

*** THIS TRANSCRIPT CONTAINS PROPRIETARY INFORMATION ***

ORIGINAL

COMMONWEALTH OF PENNSYLVANIA
PUBLIC UTILITY COMMISSION

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: Incumbent Local Exchange Carriers
: Investigation into the obligations of
: Incumbent Local Exchange Carriers to
: Unbundle Network Elements.

:
: Docket No.
: I-00030099

: DOCKETED

Further Hearing

:
: FEB 13 2004

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Pages 651 through 750

Hearing Room No. 4
Commonwealth Keystone Building
Harrisburg, Pennsylvania

DOCUMENT

Thursday, January 29, 2004

Met, pursuant to adjournment, at 10:15 a.m.

BEFORE:

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SUSAN D. COLWELL, Administrative Law Judge

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WITNESSES

DIRECT CROSS REDIRECT RECROSS

Scott Dulin
Christopher Honeywill
By Mr. Clearfield
By Mr. Barber
By Ms. Conover

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Jim Vermeulen
By Mr. Stubbs
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FORM 2

EXHIBIT INDEX

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<u>PCC Statements</u>		
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12	(Comcast Responses to PUC Preliminary Discovery) PROPRIETARY	699	700
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<u>CLEC Coalition Statement</u>		
1.0 (Gillan Direct) PROPRIETARY/PUBLIC ✓	743	747
1.1 (Gillan Rebuttal) PROPRIETARY/PUBLIC ✓	744	747
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1 (Stipulation)	746	747

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1 Mr. Clearfield.

2 MR. CLEARFIELD: Thank you, Your Honor. PCC is
3 presenting witnesses this morning. Just for the record, the
4 PCC consists of Full Service Computing Corporation, Full
5 Service Network, Remi Retail Communications, LLC, ATX
6 Licensing, Inc., and Line Systems, Inc.

7 Your Honor, PCC submitted two pieces of direct
8 testimony, Statement 1.0 and Statement 2.0. By the
9 agreement of the parties and Verizon, Statement 1.0 has been
10 stipulated to and there will be no cross on Statement 1.0,
11 as I understand it, and we are not submitting or presenting
12 that panel this morning. We can move that in now or we can
13 wait and do it after the panel for Statement 2.0 has been
14 presented.

15 JUDGE SCHNIERLE: Why don't we do Statement 1.0 and
16 get it out of the way, because, frankly, since there are
17 some who are missing in action, so to speak, at this point,
18 we may as well get that out of the way, and if the others
19 have not yet arrived, over the last day or so, we did manage
20 to make copies and everything of the filings by the Footnote
21 14 CLECs who have not chosen to appear, and we're going to
22 move those in before the day is out.

23 So, go ahead.

24 MR. CLEARFIELD: Your Honor, I would move for the
25 admission by stipulation of PCC Statement 1.0, together with

1 the three exhibits that are attached thereto. As I
2 indicated earlier, all parties have waived cross and have
3 stipulated to the authenticity of that testimony.

4 I would note that earlier this week, we did submit
5 and distribute a correction to the testimony. There had
6 been, I think, an earlier one. Those corrections are
7 reflected in the two copies of the testimony that we have
8 provided to the reporter and they will come in with that
9 change.

10 MS. CONOVER: Mr. Clearfield, by way of
11 clarification, I think there was also some updated or
12 additional amounts of testimony that was going to be in
13 Statement 1.0. Am I mistaken?

14 MR. CLEARFIELD: There is a --

15 MS. CONOVER: Is that a separate document.

16 MR. CLEARFIELD: Off the record.

17 JUDGE SCHNIERLE: We're off the record.

18 (Discussion off the record.)

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

20 MR. CLEARFIELD: I'd move for the admission of
21 Statement 1.0 and the accompanying exhibits.

22 JUDGE SCHNIERLE: Any objection?

23 MS. CONOVER: No.

24 JUDGE SCHNIERLE: All right. That's admitted.

25 (Whereupon, the document was marked

1 as PCC Statement No. 1.0 for
2 identification, and was received in
3 evidence.)

4 MR. CLEARFIELD: Your Honor, we also have distributed
5 to the parties and to Verizon a two-page document which
6 we've labeled as Statement 1.S, which is a surrebuttal
7 statement consisting of one question and answer that is
8 sponsored by the panel, but principally by Mr. Malfara.
9 That statement has been distributed to the court reporter
10 and to all the parties and Verizon earlier this week; and,
11 again, I understand that Verizon has agreed to its admission
12 and also has waived cross on Mr. Malfara on that statement.

