would the answers be true and correct to the
4 best of your knowledge, information and belief?

5 A. Yes, they would.

6 Q. Do you have any changes to -- let's take Sprint
7 Statement 1.0 first.

8 A. Yes, I have a few.

9 JUDGE SCHNIERLE: You're going to have to keep your
10 voice up a little bit.

11 THE WITNESS: Yes, I have a few edits.

12 BY MS. BENEDEK:

13 Q. Please, can you go over the first one?

14 A. Sure. On page 12, line 17, between the words
15 "switches" and "deployed" insert the words "have been," so
16 that it reads "switches have been deployed."

17 On page 13, line 7, delete the words "or these
18 carriers."

19 MR. HICKS: Excuse me; I don't see that.

20 THE WITNESS: Page 13, line 7, "data provided by
21 Verizon or these carriers," delete the words "or these
22 carriers."

23 On page 14, in footnote 2, at the end of the first
24 sentence add "and CLECs that indicated they don't serve
25 residential customers."

1 MR. BARBER: I'm sorry; can you read that?

2 MS. COYNE: What's the change?

3 THE WITNESS: In footnote 2, at the end of the first
4 sentence, after the word "switches" add the words "and CLECs
5 that indicated they do not serve residential customers."

6 On page 28, on line 19, inside the parenthetical,
7 after the word "provider," add comma "business-only CLECS,
8 and enterprise switches," end parenthesis.

9 JUDGE SCHNIERLE: Would you read that again?

10 THE WITNESS: Sure. Comma after "provider, business-
11 only CLECs, and enterprise switches," end paren.

12 JUDGE SCHNIERLE: Thank you.

13 THE WITNESS: And then in line 20, --

14 MS. CONOVER: Is this the same page?

15 THE WITNESS: Yes, same page.

16 -- insert "residential" between "the" and "access
17 lines," so it reads "currently serve less than 2.1 percent
18 of the residential access lines in Pennsylvania."

19 BY MS. BENEDEK:

20 Q. Mr. Sywenki, I believe there was an additional
21 edit at page 16, a minor additional edit, line 9.

22 A. Oh, yes. On line 9, at the end of the sentence,
23 close quotes, period.

24 JUDGE SCHNIERLE: What page was that?

25 THE WITNESS: Page 16, line 9, a typo at the end of

1 that sentence, "therefore cannot be counted toward
2 satisfying a mass market competitive trigger," closed
3 quotes, period.

4 JUDGE SCHNIERLE: Okay.

5 BY MS. BENEDEK:

6 Q. Now, with those changes and additions,
7 corrections, is your testimony true and correct to the best
8 of your knowledge, information and belief?

9 A. Yes, it is.

10 Q. Do you have before you what has been marked as
11 Sprint Statement 1.1?

12 A. I do.

13 Q. Are there any changes, additions or corrections
14 to Statement 1.1?

15 A. No.

16 MS. BENEDEK: Your Honor, Mr. Sywenki is available
17 for cross-examination.

18 JUDGE SCHNIERLE: Any CLECs?

19 Mr. Hicks.

20 **CROSS-EXAMINATION**

21 BY MR. HICKS:

22 Q. Good morning, Mr. Sywenki.

23 A. Good morning.

24 Q. My name is Ricardo Hicks and I represent Penn
25 Telecom in this proceeding. Did I pronounce your name

1 correctly?

2 A. Very good.

3 Q. I'd like to review your analysis of competitive
4 switching triggers and the companies that you included in
5 that analysis, so I want to get right to it and direct your
6 attention to page 14 of Sprint Statement 1.0. Do you have
7 that?

8 A. Yes.

9 Q. Do you notice in the response to the first
10 question you say, "Based upon a review of the data request
11 responses, it appears that about 2.1 percent of all
12 residential customers situated in the Verizon-contested MSA
13 are served by CLECs using self-deployed switches"? Do you
14 see that?

15 A. Yes.

16 Q. And I note that you also have a footnote there,
17 and that footnote 2 you just modified slightly in questions
18 from counsel for Sprint. That footnote now reads, "This
19 percentage was calculated based upon Verizon's Appendix A,
20 Part B, as adjusted to eliminate CLEC line counts
21 attributable to enterprise switches and CLECs that indicated
22 they don't serve residential customers." So am I correct
23 that those two criteria were the criteria on which you
24 excluded certain CLECs?

25 A. Let me give some background on what this

1 analysis was intended to do. Essentially, what I was trying
2 to do was provide a simple, straightforward comparison of
3 the markets that Verizon was contesting, specifically the
4 percentage of residential customers served by CLECs in the
5 markets that Verizon was contesting, to the percentage of
6 residential customers that the FCC found on a national basis
7 were served by CLEC switches. In that, yes, there's
8 actually three types of carriers I excluded for reasons
9 stated in my testimony, lines that were served by enterprise
10 switches, lines that were served by carriers that
11 specifically indicated that they do not serve residential
12 customers, and lines that are served by cable telephone
13 companies. So essentially, I took the baseline of what
14 Verizon indicated were DS-0 customers served by CLEC
15 switches and subtracted those out, for the reasons stated in
16 my testimony why they do not qualify.

17 Q. So the cable TV is not in that footnote; am I
18 right?

19 A. It's in the next sentence in the footnote,
20 "Also, cable line counts were eliminated."

21 Q. Am I correct that Sprint Exhibit PNS-1 attached
22 to Statement 1.0 is where you reflect your analysis?

23 A. Yes.

24 Q. And there you mention that counts from --

25 MR. HICKS: Perhaps, Your Honor, we ought to go on

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the proprietary record.

JUDGE SCHNIERLE: We're on the proprietary record.

(Whereupon, the following pages 562 through 565 were designated proprietary and were sealed and bound separately.)

FORM 2

1 JUDGE SCHNIERLE: Ms. Conover?

2 MS. CONOVER: Yes, I have a few questions. Thank
3 you, Your Honor.

4 **CROSS-EXAMINATION**

5 BY MS. CONOVER:

6 Q. Mr. Sywenki, I'm Julie Conover with Verizon. I
7 have a few questions for you this morning.

8 First of all, just a few background questions here.
9 You're testifying on behalf of Sprint; is that correct?

10 A. Yes. I'm testifying on behalf of Sprint's CLEC
11 operations.

12 Q. That's what I was going to ask. You state that
13 Sprint also has an ILEC affiliate in Pennsylvania, which is
14 United Telephone; is that correct?

15 A. Yes, it does.

16 Q. And am I correct that United Telecom is the
17 second largest telephone company in Pennsylvania next to
18 Verizon?

19 A. Yes, I believe that's correct.

20 Q. Now, I believe you state on page 3 of your
21 testimony that Sprint is uniquely situated to understand the
22 needs of both the providers and purchasers of unbundled
23 network elements. Is that your statement?

24 A. Yes, it is.

25 Q. Now, would it be fair to say that in this case,

1 that Sprint is representing the interest of the CLEC entity?
2 Is that correct?

3 A. That's what I stated, yes.

4 Q. And am I correct that in other states, that
5 Sprint has generally sided with the CLEC industry as opposed
6 to the ILECs?

7 MS. BENEDEK: Objection, Your Honor. Relative to
8 what, the TRO proceedings?

9 MS. CONOVER: The TRO issue. Thank you.

10 THE WITNESS: I was going to ask that question
11 myself. I don't think Sprint ever sides with one group or
12 another. Depending on the individual issue -- it has to
13 balance its interest across all of its various interests,
14 and depending on the issue, that may result in a position
15 that looks like it sides with one or the other, but it's
16 never a one-way we always side with the CLECs or always side
17 with the ILECs or always side with the IXCs or side with the
18 wireless carriers. All those elements are taken into
19 consideration.

20 BY MS. CONOVER:

21 Q. Right; I understand that. And just to clarify,
22 I was really talking about the TRO unbundling issues that
23 are currently before the Commissions. Is it generally
24 Sprint's position to be more aligned with the CLECs on those
25 issues?

1 A. I would say we read the order and are applying
2 that order in addressing these proceedings, and it's clear
3 to us that the order requires the continuation of unbundling
4 of elements until it's shown that there's not impairment.

5 Q. So you're completely impartial?

6 A. No, we certainly have an interest in
7 Pennsylvania where we serve customers using UNE-P.

8 Q. Thank you. In looking at your ILEC territory --
9 again, I'm going to refer to the map, and this is just by
10 way of background -- can you describe generally where the
11 ILEC United serves customers, and in particular, are they in
12 any of the MSAs that we're talking about?

13 A. I believe that they are. I believe we have
14 significant operations, our ILEC has significant operations
15 in the Butler area, which is out towards Pittsburgh.

16 Q. And that would be in this area north of
17 Pittsburgh, the white area on the map?

18 A. Yes. We have, in southcentral Pennsylvania,
19 Carlisle area and other areas around that, Chambersburg --

20 MS. BENEDEK: Julie, do you have an extra copy of --

21 MS. CONOVER: I do; I have an extra copy.

22 MS. BENEDEK: Please. I would prefer that.

23 THE WITNESS: I also did not review our ILEC's
24 operating territory prior to this proceeding, although I did
25 work here for several years and lived here for several

1 years. But those are the two areas in particular where we
2 have ILEC operations, yes.

3 BY MS. CONOVER:

4 Q. And then turning again to Sprint, the CLEC, I
5 understand and I just want to confirm that Sprint, the CLEC,
6 is serving mass market customers in Pennsylvania, but it is
7 not using its own switching facilities to provide those
8 services but instead doing that through the UNE-P; is that
9 correct?

10 A. That is correct. All of our CLEC operations are
11 non-facilities based, rely heavily on Verizon to provide
12 mass market services.

13 Q. Does Sprint, the ILEC, have competition in its
14 territory?

15 MS. BENEDEK: I would object, Your Honor. At this
16 point Sprint's territory, Sprint, the local company's,
17 facilities are not at issue in the proceeding. I fail to
18 see the relevancy of this line of questioning.

19 MS. CONOVER: Your Honor, I only have a few questions
20 on this, but there's been quite a bit of testimony about
21 small ILECs and their ability to essentially have CLEC
22 affiliates in Verizon's territory and other territories, and
23 I think that a few questions on this issue --

24 JUDGE SCHNIERLE: It's overruled.

25 BY MS. CONOVER:

1 Q. Does Sprint, the ILEC, have competition in its
2 territories?

3 A. Yes. I believe it sells unbundled elements in
4 its territory, so yes, it has competition there.

5 Q. And again, do you know if any of that
6 competition is mass market competition?

7 A. I can't really say the extent and what types of
8 competition, but if I were to speculate I would say yes,
9 some of it is mass market competition.

10 Q. And am I correct that in fact, if you're aware
11 of this, that Penn Telecom in fact serves customers in
12 Sprint's territory in Butler using its own facilities? Is
13 that correct?

14 A. I don't know, but if -- I don't know.

15 Q. You don't know. I believe those answers are in
16 Penn Telecom's responses to the Commission, so I'll move on.

17 Again, you had answered a number of questions about
18 your Sprint Exhibit PNS-1, and I appreciated that because I
19 had also had a little bit of trouble understanding exactly
20 what was included and excluded. But if you could turn
21 briefly to page 21 of your testimony.

