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COMMONWEALTH OF PENNSYLVANIA

PUBLIC UTILITY COMMISSION

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

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Further Hearing

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 Pages 250 through 517

Hearing Room No. 1
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 Harrisburg, Pennsylvania

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Tuesday, January 27, 2004

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BEFORE:

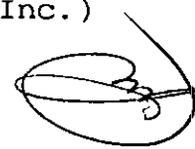
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P R O C E E D I N G S

1
2 ADMINISTRATIVE LAW JUDGE MICHAEL C. SCHNIERLE: This
3 is the time and place set for further hearing in the matter
4 of the Commission's investigation into the unbundling
5 obligations of incumbent local exchange carriers, Docket No.
6 I-00030099. My name is Michael Schnierle. Susan Colwell
7 and I are assigned to preside over this matter.

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 and
13 MetTel of Pennsylvania; Michelle Painter for MCI WorldCom;
14 Kandace Melillo for the Commission's Office of Trial Staff;
15 Dan Clearfield for the Pennsylvania Carriers' Coalition;
16 Julia Conover, Suzan Paiva and Mary Coyne for Verizon;
17 Angela Jones for the Office of Small Business Advocate;
18 Philip McClelland and Joel Cheskis for the Office of
19 Consumer Advocate; and Sue Benedek for Sprint.

20 Is there anybody else who wasn't here yesterday who
21 wishes to enter an appearances?

22 (No response.)

23 JUDGE SCHNIERLE: No. I note one preliminary matter.
24 We've been handed a motion for admission pro hac vice on
25 behalf of the Pennsylvania Carriers' Coalition requesting

1 the admission of William K. Mosca, Jr., to be admitted to
2 appear on behalf of Pennsylvania Carriers' Coalition.

3 Is there any objection?

4 (No response.)

5 JUDGE SCHNIERLE: It's granted.

6 MR. CLEARFIELD: Thank you, Your Honor.

7 JUDGE SCHNIERLE: All right. At this time, I guess
8 we're proceeding with the further cross-examination of Mr.
9 Peduto and Mr. West. As of yesterday, we heard from these
10 witnesses from Mr. Augustino, Mr. Barber, Mr. McClelland and
11 Ms. Benedek.

12 Does anybody in particular want to go next?

13 MR. BUNTROCK: Yes, Your Honor.

14 JUDGE SCHNIERLE: Go ahead.

15 **Whereupon,**

16 **CARLO MICHAEL PEDUTO, II**

17 **HAROLD E. WEST, III**

18 **having previously been duly sworn, testified further as**
19 **follows:**

20 **CROSS-EXAMINATION**

21 **BY MR. BUNTROCK:**

22 Q. Good morning, Mr. West and Mr. Peduto. My name
23 is Ross Buntrock. I'm here representing the group that has
24 been referred to in this proceeding as the CLEC Coalition, a
25 group of carriers, InfoHighway, Broadview Networks, BullsEye

1 Telecom, McGraw Communications and MetTel of Pennsylvania,
2 and I have some questions that are directed mostly to Mr.
3 West.

4 My first couple questions are just clarifications
5 regarding your testimony, and the rest I'm going to work in
6 some points that you touched on pretty heavily with Mr.
7 Barber yesterday.

8 My first question pertains to your initial testimony
9 at page 21, line 18. You're talking about the line count
10 study. You indicate that "Verizon identified, by wire
11 center, all CLECs leasing loops below the DS-1 level, that
12 is, two-wire or four-wire stand-alone voice grade loops,
13 including EELs."

14 A. (Mr. West) Yes.

15 Q. I just had a question regarding what kind of
16 service is provided over a 4-wire EEL?

17 A. (Mr. West) I'm not sure that -- I thought the
18 breakdown was two-wire copper loops, four-wire copper loops,
19 and then DS-0 EELs.

20 Q. Okay.

21 A. (Mr. West) I'm not aware of a 4-wire EEL.

22 Q. I wasn't either. That's why I was trying to
23 clarify what you meant there.

24 A. (Mr. West) Okay.

25 Q. The second clarification I have has to do with

1 some testimony you put on the record in your rebuttal at
2 page 34 talking about Broadview. It starts at 34, line 21
3 and goes over to page 35.

4 Actually, the part I want to ask you about is
5 starting at line 1 on page 35 and continuing down through
6 the end of line 4. You said that Broadview admits that it
7 has deployed a total of four local switches, built 175
8 collocation cages and provisioned 150,000 lines in the
9 northeast footprint, which includes Pennsylvania.

10 A. (Mr. West) Right.

11 Q. My question to you is did you conduct any
12 Pennsylvania specific analysis of the Broadview network or
13 do any investigation regarding where the Broadview collos
14 are, the number of lines, and so on to break out that data?

15 A. (Mr. West) That we attribute to your witness.

16 Q. Okay. I'm asking did you -- I guess I'm trying
17 to figure out what you believe Broadview has in Pennsylvania
18 or if you did any analysis of that.

19 A. (Mr. West) Hold on.

20 (Pause.)

21 A. (Mr. West) Back in the direct on page 19, we
22 did identify one switch belonging to Broadview that we felt
23 was doing local circuit switching in Pennsylvania.

24 Q. And do you know how many voice grade DS-0's are
25 served off of that one switch?

1 A. (Mr. West) Do not.

2 Q. Do you know how many collocations Broadview has
3 in Pennsylvania?

4 A. (Mr. West) I believe according to their
5 testimony it's 13.

6 Q. Right. It's 13 in the Philadelphia MSA
7 specifically. I just wanted to try to break that data out
8 in a little more detailed fashion.

9 I guess that gets to a point that Mr. Barber was
10 raising with respect to the line study that you conducted
11 that you referred to throughout your testimony and in
12 Attachment 5.

13 A. (Mr. West) Okay.

14 Q. What kind of analysis did you do to validate the
15 data in Attachment 5? You have Verizon numbers. You have
16 CLEC numbers. I guess the question is did you undertake any
17 independent analysis of the data or you just simply plugged
18 in the numbers that you got from the Commission data
19 responses?

20 A. (Mr. West) Well, on the CLEC side, just to be
21 clear, we did two things. We looked at residence E-911 data
22 for three cable companies.

23 MS. CONOVER: I'm sorry. I think you said on the
24 CLEC side.

25 WITNESS WEST: I apologize. On the Verizon count

1 side, which is the second-to-last column in Attachment 5,
2 these numbers are an amalgam of actually studies. One is
3 where we looked at the residence E-911 data to try and
4 capture lines served by cable companies, three known
5 operating cable companies here in Pennsylvania. Broadview,
6 obviously, isn't one of those.

7 JUDGE COLWELL: Excuse me. I can hardly hear what
8 you're saying. Would you keep your voice up, please?

9 WITNESS WEST: Sure.

10 JUDGE COLWELL: Thank you.

11 WITNESS WEST: The other thing we did was the line
12 count study. That's a study of all the UNE-Ls that CLECs
13 are purchasing from Verizon. We did a number of things. We
14 were able to associate the UNE-Ls with wire centers. We
15 were able to associate the UNE-Ls with the CLEC that is
16 purchasing the UNE-L, and we were also able to put them in
17 buckets of customer size, if you will, per location.

18 So we knew how many -- in any given wire center how
19 many for any given carrier where the carrier is serving just
20 one DS-0 to the customer. Maybe it's two. Maybe it's four.
21 Maybe it's nine. Maybe it's 20. That's the sort of level
22 of detail that we were able to generate using our own
23 internal systems for the line count study.

24 Q. You testified yesterday in response to Mr.
25 Barber's questions that all of the lines that you count in

1 the Verizon count are DS-0 loops; is that right?

2 A. (Mr. West) Yes.

3 Q. Can you tell me how many, I guess by percentage
4 if it's easier, of the Verizon loops serve residential
5 lines, analog residential lines?

6 A. (Mr. West) I know we had a little bit of this
7 with AT&T yesterday. I don't know the exact numbers.
8 Residence was over 4 million and business is I gather on the
9 order of maybe 2 million. That's roughly the percentage.

10 Q. Let me just back up a second. You testified
11 that the mass market in Pennsylvania consists of analog
12 lines limited to POTS lines that can be economically served
13 via DS-0 loops. That was in your rebuttal.

14 Among the mass market, would you agree that
15 approximately 80 percent of the mass market in Pennsylvania
16 consists of residential lines?

17 A. (Mr. West) I mean, that's probably right,
18 because the business count that I gave you is all business.
19 It's enterprise plus smaller business.

20 Q. But 80 percent of the total market is probably
21 residential?

22 A. (Mr. West) If say roughly 4 million lines are
23 residence, that would make sense to me.

24 Q. Okay. Then you went through a line of
25 questioning both in response to Mr. Barber and to Judge

1 Schnierle indicating that it's Verizon's position that if a
2 trigger candidate serves basically one DS-0 loop or one DS-0
3 line that they are, in fact, a trigger candidate; is that
4 right?

5 A. (Mr. West) That's very extreme, but yes.

6 Q. And you made a big point in your rebuttal and in
7 your direct about the fact that there is no requirement in
8 the TRO that switches serve residential customers.

9 A. (Mr. West) No. That's not exactly what I said.
10 What I said was the TRO defines mass market customers as
11 customers that use some limited number of DS-0's. Those
12 could be residence customers. Those could be business
13 customers.

14 I think the point that I was arguing with Mr. Barber
15 was do you have to serve both for that particular CLEC to
16 count as a trigger candidate.

17 Q. Right.

18 A. (Mr. West) And our position is no, you do not.

19 Q. Okay. That leads me to my next question, which
20 is on page 36 of your rebuttal, you put some testimony in
21 the record regarding one of the trigger candidates whose --
22 I guess this is a proprietary section starting at line 6 on
23 page 36 and going down to line 13. But without discussing
24 the proprietary information, you said at line 11, "Its
25 customer base includes both residential customers and

1 business customers that purchase only DS-0's, and, thus,
2 it's a qualifying carrier for purposes of the mass market
3 trigger."

4 I guess the confusion I had there was how is that
5 consistent or is that consistent with your testimony that
6 there is no requirement that switches serve both mass market
7 residential and business customers? It seems to me that
8 you're including some kind of a -- that you're agreeing with
9 Mr. Barber and with my clients that there is, in fact, a
10 residential requirement.

11 A. (Mr. West) No. I don't mean to imply that at
12 all. If they serve to just residence DS-0's, the could be a
13 qualifying trigger. If they serve to just business DS-0's,
14 they could be a qualifying trigger CLEC. If they serve
15 both, obviously, the union of the two works as well, but you
16 don't need both.

17 Q. Okay. Moving on to another line of questioning
18 that was touched on yesterday, the requirement in the
19 Triennial Review Order that a trigger candidate is actively
20 providing voice service to the mass market and that it is
21 likely to continue to do so. Do you agree that there is
22 such a requirement in the TRO?

23 A. (Mr. West) Is there a paragraph you --

24 Q. In your rebuttal testimony at page 27, line 7 is
25 where you I think hint on that. In fact, in the TRO,

1 paragraph 500, it says that the key consideration to be
2 examined is whether providers are currently offering, able
3 to provide service and are likely to continue to do so.

4 And if you can just accept that subject to check, the
5 last line of paragraph 500 of the Order says as I've quoted.
6 I just want to ask you what in your mind is likely to
7 continue. What does that mean? What does that requirement
8 mean to you or how is it applied to the triggers here?

9 A. (Mr. West) It means two things to me. It means
10 you need some definitive, very powerful evidence like
11 somebody has issued a notice that they're going to terminate
12 service, to say they're not likely to continue.

13 Q. Well, that means they're not likely to continue.
14 What does it mean if they're likely to continue?

15 A. (Mr. West) Well, in the alternative, without
16 some very powerful indication like that, we believe they're
17 likely to continue. I mean, these carriers have held
18 themselves out as offering services to the mass market. We
19 have on the ground evidence that they're serving the mass
20 market. So, without some very clear, distinct, strong
21 evidence that they're going to discontinue their service to
22 the mass market --

23 Q. So even though you know from press reports or
24 from investigation, until the day before they file that
25 notice, you have to assume that they're likely to continue?

1 A. (Mr. West) I mean, that's what the TRO says.
2 It says you can't get into all these economic analyses and
3 try and consider the economic well being of the firms at
4 issue.

5 Q. But it also says it's a key consideration
6 whether or not they're likely to continue, and I would
7 assume that there is some criteria that you would apply in
8 reaching that conclusion; correct?

9 A. (Mr. West) And the criteria we're using is some
10 strong, clear indication that they're not likely to
11 continue.

12 Q. Well, you said that the only thing that the
13 Commission can look at is whether they filed a notice to
14 terminate service.

15 A. (Mr. West) Well, that's an example, a very
16 logical one. I don't know the universe of other examples
17 that might constitute some very strong, clear signal that
18 they're not going to continue, but --

19 Q. But you agree that that's not the only thing
20 this Commission can look at in making their determinations?

21 A. (Mr. West) If you read the TRO literally,
22 that's correct.

23 Q. Okay. I was just trying to square that with
24 your testimony that that's the only thing that the
25 Commission can look at in making that determination.

1 Let's see. I've already gotten into the --

2 MS. CONOVER: I just want to be sure you characterize
3 his testimony correctly.

4 MR. BUNTROCK: Sure. I actually was quoting it
5 directly from the rebuttal, page 27, lines 15 through 20.
6 He did testify that that was the only consideration. The
7 Commission may look only at whether a CLEC has affirmatively
8 indicated it's existing the market altogether.

9 MS. CONOVER: Correct.

10 BY MR. BUNTROCK:

11 Q. The last thing I want to talk to you about is
12 Verizon's inclusion of Comcast and RCN and cable carriers as
13 trigger candidates in I guess about eight of the density
14 zones within the MSAs where Verizon is seeking relief.

15 A. (Mr. West) Okay.

16 Q. You would agree that these carriers are what may
17 be called intermodal competitors; right?

18 A. (Mr. West) Yes.

19 Q. In other words, they don't rely upon ILEC loops
20 to provide their services to their end users. They use
21 their own cable facilities to provide service.

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

23 Q. And you would agree that the Triennial Review
24 Order says that when we're evaluating intermodal competitors
25 like RCN and Comcast, we're supposed to look at whether or

1 not they provide comparable cost, quality and maturity --
2 provide services of comparable cost, quality and maturity to
3 ILEC services? Would you agree with that?

4 A. (Mr. West) It does say that.

5 Q. What kind of study did you or Verizon undertake
6 in determining whether or not Comcast and RCN provide
7 services of similar cost, quality and maturity? Let's start
8 off with the cost.

9 A. (Mr. West) We didn't.

10 Q. You didn't?

11 A. (Mr. West) And I don't think it's something
12 that you need to study. It's something you need to observe.
13 If the cable telephony product were absurdly expensive or of
14 inferior quality, nobody would subscribe to it. The fact
15 that people do subscribe to it is exactly the sort of
16 evidence that we're looking for when evaluating these very
17 bright line objective terms.

18 Q. Okay. Then let's talk about that. First of
19 all, how much does Verizon's baseline local voice product
20 cost in Pennsylvania on the average say in Harrisburg?

21 A. (Mr. West) I don't have those numbers with me.

22 Q. Did you look at those numbers before you put
23 your testimony together here for this case?

24 A. (Mr. West) No, I didn't; and, again, I don't
25 think you need to.

1 Q. Well, the TRO says that you need to when you're
2 looking at intermodal alternatives, which is why I bring it
3 up.

4 MS. CONOVER: I think you're mischaracterizing the
5 TRO.

6 MR. BUNTROCK: Well, I guess we can look at it.

7 BY MR. BUNTROCK:

8 Q. Turn to paragraph 97. I guess it's the last
9 sentence in paragraph 97.

10 JUDGE SCHNIERLE: You know, you've got your answer,
11 basically. They didn't look at it.

12 MR. BUNTROCK: Okay. Okay.

13 BY MR. BUNTROCK:

14 Q. Then would you agree that, given the fact that
15 you're using intermodal alternatives as triggers, that the
16 TRO requires the Commission to give less weight to those
17 alternatives than other carriers who are using regular
18 switches and not cable switches?

19 A. (Mr. West) I don't think that's true.

20 Q. Why don't you look at paragraph 98 of the TRO
21 where it says, "may give less weight to intermodal
22 alternatives" --

23 COURT REPORTER: I'm sorry. Could you slow down just
24 a little?

25 MR. BUNTROCK: Sure.

1 MS. CONOVER: Are you asking --

2 JUDGE SCHNIERLE: Look, let's try to put a stop to
3 this. I don't intend to put any weight on non-legal
4 witnesses' testimony as to the meaning of the TRO. I'll
5 read the briefs and decide what the TRO means or we're going
6 to be here for two weeks.

7 MR. BUNTROCK: I have no further questions, Your
8 Honor. It might be appropriate at this time -- maybe it is
9 or maybe it isn't. I have several witnesses who Verizon has
10 agreed to waive cross-examination of and would move to put
11 their testimony in the record at some point before I leave
12 the hearing today.

13 JUDGE SCHNIERLE: After they're done.

14 Ms. Painter.

15 CROSS-EXAMINATION

16 BY MS. PAINTER:

17 Q. Good morning.

18 A. (Mr. West) Good morning.

19 A. (Mr. Peduto) Good morning.

20 Q. My name is Michelle Painter. I represent MCI.
21 I'm actually not sure which of the -- I believe Mr.
22 West would address this.

23 Could you turn to page 18 of your rebuttal testimony,
24 please?

25 A. (Mr. West) Sure.

1 Q. The discussion actually starts on page 17.

2 A. (Mr. West) Okay.

3 Q. Are you the witness to discuss this IDLC portion
4 of the testimony?

5 A. (Mr. West) Yes.

6 Q. Okay. Do you see at the end of page 17, going
7 into page 18, Verizon states that it does not provision UNE
8 analog voice grade loops over IDLC, but it routinely
9 provisions such services to CLEC customers over alternative
10 copper loops or UDLC?

11 A. (Mr. West) Yes, I do.

12 Q. How many such loops has Verizon provisioned in
13 Pennsylvania?

14 A. (Mr. West) I don't know.

15 Q. Do you have any idea about the quantity?

16 A. (Mr. West) No.

17 Q. How long does it take to provision such loops?

18 A. (Mr. West) I don't know anything about the time
19 to provision such loops either.

20 Q. You don't know anything about whether it's
21 longer than to provision a regular loop that is not served
22 over IDLC?

23 A. (Mr. West) I do not. I know we have an
24 unbundling obligation and paragraph 297 goes through that
25 obligation and it goes through a couple of alternatives that

1 are available to Verizon Pennsylvania in this situation, but
2 nothing relieves us of that unbundling obligation, and, to
3 my knowledge, we do execute one of the alternatives and get
4 the CLEC the unbundled loop they need.

5 Q. But you have no idea whether CLECs have actually
6 -- whether Verizon has actually provided that in
7 Pennsylvania?

8 A. (Mr. West) I do not know the quantity. I do
9 know we have to do it per the TRO.

10 Q. Now, in order for Verizon to provision these
11 IDLC loops, would you agree that there has to be spare
12 copper available?

13 A. (Mr. West) That's one of the alternatives, yes.

14 Q. Are there any instances in Pennsylvania when
15 Verizon has told a CLEC that such copper facilities are not
16 available?

17 A. (Mr. West) I don't know.

18 Q. What would happen in that instance?

19 A. (Mr. West) I gather the UDLC is another
20 alternative.

21 Q. Well, if Verizon told the CLEC that there are no
22 facilities available, what would the CLEC's option be?

23 A. (Mr. West) I don't know. As I said, I know we
24 have the obligation. I don't know what happens when you get
25 to that point.

1 Q. Is it technically feasible today to unbundle the
2 loops over IDLC?

3 A. (Mr. West) That's an engineering question. I
4 would maybe defer to Mr. Peduto. He might have an opinion,
5 but I don't know whether that can or cannot be done.

6 Q. Do you know, Mr. Peduto?

7 A. (Mr. Peduto) To the best of my knowledge, it's
8 not possible to unbundle a two-wire loop over IDLC.

9 Q. Are you aware of the testimony that was provided
10 by Verizon in New York regarding the feasibility of that and
11 admitting that it was feasible?

12 A. (Mr. Peduto) No, I'm not. I am aware of the
13 testimony in New York, but I'm not aware that it admitted
14 that it was feasible.

15 Q. Mr. West, does Verizon intend to retire copper
16 facilities in Pennsylvania?

17 A. (Mr. West) I'm not privy to our plant
18 deployment plans. I don't know what the retirement schedule
19 is.

20 Q. Do you know what Verizon's practices are with
21 respect to maintaining copper that is no longer used for
22 Verizon's retail customers?

23 A. (Mr. West) No, I do not.

24 Q. Mr. Peduto, could you please turn to page 59 of
25 the rebuttal testimony? Are you there?

1 A. (Mr. Peduto) Yes, I am.

2 Q. Do you see there at lines 5 through 7, Verizon
3 states that it has asked the Commission for relief on 44
4 routes for which one end of the direct route is in Delaware?

5 A. (Mr. Peduto) I see that.

6 MS. PAINTER: Your Honor, I would like to have marked
7 MCI Cross-Examination Exhibit 2.

8 (Whereupon, the document was marked
9 as MCI Cross-Examination Exhibit No.
10 2 for identification.)

11 BY MS. PAINTER:

12 Q. What I've marked as MCI Cross-Examination
13 Exhibit 2 is Verizon's response to MCI's Set I,
14 Interrogatory No. 46. Do you see that?

15 A. (Mr. Peduto) I do.

16 Q. And in this interrogatory response, Verizon
17 states that there are 33 routes with one end in Pennsylvania
18 and the other end in Delaware; is that correct?

19 A. (Mr. Peduto) That's what it says.

20 Q. And in the attachment to this, they list out
21 those routes?

22 A. (Mr. Peduto) Okay.

23 Q. How do you square these two up?

24 A. (Mr. Peduto) I don't know.

25 Q. Does Verizon offer dedicated transport as an

1 unbundled network element when it's going through an
2 interstate route?

3 A. (Mr. Peduto) I believe that we offer UNEs, for
4 instance, with one end in Delaware and the other end in
5 Pennsylvania.

6 Q. So a CLEC could buy that at a TELRIC rate then?

7 A. (Mr. Peduto) I believe that's right.

8 Q. And Verizon is also asking the Delaware
9 Commission to eliminate these routes as part of the TRO case
10 there; is that correct?

11 A. (Mr. Peduto) To the best of my knowledge,
12 that's correct.

13 JUDGE SCHNIERLE: Hold on. What tariff are these
14 routes in?

15 WITNESS PEDUTO: I believe, Your Honor, that this is
16 worked out through some type of a meet point billing
17 arrangement. In other words, the Delaware portion billed
18 under the wholesale tariff in Delaware, the Pennsylvania
19 portion billed under the Pennsylvania wholesale tariff. I
20 believe that's how that works.

21 MS. CONOVER: Judge Schnierle, just by point of
22 clarification, Delaware and Philadelphia were part of the
23 same LATA after divestiture. Delaware is essentially part
24 of the Philadelphia LATA.

25 JUDGE SCHNIERLE: It may be part of the same LATA,

1 but it's not part of the same state.

2 MS. CONOVER: That's correct. But, essentially,
3 Verizon provided interLATA services between the two, and I
4 believed he described the billing process, but I wanted to
5 clarify that for the purpose of the record.

6 JUDGE SCHNIERLE: Thank you.

7 MS. CONOVER: IntraLATA, in case that wasn't clear.

8 BY MS. PAINTER:

9 Q. Mr. Peduto, did you see what yesterday was
10 marked as MCI Cross-Examination Exhibit 1, which related to
11 collocation space?

12 A. (Mr. Peduto) I'm not sure I did. Do you have a
13 copy I could look at, please?

14 (Document handed to witness.)

15 A. (Mr. Peduto) Thank you.

16 Q. This is Verizon's response to MCI Set I, No. 9,
17 in which Verizon states that at any given time, it does not
18 know the amount of unused collocation space; is that
19 correct?

20 A. (Mr. Peduto) That's correct.

21 MS. PAINTER: Your Honor --

22 WITNESS PEDUTO: And I can explain why that's true.

23 MS. PAINTER: I don't need an explanation. Thank yo.

24 JUDGE SCHNIERLE: No. Go ahead and make your
25 explanation.

1 WITNESS PEDUTO: Yes, Your Honor. Thank you. Quite
2 honestly, this is a very dynamic situation. Number one,
3 collocation space -- you know, it is an objective to make
4 collocation space available in every central office; and due
5 to miniaturization and that sort of thing, we're able to
6 remove older equipment, clear up floor space by
7 consolidating the newer equipment into certain areas of the
8 building. There are even building additions that have gone
9 on to create collocation space in certain central offices.

10 In addition to that, collocation space that is
11 existing may be vacated for whatever reason from time to
12 time and become available, and there may be times during the
13 course of this dynamic situation that for a time collocation
14 space is exhausted in a particular central office. When
15 that occurs, it goes on a list and I believe is shown on the
16 Verizon Web site.

17 JUDGE SCHNIERLE: You may proceed.

18 MS. PAINTER: I have no further questions, Your
19 Honor. I would move for the admission of MCI Cross-
20 Examination Exhibits 1 and 2.

21 JUDGE SCHNIERLE: Any objection?

22 MS. CONOVER: No objection.

23 JUDGE SCHNIERLE: They're admitted.

24 (Whereupon, the documents marked as
25 MCI Cross-Examination Exhibits Nos.

1 1 and 2 were received in evidence.)

2 JUDGE SCHNIERLE: Mr. Clearfield.

3 MR. CLEARFIELD: Thank you, Your Honor.

4 **CROSS-EXAMINATION**

5 BY MR. CLEARFIELD:

6 Q. Good morning, gentlemen. My name is Dan
7 Clearfield and this morning I'm representing the
8 Pennsylvania Carrier Coalition, which is a coalition of
9 Pennsylvania-based or focused CLECs. I'm just going to ask
10 you just a few questions at this point. I'm going to try
11 not to be repetitive. I think I'm going to start with Mr.
12 Peduto and some questions about transport.

13 I'm still struggling, frankly, with the basis for
14 your claim, the way in which you are characterizing the
15 trigger routes, and it's probably that I'm not understanding
16 it, but I wonder if we could turn to Statement No. 1, page
17 38, to help me understand that and maybe provide an
18 explanation for the record.