13 MS. CONOVER: Correct. Your Honor, just to make the
14 record clear, we did object to that as being improper
15 rebuttal, but after reviewing it, we are not going to oppose
16 its admission into the record.

17 JUDGE SCHNIERLE: All right. Mr. Clearfield, do you
18 have copies of 1S for us?

19 MR. CLEARFIELD: I apologize, Your Honor. I'm not
20 sure. They were supposed to be in that binder. I will call
21 and have them brought over.

22 JUDGE SCHNIERLE: That's fine. Thank you.

23 MR. CLEARFIELD: Just give me a minute. I'm sure
24 they're going to tell me that they gave those to me and
25 they're somewhere, but since there is no cross --

1 JUDGE SCHNIERLE: All right. Is there any objection
2 to PCC Statement 1S?

3 MS. CONOVER: Other than what we have just stated,
4 no.

5 JUDGE SCHNIERLE: It's admitted.

6 (Whereupon, the document was marked
7 as PCC Statement No. 1S for
8 identification, and was received in
9 evidence.)

10 MR. CLEARFIELD: One other housekeeping matter we
11 might as well complete, if you want, is we did undertake to
12 make copies of our responses to the Commission
13 interrogatories, and we've marked them as PCC Exhibit 1.
14 These are the answers to the interrogatories for all of the
15 PCC members. I can distribute those to Your Honor and to
16 the court reporter and have them marked and moved in at this
17 time, if you wish.

18 JUDGE SCHNIERLE: All right.

19 MR. CLEARFIELD: Those are the answers for all the
20 PCC members, Your Honor, as you suggested.

21 JUDGE SCHNIERLE: The two who are ATX -- ATX was the
22 only one that was a Footnote 14 CLEC, I believe. Is that
23 correct?

24 MR. CLEARFIELD: I believe so, yes.

25 JUDGE SCHNIERLE: ATX was the only one that was

1 directed to answer whether or not they had intervened.

2 MR. CLEARFIELD: I can double-check that, Your Honor.

3 JUDGE SCHNIERLE: Okay. Well, we have the record.
4 That's all right. The others filed because they filed
5 interventions is what I'm getting at.

6 All right.

7 MR. CLEARFIELD: With that, I think we can move to
8 Statement 2.0, Your Honor.

9 JUDGE SCHNIERLE: All right. Is there any objection
10 to PCC Exhibit 1?

11 MS. CONOVER: No.

12 JUDGE SCHNIERLE: It's admitted.

13 (Whereupon, the document was marked
14 as PCC Exhibit No. 1 for
15 identification, and was received in
16 evidence.)

17 JUDGE SCHNIERLE: Go ahead, Mr. Clearfield.

18 MR. CLEARFIELD: Your Honor, with respect to
19 Statement 2.0, we pre-marked a document which is entitled
20 "Direct Testimony David Schwencke, David" -- I'm sorry.
21 That's the wrong one. "Direct Testimony of Scott Dulin and
22 Christopher Honeywill on Behalf of the Pennsylvania
23 Carriers' Coalition." We've marked that as PCC Statement
24 2.0. It consists of several pages of questions and answers
25 and three exhibits, and ask that it be marked for

1 identification as PCC Statement 2.0.

2 JUDGE SCHNIERLE: It may be so marked.

3 (Whereupon, the document was marked
4 as PCC Statement No. 2.0 for
5 identification.)

6 MR. CLEARFIELD: Gentlemen.

7 MR. DULIN: Good morning.

8 MR. CLEARFIELD: Starting with you, Mr. Dulin, could
9 each of you state your full name and business address for
10 the record?

11 MR. DULIN: Sure. It's Scott Dulin, D-u-l-i-n, and
12 we're located now at 2100 Renaissance Boulevard in King of
13 Prussia, Pennsylvania.

14 MR. CLEARFIELD: Mr. Honeywill.

15 MR. HONEYWILL: It's Chris Honeywill, H-o-n-e-y-w-i-
16 l-l, and we're located at 1420 Center Avenue. That's
17 Pittsburgh, PA, 15219.

18 MR. CLEARFIELD: And by whom are each of you employed
19 and in what capacity?

20 MR. DULIN: I'm employed by ATX Communications as a
21 Senior Vice President.

22 MR. HONEYWILL: I'm part of the management team at
23 Full Service Network.

24 MR. CLEARFIELD: Do you have before you what we've
25 marked for identification as PCC Statement 2.0 with the

1 accompanying exhibits?