22 MS. BENEDEK: Page 21?

23 MS. CONOVER: Twenty-one.

24 BY MS. CONOVER:

25 Q. And I'm looking primarily at the statement where

1 you're stating that CLECs serve mass market residential
2 customers using their own switches in only about 40 percent
3 of the wire centers in Pennsylvania. Do you see that
4 sentence?

5 A. Yes, I see that sentence. But let me also point
6 out that that number also would change with the changes I
7 described earlier. In fact, that number would drop to 20
8 percent.

9 Q. Okay.

10 A. And the significance of that, if you look at my
11 testimony, the significance of that is Verizon is
12 challenging the ability of CLECs to offer UNE-P in
13 competition in those MSAs, and the point is, in those MSAs,
14 after the further adjustments, there's only 20 percent of
15 the customers are being -- of the wire centers, I should
16 say; 20 percent of the wire centers are being served by
17 CLECs using their own switches. That means there's 80
18 percent of the markets they're contesting where there's no
19 alternative, no CLECs providing service, and that's
20 precisely what the significance of that calculation is.

21 Q. I do have a couple of questions about that
22 calculation. First of all, I understand that it's Sprint's
23 contention that only CLECs who provide service to
24 residential customers should count as mass market switch
25 triggers candidates. Is that accurate?

1 A. Not at all. Our position is that the mass
2 market, as defined in paragraph 127 of the FCC order,
3 includes both residential and business customers, and the
4 "and" is very important. What our position is, is if a CLEC
5 is serving business-only customers, that provides absolutely
6 no evidence of a CLEC's ability to serve residential
7 customers, which is the core of the mass market, it is the
8 most vulnerable segment of the mass market to a potential
9 loss in competition.

10 Q. Right. I would -- if you could just answer my
11 question. I believe I understand. But you only counted,
12 you're only counting as triggers candidates companies that
13 serve residential customers; isn't that correct?

14 A. No. I'm counting companies that may serve
15 residential and business. I'm discounting --

16 Q. Okay. They have to at least serve -- excuse me;
17 they have to serve at least some residential customers for
18 them to be included in your count; is that correct?

19 A. That's correct, because the definition of a --

20 Q. Okay. Now, --

21 MS. BENEDEK: Let him finish.

22 THE WITNESS: The definition of the mass market is
23 residential and business.

24 BY MS. CONOVER:

25 Q. Okay. I understand that's your position.

1 Did Sprint also take that --

2 A. It's not my position, that's --

3 Q. -- position to the Ohio Commission?

4 A. Yes, it did.

5 Q. And do you recall what the Ohio Commission
6 decided on this issue?

7 A. Yeah, I believe I'm aware what the Ohio
8 Commission decided, because --

9 Q. I have in fact a few pages from the Ohio
10 Commission decision.

11 MS. BENEDEK: Just so that we're clear, that is a
12 final decision from the Ohio Commission?

13 MS. CONOVER: It is a decision -- as I understand it,
14 it's an opinion and order -- and it speaks for itself, and
15 it's attached to Verizon's testimony -- that is essentially
16 -- it may not be the final, end of the case, but it's my
17 understanding it is a final decision on the issues that were
18 addressed in that case. But again, it speaks for itself.
19 The full decision is in --

20 MS. BENEDEK: Your rebuttal.

21 MS. CONOVER: Is in the rebuttal; correct.

22 BY MS. CONOVER:

23 Q. I would just like to show you the following few
24 pages.

25 MS. CONOVER: May I approach the witness?

1 JUDGE SCHNIERLE: Yes.

2 MS. CONOVER: Thank you.

3 MR. BARBER: You're already there.

4 MS. CONOVER: I'm already there. I'll make this very
5 brief.

6 BY MS. CONOVER:

7 Q. I would like to read the last sentence, which is
8 their conclusion, and see if you agree that I've read it
9 correctly. "Therefore, it is the Commission's opinion that
10 once an unaffiliated CLEC is determined by the Commission to
11 be providing service to mass market customers, customers
12 with a limited number of POTS lines, regardless of whether
13 they are residential or small business, in a particular
14 geographic market, using its own switching equipment, the
15 CLEC will be considered as one of three self-provisioners of
16 switching for the purpose of the trigger analysis."

17 Did I read that correctly?

18 A. You read that Commission's opinion correctly.

19 Q. And it's clear that you disagree with that
20 opinion.

21 A. Yes, I absolutely disagree with that opinion.

22 Q. Thank you.

23 A. I think it's a travesty, frankly.

24 Q. I would like for you, for purposes of the next
25 question -- and I just am trying to correct, to see what

1 some numbers would be if we use different assumptions to
2 build your exhibit on the number of wire centers. Would you
3 indulge me on that briefly?

4 If you in fact consider all wire centers -- one other
5 question. Am I correct that in the number of wire centers
6 that you list in your exhibit PNS-1, you are including all
7 wire centers in the MSA, not simply Density Cell 1, 2 and 3
8 wire centers?

9 A. That's correct, and I believe that's based on --
10 what I understood Verizon's initial position on this was
11 that they were seeking relief throughout the entire MSA. It
12 was only yesterday where it became clear to me that it's
13 only looking at Density Cells 1, 2 and 3.

14 Q. Okay; fine. So you would agree that that column
15 then should be corrected to list the number of wire centers
16 in Density Cells 1, 2 and 3?

17 A. Not necessarily. Again, let me state what the
18 purpose of this analysis was for. The FCC, in its
19 evaluation of impairment, looked at the degree of
20 competition by CLECs using their own switches, and
21 particularly looked at the market share of CLECs serving
22 residential customers with their own switches. What I tried
23 to do is replicate that for Pennsylvania in the Verizon
24 MSAs. And the purpose was to demonstrate that the
25 circumstances in Pennsylvania in the MSAs that Verizon is

1 contesting is no different than what the FCC found when it
2 did this same analysis at the national level. So the FCC
3 definitely, in its analysis of impairment, found it
4 necessary to take a look at this market share test, and I
5 believe it's just as important for the Pennsylvania
6 Commission to have that same opportunity, and that's the
7 purpose of why I put this together; and it clearly
8 demonstrates that the circumstances in these MSAs are no
9 different than what the FCC found in its national
10 determination of impairment for mass market switching.

11 Q. Thank you. But if you just look at the Verizon
12 wire center list and you only include the Verizon wire
13 centers in the MSAs in Density Cells 1, 2 and 3, would you
14 agree with me or accept subject to check that the number is
15 150?

16 MS. BENEDEK: One hundred and fifty counts?

17 MS. CONOVER: Wire centers in Density Cell --

18 THE WITNESS: I don't know.

19 BY MS. CONOVER:

20 Q. Well, how did you come to the 279 number? You
21 went back to the Verizon exhibit; isn't that correct?

22 A. No. We went to the LERG as of December of 2003.

23 Q. Could you check the LERG to find the number in
24 the Verizon wire centers?

25 A. Yes, that would be possible.

1 Q. Then would you accept subject to check that the
2 number of the Verizon wire centers, in Density Cells 1, 2
3 and 3 in the MSAs that we've identified, was 150?

4 A. Subject to check.

5 Q. Fine. And specifically, for Allentown and
6 Bethlehem, would you accept that the number is six?

7 A. Subject to check.

8 Q. And for Harrisburg-Lebanon, would you accept
9 that the number is 11?

10 A. Subject to check.

11 Q. And for Lancaster, would you accept that the
12 number is four?

13 A. Subject to check.

14 Q. And for Philadelphia, would you accept that the
15 number is 70?

16 A. Subject to check.

17 Q. And for Pittsburgh, would you accept that the
18 number is 45?

19 A. Subject to check.

20 Q. And for Reading, would you accept that the
21 number is five?

22 A. Subject to check.

23 Q. And for Scranton-Wilkes-Barre, would you accept
24 that the number is nine?

25 A. Subject to check.

1 Q. Okay; fine. Now turning to the CLEC wire
2 centers, again, I understand --

3 MS. BENEDEK: I'm sorry, Your Honor, on what document
4 are we referring, and then secondly, CLEC wire centers?

5 MS. CONOVER: I'm sorry; it's the column "CLEC Wire
6 Centers" on the same document.

7 MS. BENEDEK: Okay. Thank you. In his exhibit.
8 Thank you.

9 MS. CONOVER: In his exhibit. I'm really talking
10 about his exhibit.

11 MS. BENEDEK: Thank you.

12 BY MS. CONOVER:

13 Q. I understand that that exhibit is the source for
14 your 40 percent, which you've now, I guess, orally updated
15 in response to Mr. Hicks' questions.

16 A. Yes, I have.

17 Q. So I would like to look at the CLEC wire center
18 numbers.

19 A. Uh-huh.

20 Q. Would you agree with me that if you consider all
21 the wire centers in Density Cell 1, 2 and 3 where Verizon is
22 seeking relief, and consider both residence and mass market
23 customers, regardless of how they're served, essentially the
24 way Verizon presented its case, that are being served by
25 self-providers of switching, that the number of wire centers

1 would be 136?

2 A. That's not the purpose of --

3 Q. I'm sorry; strike that question.

4 A. That's not the purpose of --

5 Q. Please strike the question, because I misstated
6 it.

7 JUDGE SCHNIERLE: The question is no longer on the
8 floor.

9 MS. CONOVER: Fine.

10 Do you want him to answer it, sir?

11 JUDGE SCHNIERLE: You asked that the question be
12 stricken.

13 MS. CONOVER: Correct.

14 JUDGE SCHNIERLE: It's stricken. Ask another
15 question.

16 MS. CONOVER: Fine.

17 BY MS. CONOVER:

18 Q. Looking at the CLEC wire centers, if we were to
19 include the category of CLECs that Verizon is claiming
20 should be considered mass market switching providers -- and
21 I know you disagree with it, but let's look at the category
22 of mass market switching providers. If you were to include
23 those providers and then consider all the wire centers in
24 Density Cells 1, 2 and 3 in the MSAs where Verizon is
25 seeking relief, --

1 MS. BENEDEK: Objection, Your Honor.

2 MS. CONOVER: I'm not finished with --

3 JUDGE SCHNIERLE: On what basis?

4 MS. BENEDEK: The category of CLECs that Verizon
5 contends?

6 MS. CONOVER: Correct.

7 MS. BENEDEK: There hasn't been a foundation
8 established for that, he doesn't agree to it.

9 JUDGE SCHNIERLE: Well, it doesn't make any
10 difference, it's a hypothetical question. Overruled.

11 MS. CONOVER: I wasn't finished with the question.

12 BY MS. CONOVER:

13 Q. If we were to take the category of customers
14 that Verizon is seeking relief for here as set forth in the
15 Verizon exhibits to the testimony of Mr. Peduto and Mr.
16 West, if we were to take those customers and then look at
17 the Density Cells 1, 2 and 3 in the MSAs where Verizon is
18 seeking relief, and we were to count the number of Density
19 Cells 1, 2 and 3 -- I'm sorry -- wire centers in those
20 density cells where Verizon is seeking relief, do you know
21 what that number would be?

22 A. First of all, I would never do that analysis
23 because I don't accept the premise. You're asking me to
24 accept something I don't accept, and that's that all the
25 CLECs that you've identified qualify as trigger candidates.