19 A. (Peduto) 1.0, page --

20 Q. Yes, 1.0, page 38. And there's a diagram there
21 which I found helpful trying to parse my way through that.
22 Do you see that?

23 A. (Peduto) I do.

24 Q. Now, do I understand that when we're trying to
25 determine a trigger route, it's Verizon's claim that

1 basically the connection, sort of the triangle there at the
2 top that consists of the Verizon interoffice transport and
3 then the two transmission facilities there on the bottom,
4 that would be a transport route that could qualify as a
5 trigger?

6 A. (Peduto) I'm not sure I'm following you. The
7 two transmission routes at the bottom, I --

8 Q. I'm sorry. Do you see the two lines that are
9 coming out of CLEC 3 circle there?

10 A. (Peduto) Yes, I do.

11 Q. Okay. So you have one line coming out of the
12 CLEC 3 circle going to Verizon wire center A. Do you see
13 that?

14 A. (Peduto) Yes, I do.

15 Q. And then you have a Verizon interoffice
16 transport from A to B.

17 A. (Peduto) That's right.

18 Q. Which is the route that you're considering to be
19 the trigger route for the purposes of determining whether
20 DS-1 or DS-3 or dark fiber is impaired?

21 A. (Peduto) Well, in this diagram -- and let's
22 take the self-provisioning trigger as an example, if that's
23 okay.

24 Q. Yes.

25 A. (Peduto) In this diagram, if CLEC 1, CLEC 2 and

1 CLEC 3 are operationally ready to provide a route between
2 Verizon wire center A and Verizon wire center B, then the
3 self-provisioning trigger would be met.

4 Q. What is the route between wire center A and B
5 for CLEC 1? Let's take CLEC 1.

6 A. (Peduto) Well, for CLEC 1, the facility would
7 leave Verizon wire center A, go somewhere in the CLEC's
8 network where it could be "connected" -- and I use that word
9 in quotes because it may or may not be a physical connection
10 -- to another link in the route that would go to Verizon
11 wire center B.

12 Q. All right. Now, I guess I'm just -- let me just
13 understand. You depict here a route that would follow that
14 pattern that you just described orally, don't you, or am I
15 completely wrong here?

16 A. (Peduto) No. I think that what we're depicting
17 here -- and let's again take CLEC 1 as an example -- is
18 leaving wire center A on a CLEC 1 facility that goes
19 somewhere in the CLEC's network and is somehow "connected,"
20 again in quotes, to another CLEC facility that goes to
21 Verizon wire center B.

22 Q. All right. So this would be -- hypothetically,
23 this could qualify as a trigger route under the self-
24 provisioning trigger?

25 A. (Peduto) Well, if CLEC 1, CLEC 2, CLEC 3 were

1 all operationally ready to provide a route between A and B,
2 then it would meet the self-provisioning trigger.

3 Q. What more information would you need to know,
4 other than the fact that the -- let's assume that all three
5 of these CLECs are operationally ready to provide service
6 from their switch to the Verizon wire center A, and there's
7 collocation there in wire center A, and correspondingly,
8 they're operationally ready to provide a transmission path
9 from CLEC 1 to Verizon wire center B. That's all you know.
10 Does that qualify as a trigger under your analysis?

11 A. (Peduto) Well, remember that in self-
12 provisioning there are two triggers, one for dark fiber, one
13 for DS-3.

14 Q. Okay.

15 A. (Peduto) You'd have to examine or at least
16 consider each of those elements separately, each of --

17 Q. Well, let's assume it's dark fiber that you have
18 collocated.

19 A. (Peduto) Okay.

20 Q. Now would you be -- under your analysis, would
21 you claim that this path was a trigger, trigger route?

22 A. (Peduto) Well, if I examined what I know or can
23 conclude about the facilities for CLECs 1, 2 and 3 between
24 their network and Verizon wire center A, their network and
25 Verizon wire center B, and I can conclude that there is dark

1 fiber in those links, you know, in that route, then I can
2 conclude that the dark fiber trigger is met.

3 Q. Okay. Let me just take that -- because, again,
4 I'm really trying, struggling here, I guess, to understand.
5 When you say there are dark fiber in the route or in the
6 links, you're saying that there's dark fiber in a
7 collocation arrangement in wire center A and wire center B,
8 is that correct, for the same CLEC, or for the same serving
9 carrier?

10 A. (Peduto) I'm saying that if there is dark fiber
11 available to the CLEC in wire center A, you know, connected
12 to their network, --

13 Q. Okay; operational.

14 A. (Peduto) -- and dark fiber in wire center B,
15 connected to their network, if you will -- and that's the
16 way this diagram describes it -- that the dark fiber trigger
17 would be met; and if I repetitively, if you will, for all
18 three CLECs, performed that analysis, came to that
19 conclusion with three of them, the self-provisioning trigger
20 would be met.

21 Q. So we are on the same page. I did understand
22 this. I just didn't understand it as quickly as I should
23 have.

24 Let me ask you a question, though. Let's take CLEC 1
25 and the transmission path there on the left that goes to

1 wire center A. If that wire center is that CLEC's serving
2 wire center, doesn't that route constitute an entrance
3 facility?

4 A. (Peduto) If I'm purchasing a UNE, a path
5 between wire center A and the CLEC network would constitute
6 an entrance facility; however, the TRO is very clear about
7 the CLEC facility connecting to the Verizon wire center, and
8 I don't believe that it makes that entire fiber cable an
9 entrance facility.

10 Q. Now I'm confused. You're saying that part of
11 that cable could be an entrance facility and part of it
12 could be part of a dedicated transport route?

13 A. (Peduto) I don't think that it's really
14 appropriate to view -- what the TRO is talking about as an
15 entrance facility is Verizon's requirement to sell, as a
16 UNE, an entrance facility to a CLEC, and I think --

17 Q. Right. And you don't have that requirement
18 anymore under the --

19 A. (Peduto) I think the TRO had a self-executing
20 process that basically said there's no longer impairment in
21 this area, and so, therefore, Verizon -- so that the
22 entrance facility UNE is off the table.

23 Q. Right. Now, what I'm trying to understand is if
24 we could agree, just hypothetically, that the transmission
25 path there that goes from CLEC 1 to wire center A was an

1 entrance facility --

2 A. (Peduto) If it were purchased as a UNE, Verizon
3 would call it an entrance facility.

4 Q. And would it still be able to qualify as part of
5 a dedicated transmission route for the self-provisioning
6 trigger for dark fiber, which is what you used as an
7 example? Would it be able to be part of that route even if
8 it's an entrance facility?

9 A. (Peduto) Well, I think we're talking past one
10 another. I'm suggesting that a UNE purchased from Verizon
11 back to the CLEC's network would have been considered an
12 entrance facility.

13 Q. Okay.

14 A. (Peduto) I don't believe the TRO intends for
15 the facility that leaves the collocation in Verizon's wire
16 center and goes to the CLEC network to be considered an
17 entrance facility. It's part of a dedicated transport
18 network that the CLEC would use.

19 Q. I see. So you're saying that the term "entrance
20 facility" would not apply if the transmission path was not
21 being provided by Verizon as a UNE. Is that your testimony?

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

23 Q. So any connection between the serving wire
24 centers at this point that is not provided by Verizon, it's
25 by a competing carrier, you believe could be included as

1 part of a dedicated transport route?

2 A. (Peduto) That's correct.

3 Q. Does it matter that the route that goes from the
4 CLEC's switch to the serving wire center is, in fact, going
5 to the Verizon serving wire center, in your analysis?

6 A. (Peduto) Can you repeat that, please? I'm not
7 sure I got that.

8 Q. Does the fact that the route from CLEC 1 to
9 Verizon wire center A constitutes a route between a CLEC and
10 a Verizon serving wire center, does that make any difference
11 in your analysis?

12 A. (Peduto) No. As far as, again, that link is
13 part of the route that the CLEC would be operationally ready
14 to activate between wire center A and wire center B.

15 Q. Let me ask you another question. In the rules
16 with respect to dedicated transport, I think in all three of
17 them, part B, --

18 A. (Peduto) Are we in the regulations?

19 Q. Yes, the regulations.

20 A. (Peduto) Okay.

21 MS. CONOVER: What particular rule here?

22 MR. CLEARFIELD: It's in all three, but why don't we
23 look at for DS-1, which is on page 27 and 28, my page 27 and
24 28 of Appendix B.

25 (Pause.)

1 BY MR. CLEARFIELD:

2 Q. Now, you mentioned that you're assuming that
3 there is a link at some point between wire center A and wire
4 center B at the CLEC switch or wire center. Now, that's in
5 fact a requirement of the regulation, isn't it, in part D,
6 that in fact there be a cross-connect? For the dedicated
7 transport route to be considered a trigger route, there must
8 be, and we can read part D, but there must be a cross-
9 connect either in the ILEC serving wire center or a similar
10 arrangement at each end of the transport route that is not
11 located at an incumbent LEC premises. Do you see that in
12 part D?

13 A. (Peduto) Okay. Let me read that to make sure
14 that we're talking about the same --

15 Q. Sure.

16 A. (Peduto) I'm seeing, on page 28 of the regs,
17 which is (ii)(D) as I read it, --

18 Q. Little "i" in the -- double ii.

19 A. (Peduto) Yeah, double ii; right. "Requesting
20 telecommunications carriers are able to obtain reasonable
21 and non-discriminatory access to the competing provider's
22 facilities through a cross-connect to the competing
23 provider's collocation arrangement at each end of the
24 transport route that is located in an incumbent LEC premises
25 and through a similar arrangement at each end of the

1 transport route that is not located at an incumbent LEC
2 premises."

3 Q. Yes. Now, that means there has to be either an
4 existing cross-connect or the opportunity to obtain a cross-
5 connect at the "transport route that is not located at an
6 incumbent LEC's premises," which I presume to be the CLEC
7 switch. Is that right?

8 A. (Peduto) Yes. And, I mean, I'm not sure what
9 you're suggesting here --

10 Q. Well, I'm just asking, first of all, does there
11 need to be a cross-connect, in your view; and secondly, --
12 well, does there need to be a cross-connect for the route to
13 qualify as a trigger route?

14 MS. CONOVER: I'm going to object, because the
15 provision that you just read doesn't say that. I think
16 you're mischaracterizing --

17 MR. CLEARFIELD: Well, Your Honor, the witness can
18 answer the question.

19 MS. CONOVER: He read the section and that's not what
20 it says.

21 JUDGE SCHNIERLE: I think it is what it says, Ms.
22 Conover.

23 MS. CONOVER: It says "obtain reasonable and non-
24 discriminatory access."

25 MR. CLEARFIELD: Your Honor, I'm going to object. In

1 all due respect to Ms. Conover, we don't need her leading
2 the witness and explaining and signaling how the witness
3 should answer. The witness' testimony is filled with
4 interpretations of this.

5 JUDGE SCHNIERLE: Well, let's do it this way.

6 MR. CLEARFIELD: This is a particularly complicated
7 area and I'm asking his technical opinion as to what this
8 means and how it applies in the context of the trigger, and
9 I really would object to those kinds of --

10 JUDGE SCHNIERLE: That objection is sustained.

11 BY MR. CLEARFIELD:

12 Q. Do you need to have a cross-connect, or the
13 availability of a cross-connect, at the CLEC's switch or
14 wire center for a route to qualify as a trigger route?

15 A. (Peduto) The CLEC has to be operationally ready
16 to provide linkage, if you will, on that route between A and
17 B. That would include some type of a connection.

18 Q. So is that a yes?

19 A. (Peduto) And I say connection in the broadest
20 sense, that it does not necessarily have to be a physical
21 connection at -- in the case of this diagram, the circle
22 with CLEC 1, 2 or 3 in it.

23 Q. Okay. So that's a yes?

24 A. (Peduto) I think that's all the point of
25 operational readiness.

1 Q. We can discuss that, but here's the question
2 that's been troubling me. Did you make a physical
3 inspection of the CLEC switches to assure yourself that that
4 connection existed for each of the routes that you're
5 claiming to be trigger routes? Yes or no, and then an
6 explanation, if you need to.

7 A. (Peduto) Simply no, and quite honestly, there's
8 a very easy reason why that was not necessary. The
9 companies --

10 Q. Because you just assumed the it had to exist?

11 MS. CONOVER: Excuse me; he said he could make an
12 explanation.

13 JUDGE SCHNIERLE: Yeah, let him finish.

14 MR. CLEARFIELD: I'm sorry.

15 JUDGE SCHNIERLE: Go ahead.

16 WITNESS PEDUTO: The companies here are sophisticated
17 telecommunications carriers in business in the United States
18 of America in 2004. For a CLEC, or any carrier, to build a
19 network that was incapable of connecting links in that
20 network to one another is unthinkable, totally unthinkable.

21 BY MR. CLEARFIELD:

22 Q. But you don't actually know whether that connect
23 would physically be ready in an hour, a day, three months, a
24 year, isn't that true, in any of the routes that you're
25 claiming are trigger routes?

1 A. (Peduto) It is inconceivable to me, knowing
2 what I know about telecommunications networks, knowing what
3 I know about the companies that are involved in this
4 proceeding, it is inconceivable to me that anyone could sit
5 in this room, under oath, and say that they were incapable
6 of connecting wire center A, which was connected to their
7 network, to wire center B that was connected to their
8 network; I can't imagine that anyone could sit at this
9 table, under oath, and say that that were possible.

10 Q. Are you testifying --

11 A. (Peduto) And so based on my best engineering
12 judgment, and what I know about telecommunications, it's
13 inconceivable to me that in a simple provisioning activity
14 -- and by that I mean like connecting a service for an end
15 user or connecting a service that a carrier itself would use
16 -- it's inconceivable to me that a CLEC could not take two
17 links and connect them together between two Verizon wire
18 centers.

19 Q. Now, I'm just going to ask you this one question
20 and then we can go on. You're not testifying under oath
21 that there could not be a situation in which a CLEC switch,
22 because of some physical limitation or contractual
23 limitation or some other limitation, could not make that
24 connection in a particular case. You're not testifying,
25 under oath, that that could never happen, are you?

1 A. (Peduto) There may be exceptions to any
2 inconceivable idea that I may have. There may be
3 exceptions --

4 Q. But you didn't bother to try to find out whether
5 those exceptions existed in any particular case, did you?

6 A. (Peduto) May I answer?

7 Q. Well, yeah, answer yes or no, and then you can
8 explain why you didn't bother to do that.

9 A. (Peduto) And I think I have explained that just
10 a moment ago, but what I will say is that, again, there may
11 be exceptions; however, the rule or the many, if you will,
12 the cases where that is conceivable pretty much make up the
13 attachment to Verizon's testimony where the routes are
14 described. I think it's, you know -- and I think the floor
15 has been opened in rebuttal testimony to any CLEC that could
16 say: whoops, not on that route between Ardmore and Market,
17 not on that route can I make that connection, but you're
18 right on all those other routes. Quite honestly, not one
19 CLEC has stepped up and said: my network's not capable of
20 making that connection; my network is not capable. No CLEC
21 has said, that I know of, on a route-by-route basis, that
22 their network is not capable of connecting A to B.

23 Q. What about the CLECs that aren't parties to this
24 case, did they step up and not say something, too?

25 MS. CONOVER: Objection, Your Honor; that's

1 argumentative.

2 MR. CLEARFIELD: Withdrawn.

3 Let me ask some questions of Mr. West.

4 JUDGE SCHNIERLE: Hold on. I want to ask a couple of
5 questions about this transport business.

6 The major cost involved in transport is laying line,
7 isn't it?

8 WITNESS PEDUTO: Yes, Your Honor, I would --

9 JUDGE SCHNIERLE: I mean, the cost of transporting a
10 call isn't the cost of shoving the electrons or photons over
11 the wire, it's the cost of getting the line in there in the
12 first place.

13 WITNESS PEDUTO: Yes. And I would say that the
14 electronics on either end are not trivial, but they really
15 don't match the cost of deploying the actual connection
16 itself.

17 JUDGE SCHNIERLE: On any of these routes that you've
18 identified, are the CLECs that you've identified as trigger
19 candidates buying transport from Verizon on the same route?

20 WITNESS PEDUTO: I don't know, Your Honor.

21 JUDGE SCHNIERLE: Did you check?

22 WITNESS PEDUTO: No, Your Honor. To the best of my
23 knowledge, I know I have not checked that. I do not believe
24 we checked that in this analysis.

25 JUDGE SCHNIERLE: If they were paying you for

1 unbundled transport on that route, do you think it would be
2 likely that they can't make the connection?

3 WITNESS PEDUTO: I could think of a couple of
4 instances where it could be very likely that that were the
5 case, if you'd like me to give you a couple of examples.

6 JUDGE SCHNIERLE: Yeah, go ahead.

7 WITNESS PEDUTO: One easy one is that networks evolve
8 over time, and it could be, before a particular CLEC
9 deployed fiber to collocations A and B -- let's use that as
10 an example -- that they had a need, for whatever reason, to
11 connect A to B and purchased a UNE, it was in place and it's
12 been left in place rather than rearranged onto their
13 network. So that could be one case where a UNE for a
14 special access line between A and B could be, you know, in
15 existence from Verizon but, in other words, predate the
16 ability to connect the two points.

17 Also, and this is a hypothetical to an extent,
18 because I have not done any mathematical analysis on this,
19 but I suppose there could be cases where, under TELRIC
20 pricing, a UNE could be a better buy, so to speak, a less
21 costly alternative, than provisioning through their own
22 network. But I don't have any factual data to back that up.

23 JUDGE SCHNIERLE: That would be doubtful, though,
24 once they had their lines in place.

25 WITNESS PEDUTO: Doubtful. I agree, Your Honor.

1 JUDGE SCHNIERLE: You may continue.

2 BY MR. CLEARFIELD:

3 Q. Mr. West, let me ask you, let's turn to the
4 switching triggers. I was confused yesterday, and again,
5 I'm sure it was me, about exactly what Verizon's claim is in
6 the case and I thought it might be helpful in this case to
7 clarify. Do you have Verizon Hearing Exhibit 1, the map
8 that's been depicted in the --

9 A. (West) I do.

10 Q. Let's take the Harrisburg-Carlisle, PA MSA for a
11 moment. You have areas in there that are cross-hatched,
12 which means that you claim that in those areas there are at
13 least three self-provisioning CLECs, and therefore, there is
14 no impairment for switching in those areas; is that correct?

15 A. (West) Yes.

16 Q. Now, does that mean that if the Commission
17 agrees with your claim, that switching would become
18 unavailable in the entire MSA, including the Density Cell 4
19 areas?

20 A. (West) That's not our proposal.

21 Q. Okay. That's what I wanted to make sure.

22 A. (West) Although we could make that argument,
23 but --

24 Q. Well, I'm not asking you to make that argument,
25 Mr. West.

1 A. (West) -- but that's not our proposal. Our
2 proposal is to show that we meet the triggers in the MSA,
3 but then to apply it to Density Cells 1, 2 and 3.

4 Q. It would only apply to Density Cells 1, 2 and 3?

5 A. (West) That's correct.

6 Q. And Density Cell 4 would continue to have
7 available switching as a UNE and UNE-P?

8 A. (West) Right, because we're not seeking that
9 relief today.

10 Q. And that would be the case even if the
11 Commission adopts the entire MSA as the market?

12 A. (West) As the relevant market, yes.

13 Q. Let's take the reverse, or a different
14 situation. Let's assume they adopt the entire MSA as the
15 relevant market but also determine that a condition that
16 must be applied for a CLEC to constitute a trigger is that
17 that CLEC be providing service throughout the MSA. Would
18 you say that the Commission should look in Density Cell 4 in
19 that instance to determine whether the CLEC is providing
20 service there, or you don't even want to contemplate that?

21 A. (West) No --

22 MS. CONOVER: Your Honor, I'm going to pose an
23 objection, because I believe that that's essentially
24 contrary to what the Act says, but I believe the witness
25 answered.

1 JUDGE SCHNIERLE: Overruled.

2 WITNESS WEST: The answer is no, and I think the
3 answer lies in I believe it's paragraph 499 of the TRO,
4 which says, you know, we don't have to show that these CLECs
5 are operating throughout the entire MSA to meet the trigger
6 analysis.

7 BY MR. CLEARFIELD:

8 Q. You missed my question, Mr. West. I'm telling
9 you that the Commission -- I'm asking you to hypothesize
10 that the Commission has disagreed with your analysis and
11 said: no, you're wrong; that's not what the TRO says.

12 A. (West) Okay. In that case, the --

13 MS. CONOVER: This is a hypothetical in asking -- all
14 right; go ahead.

15 WITNESS WEST: In that case, in my non-lawyer
16 opinion, they have directly contradicted the TRO, and I
17 don't know where that leads us if they go that route.

18 BY MR. CLEARFIELD:

19 Q. So you don't have an opinion as to if the
20 Commission makes that determination, whether they should
21 look to Density Cell 4 or just the first three density
22 cells?

23 MS. CONOVER: Your Honor, asked and answered.

24 JUDGE SCHNIERLE: Yeah. Sustained.

25 MR. CLEARFIELD: I'll move on, Your Honor.

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BY MR. CLEARFIELD:

Q. Page 36 of Statement 1.2, please.

MR. CLEARFIELD: Your Honor, I believe that I'm going to be asking some questions that are going to require us to go onto the proprietary record.

JUDGE SCHNIERLE: We're on the proprietary record.

(Whereupon, the following pages 298 through 309 were designated proprietary and were sealed and bound separately.)

1 JUDGE SCHNIERLE: Do you want to move for admission
2 of your exhibit?

3 MR. CLEARFIELD: Yes, Your Honor. I move for
4 admission of PCC 1.

5 JUDGE SCHNIERLE: Any objection?

6 MS. CONOVER: No objection.

7 JUDGE SCHNIERLE: It's admitted.

8 **(Whereupon, the document marked**
9 **as PCC Cross-Examination Exhibit No.**
10 **1 was received in evidence.)**

11 JUDGE SCHNIERLE: Mr. Hicks?

12 MR. CLEARFIELD: Your Honor, I apologize, but is
13 there a way that we could retroactively remove the
14 proprietary designation, or perhaps we could do it at a
15 subsequent time and just list the pages, because I do want
16 that -- that's a very important -- this is a very important
17 issue --

18 JUDGE SCHNIERLE: Well, I think the important thing
19 is that Verizon concedes that it's irrelevant, and counsel's
20 concession that the issue is irrelevant isn't proprietary.

21 MR. CLEARFIELD: Is not proprietary?

22 JUDGE SCHNIERLE: Yeah, is not proprietary. I mean,
23 as far as I'm concerned, you can't have a proprietary legal
24 position.

25 MR. CLEARFIELD: Thank you.

1 JUDGE SCHNIERLE: Mr. Hicks?

2 MR. HICKS: Thank you, Your Honor.

3 **CROSS-EXAMINATION**

4 BY MR. HICKS:

5 Q. Good morning, gentlemen.

6 A. (West) Good morning.

7 Q. (Peduto) Good morning.

8 Q. I'm Renardo Hicks, representing Penn Telecom in
9 this proceed. I realize you guys have been on the stand for
10 a very long time, so I won't be very long.

11 A. (West) Thank you.

12 Q. Mr. West, I'd like to start with you.

13 A. (West) Okay.

14 Q. And I'd like to start attempting, at least, to
15 drill down into the criteria you use for identifying switch
16 trigger candidates. Yesterday, in response to Mr. Barber,
17 you confirmed that it is Verizon's view that affiliates of
18 incumbent LECs serving the mass market can count toward
19 market triggers; is that right?

20 A. (West) Yes.

21 Q. And you also testified that it doesn't matter
22 whether a CLEC has one DS-0 or a thousand DS-0s provisioned
23 from its switch in order to be counted; is that right?

24 A. (West) I said that's an extremely -- you know,
25 you're pushing it, but that's right, yes.

1 MR. HICKS: Your Honor, I'd like to go on the
2 proprietary record.

3 JUDGE SCHNIERLE: All right; we're on the proprietary
4 record.

5 (Whereupon, the following pages 313 through 320 were
6 designated proprietary and were sealed and bound
7 separately.)

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FORM 2

1 BY MR. HICKS:

2 Q. My questions really relate to the manner in
3 which Verizon relies on the way carriers hold themselves out
4 to identify triggering information. I just want to get at
5 some of the foundation for what it is that you know.

6 A. (Peduto) Okay.

7 Q. Are you aware that there are more than 100
8 certified CLECs in Pennsylvania?

9 A. (Peduto) I'm aware there are a number of
10 certified CLECs. I couldn't put the number at more than
11 100.

12 Q. Are you aware that in order to become a CLEC in
13 Pennsylvania, the Commission requires the filing of an
14 application, the filing of an initial tariff, and in fact
15 eventually the filing of an interconnection agreement? Are
16 you aware of that process in general?

17 A. (Peduto) Generally aware of it, but not in
18 detail.

19 Q. Are you aware that a number of CLECs are
20 certified in Pennsylvania, having gone through that process,
21 but actually have no customers?

22 A. (Peduto) No, I'm not aware of that.

23 Q. And are you aware that the Commission requires
24 that tariffs actually be accessible through the web site,
25 through a web site?

1 A. (Peduto) I believe I am aware of that
2 stipulation.

3 Q. Would it surprise you that several CLECs have
4 actually filed requests to abandon their certificates within
5 recent months?

6 A. (Peduto) It wouldn't surprise me. I wasn't
7 aware of it.

8 Q. And are you aware that some CLECs who have
9 tariffs that are published on the internet also have web
10 sites?

11 A. (Peduto) Please repeat that. I want to make
12 sure I've got that question.

13 Q. In fact, let me rephrase. Some CLECs certified
14 in Pennsylvania have published tariffs and have their own
15 web sites with other information about products and
16 services. Are you aware of that?

17 A. (Peduto) Yes, I am.

18 Q. In fact, Verizon has relied on some of the
19 information on those web sites for identifying trigger
20 candidates; is that right?

21 A. (Peduto) That's one of the particular sources
22 of information that may give us some indication that someone
23 is a trigger candidate.

24 Q. And are you aware that some of the products that
25 are tariffed by CLECs are not actually provided by those

1 CLECs?

2 A. (Peduto) No, I'm not aware that -- to me,
3 something that's tariffed is something that the CLEC, or the
4 company, for that matter, any company, would generally
5 offer.