2 MR. DULIN: I do.

3 MR. CLEARFIELD: And is that your prepared direct
4 testimony for presentation in this proceeding?

5 MR. DULIN: It is.

6 MR. HONEYWILL: Yes, it is.

7 MR. CLEARFIELD: And was that testimony prepared by
8 you or under your supervision and direction?

9 MR. DULIN: Yes. It was actually jointly prepared by
10 both of us.

11 MR. CLEARFIELD: Now, could you explain for the
12 parties and the ALJ who is responsible for which portions of
13 the testimony.

14 JUDGE SCHNIERLE: Hold on. Please raise your right
15 hands and stand.

16 Whereupon,

17 SCOTT DULIN

18 CHRISTOPHER HONEYWILL

19 having been duly sworn, testified as follows:

20 JUDGE SCHNIERLE: Okay. Start again. Sorry about
21 that.

22 MR. CLEARFIELD: Should we just keep going?

23 JUDGE SCHNIERLE: Why don't you start again just to
24 be on the safe side.

25 DIRECT EXAMINATION

1 BY MR. CLEARFIELD:

2 Q. State your name and business and address and by
3 whom you're employed and in what capacity.

4 A. (Mr. Dulin) Sure. Scott Dulin with ATX
5 Communications located at 2100 Renaissance Boulevard, King
6 of Prussia, Pennsylvania. I'm employed by ATX
7 Communications as a Senior Vice President.

8 Q. Mr. Honeywill.

9 A. (Mr. Honeywill) Chris Honeywill. I'm employed
10 by Full Service Network, 1420 Center Avenue, Pittsburgh,
11 Pennsylvania, and I'm a member of the management team.

12 Q. And do you have before you what has been marked
13 as Statement 2.0 for identification in this proceeding?

14 A. (Mr. Dulin) Yes.

15 Q. And is that your prepared direct testimony for
16 this part of the proceeding?

17 A. (Mr. Dulin) It is.

18 Q. And what that prepared by you, the two of you,
19 or under your supervision and direction?

20 A. (Mr. Dulin) Yes.

21 A. (Mr. Honeywill) Yes.

22 Q. Now, could one of you explain to the parties and
23 the ALJ who is responsible for which portions of the
24 testimony?

25 A. (Mr. Dulin) Sure. Actually, we're both jointly

1 responsible for the entire testimony. Chris is principally
2 responsible for the technical application of the standards
3 as to which companies properly qualify as a trigger for the
4 analysis, which were explained in PCC Statement No. 1.0.
5 I'm responsible for making sure the standards were applied
6 correctly and to support those standards as necessary.

7 Q. Now, do you have additions or corrections that
8 either of you would like to make at this time? Why don't we
9 start with you, Mr. Dulin.

10 A. (Mr. Dulin) Yes. I have actually one
11 correction in PCC Statement No. 2.0, page 3. The sentence
12 beginning with "As to transport, we will present the results
13 of properly conducted trigger analysis..." The change I
14 have is "for some of the transport routes" as opposed to
15 "for each of the transport routes."

16 Q. Do you have any other changes you'd like to
17 make?

18 A. (Mr. Dulin) That is all I have right now.

19 Q. Mr. Honeywill, do you have any changes you'd
20 like to place on the record?

21 A. (Mr. Honeywill) Yes. I have a couple.
22 Starting on page 21, line number 9, it's just a typo. It
23 begins, "The Commission," and that should be taken out. It
24 should say "Verizon recognizes FiberNet."

25 Q. Could you indicate the other corrections?

1 A. (Mr. Honeywill) The other change was to our
2 Exhibit No. 5 to the testimony that corresponded with it.
3 We've already handed that out. It has been handed out this
4 morning. Exhibit No. 5 was Excel spreadsheet and it applied
5 -- there's a key at the top of it, and it applies different
6 letters to why companies do not qualify as a trigger
7 candidate. That was mechanized in the way it was supposed
8 to be put in, and some of the letters did not line up
9 correctly with their companies.

10 So, basically, what we've done -- it's all pretty
11 obvious -- for example, XO in the Allentown MSA --

12 MR. CLEARFIELD: Just a second, Mr. Honeywill. Just
13 for the record, Your Honor, that Exhibit 5 is behind the
14 pages that we handed out this morning, the corrected
15 testimony -- the spreadsheet. I'm sorry.

16 JUDGE SCHNIERLE: Go ahead.

17 WITNESS HONEYWILL: You'll see for XO, the new
18 version lists Triggers A, B, C and D as not being met.
19 Before, it also listed G as de minimis, but if you just look
20 at the exhibit, on its face it's obvious that XO is not de
21 minimis in that MSA. They have a couple thousand customers.