1 Q. Well, I am asking you to accept that. I know
2 you disagree with it, but I'm asking you to accept that the
3 companies that you excluded in fact do provide mass market
4 to customers. Hypothetically, I would like you to accept
5 that those companies provide mass market switching to
6 customers. Are you willing to follow me so far?

7 A. There again, you're asking me to assume
8 something I disagree with.

9 Q. Yes, I am.

10 A. But okay, I will listen.

11 Q. I'm asking you to assume a hypothetical.

12 A. Okay.

13 Q. And then I would like you to tell me or accept
14 subject to check the number of wire centers where those
15 CLECs are serving mass market customers within Density Cells
16 1, 2 and 3.

17 MS. BENEDEK: And do you have a foundation for that
18 piece of the hypothetical?

19 MS. CONOVER: Yes, I do. I believe, as I understand
20 it, he pulled his numbers from Verizon Statement No. 1.1.
21 He can pull the same information from Verizon Statement 1.1
22 simply by including all of the mass market customers that he
23 included, and that's exactly what I would like him to do.

24 MS. BENEDEK: So where in 1.1 -- is this Attachment
25 5? Is this the CLEC counts that you're referring to?

1 MS. CONOVER: Yes. Correct. I mean, I assume -- let
2 me ask you this. I assume what he did was he took
3 Attachment 1.1 and he excluded the companies that he did not
4 believe were mass market --

5 JUDGE SCHNIERLE: Wait a minute. Wait a minute.
6 What's the number? Just tell me the number.

7 MS. CONOVER: The number is 145.

8 JUDGE SCHNIERLE: All right. If you added back --
9 looking at your Sprint Exhibit PNS-1, if you added back in
10 Allegiance, Choice One, RCN, XO, AT&T, Comcast and WorldCom,
11 would you accept subject to check that the CLEC wire centers
12 are going to come out to about 145?

13 THE WITNESS: I would accept that subject to check.
14 I do not agree with the analysis.

15 BY MS. CONOVER:

16 Q. I understand you don't agree with the analysis.
17 Thank you. And would you agree that 145 is about 97 percent
18 of 150?

19 A. I don't have my calculator with me, but yes, I
20 accept your math, subject to check.

21 Q. So essentially, based upon Verizon's definition
22 of who are the valid mass market switching trigger
23 candidates, isn't it true that 97 percent of the wire
24 centers in which Verizon is claiming relief have those
25 providers present?

1 MR. BARBER: Whoa. Your Honor, is one of the
2 premises of the question that there are three of each of
3 those providers in each one of those?

4 MS. CONOVER: Yeah, at least one; I'm sorry. There's
5 at least one.

6 MR. BARBER: So there could be one carrier in one of
7 those wire centers --

8 MS. CONOVER: That's correct.

9 MR. BARBER: -- serving one customer.

10 THE WITNESS: This really brings a very important
11 point. The point is that under Verizon's construct, if a
12 CLEC is serving one DS-0, it is therefore a switch that is a
13 mass market switch that meets a competitive trigger. I
14 don't agree with that, the TRO does not agree with that. So
15 again, you're asking me to accept something that I
16 fundamentally do not accept and don't think is at all
17 supported by the TRO.

18 MS. CONOVER: Your Honor, with all due respect, there
19 was no question pending. I believe that answer should be
20 stricken. It's absolutely clear that we have a differing
21 view --

22 MS. BENEDEK: There was a question pending.

23 JUDGE SCHNIERLE: There was a question pending. Move
24 on.

25 MS. CONOVER: That's all. I have no further

1 questions.

2 JUDGE SCHNIERLE: Redirect?

3 MS. BENEDEK: I don't believe so, Your Honor. May I
4 have a moment, just real quick?

5 (Pause.)

6 MS. BENEDEK: Nothing, Your Honor.

7 JUDGE SCHNIERLE: Do you move your statements?

8 MS. BENEDEK: Yes, Your Honor. We would like to move
9 for admission Sprint Statements 1.0 and 1.1. Thank you.

10 JUDGE SCHNIERLE: Any objection?

11 (No response.)

12 JUDGE SCHNIERLE: They're admitted.

13 **(Whereupon, the documents marked**
14 **as Sprint Statements Nos. 1.0 and**
15 **1.1 were received in evidence.)**

16 JUDGE SCHNIERLE: You're excused.

17 (Witness excused.)

18 JUDGE SCHNIERLE: Do we have another Sprint witness?

19 MS. BENEDEK: Yes, we do. We have what has been
20 marked as James Dunbar, but in lieu of Mr. Dunbar we are
21 going to have James Appleby testify.

22 JUDGE SCHNIERLE: All right. Let's get him up here.

23 Would you raise your right hand?

24 **Whereupon,**

25 **JAMES A. APPLEBY**

1 having been duly sworn, testified as follows:

2 JUDGE SCHNIERLE: Please be seated.

3 MS. BENEDEK: Thank you, Your Honor.

4 **DIRECT EXAMINATION**

5 BY MS. BENEDEK:

6 Q. Mr. Appleby, would you please state your name
7 and spell it for the record?

8 A. Yes. James A. Appleby, A-p-p-l-e-b-y.

9 Q. Thank you. By whom are you employed and in what
10 capacity?

11 A. I'm employed by Sprint as a senior manager of
12 regulatory policy.

13 Q. Can you please speak up for the court reporter?

14 A. Yes.

15 Q. Can you please describe your duties in that
16 position?

17 A. My duties in that position as a senior manager
18 are to advocate the One Sprint regulatory policies in both
19 the federal and the state jurisdictions.

20 Q. Now, relative to the TRO proceedings, am I
21 correct that you have sponsored a piece of testimony that
22 was filed on Monday, the 26th of January, in Maryland
23 concerning the TRO proceeding in that state? Correct?

24 A. Yes. I will be appearing in that state.

25 Q. Have you reviewed the testimony and filings of

1 Verizon Pennsylvania submitted in this docket?

2 A. Yes.

3 Q. Were you in the hearing room earlier during the
4 course of the week when the Verizon witnesses and the other
5 witnesses, intervenors, testified?

6 A. Yes, I've been here all week.

7 Q. Are you familiar with the discovery that has
8 been propounded and answered in this proceeding?

9 A. Yes, I have reviewed that.

10 MS. BENEDEK: Your Honor, let the record reflect that
11 we have previously marked as Sprint Statement 2.0 and Sprint
12 Statement 2.1 the testimony of Mr. James Appleby, as
13 adopted.

14 JUDGE SCHNIERLE: It may be so marked.

15 MS. BENEDEK: Thank you, Your Honor.

16 (Whereupon, the documents were marked
17 as Sprint Statements Nos. 2.0 and
18 2.1 for identification.)

19 BY MS. BENEDEK:

20 Q. Mr. Appleby, would you please turn to what has
21 been marked as Sprint Statement 2.0? Do you have any
22 changes, corrections or additions to Sprint Statement 2.0?

23 A. Yes, just a couple. First off, please change
24 the name on the cover sheet as well as each title of the
25 sheets thereafter from James D. Dunbar, Jr. to James A.

1 Appleby, please.

2 Also, on page 8, line 22, towards the end of that
3 sentence there's the words "both ends." Please change that
4 to "one end" to reflect the fact that Verizon in fact has
5 asked for transport routes that are only one end within
6 Pennsylvania.

7 And then the last change occurs on page 17, starting
8 on line 2, --

9 MS. BENEDEK: This is proprietary.

10 JUDGE SCHNIERLE: All right. We're on the
11 proprietary record.

12 (Whereupon, the following pages 588 through 589 were
13 designated proprietary and were sealed and bound
14 separately.)

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1 THE WITNESS: The only change to 2.1 would simply be
2 the name change that we discussed similar to 2.0.

3 JUDGE SCHNIERLE: Could you tell me -- I was a little
4 late catching up with you. What was the first correction
5 other than your name in 2.0?

6 THE WITNESS: On page 8, sir, the only change is on
7 line 22, I believe. Yes, line 22, the words "both ends"
8 should be replaced with "one end," again, to just simply
9 reflect that Verizon has in fact asked for transport that
10 goes outside the state.

11 JUDGE SCHNIERLE: All right. Thank you.

12 BY MS. BENEDEK:

13 Q. Just to clarify, do you have any changes to what
14 has been marked as Sprint Statement 2.1?

15 A. Yes, simply a name change on the cover sheet as
16 well as the title of each of the pages thereafter.

17 Q. With those changes, is your testimony true and
18 correct to the best of your knowledge, information and
19 belief?

20 A. Yes, it is.

21 MS. BENEDEK: Your Honor, I would like to make Mr.
22 Appleby available for cross-examination at this point.

23 JUDGE SCHNIERLE: Mr. Barber.

24 MR. BARBER: This is probably more in the interest of
25 keeping the record clean on this.

CROSS-EXAMINATION

1
2 BY MR. BARBER:

3 Q. Good morning, Mr. Appleby.

4 A. Good morning.

5 Q. I'm Bob Barber from AT&T.

6 The corrections you were making on page 17 of
7 Statement 2.0, particularly the ones on line 10 where you
8 deleted one wire center and you kept in --

9 MR. BARBER: I guess I'm going to have to go on the
10 proprietary record on this, Your Honor.

11 JUDGE SCHNIERLE: All right; we're on the proprietary
12 record.

13 (Whereupon, the following page 592 was designated
14 proprietary and was sealed and bound separately.)
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1 JUDGE SCHNIERLE: Any other CLECs?

2 Ms. Conover?

3 MS. CONOVER: Ms. Coyne.

4 MS. COYNE: Your Honor, I'll be asking the questions.

5 JUDGE SCHNIERLE: Ms. Coyne.

6 **CROSS-EXAMINATION**

7 BY MS. COYNE:

8 Q. Good morning, Mr. Appleby.

9 A. Good morning.

10 Q. I'm going to apologize first off in case I start
11 calling you Mr. Dunbar. (Inaudible) Mr. Dunbar for several
12 weeks now.

13 Could we turn to the bottom of page 16? And Mr.
14 Barber has helpfully cleared up some of the confusion. Do
15 you see in line 20 of this testimony you say, "it is clear
16 that Verizon made errors as a result of its over-simplified
17 and incorrect identification of route triggers"?

18 A. Uh-huh.

19 Q. Do you see that testimony, sir?

20 A. Yes, I do.

21 Q. Could you turn to page 17 then?

22 MS. COYNE: I guess we should be back on the
23 proprietary record.

24 JUDGE SCHNIERLE: Back on the proprietary record.

25

1 (Whereupon, the following pages 595 through 599 were
2 designated proprietary and were sealed and bound
3 separately.)
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FORM 2

1 BY MS. COYNE:

2 Q. Do you see, sir, on lines 12 and 13 of your
3 testimony, you say, "The 15 Verizon identified Sprint routes
4 should not be counted in any trigger analysis for
5 Pennsylvania"?

6 A. Yes.

7 Q. And am I correct that Sprint is contending that
8 although it has fiber based operational collocation
9 arrangements in Verizon wire centers, its facilities should
10 not count toward the FCC's transport triggers?

11 A. Sprint, the CLEC, is simply a UNE-P provider
12 within the State of Pennsylvania. They do not have any
13 facilities that are used to provide local service within the
14 State of Pennsylvania.

15 Q. Well, let me break this down just a little bit.
16 Do you agree with me that Sprint has collocation
17 arrangements in Verizon wire centers?