6 Q. Are you aware that when CLECs file for
7 certification, they're required to file an initial tariff,
8 but they may not be in a position to provide all the
9 services that they request approval for?

10 A. (Peduto) No, I'm not aware of that.

11 MR. HICKS: I have no further questions, Your Honor.

12 MR. STUBBS: Your Honors, Rick Stubbs for Cavalier
13 Telephone. Like Mr. Hicks, I'd like to keep this short,
14 too.

15 Your Honor, I request to be on the proprietary
16 record.

17 JUDGE SCHNIERLE: We're back on the proprietary
18 record.

19 (Whereupon, the following pages 324 through 328 were
20 designated proprietary and were sealed and bound
21 separately.)

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1 JUDGE SCHNIERLE: Anyone else?

2 (No response.)

3 JUDGE SCHNIERLE: Do you want -- well, two things.
4 Are you going to do redirect?

5 MS. CONOVER: There will be some redirect, very
6 short.

7 JUDGE SCHNIERLE: All right. You're going to offer
8 that --

9 MS. CONOVER: The Adelpia?

10 JUDGE SCHNIERLE: Yes.

11 MS. CONOVER: Yes.

12 JUDGE SCHNIERLE: Are you going to do that as part of
13 the redirect?

14 MS. CONOVER: Well, I don't want it to be our --

15 JUDGE SCHNIERLE: We can mark it ALJ-1.

16 MS. CONOVER: I was going to introduce it as part of
17 the redirect but not necessarily mark it as our exhibit.

18 JUDGE SCHNIERLE: All right. Well, we can mark it as
19 ALJ-1. I'd like to have it performed, though, at some
20 point, because we got that last night, and I'm trying to
21 figure out how you got from there to 45,000 DS-0 loops in
22 Harrisburg, frankly.

23 MS. CONOVER: Would it be appropriate to take a brief
24 break now?

25 JUDGE SCHNIERLE: Yes. We'll take 15 minutes.

1 (Recess.)

2 JUDGE SCHNIERLE: Back on the record.

3 MS. CONOVER: Your Honor, during the break, I
4 distributed two copies to the court reporter and left one on
5 your table of a document which, at your suggestion, we
6 marked ALJ Exhibit No. 1.

7 JUDGE SCHNIERLE: That's fine.

8 (Whereupon, the document was marked
9 as ALJ Exhibit No. 1 for
10 identification.)

11 MS. CONOVER: This is a multi-page document. The
12 cover page is a letter from counsel, Eckert, Seamans, Cherin
13 & Mellott, Kathleen Misturak-Gingrich, on behalf of TelCove.
14 This document was provided to update the interrogatories
15 that TelCove provided to the Commission in response to their
16 discovery requests.

17 I would just state for the record you can see from
18 the fax notation we received this on Friday, after the close
19 of business on Friday, and it is our understanding that
20 other parties were served also. If that's not the case, I
21 do have a limited number of extra copies, some of which I
22 distributed yesterday, but I don't have one for everyone.
23 So I will make available what I have. Some people may have
24 to share, and I apologize for that.

25 REDIRECT EXAMINATION

1 BY MS. CONOVER:

2 Q. Let's start with that. First of all, Mr. West,
3 I think some of this may have been covered briefly on the
4 cross-examination this morning, but I just would like to go
5 to your Attachment 5 to your rebuttal testimony to make sure
6 some things are clear on the record.

7 A. (Mr. West) Okay.

8 Q. First of all, can you just state again what is
9 included within the Verizon counts column in Attachment No.
10 5?

11 A. (Mr. West) The Verizon counts column lists
12 lines being offered by CLECs to mass market customers, and
13 there are two flavors. There is UNE-Ls and there is cable
14 lines. The UNE-Ls were gleaned from our line count study
15 where we went to our wholesale database and were able to
16 count the number of UNE-Ls that are associated with wire
17 centers, associated with the various CLECs in this case, and
18 we were able to partition that data, segment that data into
19 actually the size of the mass market customer being served.

20 In other words, do they have one UNE-L at their
21 location; do they have three; do they have seven; all the
22 way up to 24 and greater. So that's the source of the UNE-L
23 data.

24 The cable data for the three cable companies that
25 float around in this case, Adelphia, Comcast and RCN, was

1 gleaned from the E-911 database where we looked at residence
2 listings associated with those three cable companies. You
3 add the two numbers together for the relevant wire center,
4 and then things are aggregated, obviously, up to density
5 zones and then again up to MSAs, and that's how you get the
6 numbers that appear under the column "Verizon Counts" on
7 Attachment 5, Part A.

8 Q. Okay. If I could just look at an example, and
9 it's probably one we've been talking about, for Harrisburg-
10 Carlisle, for example.

11 A. (Mr. West) Yes.

12 MS. CONOVER: This is probably going to be on the
13 proprietary record. Excuse me.

14 (Whereupon, the following pages 333 through 340 were
15 sealed and bound separately.)
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1 JUDGE SCHNIERLE: Continue.

2 WITNESS PEDUTO: Another factor that we looked at it
3 is the descriptions in the tariffs for the various
4 companies. We had a discussion here a little bit ago about
5 tariffs, and we looked at the tariffs that are available on
6 Web sites, what have you, to insure that the products
7 offered there were consistent with those offered to
8 carriers.

9 In addition to that, if we found CAC arrangements,
10 competitive access carrier type arrangements, where
11 generally fiber connections are made between carriers in our
12 central offices, that was probably another -- that was
13 another indication where probably it indicated that a
14 carrier was willing to wholesale.

15 Probably not one of those factors could in and of
16 itself be conclusive proof that a carrier was willing to
17 wholesale. However, if you get multiple supporting
18 information from a couple or three or all of those factors,
19 it becomes a stronger and stronger indication that there is
20 a willingness to offer services widely available at
21 wholesale.

22 BY MS. CONOVER:

23 Q. Now, when Verizon filed its supplemental
24 testimony, did Verizon make any modifications or any changes
25 to its classification of wholesale providers?

1 A. (Mr. Peduto) Yes. As I recall -- I'm not sure
2 whether this is proprietary or not, Your Honor -- there was
3 one company. I could mention the name. I'm not sure that
4 it's important. But in my testimony, I do mention the name
5 of one company who answered in their interrogatories pretty
6 clearly that they did not offer services at wholesale to
7 other carriers.

8 We then went back, reviewed the Web material that we
9 had, and assessed that material and other indications such
10 as New Paradigm and the like, and, basically, based on a
11 pretty clear communication in the interrogatory response
12 along with material on the Web site that was not as strong
13 as we would have liked it to be, we removed that carrier
14 from consideration as a wholesaler.

15 I could mention the name, but I don't think that is
16 important. It's in my testimony.

17 Q. Mr. Augustino also asked you whether the New
18 Paradigm report indicates whether a carrier has its own
19 fiber. Do you recall that question?

20 A. (Mr. Peduto) I do.

21 Q. Now, did Verizon use the New Paradigm report to
22 determine whether carriers have operational collocation
23 arrangements in Verizon wire centers fed by non-Verizon
24 fiber?

25 A. (Mr. Peduto) No.

1 Q. And how did Verizon make that determination?

2 A. (Mr. Peduto) Well, as I mentioned earlier
3 today, Verizon back in the summer of 2003, in order to begin
4 to compile information that would be needed for implementing
5 the Triennial Review Order when it came out began an
6 inspection process where trained and experienced individuals
7 went into our central offices and observed collocation
8 arrangements, insured that fiber could be seen, connected in
9 the collocation arrangement, that the collocation
10 arrangement was indeed operational, that the fiber could be
11 traced leaving the building.

12 Those are indeed strong indications, as outlined
13 pretty much in the TRO, that a fiber -- that there is a
14 fiber feed into a collocation site for a particular carrier
15 in a particular central office, and that was the basis for
16 our conclusions of fiber fed collocation sites in our direct
17 testimony.

18 Q. Mr. Augustino also asked you about AboveNet's
19 Web site materials. Do you recall that question?

20 A. (Mr. Peduto) I do.

21 Q. And is it your understanding that the FCC's
22 rules exclude transport facilities used to provide services
23 to an ISP?

24 A. (Mr. Peduto) It's my understanding that the
25 Triennial Review Order is fairly silent about what is

1 embedded in the data or the traffic that's going across
2 these transport facilities, and it could be -- you know, in
3 this day of ones and zeros, it could be voice. It could be
4 somebody's downloaded Internet Web page. It could be some
5 corporation's payroll going from Point A to Point B.

6 The fact is it's all ones and zeros, and that's
7 what's going over the transport facility.

8 Q. Finally, Mr. Augustino also asked whether
9 Verizon visually inspected buildings for the high cap loop
10 triggers. Do you recall that?

11 A. (Mr. Peduto) I do.

12 Q. Now, why didn't Verizon inspect those buildings?

13 A. (Mr. Peduto) Well, first of all, Verizon
14 presented no evidence in its initial testimony, direct
15 testimony, about high capacity loops. Verizon relied on the
16 information provided through discovery by the CLECs, and as
17 such, there was really no need to do that.

18 I'm not certain whether Verizon would have even known
19 where to look. There are hundreds, thousands, maybe tens of
20 thousands of potential commercial buildings in Pennsylvania
21 where carriers may have terminated facilities, high capacity
22 loops; and, quite honestly, in order to even get a small
23 subset of those buildings where the actual deployments have
24 occurred, we'd have to rely on the CLECs for that
25 information.

1 MS. CONOVER: No further redirect.

2 JUDGE SCHNIERLE: Wait. Before you go, I'm going to
3 ask one or two questions here real quickly, and maybe we'll
4 save some time.

5 Regarding AboveNet, was AboveNet identified as a
6 wholesale trigger or a self-provisioning trigger candidate?

7 WITNESS PEDUTO: Both, Your Honor.

8 JUDGE SCHNIERLE: Well, would you agree that what
9 you've shown in Attachment 10 is that the only service
10 they're offering on that page is ISP connectivity?

11 WITNESS PEDUTO: That's what is described on this
12 particular page, Your Honor, but it does talk about IP
13 bandwidth services, direct paths to the Internet from all
14 major metropolitan areas over a 100 percent fiber optic
15 network.

16 JUDGE SCHNIERLE: But they're not offering to connect
17 to Verizon's central offices, are they?

18 WITNESS PEDUTO: Those words are not on this Web
19 page, no, Your Honor.

20 JUDGE SCHNIERLE: And you wouldn't -- well, moreover,
21 you wouldn't imply that from the fact that they're offering
22 to connect people to the Internet.

23 WITNESS PEDUTO: Well, I don't look at this as
24 connecting people to the Internet, Your Honor. To me, it's
25 a case of carrying Internet traffic that's maybe being

1 hauled by one carrier to another carrier, possibly an ISP,
2 but I guess my view of that is that this is ones and zeros
3 like any other kind of digital traffic that we have on our
4 network today, and that kind of transport can be relied upon
5 for transport of -- wholesale transport to other carriers.

6 JUDGE SCHNIERLE: All right. Attachment 5, Mr. West.

7 WITNESS WEST: Sure.

8 JUDGE SCHNIERLE: I just want to get this straight
9 regarding D&E.

10 WITNESS WEST: Okay.

11 JUDGE SCHNIERLE: And I'm not going to read the
12 numbers. Look at I guess it's page 3 of the attachment
13 where you've got the Harrisburg-Carlisle, Pennsylvania. If
14 you go down to Camp Hill, Pennsylvania, your count shows a
15 number for D&E, but then there is a blank over in the CLEC
16 count.

17 Now, D&E didn't respond, but CEI responded. Is that
18 correct?

19 WITNESS WEST: Exactly.

20 JUDGE SCHNIERLE: I don't see anywhere on here a
21 count for CEI.

22 WITNESS WEST: Again, we rolled all the affiliates
23 up.

24 JUDGE SCHNIERLE: All right. Let's go down a little
25 bit further to, say -- let me see here.

1 (Pause.)

2 JUDGE SCHNIERLE: I think I saw one here where you
3 actually had a count for D&E.

4 (Pause.)

5 JUDGE SCHNIERLE: Okay. Here it is on page 7 under
6 Pottstown. You've got a Verizon count and a D&E count. So
7 the D&E count would be what CEI reported, basically?

8 WITNESS WEST: Yes.

9 JUDGE SCHNIERLE: So, where I see zero under the CLEC
10 count for D&E, it means that D&E and all their affiliates
11 reported no lines at that central office?

12 WITNESS WEST: Right; or more precisely, CEI who did
13 respond isn't serving there, but one of its affiliates is.
14 So we picked it up.

15 JUDGE SCHNIERLE: Wait a minute. Wait a minute.
16 Okay. Well, you claim that your observation shows that D&E
17 is serving there. They claim they're not.

18 WITNESS WEST: They didn't claim. They didn't
19 answer.

20 JUDGE SCHNIERLE: Well --

21 MS. CONOVER: Your Honor, they did not -- D&E Systems
22 did not respond to the Commission's data request.

23 JUDGE SCHNIERLE: Okay. Well, then let's go back --

24 MS. CONOVER: This reflects what is in our system.

25 JUDGE SCHNIERLE: Let's go back to page 7. Under

1 Pottstown, the sixth carrier down is D&E Systems. If you
2 have a number for Verizon count and a number for CLEC count.

3 WITNESS WEST: I'm sorry. I don't see Pottstown.

4 MR. BARBER: It's in the Philadelphia --

5 JUDGE SCHNIERLE: MSA. It's on -- Attachment 5, Part
6 B, and then it's 7.

7 MS. CONOVER: We called both CEI and D&E D&E. That
8 may be what's causing the --

9 JUDGE SCHNIERLE: Okay.

10 MS. CONOVER: Because we counted them as a single
11 entity.

12 JUDGE SCHNIERLE: That's fine. Then what does it
13 mean when there's a blank in the CLEC count opposite D&E?
14 To me, it means they reported zero.

15 MS. CONOVER: D&E Systems did not respond to the
16 Commission's request, because they were not a Footnote 14
17 company. That's what they said. They said they did not
18 respond.

19 JUDGE SCHNIERLE: Well, then how did you come up with
20 a number for Pottstown for D&E?

21 MS. CONOVER: Because that's -- I think that's CEI.

22 WITNESS WEST: No.

23 MS. CONOVER: Well, maybe I shouldn't testify.

24 (Laughter.)

25 JUDGE SCHNIERLE: You know, either -- is that what

1 you're telling me; that in some cases you counted D&E as
2 just D&E and in other cases you counted them as both D&E and
3 CEI?

4 WITNESS WEST: No. Where --

5 JUDGE SCHNIERLE: Let me go further. If you're
6 telling me that D&E didn't respond, then every place I look
7 for D&E, I'd expect to find a blank line, and I don't.

8 WITNESS WEST: Not all of D&E responded. Okay?

9 JUDGE SCHNIERLE: How do you know which switch from
10 looking at your table?

11 WITNESS WEST: We know who we have leased our UNE-Ls
12 to, and so we're able to trace that back to D&E. That's how
13 they show up in our line count. But when it came time for
14 the various CLECs to answer your discovery request, only CEI
15 answered. Their other affiliates chose not to.

16 JUDGE SCHNIERLE: I take it then D&E -- okay; CEI for
17 Camp Hill reported zero.

18 WITNESS WEST: I'm sorry. Which place?

19 JUDGE SCHNIERLE: For Camp Hill, CEI reported zero.

20 MS. CONOVER: D&E includes two CLECs.

21 JUDGE SCHNIERLE: I understand that, but if you say
22 they didn't respond, then all of the D&E ones should be
23 blank, but they're not.

24 WITNESS WEST: No. If CEI --

25 JUDGE SCHNIERLE: You didn't break them out

1 separately, so how do I know if I look at a blank spot if
2 that means that D&E didn't respond or CEI came back and said
3 zero?

4 WITNESS WEST: No. We would put a zero if they said
5 zero.

6 JUDGE SCHNIERLE: Okay. I give up.

7 Mr. Barber?

8 MR. BARBER: Just a couple questions, Your Honor.

9 **REXCROSS-EXAMINATION**

10 BY MR. BARBER:

11 Q. To follow up on that point, you may not have put
12 zero there, but, for example, in the Camp Hill wire center,
13 the fact that it's blank there does, in fact, reflect that
14 CEI told you it had no lines there; correct?

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

16 Q. Now, you had indicated initially in your
17 redirect that CLEC counts column in Attachment 5 reflects --
18 and I wrote this down -- your best interpretation of the
19 CLEC discovery responses; is that correct?

20 A. (Mr. West) Yes.

21 Q. Now, is it fair to say that when you did that,
22 quote, "best interpretation," you didn't exclude any lines
23 that were, in fact, reflected in CLEC discovery responses;
24 correct?

25 A. (Mr. West) No, that's not correct.

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Q. Which lines did you exclude?

A. (Mr. West) To the extent that they answered question 5 by breaking it out to DS-0's res., DS-0's bus., and then DS-1 and greater, we excluded the DS-1 and greater.

Q. To the extent that TelCove provided these responses, did you exclude any of the TelCove lines that were included in ALJ Exhibit 1?

A. (Mr. West) No, because they didn't make that breakout.

Q. Verizon did serve a subpoena on TelCove; correct?

A. (Mr. West) I gather that's how we got that ALJ 1.

Q. So there was a way of bringing TelCove in and getting to the root of this data; correct?

A. (Mr. West) I'm not familiar with the process of how you get somebody to respond to their discovery request.

Q. Now, I appreciated your offer to -- your colloquy with Ms. Conover where you said that, certainly, now you would go in and, to the extent possible, exclude lines that were attributable to the state contract, but it's fair to say that until you were on cross-examination yesterday, you weren't even aware that Adelphia was providing the state contract here; correct?

A. (Mr. West) I personally was not.

1 Q. And, in fact, you didn't seem to be aware that
2 any of these lines could, in fact, be implicated by the
3 state contract?

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

5 Q. So when you provided this testimony, your
6 submission to the Commission was that all of these lines on
7 the CLEC count were, in fact, DS-0 mass market lines?

8 A. (Mr. West) Per the discovery that we had at our
9 disposal, that was the only way to interpret the response.

10 Q. Now, the --

11 MR. BARBER: And this is probably proprietary just
12 very briefly, Your Honor.

13 (Whereupon, the following pages 353 through 354 were
14 sealed and bound separately.)
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1 JUDGE SCHNIERLE: All right. We're off the
2 proprietary record.

3 Ms. Benedek?

4 MS. BENEDEK: No, Your Honor.

5 JUDGE SCHNIERLE: Mr. Buntrock?

6 MR. BUNTROCK: No, Your Honor.

7 JUDGE SCHNIERLE: Mr. Clearfield?

8 MR. CLEARFIELD: Just one question for Mr. Peduto.

9 **RE-CROSS-EXAMINATION**

10 BY MR. CLEARFIELD:

11 Q. When did Verizon start inspections of CO's for
12 the trigger analysis, exactly when? You said it was this
13 summer.

14 A. (Mr. Peduto) To the best of my knowledge, it
15 was in the July and August time frame.

16 Q. July? Is that when it started?

17 A. (Mr. Peduto) I believe so.

18 Q. That was before the Order actually was issued?

19 A. (Mr. Peduto) That's correct.

20 MR. CLEARFIELD: Thank you.

21 JUDGE SCHNIERLE: Mr. Hicks?

22 MR. HICKS: No questions.

23 JUDGE SCHNIERLE: Mr. McClelland?

24 MR. McCLELLAND: Your Honor, OCA would offer no
25 questions. We would like to get a copy of ALJ Exhibit 1.

1 I just want to make sure we're going to get one.

2 MR. CLEARFIELD: The Pennsylvania Carriers' Coalition
3 has graciously provided a second copy.

4 MR. McCLELLAND: Thank you. We appreciate it.

5 JUDGE SCHNIERLE: All right.

6 MS. CONOVER: Your Honor, an offer that I'm more than
7 willing to do is if you would like to have a breakdown
8 between the D&E responses and the CEI, we would be more than
9 happy to provide that. We understand that they would be
10 only one triggering entity, which is why we grouped them
11 together, but to avoid this confusion unfortunately that has
12 come about because one company was identified in Footnote 14
13 and the other was not, we'd be more than happy to provide
14 that breakout.

15 JUDGE SCHNIERLE: I intend to, if we can find them
16 here, put the responses into the record, so that won't be a
17 problem.

18 Is there any objection to ALJ-1?

19 (No response.)

20 JUDGE SCHNIERLE: It's admitted.

21 (Whereupon, the document marked as
22 ALJ Exhibit No. 1 was received in
23 evidence.)

24 JUDGE SCHNIERLE: Do you have any re-redirect?

25 MS. CONOVER: No, no further questions.

JUDGE SCHNIERLE: In that case, you may step down.

(Witnesses excused.)

JUDGE SCHNIERLE: We're definitely off the proprietary record, and we're going to take a lunch break of about say an hour, maybe a little longer.

MR. BARBER: Back at 1:00, Your Honor?

JUDGE SCHNIERLE: Yes, back by 1:00.

(Whereupon, at 11:44 a.m., the hearing was adjourned, to be reconvened at 1:00 p.m., this same day.)

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FORM 2

AFTERNOON SESSION

(1:00 p.m.)

JUDGE SCHNIERLE: All right. We're back on the record. Please remain standing and raise your right hands. Whereupon,

ROBERT LOUBE

ROWLAND CURRY

having been duly sworn, testified as follows:

JUDGE SCHNIERLE: Please be seated.

Mr. McClelland.

DIRECT EXAMINATION

BY MR. McCLELLAND:

Q. Would you each please state your names and your business addresses?

A. (Mr. Loube) Robert Loube, 10601 Cavalier Drive, Silver Spring, Maryland, 20901.

A. (Mr. Curry) Rowland Curry, 1509 Mearns Meadow, Austin, Texas.

Q. Do you have before you a document described as "Direct Testimony of Dr. Robert Loube and Mr. Rowland Curry on Behalf of Pennsylvania Office of Consumer Advocate"?

A. (Mr. Loube) Yes.

A. (Mr. Curry) Yes.

Q. And did you prepare that document or have it prepared under your direction?

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A. (Mr. Loube) Yes.

A. (Mr. Curry) Yes.

MR. McCLELLAND: Your Honor, may we please have this marked as OCA Statement 1?

JUDGE SCHNIERLE: Yes.

(Whereupon, the document was marked as OCA Statement No. 1 for identification.)

MR. McCLELLAND: I will also note for the record we've provided copies for the court reporter. It does also appear in both a proprietary and a redacted version.

Your Honor, could I go off the record for a moment to discuss a revision that may involve proprietary information?

JUDGE SCHNIERLE: Yes.

(Whereupon, the following pages 360 through 361 were sealed and bound separately.)

1 BY MR. McCLELLAND:

2 Q. If I may, do you wish to make any changes to
3 your testimony?

4 A. (Mr. Curry) Yes, I do.

5 Q. Could you please explain?

6 A. (Mr. Curry) On page 38 and in the -- I think I
7 can say it this way -- in the proprietary version, there
8 would be a listing under -- there is one listing -- can I
9 give the density zone?

10 Q. Yes, I think you can.

11 A. (Mr. Curry) Okay. Under Philadelphia Density
12 Zone 1, Broadview Networks is listed with a designation of
13 "R" as an exclusion, because we did not believe at the time
14 we prepared this that they served residential customers.

15 Similar notations also occur on page 39 under
16 Philadelphia Density Zone 2 and Philadelphia Density Zone 3,
17 and all of those designations on the right-hand column,
18 "Reason for Exclusion," should have the "R" removed.

19 Q. Are there any other changes you would make?

20 A. (Mr. Curry) No.

21 A. (Mr. Loubé) No.

22 Q. With that change, is your testimony true and
23 correct to the best of your knowledge, information and
24 belief?

25 A. (Mr. Loubé) Yes.

1 A. (Mr. Curry) Yes.

2 MR. McCLELLAND: Your Honor, we would move the
3 admission of that testimony and offer both Mr. Curry and Dr.
4 Loube for cross-examination.

5 JUDGE SCHNIERLE: Any objection?

6 (No response.)

7 JUDGE SCHNIERLE: It's admitted.

8 (Whereupon, the document marked as
9 OCA Statement No. 1 was received in
10 evidence.)

11 JUDGE SCHNIERLE: Any of the CLECs?

12 (No response.)

13 JUDGE SCHNIERLE: Ms. Paiva, are you going to do it?

14 MS. PAIVA: Yes. We do have cross. We would request
15 to go last.

16 JUDGE SCHNIERLE: Oh, I'm sorry.

17 MS. BENEDEK: I have just one or two, Your Honor.

18 JUDGE SCHNIERLE: All right.

19 CROSS-EXAMINATION

20 BY MS. BENEDEK:

21 Q. Good morning. My name is Sue Benedek, and I'm
22 with Sprint Communications Company, LP.

23 Can you refer to pages 15 and 16 of your testimony?
24 Just a couple questions here. You refer to appropriate
25 geographic market. I'm not to whom this question should be

1 directed.

2 Can you provide an instance of a CLEC ad that is
3 targeted by density cell?

4 A. (Mr. Loube) No.

5 Q. Is it fair to say that marketing is broader in
6 scale than density cells, marketing by CLECs?

7 A. (Mr. Loube) I haven't made a complete survey of
8 the market. I know it could be national. It could be on a
9 media wide basis, and it could be local. But, you know,
10 many people believe that you prefer to use the media, which
11 is more or less around where the TV and the newspaper ads
12 go.

13 Q. And when you say local, what do you mean?

14 A. (Mr. Loube) Local; you can get a flier in the
15 mail from a CLEC.

16 Q. To an individual residence?

17 A. (Mr. Loube) Yes.

18 Q. Can you go to page 17, lines 17 to 18? You talk
19 about the Office of Management and Budget. Does the OMB
20 change its MSA designations in accordance with the census?

21 A. (Mr. Loube) It works with the Census Department
22 when they come out with the census. I don't know if they
23 have to be every ten years. I know there was one just
24 recent change.

25 Q. Right; the Lebanon example provided in your

1 testimony.