22 BY MR. CLEARFIELD:

23 Q. Were there other changes of similar nature?

24 A. (Mr. Honeywill) Yeah. There's been some other
25 similar changes throughout this like that. Most of them are

1 very obvious. None of them affect the testimony or affect
2 the conclusions.

3 Q. And the changes to the text, why were they
4 necessary?

5 A. (Mr. Honeywill) The changes to the text were
6 necessary just to have everything match up with the exhibit
7 for clarity.

8 Q. Now, again, I think you said this, but do these
9 changes alter any of your ultimate conclusions about --

10 A. (Mr. Honeywill) No, they do not.

11 Q. Let me just finish the question. About whether
12 any of the CLECs listed in your exhibit actually qualify to
13 be trigger companies for switching purposes.

14 A. (Mr. Honeywill) No, they do not. Although some
15 of the triggers that were not met have changed, all of the
16 CLECs that are presented still have multiple reasons why
17 they still would not qualify as a trigger.

18 Q. Do you have any other corrections or changes
19 you'd like to make at this time?

20 A. (Mr. Honeywill) No.

21 Q. And with those corrections and with the revised
22 Exhibit 5, is your testimony and exhibit true and correct to
23 the best of your information, knowledge and belief?

24 A. (Mr. Dulin) Yes, it is.

25 Q. And if I asked you the questions that are set

1 forth in the testimony today, would your answers be the
2 same?

3 A. (Mr. Dulin) They would.

4 A. (Mr. Honeywill) Yes.

5 MR. CLEARFIELD: Your Honor, I would move for the
6 admission of PCC Statement 2.0 and the accompanying
7 exhibits. The exhibit, I would note, would be the revised
8 Exhibit 5 that has been authenticated today and the revised
9 pages of the testimony.

10 JUDGE SCHNIERLE: Okay. Let me -- these are the
11 corrections since you distributed the original testimony
12 back on January 9th?

13 MR. CLEARFIELD: Yes, Your Honor.

14 JUDGE SCHNIERLE: Okay. All right. Any objection?

15 MS. CONOVER: No objection.

16 JUDGE SCHNIERLE: They're admitted.

17 (Whereupon, the document marked as
18 PCC Statement No. 2.0 was received
19 in evidence.)

20 MR. CLEARFIELD: Your Honor, before we move to cross,
21 we have a very short piece of surrebuttal, one question and
22 answer that we've already at least raised with Verizon and
23 indicated that we were planning to try to do that. This is
24 to Mr. Honeywill.

25 Your Honor, this would go to the proprietary part of

1 Mr. Honeywill's testimony and Mr. West and Peduto's
2 rebuttal.

3 JUDGE SCHNIERLE: All right. Then in that case, we
4 are on the proprietary record.

5 MR. CLEARFIELD: Thank you.

6 (Whereupon, the following pages 672 through 674 were
7 sealed and bound separately.)
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FORM 2

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JUDGE SCHNIERLE: Do any CLECs or -- Mr. Barber?

MR. BARBER: I have a couple questions, Your Honor.

JUDGE SCHNIERLE: Go ahead.

MR. BARBER: Would we need to be on the proprietary record?

CROSS-EXAMINATION

BY MR. BARBER:

Q. Mr. Honeywill, based on what you were just describing relative to that switch in Pittsburgh, is it --

MR. BARBER: Can we go off the record just very briefly?

JUDGE SCHNIERLE: All right. Of the record.

(Discussion off the record.)

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

(Whereupon, the following page 676 was sealed and bound separately.)

1 BY MR. BARBER:

2 Q. I don't know which of you gentlemen this
3 question really is for. Turning to page 25 of PCC Statement
4 2.0, line 4, you have a sentence there that basically
5 indicates you've done a transport analysis but only on those
6 route, quote, "for which PCC members have a business
7 interest," end quote.

8 Frankly, I didn't understand what you meant by
9 business interest. Which of you gentlemen would be -- Mr.
10 Dulin, what exactly is the reference there to business
11 interest?

12 A. (Mr. Dulin) The reference to business interest
13 is to note that in the current environment, there is a
14 dynamic; that as of this point in time, as of today, these
15 are specific routes where we're currently using Verizon
16 transport today.

17 That does not mean that a week from now there would
18 be another transport route that I would order up on Verizon.

19 Q. Maybe the question is just very simple. In
20 other words, you've analyzed those routes on which you
21 currently purchase dedicated transport from Verizon?