18 MS. BENEDEK: Objection, Your Honor. He has just
19 testified that Sprint, the CLEC, does not have facilities in
20 Pennsylvania. Sprint leases the entire kit-and-caboodle
21 from Verizon called UNE-P. He has just asked and answered
22 that question.

23 MS. COYNE: I'm not certain that the distinctions
24 between corporate entities are material here, and that's why
25 I want to make sure that I understand what Sprint, the

1 corporation -- there have been issues about --

2 JUDGE SCHNIERLE: Well, limit your next question to
3 Sprint long distance.

4 Does Sprint long distance have collo and fiber in
5 Pennsylvania?

6 THE WITNESS: Yes, sir, we do, for those business
7 interests.

8 JUDGE SCHNIERLE: You may continue.

9 BY MS. COYNE:

10 Q. Mr. Appleby, could you tell me where in the
11 Order or the regs or anywhere else the FCC says that
12 essentially fiber facilities that are in the ground that are
13 being used for transport that potentially could be available
14 for intraoffice transport delivery do not count because of
15 the nature of the traffic that runs over those facilities
16 presently?

17 A. I believe you said the proper word there is
18 potentially used. We're not using them to provide local
19 service.

20 Q. But you agree with me they could potentially be
21 used?

22 A. In a feasible deployment case, that might be the
23 case, yes.

24 Q. Mr. Appleby, you were in the hearing room the
25 last few days, so you probably heard that AT&T is contending

1 that it has no facilities in Pennsylvania that count toward
2 the FCC's transport triggers. Were you here for that
3 testimony, sir?

4 A. I was.

5 Q. And Sprint is now contending that it has no
6 facilities that count toward the FCC's transport triggers.
7 Is that right?

8 A. Yes.

9 Q. And from reading the CLEC testimony, do you
10 understand that many other CLECs are contending that they,
11 too, under some of the analyses that AT&T has put forth have
12 zero facilities that count toward the FCC's triggers?

13 MS. BENEDEK: Objection, Your Honor. If those CLECs
14 have testimony, they have their own reasons. I don't think
15 they're doing so because AT&T is making those claims.
16 Improper form.

17 JUDGE SCHNIERLE: Sustained.

18 BY MS. COYNE:

19 Q. Mr. Appleby, from reading the CLECs' testimony,
20 did you understand that the CLECs are making the contention
21 that they have no facilities that count toward the FCC's
22 trigger?

23 A. I have recognized in reading the CLECs'
24 testimony that the Verizon case is flawed for many reasons,
25 and each of the CLECs have identified their reasons they

1 believed it is flawed.

2 We specifically believe that you've identified a
3 collocation arrangement in A, a collocation in B, but you
4 have not established all of the necessary facts to determine
5 that those two arrangements have operational facilities
6 between them.

7 Q. Well, let me narrow it down a little bit, did
8 you see in reading Allegiance's testimony, for example, that
9 Allegiance was agreeing, essentially, with AT&T's legal
10 argument and therefore saying that it had no facilities in
11 Pennsylvania that counted toward the FCC's trigger?

12 A. As a non-facility-based CLEC, I did not express
13 a specific opinion on that particular argument.

14 Q. That's fine, sir. Do you think that it is
15 surprising that the FCC spent months gathering all this
16 information about CLECs' transport facilities and then
17 instructed state commissions to --

18 MS. BENEDEK: Objection; speculative, Your Honor.
19 She's asking him to speculate.

20 JUDGE SCHNIERLE: Sustained.

21 MS. COYNE: No more questions.

22 JUDGE SCHNIERLE: All right.

23 MS. BENEDEK: Your Honor, I'd like to move into the
24 record what has been pre-marked as Sprint Statement --

25 JUDGE SCHNIERLE: Do you have redirect?

1 MS. BENEDEK: I do not have any redirect, no.

2 JUDGE SCHNIERLE: All right. Any objection to Sprint
3 Statements 2.0 and 2.1?

4 (No response.)

5 JUDGE SCHNIERLE: Hearing none, they're admitted.

6 (Whereupon, the documents marked as
7 Sprint Statements Nos. 2.0 and 2.1
8 were received in evidence.)

9 JUDGE SCHNIERLE: Any objection to Verizon Cross-
10 Examination Exhibit 8?

11 (No response.)

12 JUDGE SCHNIERLE: Hearing none, it's admitted.

13 (Whereupon, the document marked as
14 Verizon Cross-Examination Exhibit
15 No. 8 was received in evidence.)

16 JUDGE SCHNIERLE: We'll convene at 1:00.

17 (Witness excused.)

18 (Discussion off the record.)

19 JUDGE SCHNIERLE: We're back on the record
20 momentarily.

21 MR. CLEARFIELD: This is Dan Clearfield. With
22 respect to the PCC testimony tomorrow, the first statement
23 and the first panel, Verizon has agreed at least with
24 respect to that statement to waive cross of the first panel,
25 and I wanted to make sure all the parties knew that, and I'm

1 sure no other party is going to have cross for that panel.

2 However, there is an issue of Mr. Malfara has a small
3 piece of surrebuttal that we are going to propose be
4 submitted. We have prepared that in different form and
5 provided a copy as a courtesy to counsel for Verizon, and
6 Verizon is going to review that and determine its position
7 with respect to that surrebuttal. And if the surrebuttal
8 does come in and if there is cross on it, then Mr. Malfara
9 will appear tomorrow morning.

10 JUDGE SCHNIERLE: All right.

11 MR. CLEARFIELD: But we would ask if we could --
12 well, I'll stop there.

13 JUDGE SCHNIERLE: All right.

14 MR. HICKS: Your Honor, while we're still on the
15 record, it is my understanding that if Allegiance's
16 witnesses cross has been waived, you should be aware that
17 Verizon and Penn Telecom have also worked out an arrangement
18 so that I won't have a witness on cross-examination as well.

19 MS. BENEDEK: Are we done today?

20 JUDGE SCHNIERLE: That's what I'm trying to figure
21 out. I'm also looking at SNIp LiNK, XO and Choice One.

22 MR. AUGUSTINO: Your Honor, I believe we have worked
23 out arrangements. Verizon will be waiving the cross-
24 examination of Choice One's witnesses, Mr. Bailey, and XO's
25 witness, Ms. Hudson. Mr. Abate from SNIp LiNK, however, is

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here.

MS. COYNE: Mr. Augustino, I tried to call you
yesterday on this topic.

JUDGE SCHNIERLE: Let's go off the record.

(Whereupon, at 11:51 a.m., the hearing was adjourned,
to be reconvened at 1:00 p.m., this same day.)

FORM 2

AFTERNOON SESSION

(1:00 p.m.)

1 JUDGE SCHNIERLE: Let's go back on the record.

2 Let's do the AT&T responses first.

3 Mr. Barber.

4 MR. BARBER: Thank you, Your Honor. Let the record
5 reflect that I've handed the court reporter two copies of
6 AT&T's responses to the Commission's preliminary data
7 requests in this proceeding. The one difference is that
8 we've appended a page here, which was AT&T's response to
9 Verizon's third set of interrogatories, No. 7.

10 I actually think this was an attachment in Verizon's
11 rebuttal testimony and it also was an exhibit today, but it
12 reflected the fact that subsequent to our submission to the
13 Commission, we had identified four additional -- on the
14 transport side, we had identified four additional wire
15 centers in which we had on net collocations, in which we had
16 self-provided facilities, and this tied in with the
17 transport issue.

18 And I apologize. Under appropriate circumstances, I
19 would have formally amended our response, but in the press
20 of time, we haven't had that opportunity to the extent we're
21 doing this here. So I would move for the admission of
22 ALJ-4.

23 JUDGE SCHNIERLE: Any objection?
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1 (No response.)

2 JUDGE SCHNIERLE: It's admitted.

3 (Whereupon, the document was marked
4 as ALJ Exhibit No. 4 for
5 identification, and was received in
6 evidence.)

7 MR. BARBER: Your Honor, I'd also reflect that I've
8 handed the court reporter two copies of the direct testimony
9 of Dr. John Mayo in this proceeding, AT&T Statement 2.0.
10 Verizon again, as I indicated this morning, has graciously
11 agreed to waive cross on this, and no other party had
12 identified cross-examination for Dr. Mayo.

13 So with that, by stipulation, I would move for the
14 admission of AT&T Statement 2.0.

15 JUDGE SCHNIERLE: Any objection?

16 (No response.)

17 JUDGE SCHNIERLE: It's admitted.

18 (Whereupon, the document was marked
19 as AT&T Statement No. 2.0 for
20 identification, and was received in
21 evidence.)

22 MR. BARBER: Thank you, Your Honor.

23 JUDGE SCHNIERLE: We received -- apparently there was
24 an e-mail sent this morning at 11:54 essentially asking that
25 Cavalier's -- I don't know if anybody else has had a chance

1 to see this and read. It asked that Cavalier's witness go
2 on tomorrow afternoon rather than tomorrow morning because
3 he's not here yet and he's taking a train which arrives at
4 11:00 a.m.

5 Has anybody else seen this?

6 MS. CONOVER: We saw it also at lunch.

7 JUDGE SCHNIERLE: Is that a problem?

8 MS. CONOVER: Your Honor, I think tomorrow is shaping
9 up to be a fairly short day. So, ordinarily, that would not
10 be a problem, but there are a number of witnesses that we've
11 either reached stipulations or we're waiving cross on. So I
12 think there may not even be an afternoon.

13 MR. BARBER: Well, if he can't be here till this
14 afternoon, he can't be here.

15 MS. CONOVER: That's right.

16 JUDGE SCHNIERLE: So I take it you also just saw the
17 e-mail that came in?

18 MS. CONOVER: Yes.

19 JUDGE SCHNIERLE: That's the first you've heard of
20 it?

21 MS. CONOVER: Yes.

22 JUDGE SCHNIERLE: All right.

23 MR. BARBER: It is what it is, Your Honor.

24 JUDGE SCHNIERLE: Well, we'll just have to do it as
25 best we can, I guess.

1 MR. BARBER: We could meet him at the train.

2 JUDGE SCHNIERLE: I'm trying to figure out, coming in
3 by train. Okay. Well, let's start with -- I understand
4 that a lot of these are going to be --

5 MS. CONOVER: Your Honor, I did have another
6 preliminary matter with one exhibit.

7 JUDGE SCHNIERLE: Okay.

8 MS. CONOVER: On behalf of Verizon, I handed the
9 court reporter two copies of Verizon Cross-Examination
10 Exhibit 9, which we had mentioned earlier. That is
11 essentially responses of AT&T Communications to our first
12 set of interrogatories. It is VZ-I. I've provided copies
13 to Your Honors and to all parties, and at this point I'd
14 like to move that into the record.

15 JUDGE SCHNIERLE: Any objection.

16 MR. BARBER: No objection, Your Honor; just a point
17 of clarification. These are our responses. They identify a
18 large number of buildings to which we have deployed our own
19 loops or our own capacity. Out of this list, I think
20 Verizon had identified a much smaller subset which they've
21 identified as a trigger.

22 MS. CONOVER: Correct.

23 MR. BARBER: In other words, this doesn't correspond
24 -- I mean, this is a much broader set of locations that
25 Verizon has identified as a trigger.