2 A. (Mr. Loube) The Lebanon example, and also a
3 county got added to the Pittsburgh MSA.

4 Q. Prior to that, were there any other changes to
5 the Pennsylvania MSAs that you are aware of?

6 A. (Mr. Loube) Those are the two recent ones that
7 I am aware of.

8 Q. And prior to that, any?

9 A. (Mr. Loube) I didn't go back in history and
10 track them.

11 Q. What about in the last ten years?

12 A. (Mr. Loube) I did not go historically back and
13 track over time changes in MSAs. I just found these two
14 changes most recently.

15 Q. Back to the question on density cells. If UNE-P
16 was removed in a density cell but granted in another density
17 cell, what assurance can you provide a CLEC will at some
18 point attempt to provide service in a density cell that was
19 removed for UNE-P?

20 A. (Mr. Loube) Well, if it had been removed, that
21 would mean that there's triggers and, thus, the trigger had
22 been proven, and, therefore, you would have evidence on the
23 record that there is service.

24 Q. But there is no evidence other than the
25 assumption underlying the removal of the UNE-P that you can

1 cite to; correct? There is no other assurance that you can
2 give that a CLEC will indeed attempt to market or provide
3 service in density cells other than the one in which UNE-P
4 is available?

5 A. (Mr. Loube) Well, I'm not quite sure what
6 you're trying to say here, but if the trigger mechanism has
7 been examined and it is found there is no impairment, then
8 the conclusion is that the Commission found that there was
9 enough people providing the service.

10 Now, I have no guarantee that there will be more
11 CLECs coming into that area. I can't tell you that. I
12 don't know.

13 Q. Let's take a quick hypo. Let's assume in this
14 case the Commission agrees with Verizon on its alternative
15 proposal or the proposal having to do with density cells,
16 but it does not agree that Density Cell 3 triggers have been
17 satisfied. Only Density Cell 1 and 2 triggers have been
18 satisfied.

19 A. (Mr. Loube) Okay.

20 Q. So a CLEC would have to -- what assurance can
21 you provide that there will be some competitive entry into
22 that third density cell or the fourth?

23 A. (Mr. Loube) I can't, but any CLEC can still use
24 UNE-P in 3 or 4, because that's the way the trigger
25 mechanism was decided.

1 MS. BENEDEK: I have no further questions, Your
2 Honor.

3 JUDGE SCHNIERLE: Anyone else?

4 (No response.)

5 JUDGE SCHNIERLE: No. Ms. Paiva.

6 CROSS-EXAMINATION

7 BY MS. PAIVA:

8 Q. Good afternoon, Mr. Curry and Mr. Loubé. I'm
9 Suzan Paiva on behalf of Verizon. I have a few questions
10 for you.

11 Could you turn to page 4 of your testimony beginning
12 at line 17? And based on the designation in the testimony,
13 this question is for Mr. Curry.

14 On lines 17 and 18, you quote two figures for the
15 total number of residential UNE platform arrangements in
16 Verizon's territory and the total number of business UNE
17 platform arrangements in Verizon's territory.

18 Was the source of that information Verizon's
19 discovery responses?

20 A. (Mr. Curry) I didn't footnote it, but I believe
21 it was the same as the chart on the following page, which
22 would be Verizon's response to MCI-I-41. I don't have notes
23 specifically, but that's an educated guess on my part.

24 Q. Would you accept also subject to check that your
25 numbers match up with Verizon's response to the Commission's

1 discovery as well?

2 A. (Mr. Curry) I'll accept that subject to check,
3 yes.

4 Q. My question for you is those figures for the
5 total number of UNE-P arrangements, that's in Verizon's
6 entire Pennsylvania territory, not limited to the areas for
7 which we're seeking relief; correct?

8 A. (Mr. Curry) That's correct. That would be my
9 understanding if those numbers agree with the response to
10 the PUC's data request, yes.

11 Q. Turning -- I think you already did turn to page
12 5 to the top, you have a pi drawing up there. The right-
13 hand side of the pi chart depicts, I guess, the lines that
14 CLECs provide using either UNE-loop with their own switching
15 or resale; correct?

16 A. (Mr. Curry) Right.

17 Q. And my question for you is the data that went
18 into making that chart, that would not include lines that
19 CLECs provide totally over their own facilities such as
20 cable telephony, could it?

21 A. (Mr. Curry) That's correct.

22 Q. And it also would not include voice over IP type
23 lines?

24 A. (Mr. Curry) Correct.

25 Q. My next question based on the testimony I guess

1 is for Dr. Loube, and it's right underneath that chart also
2 on page 5 beginning at line 7.

3 You talk about, and I hope I pronounce this
4 correctly, the Herfindahl-Hirschman Index.

5 A. (Mr. Loube) Yes.

6 Q. Could you tell me what that is?

7 A. (Mr. Loube) It's an index that measures the sum
8 of the shares, market shares, of all the people in the
9 market, all different carriers.

10 Q. Is it something that is used in connection with
11 anti-trust analysis?

12 A. (Mr. Loube) Yes. The Horizontal merger
13 guidelines do talk about that.

14 Q. So it's used in connection with the Horizontal
15 merger guidelines?

16 A. (Mr. Loube) Sure does.

17 Q. Is it basically a measure of market power?

18 A. (Mr. Loube) It has been used as an indicator of
19 market power.

20 Q. Do you have a copy of the Triennial Review Order
21 up there with you?

22 A. (Mr. Loube) Most of it.

23 Q. Do you have paragraph 109?

24 A. (Mr. Loube) Yes.

25 (Pause.)

1 Q. I just want to have you -- first, once you find
2 it --

3 A. (Mr. Loube) Okay.

4 Q. The first sentence of paragraph 109 after the
5 italicized, the FCC states, "We reject arguments that we
6 should require the unbundling of network elements to remove
7 an incumbent LEC's market power in the retail market and
8 that we should use the HMG to identify market power."

9 By HMG, does that stand for Horizontal Merger
10 Guidelines?

11 A. (Mr. Loube) Yes, it does.

12 Q. At the end of that sentence, it refers down to
13 Footnote 361, and about halfway down that footnote, the FCC
14 says, "Covad argues that we should always order unbundling
15 in highly concentrated markets calculated using the
16 Herfindahl-Hirschman Index."

17 Do you see that?

18 A. (Mr. Loube) Yes, I see that.

19 Q. And based on Footnote 361 being at the end of
20 the sentence where they talk about what they reject, they
21 have rejected the use of the Herfindahl-Hirschman Index for
22 purposes of determining --

23 A. (Mr. Loube) They rejected it for the purposes
24 of determining whether or not to unbundle, and I am not
25 suggesting to use it for the purposes of whether or not to

1 have an impairment. I am putting this into my testimony to
2 explain the general nature of the market in Pennsylvania.

3 It is not a decision rule to be used to determine
4 whether or not the triggers are met. The FCC decide to use
5 a trigger approach rather than the Herfindahl-Hirschman
6 Index approach.

7 Q. Thank you. Could you turn now to page 15?
8 Based on the designation in the testimony, this question is
9 also for you, Dr. Loube.

10 Starting at line 13, there is a sentence that reads,
11 "Due to the relatively small size and compactness of Density
12 Cells 1, 2 and 3, it appears that a CLEC should be able to
13 build a reasonable efficient backhaul network to bring the
14 traffic back from the incumbent's wire centers to the CLEC
15 switch."

16 Do you see that?

17 A. (Mr. Loube) Yes.

18 Q. What is backhaul?

19 A. (Mr. Loube) Backhaul is taking it from the
20 collocation or from a collocation site or actually from a
21 consumer position if you backhaul using an EEL and getting
22 back to the CLECs switch. So it's the combination of all
23 kinds of transports to bring messages back to the CLECs
24 switch.

25 Q. Just to make sure I understand, it's basically

1 transport that would aggregate the traffic going to the CLEC
2 switch and take it all to the CLEC's switch?

3 A. (Mr. Loube) Correct.

4 Q. And by this sentence, is it your opinion then
5 that a CLEC should be able to have a switch somewhere in
6 either Density Cells 1, 2 or 3 and build efficient backhaul
7 facilities to bring everything back to that one switch?

8 A. (Mr. Loube) I'm saying that it appears that
9 that could be possible. I'm not saying that I'm designating
10 that every CLEC has to have a switch there.

11 Q. Now, following on the same topic, moving over to
12 page 16 -- and this is still you -- the first question
13 there, you talk about Scranton-Wilkes-Barre MSA and you talk
14 about the Hazleton wire center.

15 Am I correct that your opinion is that even though
16 the Hazleton wire center is a Density Cell 3 wire center,
17 that your opinion is it should not be included in the relief
18 area because it is not contiguous with the other Density
19 Cell 3 areas in that MSA?

20 A. (Mr. Loube) That's correct. You can see that
21 up on your map there where you've got -- do you want me to
22 approach the map and point that out?

23 Q. Yes.

24 (Pause.)

25 A. (Mr. Loube) This is the MSA. Here's Hazleton

1 down here separated a significant distance away from the
2 other two.

3 Q. Hazleton is the pink part down at the bottom tip
4 of the Scranton-Wilkes-Barre MSA?

5 A. (Mr. Loube) Yes.

6 Q. Thank you.

7 JUDGE SCHNIERLE: As a matter of fact, having driven
8 that many times, I'd be willing to take judicial notice that
9 there are some serious mountains between those two pink
10 areas there.

11 BY MS. PAIVA:

12 Q. And the reason that you take this position is
13 because it is your opinion that the CLECs may not be able to
14 design efficient backhaul from Hazleton to a switch that
15 would be located in one of these other areas?

16 A. (Mr. Loube) That's correct.

17 Q. Do you have up there Attachment 5 to Verizon's
18 Statement 1.2? That's the chart with the various CLECs that
19 are providing service in the various wire centers.

20 (Pause.)

21 Q. If not, I can give you a copy.

22 A. (Mr. Loube) On the top, it says, VZ Statement
23 1.2, Attachment 5, Part A-1?

24 Q. Yes. That's it. I'm going to turn to the page
25 that has the Hazleton wire center on it. So if you could

1 just bear with me a minute, I'll find that page for you.

2 (Pause.)

3 A. (Mr. Loube) I only have Part A. I don't have
4 Part B that has the wire centers.

5 Q. I could hand it to you.

6 (Document handed to witness.)

7 MS. PAIVA: For those that do have it, Hazleton
8 appears on the last page.

9 WITNESS LOUBE: Yes. It's the first wire center on
10 the last page.

11 BY MS. PAIVA:

12 Q. Do you see in the Hazleton wire center itself,
13 under the Verizon count column, we have two CLECs providing
14 service there; and under the CLEC count, there are three
15 CLECs providing service there?

16 A. (Mr. Loube) Yes.

17 Q. Looking down at the other offices that are in
18 Scranton-Wilkes-Barre MSA, those same two or three CLECs
19 provide service in some of these other offices as well;
20 correct?

21 A. (Mr. Loube) According to your table, yes.

22 Q. My question for you is did you investigate what
23 kind of backhaul facilities the CLECs that are serving
24 customers in Hazleton have?

25 A. (Mr. Loube) No. I would think that that would

1 be part of an economics case, Step 2. So I did not do a
2 detailed economic analysis.

3 Q. Would you agree that unless their switch is
4 actually in Hazleton, if these CLECs are providing service
5 in Hazleton, they do have some sort of backhaul facilities?

6 A. (Mr. Loube) I don't know anything about their
7 backhaul facilities.

8 Q. But just as a matter of logic, would it be
9 required that if the switch is not in Hazleton and they're
10 serving customers in Hazleton, they would have to have
11 backhaul facilities?

12 A. (Mr. Loube) They might, yes.

13 JUDGE SCHNIERLE: I'm going to break in for a minute.
14 Do you know if Adelphia has the state contract? Were you
15 here the last two days?

16 WITNESS LOUBE: Yes.

17 JUDGE SCHNIERLE: Do you know where Commonwealth
18 Telephone has ILEC service territory?

19 WITNESS LOUBE: It's very close and along the borders
20 there.

21 JUDGE SCHNIERLE: You may continue.

22 BY MS. PAIVA:

23 Q. Just one more question, and this is also for
24 you, Mr. Loube. You can put away Attachment 5. Turn to
25 page 23 of your testimony.

1 JUDGE SCHNIERLE: Any objection?

2 MS. CONOVER: No objection.

3 (Whereupon, the document was marked
4 as MCI Statement No. 3.0 for
5 identification, and was received in
6 evidence.)

7 MS. PAINTER: MCI calls Earle Jenkins to the stand.

8 JUDGE SCHNIERLE: Please stand and raise your right
9 hand.

10 Whereupon,

11 EARLE JENKINS

12 having been duly sworn, testified as follows:

13 JUDGE SCHNIERLE: Please be seated.

14 DIRECT EXAMINATION

15 BY MS. PAINTER:

16 Q. Mr. Jenkins, can you please state your name and
17 address?

18 A. My name is Earle Jenkins. My address is Post
19 Office Box 192, Holderness, New Hampshire.

20 Q. Do you have before you what has been marked as
21 MCI Statement 2.0, which is your direct testimony?

22 A. That's correct.

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

25 A. It was, yes.

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Q. Do you have any corrections to the testimony?

A. I have three corrections. The first is on page 5. I call your attention to Footnote No. 5. I would like to remove that footnote.

The second correction appears on page 13, Footnote No. 7. There is a proprietary number there. Instead of 73, it should read 74.

JUDGE SCHNIERLE: All right. We weren't on the proprietary record.

MS. PAINTER: I don't think that there is any indication of what it was.

JUDGE SCHNIERLE: Okay. All right.

THE WITNESS: That's why I did it that way, Your Honor.

JUDGE SCHNIERLE: All right.

THE WITNESS: The last is Footnote 8, which begins on page 20 and goes onto page 21. It references DC testimony. I state line numbers there 3 through 5. I neglected to state the page. It's page 2.

BY MS. PAINTER:

Q. So insert page 2 just before lines 3 through 5?

A. Three through 5, that's correct.

Q. And with those corrections, is this testimony correct to the best of your information and belief?

A. Yes, it is.

1 Q. And if you were asked the same questions today,
2 would your answers be the same?

3 A. They would.

4 MS. PAINTER: Your Honor, with that, I'd move the
5 admission of MCI Statement 2.0 subject to cross-examination.
6 And just for the record, this statement does include
7 Attachments 1 through 6.

8 JUDGE SCHNIERLE: Any objection?

9 (No response.)

10 JUDGE SCHNIERLE: It's admitted.

11 (Whereupon, the document was marked
12 as MCI Statement No. 2.0 for
13 identification, and was received in
14 evidence.)

15 MS. PAINTER: Mr. Jenkins is available for cross-
16 examination.

17 JUDGE SCHNIERLE: Mr. McClelland or any of the CLECs?

18 (No response.)

19 JUDGE SCHNIERLE: All right. Ms. Paiva.

20 CROSS-EXAMINATION

21 BY MS. PAIVA:

22 Q. Good afternoon, Mr. Jenkins.

23 A. Good afternoon.

24 Q. Just a couple of questions. I think one of your
25 corrections actually may have taken care of some of my

1 questions, but I just want to be clear on why you made the
2 correction.

3 A. That's fine.

4 Q. Would you turn to page 5?

5 A. I'm there.

6 Q. In the corrections you just made, you removed
7 Footnote 5 entirely; correct?

8 A. That's correct.

9 Q. Is the reason that you removed it because the
10 FCC's errata has changed paragraph 499?

11 A. That's correct.

12 Q. So paragraph 499 of the TRO no longer contains
13 that sentence that you quote in Footnote 5; correct?

14 A. That's correct. That's why I removed it.

15 Q. That was part of your support for your
16 proposition that evidence of operational barriers is
17 relevant to this case, was it not?

18 A. Actually, it was a supporting statement, but,
19 again, I don't wish to get into the TRO definitions, but
20 actively providing service and the likelihood to continue
21 providing service is really the basis for my testimony,
22 which I believe still appears in the TRO.

23 Q. So what you just said is now the basis for your
24 testimony, and this quote, "They should be capable of
25 economically serving the entire market," that is no longer

1 the basis for your testimony?

2 A. Do you want to point me towards that?

3 Q. That's in Footnote 5 that you removed.

4 A. Footnote 5 does not apply.

5 MS. PAIVA: Excuse me just a minute.

6 (Pause.)

7 MS. PAIVA: I'd just like to mark an exhibit.

8 Yesterday we marked a map as Verizon Exhibit 1. So should
9 we start as Verizon Exhibit 2?

10 MR. BARBER: Is it a cross exhibit?

11 MS. PAIVA: Or Cross-Examination Exhibit 1? What is
12 your preference?

13 JUDGE SCHNIERLE: Why don't we make it Cross Exhibit
14 1.

15 MS. PAIVA: Okay.

16 (Whereupon, the document was marked
17 as Verizon Cross-Examination Exhibit
18 No. 1 for identification.)

19 BY MS. PAIVA:

20 Q. Have you had a chance to look at the document
21 marked Verizon Cross Exhibit 1?

22 A. Not really. I'll take a second and read it now.

23 (Pause.)

24 A. Okay.

25 Q. For the record, Verizon Cross Exhibit 1 is

1 markup showing paragraph 499 as it originally appeared in
2 the TRO and then marked up to change it in the way that it
3 was changed in the errata.

4 I'm assuming, based on the fact that you changed your
5 testimony, that you reviewed the errata and reviewed how
6 they changed that paragraph; correct?

7 A. That's correct.

8 Q. Having reviewed Verizon Cross-Examination
9 Exhibit 1, does this depict the changes that the FCC made in
10 its errata?

11 A. I would have to -- subject to check, I guess it
12 is.

13 Q. Subject to check, you would accept that?

14 A. Yes.

15 Q. I'll move on to something else then.

16 A. Fine.

17 Q. If you could turn to page 21 of your testimony.

18 A. Okay. I'm there.

19 Q. On line 6, you quote a number, which is the
20 number of UNE-P lines in service as of June 2003?

21 A. That's correct.

22 Q. And your point that you're making in this
23 paragraph is that if the Commission deems the triggers to be
24 satisfied, all of these UNE-P lines would have to be cut
25 over to UNE-L; correct?

1 JUDGE SCHNIERLE: Do you want move your exhibit?

2 MS. PAIVA: I'm going to move my exhibit, but before
3 we move to the next witness, Verizon and MCI had agreed to
4 stipulate on the admission of one set of MCI interrogatory
5 responses that came in after the rebuttal testimony was
6 filed, and I thought I would mark that as the next exhibit
7 and move them both in, if that's all right.

8 JUDGE SCHNIERLE: All right. Let's do it.

9 MR. CLEARFIELD: Your Honor, on the cross exhibit,
10 I'm going to lodge an objection. This is simply paragraph
11 499 of the TRO. If we're going to make that an exhibit, I
12 just want to make sure that it's clear that it has no
13 evidentiary significance. You can't change the meaning of
14 an Order through an errata. So any suggestion that just
15 because an errata moves words around it means something
16 different than what it meant in the first place should not
17 be a matter of evidentiary finding.

18 MS. PAIVA: Your Honor, may I speak to that?

19 JUDGE SCHNIERLE: Sure.

20 MS. PAIVA: The exhibit is intended to have an easy
21 reference to the changes that the errata made to that
22 paragraph. Of course, the FCC's Order and its errata are
23 public documents that the parties can cite, but I'm not
24 aware of a place where the FCC has laid it out in a cut and
25 paste form where you can see the changes, and that's the

1 purpose of the exhibit.

2 MR. CLEARFIELD: Your Honor, as long as we have a
3 stipulation that this has no evidentiary significance and
4 the question of the import of the errata and whether it can
5 actually change the meaning of an Order is something that
6 will be briefed and argued by the Commission, I'll withdraw
7 my objection. I was just concerned about the potential
8 evidentiary nature of that.

9 JUDGE SCHNIERLE: Well, I don't think you can -- it's
10 not the final word on what the interpretation of 499 is
11 going to be. Let's put it that way. With that, it's
12 admitted.

13 (Whereupon, the document marked as
14 Verizon Cross-Examination Exhibit
15 No. 1 was received in evidence.)

16 MS. PAIVA: Your Honor, just to clean up, I am going
17 to present that other exhibit that was stipulated to, which
18 we marked as Verizon Cross-Examination Exhibit 2.

19 JUDGE SCHNIERLE: That's fine.

20 (Whereupon, the document was marked
21 as Verizon Cross-Examination Exhibit
22 No. 2 for identification.)

23 MS. PAIVA: This is the entire package that is MCI
24 WorldCom's responses to Verizon's Set V interrogatories.

25 MR. BARBER: This is being marked as what?

1 MS. PAIVA: Two.

2 MS. BENEDEK: Verizon cross exhibit or just exhibit?

3 MS. PAIVA: Verizon cross exhibit.

4 JUDGE SCHNIERLE: I've got one more question
5 regarding Verizon Cross-Examination Exhibit 1. I take it
6 that Verizon would urge the Commission to look at the text
7 of the TRO as well as the regulations themselves in
8 interpreting what is required?

9 MS. PAIVA: Yes.

10 JUDGE SCHNIERLE: Thank you. You may continue.

11 MS. PAINTER: Your Honor, MCI calls Michael Pelcovits
12 to the stand.

13 JUDGE SCHNIERLE: Please raise your right hand.

14 Whereupon,

15 MICHAEL D. PELCOVITS

16 having been duly sworn, testified as follows:

17 JUDGE SCHNIERLE: Please be seated.

18 DIRECT EXAMINATION

19 BY MS. PAINTER:

20 Q. Dr. Pelcovits, can you please state your name
21 and address for the record?

22 A. My name is Michael Pelcovits. My address is
23 1155 Connecticut Avenue, N.W., Washington, D.C., 20036.

24 Q. Do you have before you what has been marked MCI
25 Statement 1.0, which is the direct testimony of Michael D.

1 Pelcovits?

2 A. Yes.

3 Q. Was this prepared by you or under your direct
4 supervision?

5 A. Yes, it was.

6 Q. And do you have any corrections to the
7 testimony?

8 A. I have one correction. On page 81, line 19,
9 there is a typographical error. In the underlined phrase,
10 there should be two words added between "wire center" and
11 "Verizon," "in the."

12 So it should read, "areas with three CLECs in any
13 wire center in the Verizon-defined market."

14 Q. And with that correction, is the information
15 contained in this statement true and correct to the best of
16 your information and belief?

17 A. Yes.

18 Q. And you were asked the same questions today,
19 would your answers be the same?

20 A. Yes.

21 Q. Do you have before you what has been marked MCI
22 Statement 1.1, which is the rebuttal testimony of Michael D.
23 Pelcovits?

24 A. Yes.

25 Q. Was this prepared by you or under your direct

1 supervision?

2 A. Yes.

3 Q. Do you have any corrections?

4 A. I do not.

5 Q. And is the information contained in this MCI
6 Statement 1.1 true and correct to the best of your
7 information and belief?

8 A. Yes.

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

11 A. Yes.

12 MS. PAINTER: With that, Your Honor, I'd move the
13 admission MCI Statement 1.0, which consists of testimony as
14 well as 13 attachments, and MCI Statement 1.1.

15 JUDGE SCHNIERLE: Any objection?

16 (No response.)

17 MS. CONOVER: No objection.

18 JUDGE SCHNIERLE: They're admitted.

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

23 JUDGE SCHNIERLE: Any CLECs want to cross?

24 MS. BENEDEK: Yes, Your Honor.

25 JUDGE SCHNIERLE: Ms. Benedek.

CROSS-EXAMINATION

1
2 BY MS. BENEDEK:

3 Q. Good afternoon, Doctor. I have two questions.
4 The first question for you is does MCI advertise on a wire
5 center basis; do you know?

6 A. I believe it does not, but if I could amplify
7 for just a second, I think that advertising is a small part
8 of the entire marketing of a telecommunications service like
9 a company like MCI. MCI primarily sells through
10 telemarketing, and telemarketing can be very highly
11 targeted.

12 Q. I'm looking at your rebuttal testimony at page
13 4. It's the electronic copy. I still think it should
14 dovetail. It's lines 1 through 4. You talk about the
15 testimony of Mr. Sywenki on behalf of Sprint.

16 A. Right.

17 Q. You said, "He cautions, however, that a granular
18 analysis must examine impairment throughout the defined
19 geographic market" --

20 JUDGE SCHNIERLE: Louder and slower.

21 BY MS. BENEDEK:

22 Q. Reference that page.

23 A. Okay.

24 Q. If the PUC chose a geographic market definition
25 that was broader than wire centers, is it your testimony

1 that you would agree or you could agree that when the PUC
2 applies this trigger analysis, that it should do so
3 throughout the market?

4 A. Yes. I agree that it should look at the entire
5 market and not just count a CLEC that serves one small
6 geographic area within that broader geographic market.

7 MS. BENEDEK: No further questions, Your Honor.

8 CROSS-EXAMINATION

9 BY MR. STUBBS:

10 Q. Dr. Pelcovits, is it fair to say that with
11 respect to responding to discovery in this case, that MCI
12 would require its sponsoring responders and managers to
13 answer truthfully, fairly and to the best of their
14 information and belief?

15 A. Yes.

16 Q. Is that how you answered your interrogatories or
17 other discovery requests in this case?

18 A. I didn't sponsor any interrogatory requests.

19 Q. But generally speaking, that's what MCI would
20 have expected of its managers and responders?

21 A. Yes.

22 Q. Do you know Donald Price?

23 A. I do.

24 Q. Do you believe that Donald Price would have been
25 expected to answer truthfully and fairly and to the best of

1 his information and belief?

2 A. Yes, sir.

3 Q. Who is Donald Price?

4 A. He is a senior manager for regulatory affairs.

5 Q. Would he have been the same Donald Price that
6 responded to the interrogatories entered by Verizon as
7 Verizon Cross-Exam 2?

8 A. Yes, but I don't have that in front of me.

9 Q. I'll show you what I'll have marked as Cavalier
10 Cross Exhibit 1.

11 JUDGE SCHNIERLE: Wait a minute. Are you marking
12 what they just marked?

13 MR. STUBBS: No, Your Honor.

14 JUDGE SCHNIERLE: All right.

15 MR. BARBER: This is Cavalier 1?

16 MR. STUBBS: That's right.

17 (Whereupon, the document was marked
18 as Cavalier Cross-Examination
19 Exhibit No. 1 for identification.)

20 BY MR. STUBBS:

21 Q. Dr. Pelcovits, Cavalier Cross 1 purports to be a
22 response of MCI WorldCom Network Services, Inc., to Set III
23 interrogatories and document requests of Verizon
24 Pennsylvania, document request number 31; is that right?

25 A. Yes.

1 Q. Do you have any reason to think that this
2 response purportedly by Donald Price is inaccurate?

3 A. No.

4 Q. Any reason to think that there is anything that
5 needs to be corrected in any way?

6 A. Not that I'm aware of.

7 MR. STUBBS: Your Honor, I would move for the
8 introduction of Cavalier Cross 1.

9 JUDGE SCHNIERLE: Any objection?

10 MS. CONOVER: No objection.

11 JUDGE SCHNIERLE: It's admitted.

12 (Whereupon, the document marked as
13 Cavalier Cross-Examination Exhibit
14 No. 1 was received in evidence.)

15 MR. STUBBS: Nothing further, Your Honor.

16 JUDGE SCHNIERLE: Anyone else?

17 (No response.)

18 JUDGE SCHNIERLE: Ms. Conover.
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1 MS. CONOVER: Your Honors, with your indulgence, Ms.
2 Coyne has a few questions in the transport area, and then I
3 will do the rest of the cross-examination.

4 JUDGE SCHNIERLE: All right. Go ahead.

5 MS. COYNE: Thank you very much.

6 **CROSS-EXAMINATION**

7 BY MS. COYNE:

8 Q. Hello, Dr. Pelcovits. You offered testimony on
9 the transport issue in your direct testimony, didn't you?

10 A. Yes.

11 Q. And that is, I believe, pages 83 through 101 of
12 your testimony; is that correct?

13 A. That sounds about right, yes.

14 Q. Subject to check. You offered testimony on
15 behalf of MCI on whether the FCC's transport triggers were
16 met in Verizon's territory in Pennsylvania; true?

17 A. I'm sorry; I didn't --

18 Q. You offered testimony on whether the FCC's
19 transport triggers were met in Verizon's territories in
20 Pennsylvania?

21 A. Yes, that's my testimony.

22 Q. And you understand, sir, that the FCC's
23 transport triggers evaluate the facilities of competitive
24 carriers such as MCI; right?

25 A. Yes.

1 Q. They're not looking at the facilities of
2 Verizon; isn't that true?

3 A. They are to the extent that the facilities
4 originate and potentially terminate in a Verizon wire
5 center.

6 Q. You're correct. Other than needing to have one
7 end of a transport facility in a Verizon wire center and the
8 other end of the route in a Verizon center, every other
9 factual aspect of the transport triggers is looking at the
10 facilities of competitive carriers such as MCI; isn't that
11 right?

12 A. I'd agree with that.

13 Q. Let me ask you a couple background questions
14 before we get back to the testimony. Prior to submitting
15 your direct testimony, did you undertake to learn about
16 MCI's transport facilities in Pennsylvania?

17 A. Well, as part of preparing for the testimony, I
18 certainly reviewed whatever material had been provided to me
19 up until that point. I frankly don't recollect exactly what
20 I saw then and what I've seen since then. But I did not
21 undertake personally to examine the facilities of MCI in
22 Pennsylvania.

23 Q. What documents did you review prior to
24 submitting your testimony, sir?

25 A. I believe all I've reviewed is the same material

1 that was submitted in response to the various discovery
2 requests in this proceeding.

3 Q. So am I correct in saying that what you reviewed
4 in order to prepare your direct testimony was the discovery
5 responses of MCI?

6 A. With respect to the MCI facilities. I also
7 reviewed the discovery responses of the other CLECs.

8 Q. So in order to prepare your direct testimony,
9 which tries to apply the transport triggers to the network
10 facilities of MCI and other carriers, what I understand you
11 reviewed is MCI's discovery responses to the Commission and
12 to Verizon, I suppose, and other competitive carriers'
13 discovery responses; is that correct?

14 A. Yes, and the testimony submitted by the Verizon
15 witnesses.

16 Q. Did you review anything else in order to learn
17 and gather facts about MCI's facilities prior to submitting
18 your testimony?

19 A. Not specifically for this testimony.

20 Q. Do you agree with me that MCI is the entity in
21 the best position to know and understand what sort of
22 transport facilities it has in Pennsylvania?

23 A. Yes.

24 Q. Prior to submitting your testimony, did you
25 review Verizon's testimony?

1 A. I think I said earlier that I did, yes.

2 Q. And you reviewed Verizon's initial testimony as
3 well as its supplemental testimony?

4 A. Yes.

5 Q. And as part of your review, you looked at, I
6 assume, the exhibits that were attached to Verizon's
7 supplemental testimony?

8 A. I did.

9 Q. I'm going to ask you a couple questions about
10 that. They're, of course, already in the record, but I
11 have, in case you don't have it readily available, pulled
12 out a copy, if you'd like to see it.

13 A. Sure. Thank you.

14 Q. And to sort of speed this along, I've gone ahead
15 and tabbed what I'm going to ask you about.

16 (Document handed to witness.)

17 A. Great. Thank you.

18 (Whereupon, the following pages 397 through 414 were
19 designated proprietary and were sealed and bound
20 separately.)

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25

1 BY MS. COYNE:

2 Q. Dr. Pelcovits, earlier I asked you whether MCI
3 differentiates between customers on the basis of business
4 plans. If you could look at Document Request 26, you can
5 see that I was reading from MCI's response. Did I read that
6 correctly, sir?

7 A. Yes, and that's -- informed by that response,
8 that's the basis of my earlier response.

9 Q. And so that is your understanding as well?

10 A. That's correct. That informed my understanding.

11 Q. Does MCI offer general transport services to its
12 customers without regard to the customers' use of such
13 facilities? Did I read that correctly also? That is the --

14 A. That's the second half of that sentence.

15 Q. That's right. Is that your understanding as
16 well?

17 A. Yes.

18 Q. So, Dr. Pelcovits, does this mean that MCI
19 doesn't differentiate between carrier customers and retail
20 customers, in essence, to MCI a customer is a customer?

21 A. That's correct.

22 JUDGE SCHNIERLE: Wait a minute. What interrogatory
23 response are you reading from?

24 MS. COYNE: I was reading from a Document Request No.
25 26.

1 JUDGE SCHNIERLE: Twenty-six. All right. Thank you.

2 MS. COYNE: And for the record, this general response
3 was given to Document Request 27 and 28, and perhaps more
4 that I haven't noted.

5 BY MS. COYNE:

6 Q. So MCI provides DS-1 and DS-3 transmission
7 services over its OCN level transmission facilities to
8 retail customers, doesn't it?

9 A. Yes.

10 Q. And so consistent with MCI's discovery responses
11 and your testimony, MCI also provides DS-1 and DS-3
12 transmission services over its OCN facilities to its carrier
13 customers; isn't that correct?

14 A. It offers it. I don't know whether it provides
15 it.

16 Q. It offers it?

17 A. It offers, as it said here earlier, it does not
18 distinguish one customer from another, but whether it has
19 carrier customers of DS-3 and DS-1 services, I can't say.

20 Q. One last question. Could we go back to
21 Cavalier Cross-Exam Exhibit 1?

22 A. Sure.

23 Q. Do you see the question there, "Provide all
24 documents that discuss or describe whether you are willing
25 to provide dark fiber dedicated transport in Pennsylvania to

1 other carriers"?

2 A. Yes.

3 Q. Did I read that correctly?

4 A. Yes.

5 Q. And the answer is, "MCI hereby incorporates its
6 general objections. By way of further answer, MCI does not
7 provide dark fiber dedicated transport in Pennsylvania to
8 other carriers."

9 Dr. Pelcovits, does MCI offer to provide dark fiber
10 dedicated transport in Pennsylvania to other carriers?

11 A. I do not know.

12 MS. COYNE: Thank you, sir.

13 **CROSS-EXAMINATION**

14 BY MS. CONOVER:

15 Q. Dr. Pelcovits, I'm Julie Conover with Verizon.
16 Good to see you this afternoon.

17 A. Good afternoon.

18 Q. I have a few questions on another topic, which
19 has to do with the switching triggers.

20 A. Yes.

21 Q. I'd like you to turn your attention to page,
22 well, first, 65 of your testimony, lines -- this is the
23 direct testimony -- line 15 where you talk about the
24 application of the wholesale trigger in a given market. Do
25 you see that?

1 A. Yes.

2 Q. And it's your understanding, is it not, that
3 Verizon is not claiming here that it meets the wholesale
4 trigger for switching? Is that correct?

5 A. Yes.

6 Q. So this language does not apply in the case of
7 Verizon's switching triggers case presented here; is that
8 correct?

9 A. I believe that's correct.

10 Q. Turning to page 67, again, lines 17 through 20,
11 you discuss -- I believe you're discussing here the self-
12 provisioning trigger; is that correct?

13 A. I'd have to double-check, but yes, I think that
14 would -- that would certainly make the most sense, yes.

15 Q. Take your time. If you want to look at it,
16 you're welcome to do so.

17 A. I think I'm okay.

18 Q. Now, you understand that Verizon is seeking to
19 meet the self-provisioning trigger; is that correct?

20 A. Yes.

21 Q. Now, you state on lines 18 through 20 that in
22 order to meet this trigger, the Commission should require
23 evidence that each company counted toward the retail trigger
24 has a demonstrated capability of holding itself out to
25 provide retail local exchange service to all, or virtually

1 all, mass market customers within that wire center, which is
2 your definition of a market. Is that your testimony?

3 A. Yes, it is.

4 Q. You'll recall, we marked and put into the record
5 Verizon Cross-Examination Exhibit No. 1, which essentially
6 sets forth paragraph 499 as originally adopted and as
7 amended. Do you have that in front of you?

8 A. Actually, I do not.

9 Q. You don't?

10 A. I don't.

11 Q. I just have a few questions to ask about that.

12 (Document handed to witness.)

13 Q. I'd just like you to look at the errata, and
14 would you agree with me that -- towards the middle of the
15 paragraph -- that the FCC essentially in the errata
16 eliminated the sentence that essentially said the
17 competitive providers must be operationally ready and
18 willing to provide service to all customers in the
19 designated market as a requirement of the self-provisioning
20 trigger?

21 MS. PAINTER: Objection, Your Honor. I would just go
22 to the same point that Mr. Clearfield made earlier. He can
23 certainly testify that they eliminated that sentence, but
24 not to the legal ramifications of what that means.

25 MS. CONOVER: I think we will be arguing the legal

1 ramifications. I just want to make it clear -- I would ask
2 him that the FCC did in fact eliminate in their errata the
3 requirement for the self-provisioning trigger.

4 MS. PAINTER: That's exactly the point, she's asking
5 if they eliminated the requirement. She can ask about
6 whether they eliminated a sentence but should not ask about
7 the legal ramifications of what that means.

8 JUDGE SCHNIERLE: Did they eliminate the sentence?

9 THE WITNESS: By now I've forgotten which sentence
10 she was referring to. Can you just refresh -- by now I'm
11 lost.

12 BY MS. CONOVER:

13 Q. Look at the middle of the sentence, the middle
14 of the paragraph.

15 A. Okay.

16 Q. The crossed out language is what was originally
17 there, and the underlined language is the errata, the new
18 language. Okay?

19 A. Right.

20 Q. The original sentence, am I correct, the
21 original sentence read, "They must also be operationally
22 ready and willing to provide service to all customers in the
23 designated market."

24 A. Right.

25 Q. And they modified that so that the sentence no

1 longer referred to switch providers, competitive switch
2 providers, and applied instead to the wholesale service
3 providers.

4 A. Yes.

5 Q. And I'd just like to turn then to the regs, page
6 21 of the FCC rules, and in particular, turn your attention
7 to the paragraph big A that talks about local switching
8 triggers.

9 Now, would you agree with me, Dr. Pelcovits, that the
10 regs are the applicable legal rules that actually apply
11 here? Is that your understanding?

12 MS. PAINTER: Objection, Your Honor. That's a legal
13 question.

14 JUDGE SCHNIERLE: Absolutely, absolutely, and not
15 probably 15 minutes ago your counsel conceded that the
16 Commission should look to the order as well as the
17 regulations, so your --

18 MS. CONOVER: Your Honor, if I may make a clarifying
19 statement? If there is a conflict, the regs absolutely
20 would govern, and if that is not understood, I will make
21 that statement for the record now.

22 MS. PAINTER: Well, Your Honor, --

23 JUDGE SCHNIERLE: You can argue that in your brief at
24 this point. You can argue that in your brief.

25 MS. CONOVER: May I ask my questions about the

1 interpretation of the regs, Your Honor?

2 JUDGE SCHNIERLE: Yes.

3 BY MS. CONOVER:

4 Q. Dr. Pelcovits, is it your understanding that the
5 regs, regulations, --

6 (Pause.)

7 MS. CONOVER: Excuse me; I asked if I could ask that
8 question. Did you -- should I not? I wasn't sure if I'm
9 permitted to go forward or not.

10 JUDGE SCHNIERLE: Go ahead.

11 BY MS. CONOVER:

12 Q. Dr. Pelcovits, is it your understanding that the
13 regulations are the applicable legal standard that the
14 Commission is to apply in setting and determining the
15 trigger test in this case?

16 MR. BARBER: If MCI counsel isn't going to object,
17 I'm going to object.

18 MS. PAINTER: I've already lodged an objection.

19 JUDGE SCHNIERLE: It's sustained. He is not the
20 ultimate arbiter of what the rule is that's going to be
21 applied.

22 BY MS. CONOVER:

23 Q. Would you look at the regs, Dr. Pelcovits? Do
24 you see where there's discussion of the local switching
25 self-provisioning trigger? And that's sub 1.

1 A. Sub 1.

2 Q. Now, I would like to ask you if there's anything
3 in that section (1) that talks about local switching for
4 self-provisioning trigger. Is there anything in there that
5 says that a trigger company must "demonstrate capability of
6 holding itself out to provide retail local exchange service
7 to all, or virtually all, mass market customers within the
8 market"?

9 A. I believe that's exactly what's required, and I
10 think that if you don't provide service or are holding
11 yourself out to provide service to all, or virtually all,
12 the customers in a wire center, then you're defining the
13 market incorrectly. In other words, if you are providing
14 service to, let's say, 60 percent of the customers in the
15 wire center, let's say the customers that are served by
16 copper loops and not the customers that are served by IDLC,
17 then I believe that you cannot define the market as the wire
18 center. The only way you can define the market as the wire
19 center and be consistent with this rule and with the meaning
20 of the order is if you're holding yourself out to serve all,
21 or virtually all, the customers in the wire center,
22 otherwise the exercise is nonsensical.

23 Q. Perhaps you misunderstood my question. I'm
24 really not asking about a market definition. Okay?

25 A. I think the two are inextricably linked.

1 Q. Well, what I would like to ask is whether this
2 rule anywhere requires that a triggering company must serve
3 all mass market customers in the market?

4 MS. PAINTER: Objection, Your Honor. That was just
5 asked and answered.

6 MS. CONOVER: No, it was not answered, Your Honor.

7 JUDGE SCHNIERLE: Sustained. It was answered.

8 BY MS. CONOVER:

9 Q. Does subpart (1) in any place talk about holding
10 oneself out, about a carrier holding itself out to serve
11 customers?

12 A. Yes, I believe -- I'm giving you my economist's
13 understanding of what this all means.

14 Q. Well, I'm really asking you if the words are
15 there. Is the word "holding itself out" in that section?

16 A. No, the words -- I'll be happy to answer the
17 question directly. The words "holding itself out" literally
18 are not there, but I think --

19 Q. Thank you. I think that answers my question.

20 MS. PAINTER: Your Honor, he should have an
21 opportunity to explain.

22 JUDGE SCHNIERLE: Do you interpret the phrase
23 "serving mass market customers in a particular market" as
24 holding itself out to serve all or most of the customers in
25 the defined market?

1 THE WITNESS: Yes.

2 BY MS. CONOVER:

3 Q. Is it your understanding that -- if a CLEC has a
4 tariff offering, is it your understanding that that carrier
5 is holding itself out to provide service to all comers
6 unless there's a specific limitation in the tariff? If you
7 know.

8 A. I can't say with respect to any specific
9 carrier's tariff, but I can say that if the carrier
10 generally is providing or claims to be providing service to
11 customers in an area or wire center, in my experience, that
12 is subject to the limitation that it's actually technically
13 capable of doing that. I've seen that, for example, in
14 Comcast's local service tariffs. I think it's a common
15 provision and certainly a reasonable analysis of a market,
16 which is what this all comes down to, to look at what the
17 carrier is actually capable of doing. And if I go to the
18 exact language of my testimony, the springboard for this
19 entire discussion, I said virtually all mass market
20 customers within the wire center. So for that definition of
21 the market, which is the definition that I believe is
22 correct, I think it's essential that it be capable of --
23 whether you call it holding itself out or trying to market
24 or whatever specific terminology is used, in order to count
25 as a trigger, the CLEC must be able to serve the customers

1 in that wire center without significant, measurable
2 exclusions.

3 Q. You also, in your testimony at page 76, discuss
4 Broadview, Full Service Computing and Penn Telecom, and you
5 eliminate them from your trigger analysis as qualifying
6 customers because they provide service to narrow niches. Is
7 that your testimony?

8 A. Specifically, what I said is they describe
9 themselves as only serving communication-intensive
10 residential customers.

11 Q. But again, would you look at paragraph 499?

12 A. Of the order, the TRO?

13 Q. Of the order, Verizon Cross-Exam Exhibit 1.

14 Would you agree that the Commission, in their errata,
15 specifically eliminated the sentence that said, "This
16 prevents counting switch providers that provide services
17 that are desirable only to a particular segment of the
18 market"?

19 A. But it also says --

20 Q. Well, would you answer my question first, Dr.
21 Pelcovits? Was that sentence eliminated?

22 A. Yes, it was. Now, --

23 MS. CONOVER: Thank you. I have no further
24 questions.

25 MS. PAINTER: Your Honor, if he could please further

1 explain his response?

2 MS. CONOVER: Your Honor, --

3 JUDGE SCHNIERLE: She's entitled to redirect.

4 MS. CONOVER: Oh, I didn't know whether that was
5 redirect or that was -- whether you wanted to continue my
6 cross.

7 JUDGE SCHNIERLE: Did you have any more questions?

8 MS. CONOVER: I have no further questions.

9 JUDGE SCHNIERLE: Redirect?

10 MS. PAINTER: Thank you.

11 **REDIRECT EXAMINATION**

12 BY MS. PAINTER:

13 Q. Starting there, Dr. Pelcovits, could you explain
14 why you eliminated Broadview, Full Service Computing and
15 Penn Telecom because of these narrow niches?

16 A. As I was starting to say, taking the FCC's order
17 as just a starting point, it says, "The identified
18 competitive switch providers should be actively providing
19 voice service to mass market customers in the market," and
20 as I explained earlier, I think the market has to be defined
21 properly, it should not exclude significant shares of the
22 customers, and if this particular carrier, Broadview, is
23 self-described as limiting its marketing efforts, then I
24 think it should not count.

25 Q. You were asked some questions earlier from Ms.

1 Coyne about transport and what MCI's data provided in
2 testimony. Would you agree that MCI did provide information
3 regarding its transport network to Verizon in discovery?

4 A. Yes.

5 Q. And in particular, could you please look at what
6 has been marked as Verizon Cross-Examination Exhibit 3?
7 There is a response there of MCI Set III to Interrogatory
8 No. 9.

9 A. Correct. I have it.

10 Q. Do you see that this interrogatory provides
11 information regarding five routes where MCI offers transport
12 facilities to make available to other customers or carriers?

13 A. Yes.

14 MS. PAINTER: I have no further questions, Your
15 Honor.

16 JUDGE SCHNIERLE: Recross, Ms. Conover?

17 MS. CONOVER: No.

18 MS. COYNE: I have one question.

19 JUDGE SCHNIERLE: I'm sorry. Ms. Coyne.

20 (Pause.)

21 MS. COYNE: Your Honor, I have no further questions.

22 JUDGE SCHNIERLE: All right.

23 MS. PAINTER: With respect to Verizon's exhibits,
24 which I assume they will move in --

25 MS. CONOVER: We would like to move them in, yes.

1 JUDGE SCHNIERLE: Did you move Cross 2 yet?

2 MS. PAIVA: If I didn't, we would move Cross 2 also.
3 That was my stipulation.

4 JUDGE SCHNIERLE: And Cross 3.

5 MS. PAINTER: They're in the process, I'm sure, of
6 moving that in at this time, and the only thing I would
7 object to, this provides all of MCI's interrogatory
8 responses to Set III, and the only ones that were
9 referenced, there were about five that were referenced,
10 which were 26 through 28, and then number 9, so I'm not sure
11 why we need the rest of them in there.

12 MS. COYNE: If you would prefer not having the
13 responses in the record, that's fine.

14 JUDGE SCHNIERLE: We're going to go off the record a
15 minute and take a little bit of a recess, and then you can
16 talk about that and we'll make a decision when we come back.
17 In the meantime, we can start getting AT&T's witnesses up
18 here.

19 Hold it; I'm not done yet. Nowhere in this whole
20 thing, as I'm reading it, did MCI put in its responses to
21 the Commission's questions.

22 MS. PAINTER: That's correct, Your Honor.

23 JUDGE SCHNIERLE: Were you going to make them an
24 exhibit and offer them?

25 MS. PAINTER: I can do that. It was my understanding

1 that they were going to be ALJ exhibits, so I have not --

2 JUDGE SCHNIERLE: Okay. Frankly, we've got a
3 production problem on that score of our own, so if you could
4 simply reproduce them and get two copies here between now
5 and Friday, I'd appreciate it.

6 MS. PAINTER: I can absolutely do that.

7 JUDGE SCHNIERLE: In that case, we're off the record
8 for ten minutes anyway, and then we'll come back and decide
9 what to do about Cross 3. Cross 2 is admitted.

10 (Whereupon, the document marked
11 as Verizon Cross-Examination Exhibit
12 No. 2 was received in evidence.)

13 (Recess.)

14 MR. BARBER: We're back on the record, Your Honor?

15 JUDGE SCHNIERLE: Yes. Before you get started, where
16 is MCI's counsel?

17 (Pause.)

18 MS. PAINTER: Sorry.

19 JUDGE SCHNIERLE: All right. Did you reach sort of
20 accommodation on this Verizon Cross 3?

21 MS. PAINTER: Yes. MCI does not object to the entry
22 of questions 7 through the end, but questions 1 through 6,
23 the responses to interrogatories 1 through 6 will be removed
24 from the exhibit.

25 JUDGE SCHNIERLE: All right, 1 through 6 are going to

1 be removed from the exhibit, and those are the top six.

2 MS. PAINTER: That's correct, Your Honor.

3 JUDGE SCHNIERLE: So all we've got to do is that
4 (indicating) --

5 MS. PAINTER: Exactly what I did, Your Honor.

6 JUDGE SCHNIERLE: -- and we're done. All right.
7 Thank you. Verizon Cross-Examination Exhibit 3, with that
8 modification, is admitted.

9 (Whereupon, the document marked
10 as Verizon Cross-Examination Exhibit
11 No. 3 was received in evidence.)

12 JUDGE SCHNIERLE: Mr. Barber.

13 MR. BARBER: Thank you, Your Honor. Before we call
14 our witnesses, I guess from a housekeeping perspective, you
15 had talked about the admission of our data responses to the
16 PUC, preliminary data responses.

17 JUDGE SCHNIERLE: Yes.

18 MR. BARBER: I'd be happy to do that right now, Your
19 Honor. I just realized we only brought two copies for the
20 reporter. I don't know whether the Judges have copies of
21 these, whether you want me to hold off on that. Maybe we
22 can handle it tomorrow to make sure I have enough copies for
23 anyone who may need copies.

24 JUDGE SCHNIERLE: We can do that either way. We have
25 copies of it, because we made copies from the record of the

1 ones that were there a couple months ago.

2 MR. BARBER: I just wanted to reflect that I hadn't
3 done my school assignment for the day, Your Honor.

4 JUDGE SCHNIERLE: Right.

5 MR. BARBER: But I think maybe in retrospect, it
6 might be better to bring these in tomorrow and make sure I
7 have enough copies.

8 JUDGE SCHNIERLE: Okay. I'm going to reiterate right
9 now, I don't care, if you don't want to make them your own
10 -- for the people here like XO and some of the PCC
11 companies, I guess, if you did responses, if you don't want
12 to admit them as your own exhibit, at least bring us copies,
13 if you would, and we'll put them in as ALJ exhibits if
14 that's your preference.

15 Yes?

16 MR. CLEARFIELD: Can we go off the record for this,
17 Your Honor?

18 JUDGE SCHNIERLE: All right.

19 (Discussion off the record.)

20 JUDGE SCHNIERLE: Back on the record.

21 Mr. Barber.

22 MR. BARBER: Thank you, Your Honor. AT&T would call
23 Robert Kirchberger and E. Christopher Nurse to the stand.

24 JUDGE SCHNIERLE: Please stand and raise your right
25 hands?

1 Whereupon,

2 ROBERT JAMES KIRCHBERGER

3 and

4 E. CHRISTOPHER NURSE

5 having been duly sworn, testified as follows:

6 JUDGE SCHNIERLE: Please be seated.

7 Mr. Barber.

8 MR. BARBER: Thank you, Your Honor.

9 DIRECT EXAMINATION

10 BY MR. BARBER:

11 Q. Good afternoon, gentlemen.

12 Mr. Kirchberger, can you state your full name and
13 address for the record, please?

14 A. (Kirchberger) Robert James Kirchberger, 1 AT&T
15 Way, Bedminster, New Jersey.

16 Q. And Mr. Nurse, could you state your full name
17 and address for the record, please?

18 A. (Nurse) Yes. My name is E. Christopher Nurse.
19 My business address is 3033 Chain Bridge Road, Oakton,
20 Virginia, 22185.

21 Q. Do both of you gentlemen have before you a
22 document that's entitled Direct Testimony of Robert J.
23 Kirchberger and E. Christopher Nurse on behalf of AT&T
24 Communications of Pennsylvania, LLC?

25 A. (Kirchberger) Yes.

1 A. (Nurse) Yes.

2 Q. And is that a document that's been marked as
3 AT&T Statement 1.0?

4 A. (Kirchberger) Yes.

5 A. (Nurse) Yes.

6 (Whereupon, the document was marked
7 as AT&T Statement No. 1.0
8 for identification.)