1 JUDGE SCHNIERLE: All right. It's admitted.

2 (Whereupon, the document was marked
3 as Verizon Cross-Examination Exhibit
4 No. 9 for identification, and was
5 received in evidence.)

6 MR. CHESKIS: Your Honor, I also have one other
7 preliminary matter as well. We had some documents that we
8 wanted to get into the record when Dr. Loube and Mr. Curry
9 were on the stand yesterday. Off the record, Verizon
10 requested an opportunity to review those documents before
11 we, in fact, put them in.

12 The company has reviewed them and, as far as I
13 understand, has no objection to their admission. I'd like
14 to distribute them now to the parties and Your Honor, as
15 well as the court reporter.

16 JUDGE SCHNIERLE: Okay.

17 MR. CHESKIS: And move for their admission. I've
18 labeled them as OCA Hearing Exhibits Nos. 1, 2 and 3. For
19 the record, I'll also note that OCA Hearing Exhibit 1 is the
20 response of CTSI to the joint parties' first set of
21 interrogatories to CLEC parties, Response No. 8, which has
22 been marked by the respondent as highly confidential. That
23 is No. 1.

24 OCA Hearing Exhibit No. 2 is a public document. That
25 is the Form 10-K filed with the United States Securities and

1 Exchange Commission for Commonwealth Telephone Enterprises.

2 OCA Hearing Exhibit No. 3 is also a public document.
3 It is portions of the Class Annual Report of FiberNet of
4 Pennsylvania filed with the Pennsylvania Public Utility
5 Commission for the year ending December 31st, 2002.

6 Like I said, the company has not indicated any
7 objection to their admission, and I'd move that they be
8 admitted into the record.

9 JUDGE SCHNIERLE: Any objection?

10 (No response.)

11 JUDGE SCHNIERLE: They're admitted.

12 MR. CHESKIS: Thank you, Your Honor.

13 (Whereupon, the documents were marked
14 as OCA Hearing Exhibits Nos. 1, 2
15 and 3 for identification, and were
16 received in evidence.)

17 MR. BARBER: I'm sorry. It's being marked as OCA
18 Cross --

19 MR. CHESKIS: OCA Hearing Exhibits 1, 2 and 3.

20 JUDGE SCHNIERLE: We don't have an attorney here on
21 behalf of Allegiance.

22 MS. CONOVER: I'm doing that on their behalf, as
23 curious as that may seem.

24 JUDGE SCHNIERLE: That's a low priced way of handling
25 this.

1 (Laughter.)

2 JUDGE SCHNIERLE: All right. Go ahead.

3 MR. BARBER: Have you seen Julie's rates lately?

4 (Laughter.)

5 MS. CONOVER: Your Honor, in discussions we had with
6 Allegiance, we had agreed that we would waive cross-
7 examination. I believe they contacted all other counsel who
8 agreed to waive cross-examination. We asked if they would
9 stipulate to the admission of two exhibits in return, and
10 they agreed to it, and I agreed to provide those documents
11 to the court and mark them into the record.

12 So, first, I have the direct testimony of Richard
13 Anderson on behalf of Allegiance Telecom, both a public
14 version and a private version, that I would like to
15 introduce into the record at this time.

16 JUDGE SCHNIERLE: That will be marked Allegiance
17 Statement No. 1.

18 (Whereupon, the document was marked
19 as Allegiance Statement No. 1 for
20 identification.)

21 MS. CONOVER: I'm providing both a public version and
22 a proprietary version to the court reporter at this time.

23 (Pause.)

24 MS. CONOVER: Then we would like to mark as exhibits
25 -- I believe the next one will be Verizon Cross-Examination

1 Exhibit No. 10 -- the Allegiance 10-K report from 2002.
2 That will be Exhibit No. 10.

3 (Whereupon, the document was marked
4 as Verizon Cross-Examination Exhibit
5 No. 10 for identification.)

6 MS. CONOVER: And I would like to mark as Verizon
7 Cross-Examination Exhibit No. 11 the Allegiance 10-K for
8 2001.

9 (Whereupon, the document was marked
10 as Verizon Cross-Examination Exhibit
11 No. 11 for identification.)

12 MS. CONOVER: And, finally, I'd like to mark as
13 Verizon Cross-Examination Exhibit No. 12 Allegiance's
14 response to Verizon Pennsylvania's first set of
15 interrogatories, Question No. VZ-2 and VZ-3.

16 (Whereupon, the document was marked
17 as Verizon Cross-Examination Exhibit
18 No. 12 for identification.)

19 MR. BARBER: That's Set I, No. 1 and 2 or Set I, No.
20 2 and 3?

21 MS. CONOVER: Yes. And I'd like to move all those
22 documents into the record.

23 JUDGE SCHNIERLE: Any objection to any of those?

24 (No response.)

25 JUDGE SCHNIERLE: They're admitted.

1 (Whereupon, the document marked as
2 Allegiance Statement No. 1 was
3 received in evidence.)

4 (Whereupon, the documents marked as
5 Verizon Cross-Examination Exhibits
6 Nos. 10, 11 and 12 were received in
7 evidence.)

8 JUDGE SCHNIERLE: I'm guessing you don't have the
9 Allegiance responses.

10 MS. CONOVER: Actually, I do.

11 JUDGE SCHNIERLE: Oh, great.

12 MS. CONOVER: I've also provided the Allegiance
13 responses to the Commission's discovery, which I believe
14 would be --

15 JUDGE SCHNIERLE: ALJ-5.

16 MS. CONOVER: ALJ-5.

17 (Whereupon, the document was marked
18 as ALJ Exhibit No. 5 for
19 identification.)

20 MS. CONOVER: And I would note that we only have a
21 proprietary version, because no public version was made.

22 JUDGE SCHNIERLE: Right, right.

23 MR. BARBER: This is ALJ-5, Your Honor?

24 JUDGE SCHNIERLE: Yes.

25 JUDGE SCHNIERLE: ALJ-5 is admitted.

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(Whereupon, the document marked as ALJ Exhibit No. 5 was received in evidence.)

JUDGE SCHNIERLE: That brings us to Penn Telecom.
Mr. Hicks?

MR. HICKS: Your Honors, much like the arrangements you've just experienced with Allegiance, Penn Telecom has developed an agreement with Verizon and has no indication that any other parties have cross-examination for Mr. Meyers, so with no questions before us, Verizon and Penn Telecom have agreed to move to enter Mr. Meyers' statement into the record with some stipulation as to exhibits that they would like to have introduced.

JUDGE SCHNIERLE: All right.

MR. HICKS: I've already provided a copy of both the public and proprietary versions of Mr. Meyers' statement, Your Honor, and marked them as Penn Telecom Statement No. 1.0.

(Whereupon, the document was marked as Penn Telecom Statement No. 1.0 for identification.)

MR. HICKS: I have additional copies for Your Honors if you'd like.

JUDGE SCHNIERLE: Yes, I would.

MR. HICKS: The parties have all been served both

1 electronically and in hard copy, so I didn't bring extras
2 for them.

3 JUDGE SCHNIERLE: Thank you.

4 MR. HICKS: Just to be clear, that is the testimony
5 of Wayne Meyers, now marked as Penn Telecom Statement No.
6 1.0. Additionally, Your Honor, I've provided to the court
7 reporter two copies of Penn Telecom responses to the
8 Pennsylvania Public Utility Commission preliminary discovery
9 request.

10 And actually, not to change up the numbering
11 sequence, but we took responsibility for them and marked
12 them PTI Exhibit No. 1.

13 JUDGE SCHNIERLE: No problem.

14 **(Whereupon, the document was marked**
15 **as Penn Telecom Exhibit No. 1 for**
16 **identification.)**

17 MR. HICKS: I have additional copies for Your Honors
18 if you'd like.

19 JUDGE SCHNIERLE: No, we've got a copy of that.

20 MR. HICKS: I therefore move that those documents be
21 admitted into the record.

22 JUDGE SCHNIERLE: Any objection?

23 MS. CONOVER: No objection, but subject to other --

24 JUDGE SCHNIERLE: Right, the agreement.

25 **(Whereupon, the documents marked as**

**Penn Telecom Statement No. 1.0 and
Penn Telecom Exhibit No. 1 were
received in evidence.)**

JUDGE SCHNIERLE: So what do you have?

MS. CONOVER: I would like to identify the record a document entitled Verizon Cross-Examination Exhibit No. 13, which is a three page document taken from the Penn Telecom web site.

JUDGE SCHNIERLE: It may be so marked.

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

MS. CONOVER: I would also like to mark as Verizon Cross-Examination Exhibit No. 14 responses from Penn Telecom, Penn Telecom's updated responses to Verizon Set I interrogatories, 1 through 4 and 8.

JUDGE SCHNIERLE: It may be so marked.

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

MS. CONOVER: I should mention for the record, 14 is proprietary to Penn Telecom.

MR. HICKS: Actually, not just proprietary but highly confidential --

MS. CONOVER: Highly confidential.

FORM 2

1 MR. HICKS: -- under the existing Protective Order.

2 MS. CONOVER: And then finally, I'd like to mark as
3 Verizon Cross-Examination Exhibit No. 15 pages from the Penn
4 Telecom competitive access tariff, pages on file with the
5 Pennsylvania Public Utility Commission.

6 JUDGE SCHNIERLE: It may be so marked.

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

10 MS. CONOVER: Your Honor, at this time I'd like to
11 move Verizon Cross-Examination Exhibits 13, 14 and 15 into
12 the record.

13 JUDGE SCHNIERLE: Any objection?

14 MR. HICKS: No objection, Your Honor, but just a
15 couple comments with respect to them. With respect to
16 Verizon Cross-Examination Exhibit No. 13, I acknowledge that
17 it is from the web site and it is what it is, but I would
18 note for the record that the third page of that exhibit
19 reflects the Penn Telecom service territory and includes
20 Butler County which is not in Verizon's service territory
21 but is in the Sprint United ILEC service territory.

22 The only other comment that I'd like to make is with
23 respect to Verizon Cross-Examination Exhibit No. 15. That
24 is the competitive access service tariff of Penn Telecom
25 found on the web site that was issued May 4, 2000, effective

1 May 5, 2000.

2 JUDGE SCHNIERLE: All right. Those exhibits are
3 admitted.

4 (Whereupon, the documents marked as
5 Verizon Cross-Examination Exhibits
6 Nos. 13, 14 and 15 were received
7 in evidence.)

8 JUDGE SCHNIERLE: Okay. I guess we've got now SNIp
9 LiNK, XO and Choice One. Any particular order you want to
10 go in?

11 MR. AUGUSTINO: Yes, Your Honor. Actually, I think
12 it may be best to take those in reverse order.

13 JUDGE SCHNIERLE: All right. We'll start with Choice
14 One.

15 MR. AUGUSTINO: Your Honor, I have provided two
16 copies to the court reporter of direct testimony of Robert
17 O. Bailey on behalf of Choice One Communications of
18 Pennsylvania, Inc. filed January 9, 2004.

19 I would like to mark that as Choice One Statement
20 1.0. The cover does not so indicate.

21 (Whereupon, the document was marked
22 as Choice One Statement No. 1.0 for
23 identification.)