9 BY MR. BARBER:

10 Q. And it's a document that consists of 154 pages
11 of written questions and answers?

12 A. (Kirchberger) Yes.

13 Q. And also, I believe, 20 exhibits attached to
14 that document?

15 A. (Kirchberger) Yes.

16 Q. Was this a document, gentlemen, that was
17 prepared by you or under your direct supervision?

18 A. (Kirchberger) Yes, it was.

19 A. (Nurse) Yes.

20 Q. Do you have any amendments, changes,
21 corrections, deletions, other revisions to AT&T Statement
22 1.0?

23 A. (Kirchberger) Yes, I do.

24 Q. Can you go through them?

25 A. (Kirchberger) Sure. Thank you. First, on page

1 5 of 1.0 there's a typo and an omission. On line 13 of page
2 5, the words "14 DS-0 lines" is repeated at the end of that
3 line. That should be stricken. So the last words should be
4 "14 to 16 DS-0 lines," period.

5 On line 17, it reads "Verizon's dedicated
6 triggers." It should --

7 Q. What line?

8 A. (Kirchberger) Line 17 of the same page 5.

9 Q. Okay.

10 A. (Kirchberger) It currently reads, "Verizon's
11 dedicated triggers case," and it should be amended to read
12 "Verizon's dedicated transport triggers case."

13 Those are the changes on page 5.

14 Q. Actually, just looking at the first bullet point
15 up top, there's a reference to a metropolitan switching
16 area.

17 A. (Kirchberger) Yes. That should be a
18 metropolitan statistical area. We'll make that change.
19 That's line 6.

20 That takes care of typos on page 5.

21 Next, I'd like to go to page 70 of the same document.
22 In the center of that page, in the question on line 16,
23 change the word "seven" to "eight," so it should read "any
24 of the eight MSAs as issue."

25 The next single word change, I'm going to skip to

1 page 143. On line 10, it says today "specific CLECs offered
2 dark fiber. It should be changed to "specific CLECs
3 deployed dark fiber," so change the word "offered" to
4 "deployed."

5 Then the other changes are more than just one or two
6 words, so we have prepared --

7 MR. BARBER: Your Honor, we have two -- as I
8 understand, the witnesses have two particular pages in which
9 the changes, I mean, they're going to be talking them
10 through, but they're somewhat extensive, and to that end we
11 prepared sort of red-lined pages, and I guess the question
12 is should I have these marked as hearing exhibits? What
13 would be your preference?

14 JUDGE SCHNIERLE: Why don't you make it AT&T Exhibit
15 1.

16 MR. BARBER: Both pages together?

17 JUDGE SCHNIERLE: Yeah -- well, --

18 MR. BARBER: They're two separate -- it might be
19 cleaner if we do it as Exhibit 1 and Exhibit 2, Your Honor.

20 JUDGE SCHNIERLE: All right.

21 MS. CONOVER: Can you tell me where the pages are
22 that --

23 MR. BARBER: It's going to be pages 114 and 133. I'm
24 going to be handing them out here.

25 MR. HICKS: So 1 is 114 and 2 is 133?

1 MR. BARBER: Yeah. AT&T 1 is going to be on page
2 114, and AT&T 2 is going to be on page 133.

3 (Whereupon, the documents were marked
4 as AT&T Exhibits Nos. 1 and 2
5 for identification.)

6 MR. BARBER: Beg your indulgence for a moment, Your
7 Honor, while I get copies for the Judges and for the court
8 reporter and the parties.

9 MS. CONOVER: It would have been nice to have
10 these --

11 MR. BARBER: They're coming. They're coming.

12 (Pause.)

13 BY MR. BARBER:

14 Q. Okay, turning to page 114 and AT&T Exhibit 1,
15 can you talk through the changes?

16 A. (Nurse) If we could have the exhibit?

17 (Documents handed to witnesses.)

18 MR. BARBER: Does everyone have copies?

19 MS. BENEDEK: Do you have an extra one?

20 MR. BARBER: No. Mark might.

21 BY MR. BARBER:

22 Q. Again, turning to page 114, --

23 A. (Kirchberger) Yes.

24 A. (Nurse) Yes.

25 Q. -- describe the changes.

1 (No response.)

2 Q. For the record, can you describe the changes?

3 A. (Kirchberger) Yes. We've made modifications to
4 page 114, starting at line 9 and running through line 17,
5 striking a number of the words there and changing "would" to
6 "could" in line 9, as well as on line 21.

7 The nexus for this, essentially, it's been a little
8 hard to follow what Verizon's argument is as far as how
9 these collos are connected to each other and how traffic
10 would flow from the collo to some other point or from the
11 collo to each other. We have a very different network
12 layout from Verizon's, than theirs, so as it went along and
13 they had the first, second, third round of testimony, it got
14 a little clearer what it was that they were arguing. It
15 became clearer from the testimony here that it's sort of a
16 different argument from what we understood at the beginning.

17 The net net is that we've set our network essentially
18 a hub and spoke with the collos running directly to the hub
19 or maybe two collos on a ring running to the hub. In the
20 hub there is digital cross-connection machines, and so
21 although it's technically feasible, and we don't dispute
22 that it's technically feasible to connect one ring to
23 another at a digital cross-connect machine in the hub, which
24 would technically feasibly let you route traffic from one to
25 the other, that's a different matter from being

1 operationally ready, having any business reason to carry
2 traffic from one ILEC CO to another.

3 Q. Turning to page 133 of your direct testimony and
4 AT&T Exhibit 2, what is the change on that page?

5 A. (Nurse) It appeared to us from Verizon's
6 testimony --

7 Q. Can you just identify the change?

8 A. (Nurse) Yes. Starting at line and running to
9 line 12, we added the rest of that cite, which we had
10 intended to put in originally and which apparently was the
11 source of some confusion, so that's just the rest of that
12 cite from 333.

13 Q. Subject to the revisions that you, Mr. Nurse,
14 and you, Mr. Kirchberger, have identified, if I were to ask
15 you the questions in AT&T Statement 1.0 today, would your
16 answers be the same?

17 A. (Kirchberger) Yes, they would.

18 A. (Nurse) Yes, they would.

19 MR. BARBER: Your Honor, with that I would move for
20 the admission of AT&T Statement 1.0 and AT&T Exhibits 1 and
21 2, and would make Mr. Nurse and Mr. Kirchberger available
22 for cross-examination.

23 JUDGE SCHNIERLE: Any objections?

24 (No response.)

25 JUDGE SCHNIERLE: They're admitted.

1 (Whereupon, the documents marked
2 as AT&T Statement No. 1.0 and AT&T
3 Exhibits Nos. 1 and 2
4 were received in evidence.)

5 JUDGE SCHNIERLE: Any CLECs?

6 (Counsel Cheskis indicating.)

7 JUDGE SCHNIERLE: Go ahead. Consumer Advocate.

8 **CROSS-EXAMINATION**

9 BY MR. CHESKIS:

10 Q. Good afternoon, gentlemen. My name is Joel
11 Cheskis. I'm an Assistant Consumer Advocate with the Office
12 of Consumer Advocate. I have a few brief questions for you
13 about the testimony in Statement 1.0, page 67.

14 A. (Kirchberger) Yes.

15 Q. There you're generally discussing a cross-over
16 issue present in this case, and at lines 1 to 5 you are
17 essentially indicating your agreement with Verizon regarding
18 the cross-over point from DS-0 to DS-1; is that correct?

19 A. (Nurse) Well, we're not contesting Verizon's
20 position that it doesn't really matter where that cross-over
21 point is, up at the top, you can let it float, because the
22 danger is if you went over that cross-over point, CLECs
23 would be buying an uneconomically large number of DS-0s
24 instead of a DS-1, so where's the harm? So we've said
25 there's no point quibbling over that. That also helps

1 Verizon, because they're unable to distinguish UNE loops,
2 business from res. So we said you can let all of the DS-0
3 UNE loops in.

4 Q. Is it also correct, if you recall, that Verizon
5 confirms this agreement generally in their rebuttal
6 testimony? Do you recall that?

7 A. (Nurse) Yes.

8 A. (Kirchberger) Yes.

9 Q. I would like to clarify your position given what
10 you just said. Is it your position that when a DS-0 is
11 sold, that signifies in and of itself the provision of
12 service to a mass market customer for purposes of
13 determining whether it qualifies as a trigger?

14 A. (Nurse) No, and this has come up in a number of
15 contexts. It's not uncommon for an enterprise customer of
16 ours to have employees who have virtual offices. Some of
17 our employees have virtual offices. And so they will have
18 business lines in their residence that are charged at the
19 corporate rate and billed to the corporation even though
20 they're a DS-0 line in a residential premise. But for the
21 existence of that enterprise customer and his contract with
22 us, we wouldn't have that line in that residence. That's
23 not a DS-0 residential service, that's a DS-0 enterprise
24 service, a lot like a Centrex line for a 5,000 line account
25 is a DS-0 enterprise line.

1 Q. So your answer to my question essentially is no?

2 A. (Kirchberger) Yes, you are correct, it is no.

3 MR. CHESKIS: Your Honor, may I approach the
4 witnesses?

5 JUDGE SCHNIERLE: Sure.

6 MR. CHESKIS: Your Honor, I have had marked as OCA
7 Cross-Examination Exhibit 1, AT&T's answer to OCA
8 Interrogatory Set I, No. 1 and No. 2, and as OCA Cross-
9 Examination Exhibit No. 2, AT&T's answer to OCA
10 Interrogatory Set II, No. 1, which I will note that both of
11 these are proprietary, or labeled as proprietary. I don't
12 think we're going to go on the proprietary record, because
13 I'm not going to ask specific questions about this.

14 JUDGE SCHNIERLE: Go ahead.

15 MR. CHESKIS: Thank you.

16 **(Whereupon, the documents were marked**
17 **as OCA Cross-Examination Exhibits**
18 **Nos. 1 and 2 for identification.)**

19 MR. CHESKIS: I also wanted to note that it's unclear
20 to me who, in fact, answered these questions and exactly
21 what the date was that they were answered. I'm not sure
22 which one of these witnesses in particular can authenticate
23 this answer.

24 MR. BARBER: You can pose it to them. Either one
25 should be able to.

1 MR. CHESKIS: Okay.

2 BY MR. CHESKIS:

3 Q. Gentlemen, did either of you have these answers
4 prepared under your direct supervision?

5 A. (Kirchberger) Yes, they would be prepared under
6 our direct supervision.

7 Q. And would you testify that they are true and
8 correct to the best of your knowledge, belief and
9 understanding?

10 A. (Kirchberger) Yes.

11 MR. CHESKIS: I guess briefly I will go onto the
12 proprietary record.

13 JUDGE SCHNIERLE: All right. We're on the
14 proprietary record.

15 (Whereupon, the following pages 444 through 445 were
16 designated proprietary and were sealed and bound
17 separately.)

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1 BY MR. CHESKIS:

2 Q. Mr. Kirchberger, you did indicate that these
3 answers are true and correct to the best of your knowledge,
4 belief and understanding?

5 A. (Kirchberger) Yes.

6 MR. CHESKIS: I really have no further questions for
7 these witnesses, Your Honor. I'd like to move for the
8 admission of OCA Cross-Examination Exhibits Nos. 1 and 2.

9 MR. BARBER: No objection, Your Honor.

10 JUDGE SCHNIERLE: They're admitted.

11 (Whereupon, the documents marked
12 as OCA Cross-Examination Exhibits
13 Nos. 1 and 2 were received in
14 evidence.)

15 MR. CHESKIS: Thank you, Your Honor.

16 JUDGE SCHNIERLE: Yes?

17 MR. STUBBS: Your Honor, Rick Stubbs for Cavalier
18 Telephone.

19 JUDGE SCHNIERLE: Go ahead, Mr. Stubbs.

20 **CROSS-EXAMINATION**

21 BY MR. STUBBS:

22 Q. Mr. Nurse and Mr. Kirchberger, as to the AT&T
23 responses to the Pennsylvania PUC's preliminary discovery
24 requests, would you both have been in a position to either
25 prepare or oversee the preparation of those responses?

1 A. (Kirchberger) Yes.

2 Q. And same question as to AT&T's responses to
3 Verizon's third set of interrogatories, would you have been
4 in a position to either prepare or oversee the preparation
5 of those responses?

6 A. (Kirchberger) Yes.

7 Q. And if those responses do not contain a
8 designation of proprietary or confidential information, does
9 that mean they need not be part of the proprietary record?

10 A. (Nurse) Yes.

11 A. (Kirchberger) Provided they were marked
12 properly, and I hope they were, yes.

13 MR. STUBBS: May I approach the witnesses, Your
14 Honor?

15 JUDGE SCHNIERLE: Yes.

16 (Pause.)

17 MR. STUBBS: Your Honor, I've marked Cavalier Cross-
18 Exam 2 and Cross-Exam 3.

19 **(Whereupon, the documents were marked**
20 **as Cavalier Cross-Examination**
21 **Exhibits Nos. 2 and 3 for**
22 **identification.)**

23 (Pause.)

24 BY MR. STUBBS:

25 Q. Gentlemen, turning your attention to Cavalier

1 Cross-Exam 2, it purports to be responses of AT&T
2 Communications to Verizon's third set of interrogatories,
3 and there's a response to Verizon Set II, Question 31. Does
4 this answer fairly and accurately reflect the response of
5 AT&T to this interrogatory?

6 A. (Nurse) Yes.

7 Q. Turning your attention to Cavalier Cross-Exam
8 question 3, purporting to be responses of AT&T
9 Communications of Pennsylvania to Preliminary Discovery
10 Requests, Transport 6, does this response fairly and
11 accurately represent AT&T's response to the Pennsylvania PUC
12 Appendix A, Question 6, on transport?

13 A. (Nurse) I'm sorry; I'm trying to understand the
14 question. Cavalier Cross Exhibit 2 asked us to provide
15 these documents, and I guess under the second iteration of
16 this, or notwithstanding the objection, we referred you to
17 the testimony.

18 Q. Correct; right.

19 A. (Nurse) Okay. That's what the answer says.

20 Q. Subject to the reference to your testimony, does
21 that fairly and accurately represent AT&T's response to that
22 question?

23 A. (Nurse) Yes.

24 Q. And as to Cavalier Cross-Exam Exhibit 3, does
25 this document fairly and accurately represent the response

1 of AT&T to the Pennsylvania PUC's Appendix A questions,
2 Transport 6?

3 A. (Nurse) Yes.

4 Q. And is this Transport 6 document, Cavalier
5 Cross-Exam 3, the same response that is referenced in
6 Cavalier Cross-Exam 2?

7 A. (Nurse) I'm not sure that there's a one-to-one
8 match-up, because Exhibit 2 is asking about dark fiber and
9 Exhibit 3 is asking about transport.

10 Q. Okay. Do you want to take a moment to look at
11 it?

12 A. (Nurse) I'm looking at Cavalier Exhibit 2. It
13 says, "Provide all documents that discuss or describe
14 whether you are willing to provide dark fiber," and then
15 Cross Exhibit 3 is identify and describe arrangements which
16 you've entered into with another entity for transport, so
17 I'm not sure that --

18 Q. Let me ask it in a better way.

19 A. (Nurse) It seems like you're talking apples and
20 oranges. You've got to help me understand the link you're
21 making.

22 Q. Cavalier Cross-Exam 2, the third line from the
23 bottom, I believe it reads, "Subject to AT&T's general and
24 specific objections, see AT&T's response to PA PUC
25 Preliminary Discovery Requests, Transport Question 6."

1 A. (Nurse) Okay.

2 Q. And I'm just wondering, is that response what we
3 see here on Cavalier Cross-Exam 3?

4 A. (Nurse) Yes. I wasn't making the link.

5 Q. So it's a yes?

6 A. (Nurse) Yes.

7 MR. STUBBS: Your Honors, I would move the
8 introduction of Cavalier Cross-Exam 2 and Cavalier Cross-
9 Exam 3.

10 JUDGE SCHNIERLE: Any objection?

11 MR. BARBER: No, Your Honor.

12 JUDGE SCHNIERLE: They're admitted.

13 **(Whereupon, the documents marked**
14 **as Cavalier Cross-Examination**
15 **Exhibits Nos. 1 and 2**
16 **were received in evidence.)**

17 MR. STUBBS: No further questions, Your Honor.

18 JUDGE SCHNIERLE: Anybody else?

19 Ms. Coyne.
20
21
22
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CROSS-EXAMINATION

1
2 BY MS. COYNE:

3 Q. Good morning, Mr. Kirchberger and Mr. Nurse.

4 A. (Mr. Kirchberger) Good afternoon.

5 Q. I'm going to be asking questions on the
6 transport testimony. Which one of you is the transport
7 witness?

8 A. (Mr. Nurse) We both are.

9 A. (Mr. Kirchberger) We both filed panel
10 testimony, and between the two of us, we will try to answer
11 your questions.

12 JUDGE SCHNIERLE: One at a time.

13 WITNESS KIRCHBERGER: Exactly. Thank you.

14 MS. COYNE: I'm sorry. I didn't catch that.

15 JUDGE SCHNIERLE: I said one at a time.

16 MS. COYNE: One at a time; okay.

17 BY MS. COYNE:

18 Q. So each of you is fully responsible for the
19 transport testimony or have you divided it up in any
20 particular way just so I can direct the questions?

21 A. (Mr. Nurse) If you ask the question, we'll
22 provide the answer.

23 Q. So all of you are responsible for all of the
24 testimony? Both of you are responsible for all of the
25 testimony, just so I understand?

1 Q. Sure. So you see that I've just handed you a
2 copy of an AT&T Annual Report?

3 A. (Mr. Kirchberger) It's the AT&T 10-K. It's not
4 the AT&T Annual Report to shareholders.

5 Q. An AT&T 10-K; that's fine. Mr. Kirchberger, do
6 you see that this report is for the fiscal year ended
7 December 31, 2002?

8 A. (Mr. Kirchberger) Yes, I do.

9 Q. Is it your understanding that 10-K's then are
10 filed approximately April-May of the following year, so this
11 would have been filed sometime in the spring of 2003?

12 A. (Mr. Kirchberger) I believe that's the practice
13 of all corporations that file 10-K's.

14 Q. If you could flip to the end, this is an
15 excerpt, as you can see, of the 10-K. If you could go back
16 to, say, pages 120 and 121 and 122.

17 (Pause.)

18 A. (Mr. Kirchberger) Okay. I'm at 120.

19 Q. My question, sir, is do you see that in these
20 last pages, this 10-K is attested to by senior managers or
21 senior executives of AT&T?

22 A. (Mr. Kirchberger) I sit right around the corner
23 from one of these guys, yes.

24 Q. Okay. Could you now turn to page 2? Actually,
25 let me back up a second. If you could turn to page 1. Do

1 you see about 80 percent down the page, there is a heading
2 "Description of AT&T Business Services"?

3 A. (Mr. Kirchberger) Yes. I see that.

4 Q. And then there is a section in caps entitled
5 "Overview"?

6 A. (Mr. Kirchberger) Yes.

7 Q. Now if you could turn to page 2, please. Do you
8 see the first paragraph on --

9 WITNESS KIRCHBERGER: Your Honor, could I have time
10 to read what she's pointing me at before I turn the page?

11 JUDGE SCHNIERLE: Yes.

12 (Pause.)

13 WITNESS KIRCHBERGER: I'm ready for page 2 at this
14 point.

15 BY MS. COYNE:

16 Q. Mr. Kirchberger, I just want to ask you a
17 question about the first paragraph on this page, and I'll go
18 ahead and read it into the record. "AT&T Business Services
19 provides a broad range of communications services and
20 customized solutions, including," there's a colon. Do you
21 see at the bottom of that paragraph, it says "wholesale
22 transport services"?

23 A. (Mr. Kirchberger) Yes. I see the words
24 "wholesale transport services."

25 Q. Thank you. If you could then turn --

1 A. (Mr. Nurse) If I could just clarify, I don't
2 necessarily agree that as used at the time this was written
3 and the 10-K context that this wholesale transport is the
4 transport that they're talking about in the TRO; and as it
5 mentions on the previous page, this is 850 cities around the
6 world. So it's certainly not Pennsylvania specific or
7 necessarily even the United States.

8 Q. Thank you. My question was whether or not the
9 document said wholesale transport services, and Mr.
10 Kirchberger has confirmed that it does.

11 If you could turn to page 3 then, do you see at the
12 top on the left-hand side, it says, "Services and Products"?
13 And Mr. Kirchberger, I'm not going to ask you about anything
14 else on this page. So if you want to read it, fine. If you
15 don't want to read it, there will be no further questions.

16 And then if you turn to page 4 -- are you there, sir?

17 (No response.)

18 Q. Do you see about 80 percent down this page in
19 caps, there is something that says, "Transport"?

20 A. (Mr. Kirchberger) Yes, if you'll give me a
21 minute and let me read it.

22 (Pause.)

23 A. (Mr. Kirchberger) Okay. Is there a question?

24 Q. Mr. Kirchberger, do you see in the first
25 sentence, it says, "AT&T Business Services provides

1 wholesale networking capacity and switched services to other
2 carriers"?

3 A. (Mr. Kirchberger) Yes.

4 Q. And in the second sentence, it says, "AT&T
5 Business Services offers a combination of high-volume
6 transmission capacity, conventional dedicated line services
7 and dedicated switched services on a regional and national
8 basis to Internet Service Providers and facility-based and
9 switchless resellers"? Do you see that, sir?

10 A. (Mr. Kirchberger) Yes, I do.

11 Q. And then it goes on with further description.

12 A. (Mr. Kirchberger) Yes, but what it fails to do
13 is to align what they're talking about here as to what our
14 wholesale services group sells to versus the definitions as
15 specified in the TRO, which are very narrow; and so what you
16 have here is a description of the business, the overall
17 business of AT&T, which, of course, is expansive just like
18 any corporation when they talk about their total business.

19 I've seen very expansive description of the business
20 of Verizon as well. And you can draw broad generalizations
21 from statements, but until you define this and narrowly look
22 to see if the definition of transport, either self-
23 provisioned or wholesale from the TRO, lines up to this,
24 this is just kind of something out there that somebody might
25 be able to cleave to and, say, hey, that means that you must

1 be doing it even though we've testified in this case that in
2 Pennsylvania we are not providing wholesale services on
3 transport.

4 Q. Are you done, Mr. Kirchberger?

5 (No response.)

6 Q. I will stipulate for purposes of my question
7 that Verizon and AT&T disagree as to the FCC's definition of
8 dedicated transport. I'll also stipulate that I understand
9 that you've taken a legal position on that.

10 What I would like to do here is provide a base line
11 so we know what AT&T is doing, and then we can fight about
12 the legal definition. Okay?

13 A. (Mr. Kirchberger) Excuse me. I'm not sure if
14 there is a question in there, but you just said I gave you a
15 legal definition. I didn't think I gave you a legal
16 definition of anything about what the FCC said, and I think
17 you and I both -- we don't disagree over what the definition
18 of dedicated transport is. It's well defined by --
19 dedicated transport as a UNE is well defined.

20 I mean, the TRO said it had to be between two ILEC
21 wire centers or switches that eliminated the use of
22 dedicated transport UNE for an entrance facility. So, I
23 mean, that's the FCC's definition in the TRO, and I don't
24 think we have a major disagreement on that interpretation of
25 what it said.

1 Q. Well, let me go back to my question. We just
2 read AT&T's 10-K that AT&T offers wholesale transport. We
3 read a description a moment ago of AT&T's wholesale
4 transport.

5 Mr. Kirchberger, is the 10-K correct? Does AT&T
6 provide wholesale transport? A simple yes or no. Is it
7 correct or is it not correct?

8 A. (Mr. Nurse) It's not a yes or no question
9 because you're changing context, and I explained this
10 before. There are three definitions of transport at least.
11 There was a transport UNE before the TRO. In paragraph 365,
12 they changed the definition of a transport UNE. So you've
13 got a UNE transport defined different depending on what time
14 period you're talking.

15 Then you have the broader definition of transport
16 like you might find in Newton's Telecom, which, as you can
17 see from this description here, is picking up a lot of
18 things which clearly have nothing to do -- I mean, you're
19 talking a national transport which has nothing to do with a
20 Verizon Pennsylvania end office to end office route.

21 So I don't think that there is a yes or no answer,
22 because you're not asking about the transport at issue in
23 this case. You're talking about a much broader transport;
24 and so we can't give you an answer to that question that has
25 any bearing to the UNE transport here unless you can modify

1 which transport you're talking about.

2 Q. Well, let me ask you --

3 JUDGE SCHNIERLE: Wait a minute. Wait a minute.
4 What was the transport UNE defined as before the TRO? What
5 did it include?

6 WITNESS NURSE: In 365, it included going from the
7 Verizon network to the CLEC network. So it included
8 entrance facilities. So you had four combinations; a
9 Verizon CO to a Verizon CO, a CLEC switch to a Verizon
10 collo, and then even a CLEC switch to a CLEC switch. And in
11 365, as I understand it, at the USTA remand, they said
12 that's too broad and they chopped out the part from the
13 Verizon network to the CLEC network; so that it must be
14 wholly the Verizon network to the Verizon network.

15 So it's a CLEC collo and a Verizon end office to a
16 CLEC collo and another Verizon end office. They narrowed
17 the definition substantially.

18 JUDGE SCHNIERLE: Well, let's -- all right. Why
19 would a CLEC want to transport something between two Verizon
20 end offices?

21 WITNESS NURSE: They really wouldn't. The transport
22 is the analog to your switching network. Verizon and all
23 ILECs tend to have a lot of direct end office trunking, and
24 that comes from essentially the community of interest or EAS
25 traffic.

1 Verizon routes from an end office where they have a
2 switch to another end office where they have a switch in
3 lieu of going to the tandem. So when they get a threshold
4 of traffic, say 25 calls all the time, it doesn't make sense
5 to send 25 calls up to the tandem and incur the tandem
6 switching cost and then come back down from the tandem to
7 the end office. So they put a direct end office trunk in.
8 So they're always doing the tandem switching versus direct
9 end office trunking.

10 For the CLEC who has one local switch, as Verizon
11 subscribed in their testimony citing our New Jersey
12 arbitration, our switch is centrally located, sort of hub
13 and spoke. We have no opportunity to avoid switching in the
14 middle of our network by going end office to end office
15 because we don't have any trunks in the end office. All our
16 calls go into our central switch and then back down. So we
17 don't build these end office to end office trunks, because
18 we don't carry that kind of traffic.

19 An important thing Mr. Peduto raised yesterday about
20 this is if you were looking at a business case and said,
21 well, could AT&T or a CLEC build Verizon end office to
22 Verizon end office trunks and make a business of it,
23 certainly, the part of that market we cannot address is
24 Verizon's end office to end office traffic, because Mr.
25 Peduto testified yesterday that even on the routes where he

1 asserts that CLECs have these facilities, Verizon doesn't
2 buy those facilities from CLECs even when Verizon is
3 exhausted from facilities.

4 So there's just not a lot of revenue that we've seen
5 that makes sense to undertake that sort of thing, that sort
6 of traffic routing. Our switching network is different, and
7 then the transport network that goes with that is different.

8 JUDGE SCHNIERLE: Well, all right. Then if it's not
9 a big deal for the CLECs, why do you care if those routes
10 are eliminated as UNEs?

11 WITNESS NURSE: That's a good question. I mean, that
12 occurred to me in a certain sense like if I had traffic on
13 those routes and say I was the only CLEC that did, I almost
14 ought to be going with Verizon and say, hey, I'm on the
15 inside. Pull the ladder up. You know, better for me than
16 for them. But whether it's the transport, the loop or the
17 switching, Verizon put together the same sort of case that
18 we don't think passes muster, and so wherever Verizon is
19 wrong, we're saying they're wrong and we're against it.

20 WITNESS KIRCHBERGER: It's the search for a higher
21 truth.

22 JUDGE SCHNIERLE: And, as I understand it, in order
23 to -- let me just go a little bit further with this just to
24 make sure I understand this from a physical reality kind of
25 standpoint.

1 AT&T doesn't -- in these instances where Verizon has
2 gone out and said, hey, we've got an AT&T collo here with
3 fiber and an AT&T collo fiber here and they're both lit and
4 everything and they're operational, you don't contest that
5 they're going back to a switch where you could switch one to
6 the other? Well, I shouldn't say that. I mean, they don't
7 all go back to one big switch, but if they're in the same
8 LATA anyway, they're probably collected centrally.

9 WITNESS NURSE: Let me go right to that.

10 JUDGE SCHNIERLE: Let me finish. Let me finish. But
11 what you don't necessarily have set up is a cross-connect
12 that will allow traffic that's just going straight through
13 to flow freely without going through the switch.

14 WITNESS KIRCHBERGER: Your Honor, I think you've
15 basically hit the nail on the end.

16 JUDGE SCHNIERLE: And the cross-connect would likely
17 be electronic because it's all fiber flowing back and forth.
18 It's not going to be wires on a frame.

19 WITNESS NURSE: It would be a digital cross-connect.
20 There was some confusion early. Say, like in, you know,
21 Philly we have a dozen collos. There was like this thought
22 they were like all on one big ring and you'd pick up the
23 traffic from anywhere on the ring and drop it off anywhere
24 on the ring. Although you can set up a network like that,
25 that's not how the network was set up, because you started

1 with collo going to the switch.

2 So, typically, new collos, we might put one or two
3 collos on a ring. So, essentially, you end up with a hub
4 and a spoke where either one or two collos are coming in on
5 a hub to the center.

6 Now, primarily, that's set for backhauling the POTS
7 traffic, because that's why you collocated in that central
8 office in the first place, put in the digital loop carrier
9 and all that.

10 When you get in, you're coming in on high capacity
11 circuits that go to a digital cross-connect and you're
12 pulling off the voice traffic and plugging it into the
13 switch, and we may bring other traffic from outside in and
14 from there out.

15 So, yes, it's technically feasible that in the future
16 we could set up to connect one end office to the other, but
17 we're not operationally ready to use our network to do that,
18 because we haven't seen the need to do it.

19 The key is that, you know, why does it make any
20 sense? We pay Verizon \$3 million a year for access on the
21 routes in Pennsylvania where Verizon has asserted that we're
22 operationally ready to use our own network to self-
23 provision.

24 JUDGE SCHNIERLE: Okay. And let me go one further
25 and ask another question. You don't presently offer Verizon

1 central office to Verizon central office transport on the
2 wholesale market, but you do offer other kinds of transport.

3 WITNESS NURSE: Transport in a bigger meaning. We'll
4 take traffic from a customer prem to a Verizon central
5 office and to our POP, and that kind of transport is what
6 the 10-K is talking about as opposed to the TRO's transport
7 end office to end office.

8 I mean, the simple reason is that when you go end
9 office to end office, the problem is to meet a customer, you
10 then typically are going to have to go to two prems; and if
11 you have to buy two tails, two access tails, the market just
12 doesn't support buying two access tails for a local service
13 like that. It becomes too expensive.

14 If it's a very large customer, we're likely to go
15 straight from customer to customer or at least on one end
16 customer to customer with our own fiber and then we can
17 avoid it, but the market doesn't really support buying two
18 access tails and going end to end.

19 JUDGE SCHNIERLE: Let me just try a concrete example.
20 If you have a -- AT&T local services is old TCG and they've
21 got a loop and sonnet ring in downtown Pittsburgh. If you
22 got somebody who's got two buildings that are on that ring,
23 you'll transport traffic between the two buildings?

24 WITNESS NURSE: Yes.

25 JUDGE SCHNIERLE: And call it dedicated transport.

1 WITNESS NURSE: Yes, which has nothing to do with the
2 UNE transport we're talking about here.

3 JUDGE SCHNIERLE: All right.

4 WITNESS NURSE: Whether that goes directly building
5 to building or indirectly.

6 JUDGE SCHNIERLE: I mean, I gather at this point that
7 -- we'll hear, I guess, from Verizon, but Verizon's argument
8 is because you can do all that other stuff, you can do the
9 UNE transport.

10 WITNESS NURSE: I think where we and Verizon are
11 falling off is in paragraph 401, the Order is talking about
12 if transport goes from a switch to a switch, and dedicated
13 special access that we've always bought usually went like
14 from a Class 5 switch, took access traffic to a Class 4
15 switch. So it went from a switch to a switch, between
16 switches.

17 Paragraph 401 in the Order says --

18 JUDGE SCHNIERLE: Just by way of illumination, a
19 Class 4 switch is a long distance switch that can't provide
20 dial tone?

21 WITNESS NURSE: It provides enterprise dial tone.

22 JUDGE SCHNIERLE: Okay.

23 WITNESS NURSE: You know, the billions of dollars we
24 pay the ILECs to take traffic from their Class 5 switch to
25 our Class 4 long distance switch. So that was a pipe or

1 dedicated transport link in the old meaning that went from a
2 switch to a switch.

3 Sometimes those routes would hub. So you'd go from
4 maybe small central offices, four or five central offices
5 with a T-1, converge into a hub, go to a 3-1 multiplexer,
6 and then leave on a DS-3, and go from that hub to the POP,
7 and you'd go and do the economics whether it was cheaper to
8 go directly or hub first and then go.

9 So in 401 where they're talking about intermediate
10 wire center X, that to me is what they're talking about. So
11 they're saying whether you go A to Z directly or A to Z
12 through X where you would hub, that makes sense.

13 There was a discussion earlier today where they were
14 talking about you had to make sure you could do that cross-
15 connect. You had to make sure you could do that cross-
16 connect in that middle point, and that makes sense so that
17 you can get A to Z connectivity.

18 I think where the confusion comes is in the rule. In
19 519-E, they're also talking there about an intermediate wire
20 center or switch X, and I think that has caused some
21 confusion thinking that these dedicated transport links or
22 pipes would be switched. I think that switch means switch
23 location, because how are you going to take ten OC-48's with
24 32,000 voice grade equivalents and put them into a switch?
25 I mean, that's, you know, a third of a million voice grade

1 equivalents. You don't have a switch like that. Digital
2 cross-connects you have, but not switches.

3 JUDGE SCHNIERLE: Thank you.

4 Ms. Coyne?

5 BY MS. COYNE:

6 Q. Okay. I'm going back to get an answer to my
7 question. The Judge asked you if you provide wholesale
8 network capacity and switched services to other carriers.
9 Is the answer to that yes?

10 A. (Nurse) I'm sorry, I couldn't hear.

11 Q. Are you answering now?

12 A. (Nurse) Well, I can't hear the question.

13 Q. Okay. Is it true that AT&T business services
14 provides wholesale networking capacity and switched services
15 to other carriers?

16 MR. BARBER: Your Honor, I mean, subject to all the
17 caveats, I mean, the document says what the document says.
18 There's been a lengthy explanation about how this coincides
19 or doesn't coincide with what we're talking about in this
20 case.

21 MS. COYNE: Your Honor, we just had a very lengthy
22 discussion from the witness and now we're having lengthy
23 discussions from the witness's counsel. Could I please just
24 ask my questions and get a response?

25 JUDGE SCHNIERLE: Well, he answered. I thought he

1 answered that, though.

2 MR. BARBER: Right.

3 JUDGE SCHNIERLE: I mean, I thought he said they do.
4 You know, I'm trying to reduce the confusion, not enhance it
5 here. And going back over old ground isn't helping. But go
6 ahead.

7 BY MS. COYNE:

8 Q. Mr. Kirchberger, I guess we were talking to you.
9 Could you please turn to page 118 of your testimony? And
10 you see the sentence that's on lines 11 through 14?

11 A. (Kirchberger) Let me have a chance to read the
12 entire paragraph and then I'll look at 11 to 14.

13 Q. That's fine.

14 (Witness Kirchberger perusing document.)

15 A. Yes, I have read that paragraph.

16 Q. Mr. Kirchberger, I'm looking at the sentence
17 that starts on line 11 and it starts, "And that remains the
18 case because AT&T does not provide on a wholesale basis
19 dedicated transport as defined by the FCC in the TRO." Did
20 I read that correctly, sir?

21 A. (Kirchberger) Yeah, and that's modified by a
22 description of the wire center, the wire center dedicated
23 transport activity, which is in the sentence above.

24 Q. And just so I'm clear, I think what we concluded
25 here is AT&T does provide wholesale dedicated transport, but

1 the operative phrase is, not as defined by the FCC in the
2 TRO; is that correct?

3 A. (Kirchberger) I don't know if I can say that
4 statement is correct. I think the 10-K indicates as part of
5 the business services we have a whole division called
6 wholesale marketing or wholesale services.

7 And in there, I'm sure there are some transport
8 services that are sold to customers or other users of this
9 service.

10 It is our testimony here that as the definition of
11 dedicated transport in the TRO, wire center to wire center
12 dedicated transport activity, we don't do. We don't offer
13 it normally on a customer retail basis, and we don't do it
14 on a wholesale basis. So I don't see an inconsistency with
15 the testimony and the 10-K.

16 Q. Mr. Kirchberger, can you turn to page 90,
17 please?

18 A. (Kirchberger) Nine?

19 Q. Ninety.

20 A. (Kirchberger) Ninety. I hope it's the
21 acoustics in this room, or else I'm much older than I think,
22 or I'm going to go get my hearing checked. It's very
23 difficult to hear you, Ms. Coyne.

24 Q. I apologize for that. I feel like I'm over here
25 yelling.

1 A. (Nurse) Please yell. Yell louder.

2 A. (Kirchberger) You're not yelling at me. Page
3 90, yes, I'm there.

4 Q. Okay. Do you see on line 20, on that line in
5 that sentence, you are discussing the "enormous factual
6 record" that was before the FCC in the TRO proceeding; do
7 you see that?

8 A. (Kirchberger) Yes.

9 Q. And isn't it the case that AT&T filed comments
10 in those proceedings?

11 A. (Kirchberger) Yes, they did.

12 Q. And are you familiar with those comments, Mr.
13 Kirchberger?

14 A. (Kirchberger) I'm familiar generally, but to be
15 honest with you, with the number of individual state cases
16 that we're handling, I focus on the state cases, not on the
17 federal case.

18 Q. I understand completely. Isn't the case that in
19 those comments, AT&T describes its transmission facilities
20 to the FCC?

21 A. (Nurse) Yes. That appears in the order where
22 we talk about typically being an OC-48, which Verizon says
23 is typically what they use as well.

24 Q. Mr. Kirchberger and Mr. Nurse, I didn't want to
25 put this into the record as an exhibit because it's so

1 voluminous. It's also just excerpts of the comments, but
2 I'm just going to ask you for a couple items in here. If
3 you'd like, I'll give you a copy.

4 MR. BARBER: They're going to need to see it. I may
5 need to see it.

6 (Witnesses perusing document.)

7 MR. BARBER: Mary, do you have the date?

8 WITNESS NURSE: Yeah, it's right here, it's April 5.

9 MR. BARBER: Of 2002?

10 WITNESS NURSE: Two thousand two.

11 WITNESS KIRCHBERGER: Two years ago.

12 MR. BARBER: Okay. Thank you.

13 BY MS. COYNE:

14 Q. This is just for purposes of background. Mr.
15 Kirchberger?

16 A. (Kirchberger) Yes?

17 Q. Isn't it true that AT&T told the FCC in these
18 comments that it had made a, quote, "enormous investment in
19 network facilities since 1996"?

20 A. (Nurse) Yes.

21 MR. BARBER: Page?

22 WITNESS NURSE: You're on page iv, I think here,
23 Roman four?

24 BY MS. COYNE:

25 Q. I'm looking basically at the document on small

1 "i." It's four in the introduction.

2 A. (Nurse) Yes.

3 A. (Kirchberger) Yes.

4 Q. Okay. And specifically, AT&T told the FCC that
5 it had installed over 17,000 route miles of local fiber;
6 isn't that correct?

7 A. (Nurse) Yes. This is primarily the roughly
8 \$10 billion purchase of TCG.

9 Q. And AT&T has established collocations over 1,000
10 ILEC wire centers?

11 A. (Nurse) I don't know if that's true anymore. I
12 know we've given back a substantial number of collocations,
13 including something on the order of a quarter of the ones
14 here in Pennsylvania.

15 Q. Fair enough. But that's what AT&T told the FCC
16 in the TRO proceeding in 2002?

17 A. (Nurse) Right, right. I wasn't asserting the
18 proposition that it's necessarily still true. I know we
19 have fewer collos now than we did then.

20 JUDGE SCHNIERLE: Just a second. That's a
21 thousand --

22 WITNESS NURSE: Nationwide.

23 JUDGE SCHNIERLE: -- nationwide?

24 WITNESS NURSE: Yes.

25 JUDGE SCHNIERLE: Thank you.

1 MR. HICKS: Your Honor, on that point in particular,
2 I've been very patient through the questioning regarding the
3 AT&T national 10-K and now patient with regard to the AT&T
4 national evidence presented to the FCC.

5 I would offer an objection that anything other than
6 AT&T of Pennsylvania is irrelevant to this proceeding.

7 JUDGE SCHNIERLE: That's overruled, but we'll take
8 into account the weight to be associated with any of that.
9 Go ahead.

10 BY MS. COYNE:

11 Q. And if you could turn to the back of the
12 document, you see there's a declaration, and I tried to tab
13 that for you as well, the declaration of Michael Leshar?

14 A. (Nurse) Yes.

15 Q. And Robert Frontiere on behalf of AT&T?

16 A. (Nurse) Yes.

17 Q. Are you back there?

18 A. (Nurse) Yes.

19 Q. And Messrs. Leshar and Frontiere were submitting
20 testimony or a declaration to the FCC on AT&T's transmission
21 facilities amongst other things; isn't that correct?

22 A. (Nurse) Yes. And here on page eight, in the
23 middle of the page, is the network being built on the
24 OC-48's that I was discussing.

25 Q. And on page eight, AT&T says that its

1 transmission facilities typically interconnect at least one
2 AT&T local switch with one or more ILEC central offices;
3 isn't that correct?

4 A. (Nurse) Well, except that you left off, "and
5 permits extensions to high capacity customer locations."

6 Q. And is it still correct that AT&T's facilities
7 in Pennsylvania interconnect at least one AT&T local switch
8 with one or more ILEC central offices?

9 A. (Nurse) Yes. That's what I said, is that
10 typically we run a ring from one or two collos back to the
11 central office at an OC-48 level. And the implication of
12 that, and one of the things I think Verizon overlooked is if
13 you have ten sonnet rings, Verizon has assumed right off the
14 bat you connect any ring to any ring.

15 And it's easier certainly to connect something on a
16 ring to something else on a ring than to connect it from
17 Ring 1 to Ring 7 because then you have get into ring-to-ring
18 connectivity, but they just glance over all that.

19 Q. I might as well just give up and ask Mr. Nurse
20 these questions. Mr. Nurse, could you look at Footnote 150
21 in your testimony?

22 A. (Kirchberger) What page?

23 JUDGE SCHNIERLE: One twelve, I think.

24 BY MS. COYNE:

25 Q. Page 112.

1 A. (Nurse) Yes.

2 Q. And in Footnote 150 you say, "Thus, considerable
3 portions of AT&T's fiber network have been rendered
4 irrelevant to the transport trigger analysis by the FCC's
5 TRO such as entrance facilities to AT&T's POP or to AT&T's
6 local switch." Did I read that correctly, sir?

7 A. (Nurse) Yes, certainly.

8 Q. Okay. And in the sentence, you say considerable
9 portions have been rendered irrelevant. Could you tell me
10 what portions of AT&T's facilities are not rendered
11 irrelevant to the FCC's transport triggers?

12 A. (Nurse) I presume that it could also be all. I
13 mean, unless there was traffic being carried from central
14 office to central office, I don't really see that any of it
15 would be relevant. I mean, certainly the loops aren't
16 relevant to the transport section, so all our facilities
17 going directly to enterprise customers and between
18 enterprise customers are not relevant to transport.

19 The parts going from the Verizon central offices to
20 our local office, to our POP or entrance facilities, I don't
21 see how those switched services have any bearing on this.

22 So when you start stripping it out, I don't see that
23 there's that much there.

24 Q. So is it your testimony that all AT&T's network
25 facilities in Pennsylvania have been rendered irrelevant to

1 the FCC's transport triggers?

2 A. (Nurse) No, I don't necessarily say that I'd
3 say that, but I haven't seen any of the AT&T network that
4 you've identified that's relevant.

5 Q. Well, I'm --

6 A. (Nurse) And --

7 Q. Excuse me, I'm sorry to interrupt, but I'm
8 asking you because you have much more expertise in AT&T's
9 network than I do. Could you please identify the portions
10 of AT&T's network in Pennsylvania that have not been
11 rendered irrelevant in your view by the FCC's order?

12 A. (Nurse) The part that would be relevant would
13 be any part where we were operationally ready to connect a
14 Verizon end office to a Verizon end office, and I don't see
15 any of that.

16 And you haven't shown me any of that, but if you want
17 to show me some, I'd be happy to discuss that with you.

18 Q. Are you aware of any facilities that meet your
19 definition? Are you aware of any facilities in Pennsylvania
20 of AT&T that you consider to be relevant to the FCC's
21 trigger?

22 A. (Nurse) Not --

23 A. (Kirchberger) No.

24 A. (Nurse) No, not that meet the FCC's criteria.

25 A. (Kirchberger) And further, we have talked to

1 some of the same people who you've provided the FCC filing
2 with and verified that in Pennsylvania we are not offering
3 any services that would duplicate the transport to our
4 customers.

5 Q. Okay. I'd like to ask you a couple questions
6 now about AT&T's facilities in Pennsylvania. Has AT&T
7 deployed fiber rings in Pennsylvania?

8 A. (Nurse) Fiber what --

9 MS. COYNE: Oh, excuse me. I guess we should make
10 this proprietary.

11 MR. BARBER: Well, if you're speaking generically,
12 probably not. If you're going to be speaking in specific
13 locations and routes, probably.

14 MS. COYNE: I hope to get specific.

15 MR. BARBER: Well, I mean, if you feel the need, if
16 you think your questions are going to get into proprietary
17 data, let's get on the proprietary record.

18 MS. COYNE: Well, why don't we do that then in an
19 abundance of caution.

20 JUDGE SCHNIERLE: All right.

21 (Whereupon, the following pages 478 through 486 were
22 sealed and bound separately.)
23
24
25

1 JUDGE SCHNIERLE: We're off the proprietary record.
2 Before you go on, let me ask them a couple questions
3 myself. There's one thing I want to try to get to the heart
4 of.

5 It's AT&T's claim that fiber that goes between a
6 Verizon collocation and an AT&T switch for the purposes of
7 bringing local traffic back to the AT&T switch, it's AT&T's
8 argument that that under the TRO can't be counted as part of
9 a route for the purposes of dedicated transport as defined
10 in the TRO?

11 WITNESS NURSE: Yes.

12 JUDGE SCHNIERLE: Have I got that right?

13 WITNESS NURSE: Yes.

14 JUDGE SCHNIERLE: And is that because the TRO defines
15 dedicated transport as transport directly between two wire
16 centers?

17 WITNESS NURSE: Yes. It also allows it to be
18 indirect, and we don't quibble with Verizon. If we had a
19 Verizon Wire Center A to Verizon Wire Center Z and we had a
20 fiber route that was digitally cross-connected at our switch
21 at a Transport Hub X, yes, that would be a route from A to
22 Z. It would be A to X to Z.

23 So we're not contesting, there's really no confusion
24 now about the technology. That's the modification to our
25 testimony now that we're understanding it.

1 As I understand Verizon, they're saying that switched
2 traffic is dedicated transport and --

3 JUDGE SCHNIERLE: And that's where you --

4 WITNESS NURSE: Dedicated is not switched. That's
5 just an oxymoron. But if we had a digital cross-connect at
6 the hub and we had the A to X leg and the X to Z leg
7 digitally cross-connected and we were offering service at
8 each end, we're operationally ready to do it, that would be
9 transport.

10 JUDGE SCHNIERLE: And if you're doing it for
11 yourself, it would be self-provisioned transport?

12 WITNESS NURSE: Yes.

13 JUDGE SCHNIERLE: All right. Number two, if you had
14 a ring connected, sonnet ring connected to two Verizon COs
15 and to the switch, and the ring were not simply used for
16 getting traffic back, local traffic back to the switch, that
17 would qualify?

18 WITNESS NURSE: It would essentially be a potential
19 deployment case, but you could use add-drop multiplexers and
20 if you intended to carry traffic from one Verizon wire
21 center to the other, you put an add-drop multiplexer in both
22 of the Verizon wire centers with the intention of picking
23 traffic up at that part of the ring and carrying it to the
24 other. You could do that.

25 JUDGE SCHNIERLE: All right. And you would argue

1 that or you claim that AT&T is not operationally ready to
2 provide that kind of service because you don't have add-drop
3 multiplexers at a Verizon, where a ring touches a Verizon
4 CO?

5 WITNESS KIRCHBERGER: It's our understanding based on
6 discussions with our network folks specifically on this
7 subject that we -- number one, our rings are basically
8 configured between either a customer premise, a collocation
9 and our switch, okay, because basically it's backhaul of
10 traffic to our switch.

11 We don't have this theoretical ring that daisy chains
12 all these collocations together. That would then go to your
13 possibility of saying, well, then, why can't you just pull
14 some tails down and serve customers that way.

15 JUDGE SCHNIERLE: And on Verizon Cross-Examination
16 Exhibit No. 5, you don't know if any of these collos are on
17 the same ring, same ring electronically?

18 WITNESS KIRCHBERGER: I have no knowledge that they
19 are. It's my understanding that these rings are, or that
20 this listing of collo CLLIs is the fact that it associates a
21 collo CLLI with the homed switch that it's associated with,
22 like Wayne has Bryn Mawr and I think that's Conshohocken and
23 King of Prussia and Paoli and various other ones on down.

24 But those, in our discussions and our review of the
25 network information is, those rings are individual rings

1 that go from Bryn Mawr up to the Wayne. It doesn't swing by
2 and pick up traffic or customers from all those others.

3 JUDGE SCHNIERLE: Well --

4 WITNESS NURSE: One or two. You know, when we were
5 doing the investigation, they were saying they either go to
6 one or they go to two, depending on the size, but that's --

7 JUDGE SCHNIERLE: All right. Let me just take this a
8 little further. So some of these could be on, I'm going to
9 take a look at the second one down under Philadelphia --

10 MR. BARBER: Your Honor --

11 JUDGE SCHNIERLE: -- and I'm going to read the CLLI
12 codes because I don't think they'd make sense to anybody
13 outside of this room.

14 MR. BARBER: Okay.

15 JUDGE SCHNIERLE: HPC, you've got two from HPC going
16 to the second Philadelphia switch.

17 MR. BARBER: You're looking at the last column there,
18 the CLLI code?

19 JUDGE SCHNIERLE: Yes.

20 WITNESS NURSE: You want the column to the left
21 because that's the three digit extension that --

22 MR. BARBER: He's trying to keep this off the
23 proprietary record.

24 WITNESS NURSE: Oh, sorry. I understand now.

25 JUDGE SCHNIERLE: All right?

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WITNESS NURSE: Yes.

JUDGE SCHNIERLE: Those might be on the same electronic ring.

WITNESS NURSE: Yes.

JUDGE SCHNIERLE: Other of these could be on the same physical ring.

WITNESS NURSE: They could be on separate fibers within the sheath on the same physical ring, but they would be like -- they could be on different a sonnet multiplexer system. They could even be on a different speed. You could have an OC-12 and an OC-48.

JUDGE SCHNIERLE: Right, okay. All right. And you concede that where there are two on the same electronic ring, if you added these add-drop multiplexers, you could transport traffic between the two?

WITNESS NURSE: Yeah. It's not an issue of technical feasibility. It's an issue of whether we stand operationally ready to use our network to do that.

JUDGE SCHNIERLE: You may continue, if you feel a need.

MS. COYNE: I'm willing to move on to the next topic.

JUDGE SCHNIERLE: I mean, I think I understand this. There are certain definitional arguments going on here, and there's the other issue of whether or not the -- well, go ahead.

1 BY MS. COYNE:

2 Q. Let me pick up with the argument about backhaul
3 facilities. If I understand your testimony and what you've
4 been saying here, AT&T's contention is that backhaul
5 facilities, the link from the Verizon wire center to let's
6 say AT&T's switch doesn't count.

7 A. (Nurse) Yes.

8 Q. Okay. Could you then look at your -- I want to
9 ask you a question about your testimony on page 112.

10 A. (Nurse) Yes.

11 Q. Could you look at the final sentence on -- not a
12 complete sentence, but the final sentence on 112 that begins
13 on line 14? And while you're reading, I'll just read it
14 into the record.