24 MR. AUGUSTINO: I have additional copies for Your
25 Honors if you would like.

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JUDGE SCHNIERLE: Actually, I don't need that.

MR. AUGUSTINO: I have provided to the court reporter both the proprietary version and the public copy.

JUDGE SCHNIERLE: Why don't you give us one copy?

MR. AUGUSTINO: Certainly. Your Honor, I would note for the record that Exhibit A to that testimony are the responses of Choice One Communications to the Commission's Appendix A discovery requests, so we will not be separately moving those in.

Verizon has agreed to waive cross-examination with respect to Choice One. We did have one clarification. It's very brief. I can read it into the record but I can also provide you with a copy if you'd like to see it.

JUDGE SCHNIERLE: Well, read it into the record.

MR. AUGUSTINO: Okay, I'll read it in first. It concerns the responses to questions 3 and question 5 of the switching portion of Appendix A.

The stipulation reads, "The number of DS-0's provided by Choice One Communications of Pennsylvania, Inc. to customers in Pennsylvania is identified in its response to switching questions 3 of the Pennsylvania Public Utility Commission's Appendix A discovery requests. The response provided to switching question 5 of the Commission's Appendix A discovery requests identifies, as the question indicates, the number of customers to whom Choice One

1 provides the services identified in the question."

2 JUDGE SCHNIERLE: Let's mark it and put it in.

3 MR. AUGUSTINO: I may have not have enough copies of
4 this.

5 MS. PAIVA: I have extra copies.

6 MR. AUGUSTINO: I have two for the reporter. I have
7 one for Your Honor and I can provide -- Verizon's counsel
8 has copies.

9 JUDGE SCHNIERLE: All right. That will be Choice One
10 Exhibit 1.

11 (Whereupon, the document was marked
12 as Choice One Exhibit No. 1 for
13 identification.)

14 MR. AUGUSTINO: Your Honor, we provided the draft of
15 that to the parties yesterday, I believe. I don't believe
16 that any other parties have questions for the Choice One
17 witness.

18 JUDGE SCHNIERLE: All right. So you're moving into
19 the record Choice One Statement 1 and Choice One Exhibit 1?

20 MR. AUGUSTINO: Yes, Your Honor.

21 JUDGE SCHNIERLE: Any objection?

22 MS. CONOVER: No objection.

23 JUDGE SCHNIERLE: They're admitted.

24 (Whereupon, the documents marked as
25 Choice One Statement No. 1.0 and

1 Choice One Exhibit No. 1 were
2 received in evidence.)

3 JUDGE SCHNIERLE: I guess that would bring us to XO.

4 MR. AUGUSTINO: That will move us to XO, yes, Your
5 Honor. Now, with respect to XO, again I have provided two
6 copies to the court reporter of the public and the
7 proprietary versions. It is the direct testimony of Kristen
8 Hudson on behalf of XO Pennsylvania, Inc. dated January 9,
9 2004, and I would request that that be marked as XO
10 Statement No. 1.0.

11 JUDGE SCHNIERLE: It may be so marked.

12 (Whereupon, the document was marked
13 as XO Statement No. 1.0 for
14 identification.)

15 MR. AUGUSTINO: Would Your Honors like another copy
16 of that? I do have that.

17 JUDGE SCHNIERLE: No, we're fine.

18 MR. AUGUSTINO: And as with Choice One, I do have a
19 brief stipulation to read into the record.

20 JUDGE SCHNIERLE: Looking at this, it looks like
21 you've included the responses here also.

22 MR. AUGUSTINO: Yes, Your Honor, I'm sorry. They are
23 included as Exhibit A to that testimony.

24 JUDGE SCHNIERLE: All right.

25 MR. AUGUSTINO: Our stipulation relates to that very

1 exhibit. I'll mark this as XO Exhibit 1.

2 (Whereupon, the document was marked
3 as XO Exhibit No. 1 for
4 identification.)

5 MR. AUGUSTINO: Those are being passed down to
6 counsel at this time. Again, it relates to the Exhibit A
7 responses. The stipulation reads as follows: "XO
8 Pennsylvania, Inc. provides local exchange service to
9 business customers in Pennsylvania using analog voice grade
10 loops via the switches identified in its response to
11 switching question 1 of the Pennsylvania Public Utility
12 Commission's Appendix A discovery requests. The number of
13 DS-0's provided to business customers to whom XO provides
14 only voice grade or DS-0 lines using its own switches are
15 those appearing under the 'DS-0 Only' column in XO's
16 response to switching question 5 of the Commission's
17 Appendix A discovery requests, however, some of the DS-0's
18 reported in switching question 5 are served using T1's.

19 That was Exhibit 1. I'd like to move both of those
20 into the record. I understand that Verizon will have
21 certain cross-examination exhibits related to XO.

22 JUDGE SCHNIERLE: All right. Any objection?

23 MS. PAIVA: No objection subject to our agreement to
24 enter our exhibit.

25 JUDGE SCHNIERLE: Okay.

1 (Whereupon, the documents marked as
2 XO Statement No. 1.0 and XO Exhibit
3 No. 1 were received in evidence.)

4 JUDGE SCHNIERLE: I've got a question, Exhibit 1. Is
5 that saying that the number reported in the DS-0 Only column
6 in response to switching question 5 of the Commission's
7 Appendix A discovery requests includes DS-0's that are
8 provided over T1's as well as DS-0's that are provided as
9 individual loops? Is that what that's telling me?

10 MR. AUGUSTINO: That is correct. The numbers, if you
11 look on page seven of that Exhibit A to our Statement 1.0,
12 that's the response to question 5. There's a column that
13 reads, "DS-0 Only."

14 The numbers that are in there include customers who
15 receive an analog DS-0 but some customers may also receive
16 -- I'm sorry, let me back up.

17 What this number represents, we are not able to break
18 out the pure DS-0's from the customers who receive a DS-0 on
19 what is physically a T1 line, so those are reported in the
20 "DS-0 Only" column.

21 JUDGE SCHNIERLE: Okay. All right. Thank you.

22 Ms. Conover?

23 JUDGE SCHNIERLE: We'd like to mark as Verizon Cross-
24 Examination Exhibit No. 16 a multipage document that is
25 taken from the XO web site. That's essentially a

1 description of their services.

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

5 MS. CONOVER: And we'd like to move that into the
6 record at this time.

7 JUDGE SCHNIERLE: Any objection?

8 (No response.)

9 JUDGE SCHNIERLE: It's admitted.

10 (Whereupon, the document marked as
11 Verizon Cross-Examination Exhibit
12 No. 16 was received in evidence.)

13 JUDGE SCHNIERLE: Is that it on XO, then?

14 MS. CONOVER: Yes.

15 JUDGE SCHNIERLE: Which brings us to SNIp LiNK.

16 MR. AUGUSTINO: Yes, Your Honor. With respect to
17 SNIp LiNK, I have three pieces of testimony. I think we
18 should take them one at a time because I understand Verizon
19 has certain issues.

20 So I will start with the direct testimony of Anthony
21 Abate on behalf of SNIp LiNK.

22 JUDGE SCHNIERLE: All right.

23 MR. AUGUSTINO: We have direct testimony filed
24 January 9, 2004. I have provided two copies to the court
25 reporter, both public version and a proprietary version. I

1 would like to have them marked as SNIp LiNK Statement 1.0.

2 (Whereupon, the document was marked
3 as SNIp LiNK Statement No. 1.0 for
4 identification.)

5 MR. AUGUSTINO: I understand that Verizon has no
6 cross-examination questions with respect to this aspect of
7 the testimony. I do not have any additional stipulations
8 either.

9 JUDGE SCHNIERLE: All right. Before you go any
10 further, the copy that I got, the hard copy that I got of
11 that is proprietary version with public exhibits. Does that
12 mean that the exhibits are all public?

13 MR. AUGUSTINO: Yes, Your Honor. There was only one
14 exhibit to that, and that was an exhibit describing the loop
15 triggers and the transport triggers, and it's not
16 proprietary.

17 JUDGE SCHNIERLE: Okay, it's not proprietary. All
18 right. There's not a proprietary version with proprietary
19 exhibits, is what I'm getting at?

20 MR. AUGUSTINO: You're correct. There are no
21 proprietary exhibits.

22 JUDGE SCHNIERLE: All right. Any objection to
23 admission of SNIp LiNK 1.0?

24 (No response.)

25 JUDGE SCHNIERLE: It's admitted.

1 (Whereupon, the document marked as
2 SNIp LiNK Statement No. 1.0 was
3 received in evidence.)

4 MR. AUGUSTINO: Secondly, Your Honor, then I would
5 like to mark SNIp LiNK Statement 1.1. It is rebuttal
6 testimony on behalf of Anthony Abate filed January 20, 2004.
7 I have both a public version and a proprietary version.

8 JUDGE SCHNIERLE: It may be so marked.

9 (Whereupon, the document was marked
10 as SNIp LiNK Statement No. 1.1 for
11 identification.)

12 MR. AUGUSTINO: We did not receive word from Verizon
13 in time, so Mr. Abate is in the room today, but I understand
14 that Verizon may have an objection with respect to the
15 admission of this exhibit.

16 MS. COYNE: Yes, Your Honor, we do, if I could
17 address that for a second. Verizon does not object to the
18 first essentially three pages of the rebuttal testimony.
19 That would be page one to the top of page three.

20 That's perfectly appropriate rebuttal testimony. In
21 that testimony, Mr. Abate is taking issue with a proposal
22 made by Allegiance to rely on the Commission as some sort of
23 clearinghouse for the accuracy of transport facts.

24 From page three to the end, including the
25 attachments, this is not rebuttal testimony. It's not

1 consistent with your directive on January 5th that basically
2 friendly testimony not come in in the form of rebuttal.

3 And here I use "friendly" not in terms of supporting
4 another CLEC but in terms of supporting SNiP LiNK's first
5 testimony.

6 What happens in pages three through eight and the
7 attachments is they use the Allegiance's testimony as a
8 launching pad for introducing their own new analyses of the
9 CLEC responses to the Commission's discovery.

10 Commission's discovery responses had come in prior to
11 that point, prior to the direct, which could have been in
12 the direct testimony had they so chosen.

13 There's not one word about Allegiance from page three
14 to page eight or in the attachment. It's simply brand new
15 analyses supporting SNiP LiNK's original position.

16 And for that reason, we think that it's inappropriate
17 rebuttal and we would ask you to strike it.

18 MR. AUGUSTINO: Your Honor, for the record, I'd like
19 to note first of all that this morning was the first that I
20 heard that Verizon would have an objection to Statement 1.1.
21 They did not file any objection prior to this, so I am
22 dealing with this. This is the first time I heard Ms.
23 Coyne's explanation of this.

24 Nevertheless, I believe that those portions --

25 JUDGE SCHNIERLE: Do you want to take a few minutes

1 to --

2 MR. AUGUSTINO: No, I think I can respond to it.

3 MS. COYNE: I did tell SNIp LiNK's counsel prior to
4 lunch that I would have an objection and I would move to
5 strike a portion of this testimony, so I don't think I am
6 sandbagging you.

7 MR. AUGUSTINO: I apologize, yes. You did tell me
8 about an hour ago. That was the first that I heard. I did
9 not hear the explanation until just now. But nevertheless,
10 Your Honor, I am prepared to respond to it.

11 Mr. Abate's exhibit, they flow directly from the
12 point that I understand Verizon does not have any objection
13 to, which is we opposed Allegiance's suggestion because we
14 believe the evidence is already available to the Commission
15 and can easily be compiled.

16 In fact, Mr. Abate in Statement 1.0 did refer to this
17 at page 14, saying this was the best way to identify the
18 potential routes.

19 And all that Attachments A and B and the text that is
20 provided in his testimony on pages three through eight, it
21 explains how those exhibits are created.

22 They were created, I will note, from the parties'
23 responses to Appendix A of the Commission's discovery
24 requests which we are now admitting into the record, so they
25 all deal with record evidence in any event.

1 So for those reasons, I think that that portion of
2 the testimony should also be admitted.

3 MS. COYNE: If I may respond?

4 JUDGE SCHNIERLE: I'll tell you, when I read that, I
5 said, there's going to be a motion to strike here, and it's
6 going to be granted. I agree with Verizon on this. That
7 should have been in the direct testimony. That analysis
8 should have been in the direct testimony. The motion to
9 strike is granted.

10 I don't know how you want to handle this from a
11 logistic sense. We could just note on the record that the
12 balance is stricken and we won't rely on it when we write
13 our decision.

14 MS. COYNE: That's fine with me, Your Honor. My
15 proposal would be to strike everything in the document after
16 line five on page three through to the end, although if SNiP
17 LiNK wants we could include lines 12 and 13: "Does this
18 conclude your testimony?" "Yes, it does."

19 MR. AUGUSTINO: I'm sorry, Your Honor, I would
20 believe that on page three, the alternative proposal and the
21 explanation of the alternative proposal is still a response
22 to Allegiance's testimony and that that explanation all the
23 way through to line 19 should be included.

24 JUDGE SCHNIERLE: Let me take a look at that.

25 MR. AUGUSTINO: The two exhibits are compiling

1 evidence which is going to be in the record by the end of
2 this hearing and it certainly could be attached to the
3 brief.

4 MS. COYNE: I'm fine. If we want to strike
5 everything from line 20 on page three to the end of the
6 document including the attachments, that's perfectly
7 acceptable.

8 JUDGE SCHNIERLE: Is that all right with you?

9 MR. AUGUSTINO: I believe that implements Your
10 Honor's ruling.

11 JUDGE SCHNIERLE: I mean, we can alternatively go
12 through, you know, page by page, but I think that's a
13 reasonable point. All right. SNIp LiNK Statement 1.1 from
14 the cover page through line 19 on page three is admitted.

15 **(Whereupon, the document marked as**
16 **SNIp LiNK Statement No. 1.1 was**
17 **was received in evidence.)**

18 JUDGE SCHNIERLE: The balance of that statement and
19 the two attached exhibits are not admitted. Does that take
20 care of SNIp LiNK, then, or do you have --

21 MR. AUGUSTINO: There's a Statement 1.2, the
22 supplemental rebuttal testimony.

23 JUDGE SCHNIERLE: Sorry. Yes, okay, go ahead.

24 MR. AUGUSTINO: Which I would like to mark -- it is
25 supplemental rebuttal testimony of Anthony Abate dated

1 January 21, 2004.

2 And I would offer it into the record. I understand,
3 Your Honor, based upon your previous ruling, that the
4 attachments I understand would be stricken for the same
5 reasons.

6 However, there is one exhibit I think we may have to
7 address separately.

8 JUDGE SCHNIERLE: All right. And I don't believe
9 that I've received a hard copy of that yet, so if you've got
10 hard copies for us, it would be helpful.

11 MS. COYNE: And Your Honor, I'm sure it's because of
12 the time frame of the hearing, but I have never seen this
13 testimony and I'm not entirely certain when it was filed.

14 MR. AUGUSTINO: I apologize. It was filed. I will
15 provide you with copies.

16 MS. CONOVER: This is supplemental. It's all
17 together.

18 MR. BARBER: January 21st.

19 MS. COYNE: I'm sure it's my error. I've been
20 advised by co-counsel that we did in fact get it.

21 MR. AUGUSTINO: It's the same analysis as in 1.1,
22 Your Honor, except that it includes additional information
23 that only became on January 20th.

24 JUDGE SCHNIERLE: Oh, all right. I take that back.
25 Maybe I do have it. This is called supplemental. I'll take

1 one just so I have it. All right.

2 MS. COYNE: And I would have the same motion and the
3 same result would flow from this.

4 JUDGE SCHNIERLE: All right. This has been marked
5 SNIp LiNK Statement 1.2.

6 (Whereupon, the document was marked
7 as SNIp LiNK Statement No. 1.2 for
8 identification.)

9 JUDGE SCHNIERLE: And I take it we have the same
10 problem with this as with the other?

11 MR. AUGUSTINO: Your Honor, with Statement 1.2, the
12 two attachments are the same, provide the same analysis as
13 in the portions of Statement 1.1 that were stricken,
14 however, it includes additional information that came from
15 one carrier.

16 So if Verizon objects to this also and Your Honor
17 also grants it, I would like to address Attachment C
18 separately.

19 What it provides, Your Honor, is Attachments A and B,
20 Attachment A used the CLEC discovery response information to
21 compile the possible route for transport. Attachment B uses
22 the CLEC information for the loop triggers.

23 The difference is that we had served a subpoena on
24 AboveNet because Verizon had not sought any testimony from
25 AboveNet or any information from AboveNet.

1 We served a subpoena. We received that on the
2 afternoon of January 20th, not in time to submit it with our
3 testimony on the 20th, so we submitted it on the 21st, the
4 very next day.

5 JUDGE SCHNIERLE: Okay. So what you're looking to do
6 is basically just admit Appendix 1 which is the response
7 that you received from AboveNet?

8 MR. AUGUSTINO: Right. What is marked as
9 Supplemental Attachment C is the response from AboveNet and
10 I would move that in as a SNIp LiNK exhibit.

11 JUDGE SCHNIERLE: Well, it looks like the rest of it
12 is objectionable for the same reason as the last statement.
13 Does Verizon object to admission of Supplemental Attachment
14 C, the AboveNet discovery response? And if you don't, then
15 we're just going to mark it as like SNIp LiNK Exhibit 1 or
16 something like that. We'll separate it from the rest.

17 MS. COYNE: What I would like is to see precisely
18 what you got from AboveNet, and could we put in the
19 subpoena, the questions, the full response, the cover
20 letter, whatever the package is? That way we will be able
21 to put the data in context for AboveNet.

22 MR. AUGUSTINO: We could certainly provide all of the
23 pages. However, I will note that what is Exhibit C was
24 Appendix 1 to our subpoena.

25 What AboveNet did is that they, as you see, they

1 repeated our questions, A, B, C and D. The response to each
2 says, "See below table," and then on the table the right
3 hand columns, the four columns on the right, A, B, C and D
4 are AboveNet's information and their response.

5 MS. COYNE: And that's fine, and I do not disagree
6 that we should get all pertinent information into the
7 record. But if we could put the complete set of documents
8 in, your letter, the subpoena, any declarations, whatever
9 else is part of that evidentiary package so we could have
10 that fully in the record, and then, by all means, let's put
11 the additional information in.

12 JUDGE SCHNIERLE: Are you going to be here tomorrow?

13 MR. AUGUSTINO: I was not planning to be here
14 tomorrow, Your Honor.

15 JUDGE SCHNIERLE: Okay.

16 MR. AUGUSTINO: I can find a way to put the paper
17 together as Verizon requests. It adds a couple more pages
18 to this. We did request the subpoena.

19 JUDGE SCHNIERLE: Yes, I recall that. They did
20 request a subpoena, and a matter of fact I think somebody
21 has already sent us the answer, I believe.

22 MR. AUGUSTINO: AboveNet's counsel, Ms. Sanford,
23 e-mailed all of the parties on the 20th. I had agreed to
24 make sure I forwarded it to everybody, but AboveNet's
25 counsel had done that on the 20th.

1 JUDGE SCHNIERLE: I thought I had seen that.

2 Are you agreeing to admit whatever the entire package
3 is?

4 MS. COYNE: Yes, Your Honor. I mean, Verizon's
5 position is, the more information the better, let's make it
6 accurate.

7 JUDGE SCHNIERLE: I'm going to deny --

8 MR. AUGUSTINO: Yet you would not like to see the
9 compilation of the information --

10 JUDGE SCHNIERLE: Right. I'm going to deny the
11 admission of SNIp LiNK Statement 1.2. Why don't we do this.
12 Let's go off the record for a minute.

13 (Discussion off the record.)

14 JUDGE SCHNIERLE: We'll go back on the record.

15 Here's how we're going to handle this. SNIp LiNK
16 Exhibit 1 is going to be the subpoena to AboveNet and the
17 ensuing response. It is admitted, and counsel will provide
18 it to the parties, to the Judges and to the court reporter
19 by mail as expeditiously as possible.

20 (Whereupon, the document was marked
21 as SNIp LiNK Exhibit No. 1 for
22 identification and received in
23 evidence.)

24 MR. AUGUSTINO: Yes, we will, Your Honor.

25 JUDGE SCHNIERLE: And everybody understands, it

1 includes the subpoena and the entire response from AboveNet.
2 Is that satisfactory, Ms. Coyne?

3 MS. COYNE: That's satisfactory. Thank you, Your
4 Honor.

5 JUDGE SCHNIERLE: All right.

6 MR. AUGUSTINO: Your Honor, just for clarification
7 purposes, these two exhibits, the two attachments, the
8 compilations, as I said, I believe all of this is going to
9 be record evidence by the time this hearing closes, so it
10 would be our intention to attach this into the exhibit, so
11 we really haven't prejudiced Verizon in any way. We've
12 actually given them several weeks advance notice of what our
13 exhibits is going to look like.

14 I just want to make sure that there's nothing in your
15 ruling that precludes us from attaching record evidence into
16 our brief when that rolls around.

17 JUDGE SCHNIERLE: Are you saying, when you say
18 "record evidence," what specifically are you talking about?

19 MR. AUGUSTINO: The data that --

20 JUDGE SCHNIERLE: All right. You're saying, can you
21 do the same compilation in brief and argue from it?

22 MR. AUGUSTINO: All of the responses are in the
23 record or are going to be in the record, depending upon
24 which of the ten carriers that we did here, where we stand
25 at this point.

1 And it would be our intention to then compile record
2 evidence to produce to the Commission a list which we
3 believe is the only one that could possibly --

4 JUDGE SCHNIERLE: Yes, yes. I mean, if it's evidence
5 in the record, you can use it in the brief.

6 MR. AUGUSTINO: Thank you, Your Honor.

7 JUDGE SCHNIERLE: Now, I take it that takes care of
8 SNiP LiNK?

9 MR. AUGUSTINO: Yes.

10 JUDGE SCHNIERLE: Now, tomorrow, as I understand it,
11 we've got some of the CLEC Coalition and --

12 MR. BARBER: Cavalier.

13 JUDGE SCHNIERLE: -- some of the Pennsylvania Carrier
14 Coalition and Cavalier that we've got cross of. Is that
15 where we are?