15 "In terms of the FCC self-provisioning triggers
16 analysis, therefore, the AT&T fiber facilities that are in
17 place cannot reasonably be assumed to begin and terminate at
18 two collocation arrangement and thus fail the requisite
19 definition of a route, and likewise but for additional
20 reasons there is no evidence that AT&T met the requisite
21 need to be operationally ready" -- there's a cite -- "or is
22 immediately able to provision" -- another cite -- "dedicated
23 transport service between each of the collocation pairs
24 claimed by Verizon."

25 Did I read that correctly?

1 A. (Kirchberger) Yes, you did, and I think that
2 summarizes the last 15 minutes of discussion we had with you
3 and the Judge.

4 Q. Well, I'd like to focus on the first part of
5 this where you say, "AT&T fiber facilities that are in place
6 cannot reasonably be assumed to begin and terminate at two
7 collocation arrangement and thus fail the requisite
8 definition of a route."

9 Where is a route defined in the FCC's regulations?

10 A. (Nurse) There's a footnote that defines a route
11 and distinguishes it from a link. The cite escapes me, but
12 I'm sure you'll be providing it.

13 A. (Kirchberger) It's the paragraph that discusses
14 daisy chains.

15 Q. If you don't mind, I'd like to look at the
16 regulations, not the order, because I think it's a little
17 bit clearer.

18 A. (Nurse) Well, I can't agree with the
19 characterization that the regulation is clearer than the
20 order.

21 Q. Well, nevertheless, it's my question and I'd
22 like to look at the regulations.

23 A. (Nurse) That's true. I don't accept your
24 characterization, the premise in your question.

25 Q. Could you please look at Appendix B, the final

1 rules, and could you tell me where in these regulations the
2 FCC defines a route for purposes of the transport trigger
3 analysis?

4 A. (Kirchberger) Could you give us the cite and
5 point to where you're --

6 Q. Sure.

7 JUDGE SCHNIERLE: It's page 27 on the regs.

8 BY MS. COYNE:

9 Q. Page 27, small "e."

10 A. (Nurse) Right. So it's 319(e).

11 Q. Right.

12 A. (Nurse) Right. And I mentioned this earlier in
13 my discussion with the Judge here, in that a route between
14 two points, for example a Wire Center or Switch A and a Wire
15 Center or Switch Z may pass through one or more intermediate
16 wire center or switches, for example Wire Center or Switch
17 X.

18 And that makes no sense, because dedicated transport
19 doesn't pass through a switch. It's physically impossible
20 because you don't make switches as big as the OC-48's the
21 FCC talks about in their order.

22 And when you look at -- if you take switch there to
23 mean like a Class 5 or Class 4 switch, if you look at
24 Paragraph 401 which describes this, they talk more clearly
25 about how you're going from a collo in a Verizon wire center

1 to a collo in a Verizon wire center, and you're going
2 through an intermediate point.

3 And if you put that together with the discussion
4 earlier this morning about having cross-connect capability
5 at that point, not on the Verizon end, that makes sense, and
6 that makes sense with how the network works.

7 You don't connect DS-3's and OC-48's and OC-12's
8 through Class 4, Class 5 switches. You connect them through
9 digital cross-connect systems or DS-X's.

10 BY MS. COYNE:

11 Q. Mr. Nurse, my question was much more simple. Is
12 it AT&T's contention the definition of route that you refer
13 to in your testimony is the definition that's set forth here
14 in (e) in the regulations?

15 A. (Nurse) No. It's as set forth here in (e) in
16 the regulation read together with Paragraph 401 in the order
17 and the surrounding discussion because if you just took it
18 in isolation, it's a senseless -- if you took switch here in
19 the intermediate point to mean like a Class 5 switch, you
20 know, I would dare you to find a place where Verizon's
21 connected two OC-48's and certainly, you know, 10 or 20
22 OC-48's through a Class 5 switch because it just doesn't
23 exist.

24 You connect OC-48's through a digital cross-connect
25 system. So we're not quibbling that if you have a digital

1 cross-connect system in Point X, and you connected the A to
2 X and the X to Z, we would stipulate to that.

3 But Verizon's taken some position now that switch
4 traffic from A to X and X to Z would trigger dedicated
5 transport which makes no sense. We just don't think that
6 they're reading this right.

7 Q. So, Mr. Nurse, AT&T agrees that the definition
8 of a route that applies to the transport triggers is the
9 definition that's set forth in (e)?

10 A. (Nurse) You asked that question --

11 MR. BARBER: Asked and answered, Your Honor.

12 JUDGE SCHNIERLE: Sustained.

13 BY MS. COYNE:

14 Q. And Mr. Nurse, do you agree that this is the
15 definition of the route that applies to ILEC facilities as
16 well as CLEC facilities?

17 A. (Nurse) Well, there's kind of a quirk in that
18 in 401 that might give you some indigestion which is in the
19 third line of Paragraph 401, "even if on an incumbent LEC's
20 network a transport circuit passes through the intermediate
21 point."

22 Q. If we could go back and look at the regs at (e),
23 and let me just read this so I'm sure that we're all in the
24 same place. The first sentence says, "An incumbent LEC
25 shall provide a requesting telecommunications carrier with

1 non-discriminatory access to dedicated transport on an
2 unbundled basis in accordance with Section 251(c)(3) and
3 this part and as set forth in Paragraph (e)(1) through
4 (e)(5) of this section." Did I read that correctly, sir?

5 A. (Nurse) Yes.

6 Q. And 251 is the unbundling obligation, correct?

7 A. (Nurse) I'll take that.

8 MR. BARBER: 251(c).

9 BY MS. COYNE:

10 Q. And (e)(1) and (e)(2) that's referred to are the
11 rules that are set forth governing the transport triggers
12 and the rules that are set forth governing the UNE
13 obligation; is that correct?

14 A. (Nurse) Yes, these rules in conjunction with
15 the order underlying.

16 Q. And so the next sentence reads, "As used in
17 those paragraphs, a route is a transmission path between one
18 of an incumbent LEC's wire centers or switches and another
19 of the incumbent LEC's wire centers or switches.

20 A. (Nurse) And we're okay so far.

21 Q. And "as used in those paragraphs" refers to the
22 previous sentence where it discusses the 251(c)(3)
23 obligation and where it discusses the trigger requirements
24 of (e)(1) and (e)(5), correct?

25 A. (Nurse) And we're okay so far.

1 Q. Excellent. The next sentence says, "A route
2 between two points, for example Wire Center or Switch A and
3 Wire Center or Switch Z may pass through one or more
4 intermediate wire centers or switches, for example Wire
5 Center or Switch X."

6 Now, was it your testimony that the FCC could not
7 mean what it said because that would be senseless?

8 A. (Nurse) No, that it shouldn't be interpreted as
9 you've interpreted it, because that would be senseless. If
10 you take switch to mean switch location or wire center or
11 commonly I think Verizon would call it transport node, that
12 makes sense because that's where dedicated transport runs.

13 DS-3's run into the transport section. If you go
14 into a Verizon central office, they'll have all the
15 transport equipment segregated typically in a separate
16 section and you'll have DS-X panels and you'll have bigger,
17 you know, Titan digital cross-connect machines and they'll
18 have huge amounts of OC-3's plugged into them. They're very
19 expensive machines.

20 And if you interpret it that way, that makes sense.
21 That's consistent with the way the industry is put together.
22 That's consistent with the way your network's run. It's
23 consistent with the way our network runs, with all ILECs
24 that I know of. That makes sense.

25 If you take that to mean a Class 5 switch, it

1 wouldn't work so it couldn't be so, and it's inconsistent
2 with the FCC's discussion developing it.

3 It would also hugely expand the definition of
4 dedicated transport, and in Paragraph 365, the FCC said they
5 were narrowing the definition of transport under the USTA
6 directive.

7 Q. Will you agree with me that there's nothing in
8 this definition that excludes switching?

9 JUDGE SCHNIERLE: Look. You're either going to argue
10 that it's the regs and only the regs, or you're going to
11 argue the regs as modified by the entire order, but you're
12 not going to have it both ways when it comes to the brief.

13 So, which is it going to be? If it's going to be
14 just the regs, well, then we can toss out Verizon Cross 1
15 and I don't want to hear about anything else in the order
16 but the regs when it comes to the brief.

17 But you're not going to have it both ways. You're
18 not going to say, we read the regs when it favors us, we
19 read the order when it favors us.

20 And you already said, read them both. You know, what
21 is the point of this? You know, I'm sorry, I'm getting a
22 little bit -- it seems like we're wasting a lot of time on
23 what should be a fairly obvious point at this point in the
24 game. You may continue.

25 MS. COYNE: Well, I think I'll take the hint and wrap

1 it up.

2 BY MS. COYNE:

3 Q. Mr. Nurse and Mr. Kirchberger, in your
4 testimony, did you take issue with any specific route that
5 Verizon identified?

6 A. (Nurse) Yes.

7 Q. And which one is that?

8 A. (Nurse) All of them.

9 Q. I think I have the answer to my question, but
10 isn't it true that you did not identify a specific route and
11 say, assuming that AT&T, if AT&T is wrong about its
12 definition of dedicated transport, Verizon doesn't meet the
13 trigger for these particular routes?

14 A. (Nurse) I'm not sure I understand the question.
15 You've asserted that we qualify as trigger candidate on a
16 number of routes. We disagree with your position on all the
17 routes.

18 Q. We disagree on the legal issue, potentially. I
19 think it's pretty clear we do. But assuming that Verizon
20 prevails in its view of the law, is it correct that you did
21 not say in your testimony that if Verizon is correct, then
22 AT&T nevertheless doesn't meet the transport triggers on any
23 particular route?

24 A. (Nurse) Even if the Commission interpreted the
25 reg as you would have them do, you didn't marshal the case,

1 you didn't gather the facts to be consistent with that.

2 And you know, it's not for me to build your case for
3 you, but you know, you never proved that there was
4 connectivity from any one of these rings to any one of these
5 other rings. You didn't get the questions necessary to
6 establish that. You just assumed that it was so and then
7 tried to foist it on the CLEC to prove that it wasn't.

8 So, no. Even if you got the legal interpretation you
9 wanted, in my view you don't have the facts.

10 Q. And I understand that you believe that Verizon
11 didn't meet its burden, but my question was --

12 A. (Nurse) No, it's not that you didn't meet your
13 burden. It's that you didn't gather the facts, regardless
14 of who had the burden.

15 Q. Is it true that AT&T is the best source of
16 information on AT&T's network?

17 A. (Nurse) Yes, and if you had asked, you know,
18 questions, we answered them. And if you had asked some
19 different questions, we probably would have given you
20 different answers, but it's not my job to ask your questions
21 for you.

22 Q. And isn't it also true that AT&T in its
23 testimony didn't say that if Verizon prevails on the legal
24 issue of dedicated transport, AT&T nevertheless, AT&T's
25 facilities nevertheless don't meet the triggers in various

1 routes?

2 A. (Nurse) That would have been redundant, because
3 we're done. We've already proved that you don't meet the
4 triggers, so we didn't need to do belt and suspenders.

5 MS. COYNE: I have no more questions.

6 MS. CONOVER: I have a few questions about switching.

7 **CROSS-EXAMINATION**

8 BY MS. CONOVER:

9 Q. I'm not sure. Is one or the other of you
10 responsible for switching?

11 A. (Nurse) Same deal.

12 A. (Kirchberger) As before, we filed joint
13 testimony, Ms. Conover.

14 Q. It's a tag team, okay.

15 MS. CONOVER: I think I'd like to mark as Verizon
16 Cross-Examination Exhibit No. 6 some responses of AT&T to
17 the preliminary discovery requests. I know this is already
18 going to be in the record, but I think it will be easier to
19 have it in front of everyone, so I will mark that.

20 (Whereupon, the document was marked
21 as Verizon Cross-Examination
22 Exhibit No. 6 for identification.)

23 BY MS. CONOVER:

24 Q. I just have some clarification questions to ask
25 about this exhibit. Am I correct that AT&T identified seven

1 switches in its response to the Commission's switching
2 question number one?

3 A. (Kirchberger) Yes.

4 Q. Which essentially asks AT&T to identify switches
5 used to provide mass market local exchange service to small
6 business customers in Pennsylvania. Those were those
7 switches that you identified, correct?

8 A. (Nurse) Yes.

9 Q. Okay. And then in response to question number
10 three, you identified the wire centers that you serve using
11 those switches and the number of DS-0 lines served.

12 A. (Nurse) Yes.

13 A. (Kirchberger) Yes.

14 Q. And am I correct that all of these lines are
15 provided to business customers to whom AT&T provides only
16 DS-0 lines at the location where the service is provided?

17 A. (Kirchberger) No. Basically, these are DS-0
18 lines -- yeah, since we're not talking numbers, these are
19 business all in one, which is a service that we have, that
20 generally is used by small business, and they're provisioned
21 on a DS-0 basis to customers that are served out of these
22 collos.

23 But the only difference is that I believe in your
24 question you said, only to customers served by DS-0 or
25 whatever. But there might be enterprise customers that need

1 an analog line that we would sell this service in
2 conjunction with that as well.

3 So not all of these lines are to traditional small
4 business, but we didn't try to break that out.

5 Q. Correct. Do you also serve enterprise customers
6 out of those same switches? That was actually going to be
7 my --

8 A. (Kirchberger) Out of those same collocations?
9 Yes.

10 Q. Same switches, correct.

11 A. (Nurse) Yeah.

12 A. (Kirchberger) And same switches.

13 Q. Okay. I have a few other questions about, in
14 particular your testimony regarding the self-provisioning
15 trigger for local switching. And if you could just turn to
16 the FCC's regs. On page 21, it discusses the local
17 switching self-provisioning trigger.

18 Now, I'd like to ask you in particular about your
19 testimony regarding --

20 A. (Nurse) I'm sorry. Just to make sure that
21 we're -- because this paginates differently sometimes
22 depending on the printer -- if you could just give us the
23 reg cite?

24 Q. Okay, I'm sorry. I have it on page 21, and it's
25 section little three "i," State Commission Analysis, then

1 big "I," Local Switching Triggers. And I'm looking at
2 paragraph one, local switching self-provisioning trigger.

3 A. (Nurse) I'm with you.

4 Q. Okay. And so it's clear, this is the provision
5 that would govern Verizon's case regarding the local, the
6 self-provisioning trigger requirement for switching?

7 A. (Nurse) Well, as the Judge covered before, this
8 part of the regs with the associated part of the order.

9 Q. I understand that's your position. This is just
10 a set-up question. I'm not asking for a legal
11 interpretation. We're not going to go there, believe me.
12 But I just want to draw your attention to the language that
13 talks about intermodal providers.

14 And as I understand it, would you agree that it's
15 clear from the rule that the rule states that intermodal
16 providers should be considered, assuming that they have
17 service that's comparable in quality to that of the
18 incumbent LEC? Is that correct?

19 A. (Nurse) Right. That's what it says, and --

20 Q. Okay, thank you. That's my only question. Now,
21 would you agree that comparable in quality does not say
22 identical to the ILEC? Is that correct?

23 A. (Nurse) Yes, and looking at Paragraph 499, they
24 kicked up --

25 MS. CONOVER: Your Honor --

1 WITNESS NURSE: They kicked out --

2 MS. CONOVER: Your Honor, please, if this witness
3 could answer my question, we could go very fast. I
4 understand their argument. I understand their argument, but
5 if we want to get through this, if they would just answer
6 the direct question, and I would request that you direct
7 them to do that.

8 JUDGE SCHNIERLE: They can answer the question yes,
9 but or no, but. It's the same rule I apply across the
10 board.

11 WITNESS NURSE: Yes, but --

12 JUDGE SCHNIERLE: If you're going to ask them for a
13 legal opinion, they're going to give you their legal
14 opinion.

15 WITNESS NURSE: Yes, but for example at Paragraph
16 499, they kicked out cellular providers. And I think
17 Verizon's argument earlier today or yesterday was that if
18 you look at people voting with their feet, since they bought
19 some service, it must be good.

20 And of course, Verizon provides tens of millions of
21 cellular lines. The FCC still expressly found it not
22 comparable in quality.

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1 BY MS. CONOVER:

2 Q. Is it AT&T's position that cable telephony is
3 not comparable in quality to the ILEC telephone service; is
4 that correct?

5 A. (Nurse) Yes.

6 Q. Now, as I understand it, AT&T Broadband
7 previously offered cable telephony over hybrid fiber co-ax
8 facilities in Pittsburgh; is that correct?

9 A. (Nurse) Yes.

10 Q. And in fact, those were the facilities that are
11 now Comcast facilities in Pittsburgh; isn't that correct?

12 A. (Nurse) Yes.

13 Q. Can you tell me when AT&T sold those assets to
14 Comcast?

15 A. (Nurse) A year ago or whatever the 10K says.
16 I'm not sure when they announced the sale and when the sale
17 closed, but --

18 Q. You would say it's less than a year ago,
19 approximately a year ago?

20 A. (Kirchberger) I believe it was within the last
21 18 months.

22 Q. Okay. Fine. That's sufficient.

23 Now, when AT&T had these facilities, wasn't it AT&T's
24 position that the telephone service it offered over those
25 facilities was equal or even better in quality than

1 Verizon's services?

2 A. (Nurse) That's -- you're in a different
3 context. This is a legal context where the --

4 Q. Well, I --

5 A. (Nurse) This is a different context of what you
6 mean by quality.

7 MS. CONOVER: Your Honor, could he answer yes or no
8 and then he can provide his explanation?

9 JUDGE SCHNIERLE: Yes or no, and then provide your
10 explanation.

11 WITNESS NURSE: No, we do not market the service to
12 customers as bad sheep telephone service, but quality in
13 this part of the reg, in this part of the order, is
14 different from, you know, what might be a customer's
15 perceived quality. Obviously, 50 or 60 million people
16 perceive cellular service to be of sufficient quality that
17 everybody in the hearing room has a cell phone running
18 around. That doesn't mean that it's a quality connection,
19 and that's what the FCC found. So when you're talking about
20 quality, you have to get the context which applies to it.

21 MS. CONOVER: I'd like to mark an excerpt from AT&T
22 Annual Report for the year 2001 Verizon Cross-Examination
23 No. 7.

24 JUDGE SCHNIERLE: It may be so marked.

25 (Whereupon, the document was marked

1 A. (Nurse) Yes, but this doesn't stand for the
2 proposition of high quality, because --

3 Q. Excuse me; there is no question pending.

4 I would also like you to read the quote, or I will
5 read it and tell me if I -- confirm that I'm reading it
6 correctly. Quote, "The customers I talk to really like our
7 AT&T Digital Phone service," says Jack Follmer, an AT&T
8 Broadband service technician in Pittsburgh. "It gives them
9 the same quality as a regular phone call at a price that's
10 better than the competition." Is that what that says?

11 A. (Nurse) That says phone call, yes.

12 A. (Kirchberger) Right.

13 Q. So am I correct that when AT&T was offering the
14 phone service in Pittsburgh over the cable telephony
15 facilities that now belong to Comcast, AT&T represented in
16 its annual report that the phone service was the same
17 quality as a regular phone call at a price that's better
18 than the competition? Isn't that what AT&T stated?

19 A. (Nurse) This is not what that says. It says,
20 "the same quality as a regular phone call." I mean, the
21 simplest example is you have an ice storm and you have a
22 power outage; you have no phone call when your cable goes
23 out because it isn't battery backed up and it doesn't have
24 standby generators. That, obviously, is not the same
25 quality reliability as a traditional land line phone.

1 Q. Are you aware of people that have phones that
2 are -- what are they called? They're not wireless.

3 A. (Nurse) They're cordless.

4 Q. Cordless. Thank you. People that have cordless
5 phones?

6 A. (Nurse) Yes.

7 Q. And am I correct that when there's a power
8 outage, the cordless phones don't work?

9 A. (Nurse) Yes, and those are also subject to
10 eavesdropping and fraud dialing, and yes, they don't work
11 generally when the power doesn't work.

12 Q. But nonetheless, millions of people buy cordless
13 phones and probably millions have them as their only phone;
14 correct?

15 A. (Nurse) Yes, and the FCC recognized that, and
16 I'm sure your annual report likewise talks about tens of
17 millions of cellular customers, but the FCC addressed that
18 in that order and they said even though there are millions
19 of people, volume of customers doesn't mean quality of
20 service.

21 Q. I think there's one other question I want to ask
22 you. Are you aware that the Commission regulates all
23 providers of telephone service, including cable companies
24 that provide cable telephone service as local telephone
25 providers?

1 A. (Kirchberger) Yes.

2 A. (Nurse) Yes. Except I understand they don't
3 regulate VOIP providers.

4 Q. I'm not referring to VOIP, I'm talking about the
5 cable telephony that is provided over hybrid fiber co-ax
6 similar to what is being provided by Comcast and previously
7 provided by AT&T Broadband.

8 A. (Nurse) Yes.

9 Q. In fact, the Commission also regulates the
10 quality of service that's offered by those CLECs; is that
11 correct?

12 A. (Nurse) The Commission has some quality
13 measures, yes.

14 MS. CONOVER: I have no further questions of these
15 witnesses, but I would like to move into the record the
16 Cross-Examination Exhibit --

17 JUDGE SCHNIERLE: Four, 5, 6, and 7.

18 MS. CONOVER: Yes.

19 JUDGE SCHNIERLE: Any objection?

20 MR. BARBER: No, Your Honor.

21 JUDGE SCHNIERLE: They're admitted.

22 (Whereupon, the documents marked
23 as Verizon Cross-Examination
24 Exhibits Nos. 4 through 7
25 were received in evidence.)

1 JUDGE SCHNIERLE: Before you redirect, I've got a
2 couple other questions. Just to put one of the comments
3 that has been going through here in context, an OC-48 is
4 essentially an optical transmission circuit that's running
5 at 2,488 megabits per second, more or less?

6 WITNESS KIRCHBERGER: It has a capacity of 48 DS-3s.

7 JUDGE SCHNIERLE: And a DS-3 is the equivalent of 672
8 voice grade --

9 WITNESS NURSE: Yes.

10 WITNESS KIRCHBERGER: Yes.

11 WITNESS NURSE: So when you multiply that, that's
12 where you get the 32,000 and change voice grade equivalents.

13 JUDGE SCHNIERLE: All right. Essentially, what your
14 testimony is, is that you can't put 32,000 phone calls into
15 a switch and have them come out the other end --

16 WITNESS NURSE: And leave them there 24/7 and have
17 anybody else talk on the phone.

18 JUDGE SCHNIERLE: And have it going 24/7 and
19 everybody else using the switch.

20 WITNESS NURSE: Right.

21 WITNESS KIRCHBERGER: You don't use a circuit switch
22 switching fabric to nail up permanent connections between
23 fibers.

24 WITNESS NURSE: You use a switch. For a call that's
25 going to last three minutes, you set it up, you tear it

1 down, you set it up, you tear it down, because it's dynamic.
2 If it's going to be stable, you know, they used to use patch
3 panels, you know, just be like a jumper cable, and you just
4 plug it in and you'd leave it there and it would stay for
5 years.

6 JUDGE SCHNIERLE: All right. Now, the other thing,
7 you had just very briefly -- and I don't think you meant to
8 create a connection or anything like that, but just to be
9 clear, you had something at the very beginning of your
10 testimony I think about making an analogy to Centrex. I
11 think it was in the context of providing a private DS-0 --

12 WITNESS NURSE: Yes.

13 JUDGE SCHNIERLE: -- to a distant location where an
14 employee might be working. CLECs don't provide Centrex;
15 right?

16 WITNESS KIRCHBERGER: They do. Some CLECs provide a
17 Centrex-like service, yes.

18 JUDGE SCHNIERLE: Well, but Centrex-like. Centrex
19 literally is where a location has a whole lot of copper
20 loops and they're taken back and essentially -- I don't know
21 quite how to -- they're switched locally at the telephone
22 company.

23 WITNESS NURSE: In my previous life I looked at a lot
24 of Centrex contracts, and usually Centrex customers are
25 governments. Municipal governments are very big Centrex

1 customers because they have usually a mass of customers in a
2 couple locations or, you know, applications, City Hall, that
3 sort of thing, and then they get onesies, twosies, you know,
4 all over town, they got the garage at the cemetery and the
5 phone at the pool and that kind of stuff, so they're very
6 good at being dispersed. The problem in selling Centrex is
7 you have to compete against PBX. When you buy Centrex,
8 you've got to pay for all the lines all the way back to the
9 office and it doesn't usually work. But my point was that
10 you do have enterprise services that are provided on a DS-0
11 or, you know, on a derived or a virtual DS-0. So you can
12 have a 5,000 line Centrex, theoretically could be all copper
13 lines into the switch, and the switch in that case would be
14 acting kind of like a big PBX.

15 JUDGE SCHNIERLE: Right. Okay.

16 MS. CONOVER: Your Honor, just one other clean-up.

17 JUDGE SCHNIERLE: Yes.

18 MS. CONOVER: There was another interrogatory, AT&T's
19 answer to our Set I, No. 1, that we wanted to put on the
20 record, but we did not bring a copy. Is there some way we
21 can preserve that --

22 JUDGE SCHNIERLE: Well, we're going to adjourn now
23 and do redirect tomorrow. You can offer that --

24 MR. KEFFER: There is no redirect, Your Honor.

25 JUDGE SCHNIERLE: Oh, there is no redirect.

1 MR. BARBER: No. I mean, I have no objection to them
2 bringing the document.

3 JUDGE SCHNIERLE: All right. Well, just bring it
4 tomorrow and offer it.

5 MR. BARBER: Wasn't this included in the rebuttal
6 testimony? These are -- maybe we can go off the record,
7 Your Honor.

8 JUDGE SCHNIERLE: All right. Off the record.

9 (Discussion off the record.)

10 JUDGE SCHNIERLE: We're back on the record.

11 So you're going to bring that exhibit tomorrow?

12 MS. CONOVER: Yes, we will.

13 JUDGE SCHNIERLE: All right. In that case, we're
14 adjourned. We'll see you tomorrow.

15 (Whereupon, at 5:05 p.m., the hearing was adjourned,
16 to be reconvened at 10:00 a.m. on Wednesday, January 28,
17 2004, in 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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