16 MS. PAIVA: Yes, Your Honor. We agreed to waive
17 cross on the first PCC panel, the Schwenke, Malfara and
18 Dulin.

19 JUDGE SCHNIERLE: Yes.

20 MS. PAIVA: But we will have cross for the Dulin and
21 Honeywell.

22 JUDGE SCHNIERLE: Honeywell one, okay. That's what I
23 thought.

24 MR. BARBER: And I guess -- well, PCC's counsel is
25 here, but I heard Mr. Clearfield say this morning that

1 notwithstanding Verizon waiving cross on the first panel, he
2 was planning on bringing Mr. Malfara here and offering
3 surrebuttal.

4 JUDGE SCHNIERLE: Surrebuttal, right.

5 MS. PAIVA: Actually, I understand that Mr. Malfara
6 will not be coming but Mr. Clearfield has a written piece of
7 surrebuttal he wants to offer.

8 We object to it, but we're going to state our
9 objection on the record and agree to let it in and then the
10 witness doesn't actually have to be here in person.

11 JUDGE SCHNIERLE: All right. Is there a sense that
12 you want to start at ten instead of nine?

13 MR. BARBER: That would be a consensus, Your Honor.

14 MS. CONOVER: That makes sense.

15 JUDGE SCHNIERLE: Is Mr. Clearfield --

16 MR. MOSCA: Your Honor, Bill Mosca here.

17 JUDGE SCHNIERLE: You'll -- okay. All right. In
18 that case, the hearing is adjourned until -- yes?

19 MR. AUGUSTINO: I apologize, Your Honor. I did have
20 two housekeeping issues.

21 JUDGE SCHNIERLE: Okay.

22 MR. AUGUSTINO: I had mentioned, I also represent
23 Focal Communications Corporation.

24 JUDGE SCHNIERLE: Right.

25 MR. AUGUSTINO: And I had planned to admit their

1 Appendix A responses.

2 JUDGE SCHNIERLE: Right.

3 MR. AUGUSTINO: I checked my boxes and unfortunately
4 I did not have copies in there, so I'd like to request leave
5 to submit those as late-filed exhibits.

6 Focal Communications does not have testimony. They
7 did not file testimony in this case.

8 JUDGE SCHNIERLE: Right. I'll tell you what. If
9 that's the only one that we're going to be short on, I think
10 we'll probably just try to do that ourselves tomorrow so
11 that the thing is as clean as possible, basically, all
12 right? And you say you had another --

13 MR. AUGUSTINO: Yeah, I had a question. I'm not sure
14 whether this should be on the record or off the record.

15 JUDGE SCHNIERLE: Okay, we're off the record.

16 (Discussion off the record.)

17 JUDGE SCHNIERLE: Let's go back on the record. I
18 think I'm prepared to make a ruling, but I want you to put
19 the arguments you just made on the record. So we're going
20 to go back on the record and go over it again.

21 I mean, there's really no time to hear anything, you
22 know, get a written motion and all that stuff. Mr.
23 Augustino, would you repeat what you just said, what you
24 requested of Verizon?

25 MR. AUGUSTINO: Yes, Your Honor. The Loop Transport

1 Carrier Coalition has served discovery requests upon Verizon
2 and those discovery requests, the responses are due this
3 Friday, January 30th.

4 There are four questions to that that, unfortunately
5 I don't have it in front of me so I can't give you the
6 specific numbers. There are four questions that ask Verizon
7 to report the number of UNEs, special access circuits or
8 dark fiber that Verizon provides to the trigger candidates.

9 And one question asks with respect to transport, one
10 asks with respect to loop, the next two questions ask with
11 respect to transport and loops but where only one end of the
12 transport route, one of the collocations is identified.

13 So the first two questions ask, on the A to Z route,
14 identify where you're providing UNEs and special access or
15 dark fiber to those carriers. The second set of questions
16 asks, on either the A or Z location, provide the same
17 information.

18 Verizon's counsel has indicated that they would
19 object to that. We believe that the information is
20 relevant. It certainly will go to Verizon's contention that
21 the carriers are using these two collocations to provide
22 transport between that location.

23 We also believe that it is within the bounds of
24 proper discovery. We believe that Verizon has sufficient
25 time to respond and collect that information.

1 I would note also that this information is very
2 similar to information that AT&T introduced into the record
3 earlier today during the live surrebuttal testimony.

4 JUDGE SCHNIERLE: Go ahead.

5 MS. PAIVA: And the nature of Verizon's objection
6 first is on the basis of relevance. We do not agree that
7 this information would be relevant to this case.

8 As you heard Mr. Peduto explain this morning, the
9 mere fact that a carrier may have UNE transport on a route
10 does not necessarily prove that they are not ready to
11 self-provision, operationally ready to self-provision their
12 own transport for several reasons.

13 First of all, they may have -- should I stop for a
14 minute?

15 JUDGE SCHNIERLE: Yes, stop for a minute.

16 (Pause.)

17 JUDGE SCHNIERLE: We're off the record.

18 (Discussion off the record.)

19 JUDGE SCHNIERLE: I think we're quiet again. Go
20 ahead.

21 MS. PAIVA: Okay. I'm not exactly sure where the
22 interruption from the noise came in.

23 JUDGE SCHNIERLE: Well, you talked about Mr. Peduto's
24 testimony.

25 MS. PAIVA: Right. And Mr. Peduto testified that

1 there could be other reasons that a carrier might have UNE
2 transport on a route such as that they had that in place for
3 a number of years and they just haven't yet gotten around to
4 removing it.

5 They also could have it in place for redundancy, but
6 that does not prove that they are also operationally ready
7 to provide, self-provision their own transport, so that the
8 information would not necessarily add anything of relevance
9 to the case.

10 Another basis for objection is, at this late date,
11 this is the type of information, whether a carrier has UNE
12 transport, special access or its own loops, this is
13 information that should be within the possession of each
14 carrier itself.

15 If the carriers had believed that it was relevant,
16 they could have tried to bring it in in their testimony from
17 their own records and they have not done so.

18 So we don't view it as proper to now at this late
19 date try to ask Verizon to go through the exercise of
20 compiling all this information on short notice.

21 And our final point is that this discovery was asked
22 to us in a way, in a time schedule that made it due on the
23 30th, which was the last scheduled day of the hearings.

24 And even had we answered it, we believe that was too
25 late. At this point, we exercised our right to object and

1 it just would take a long time, even if we were ordered to
2 compile it, it would take a long time to put that sort of
3 information together to a point where it wouldn't be able to
4 be done in time to get into the record before the date of
5 the closing of the record.

6 Also, we had given our oral objections last
7 Wednesday, last week, and counsel waited until today to
8 raise it with Your Honor. That leaves us even less time to
9 deal with the issue.

10 Finally, there has been no proffer as to why this
11 would be relevant for loops where the standard is different.

12 JUDGE SCHNIERLE: All right, here we go. Let me ask
13 one question of Verizon. Does Verizon acknowledge that
14 beyond AT&T, there are trigger candidates that purchase
15 access over the routes for which Verizon has identified them
16 as trigger candidates?

17 MS. PAIVA: Your Honor --

18 JUDGE SCHNIERLE: You don't know?

19 MS. PAIVA: I don't know anything more beyond what
20 Mr. Peduto said.

21 JUDGE SCHNIERLE: Well, I think the information is --
22 I am going to deny the motion to compel because of the
23 timeliness issue, but I don't agree at all that the
24 information is irrelevant.

25 So it's already in the record that AT&T at least is

1 doing that. If you want to argue that the Commission should
2 take an inference that there are other similar trigger
3 candidates, go ahead. I mean, that's basically, as far as
4 I'm concerned, it's in the record that it's happening, but
5 it's too late, given the time pressures on this, to move
6 through that now.

7 And basically, consider that ruling made here. If
8 you want to take an interlocutory review or try to to the
9 Commission, just cite to the transcript.

10 MR. AUGUSTINO: Thank you.

11 JUDGE SCHNIERLE: All right?

12 MS. PAIVA: Thank you, Your Honor.

13 JUDGE SCHNIERLE: Anything else before we adjourn
14 today?

15 MS. PAIVA: Your Honor, I have one housekeeping
16 thing. We have Verizon's answers to the Commission's
17 discovery. Would you like to mark those as well?

18 JUDGE SCHNIERLE: Yes. Weren't those an exhibit to
19 your testimony?

20 MS. BENEDEK: I think they were.

21 MS. PAIVA: They were attached to the petition, so
22 does that get them in the record?

23 MS. BENEDEK: Oh, that's right.

24 JUDGE SCHNIERLE: Oh, okay. They were attached to
25 the petition but they were not included as an exhibit to any

1 of the testimony.

2 MS. PAIVA: That's correct.

3 JUDGE SCHNIERLE: All right, I misunderstood that.
4 Okay, yes, it would be helpful then to do that. Do you want
5 a Verizon number for it or an ALJ number?

6 MS. PAIVA: I think we can make them a Verizon.
7 Verizon 17, or --

8 MR. BARBER: Actually, it wouldn't be a cross
9 exhibit.

10 MS. CONOVER: Actually, it should be Verizon Hearing
11 Exhibit 2, I think.

12 JUDGE SCHNIERLE: Yes, I think that's right. It
13 would be Verizon Exhibit 2.

14 (Whereupon, the document was marked
15 as Verizon Hearing Exhibit No. 2
16 for identification.)

17 (Pause.)

18 MS. PAIVA: So we don't keep everybody, why don't we
19 just mark it as that and first thing in the morning we'll
20 just hand out the copies.

21 JUDGE SCHNIERLE: All right. It will be marked as
22 that.

23 MR. BARBER: Aren't we moving to another hearing room
24 tomorrow, Your Honor?

25 JUDGE SCHNIERLE: Yes.

1 (Pause.)

2 JUDGE SCHNIERLE: Oh, I'm being informed that it's
3 Verizon Exhibit 3, not 2 -- oh, I'm sorry, Hearing Room 3,
4 which is downstairs, and hopefully the heating fans won't
5 kick on.

6 As I'm sitting here, I had a thought about this, and
7 I'm not sure I'm ready to fully articulate it but I'm going
8 to try.

9 I think that regardless of the parties' positions on
10 the whole dedicated transport issue, I really believe that a
11 major problem -- and this wraps over to the switching, too,
12 a little bit -- a major problem with this case has been just
13 the general lack or confusion about data that's required,
14 that the Commission needs to evaluate this stuff.

15 And I think some thought might be given to a
16 recommendation that can be made to the Commission for some
17 sort of going-forward formal rules about what parties have
18 to report periodically so that the Commission has some basis
19 on which to evaluate these claims.

20 That's about the best I can describe it. I mean,
21 pretty clearly, there's been I think a lot of confusion
22 simply due to the lack of common definitions and that sort
23 of thing. And some thought has to be given.

24 I mean, this is obviously not going to be the last of
25 these, and I sure hope for the next one we don't spend

1 several months just trying to get the numbers straight going
2 in. Hopefully we'll at least get the definitions straight
3 this time.

4 All right. With that thought, we're adjourned until
5 tomorrow morning at ten in Hearing Room 3. Thank you.

6 (Discussion off the record.)

7 (Whereupon, at 2:12 p.m., the hearing was adjourned,
8 to be reconvened at 10:00 a.m., Thursday, January 29, 2004,
9 in Hearing Room 4, Harrisburg, Pennsylvania.)
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C E R T I F I C A T E

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

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