22 A. (Mr. Dulin) That is correct.

23 Q. And you purchase it as an unbundled element from
24 Verizon?

25 A. (Mr. Dulin) That is correct.

1 Q. And, basically, Verizon has identified these
2 routes as one which it believes the triggers have been met
3 for eliminating dedicated transport as a UNE?

4 A. (Mr. Dulin) That is Verizon's belief, yes.

5 Q. So, in other words, these are routes on which,
6 if Verizon has its way, your ability to obtain dedicated
7 transport would be eliminated as an unbundled network
8 element; correct?

9 A. (Mr. Dulin) That is my understanding.

10 MR. BARBER: Nothing further, Your Honor. Thank you.

11 JUDGE SCHNIERLE: Just to clarify, you'd probably
12 still be able to get it, but at tariffed access rates.

13 WITNESS DULIN: That is my understanding; that there
14 is actually a special access tariff that would offer
15 transport at much higher rates.

16 JUDGE SCHNIERLE: Okay. All right. Anybody else,
17 CLECs?

18 (No response.)

19 JUDGE SCHNIERLE: No. All right. Ms. Conover?

20 MS. CONOVER: I'm going to be doing it. Thank you.

21 **CROSS-EXAMINATION**

22 BY MS. CONOVER:

23 Q. I believe I have some questions about your
24 surrebuttal and also about some of the information you
25 provided to the Commission in your data responses.

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First, with regard to the switch in Pittsburgh --

MR. CLEARFIELD: Is this going to go to proprietary?

MS. CONOVER: Yes; this probably will be proprietary.

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

(Whereupon, the following pages 680 through 688 were
sealed and bound separately.)

1 BY MS. CONOVER:

2 Q. I'm very interested in how the term "ubiquitous"
3 and the categorization of ubiquitous was used in your
4 categorization. Is it your definition that a carrier must
5 actually have mass market customers in every wire center in
6 the market in order to be ubiquitous, as you classify that?

7 A. (Dulin) I'd like to answer that. Our
8 interpretation is ubiquitous is as it's defined, coverage of
9 the entire mass market, so if it was 98 percent of the state
10 or the Commonwealth worth of coverage, I would consider that
11 fairly close to ubiquitous.

12 Q. But as you've used it in your attachment, in
13 order to not have a "U" next to their name, the carrier had
14 to be in every single wire center; is that correct?

15 A. (Dulin) That is correct.

16 Q. So, for example, if a carrier --

17 MS. CONOVER: This may be proprietary, Your Honor.
18 Excuse me.

19 JUDGE SCHNIERLE: All right. We're back on the
20 proprietary record.

21 **(Whereupon, the following pages 690 through 695 were**
22 **designated proprietary and were sealed and bound**
23 **separately.)**
24
25

1 BY MS. CONOVER:

2 Q. I would just like to look at Exhibit 6, which
3 has to do with transport. As I understand it, Exhibit 6
4 contains information that was received no later than January
5 9; is that correct?

6 A. (Dulin) Are you asking if there's an updated
7 version that's been submitted?

8 Q. Yes, that's where I was going, Mr. Dulin. I was
9 going to say that in fact this has not been updated to
10 reflect later changes in the CLEC discovery. I just want to
11 confirm that on the record.

12 MR. CLEARFIELD: We have not, as far as I know, made
13 an updated version. We just simply haven't had the time.

14 MS. CONOVER: Now I have no further questions.

15 MR. CLEARFIELD: And I still don't have any redirect.

16 JUDGE SCHNIERLE: All right; you may step down.

17 (Witnesses excused.)

18 JUDGE SCHNIERLE: I guess we still don't have --

19 MR. BARBER: Can we go off the record?

20 JUDGE SCHNIERLE: We're off the record.

21 (Discussion off the record.)

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

23 Let's see, we're going to be awaiting the submission
24 of testimony on behalf of the CLEC Coalition and Cavalier,
25 and in that time we're going to deal with some of these

1 responses that the Commission required, starting with
2 Verizon's.

3 Ms. Conover.

4 MS. CONOVER: Yes. I'd like to move into the record
5 Verizon Hearing Exhibit No. 2, which is our responses to the
6 Commission's Data Requests.

7 JUDGE SCHNIERLE: Any objection?

8 MR. BARBER: No, Your Honor.

9 JUDGE SCHNIERLE: It's admitted.

10 (Whereupon, the document marked
11 as Verizon Hearing Exhibit No. 2
12 was received in evidence.)

13 MS. BENEDEK: That's number 2?

14 JUDGE SCHNIERLE: That's Verizon Exhibit No. 2, yes.
15 All right. Let's go off the record for a minute.
16 (Discussion off the record.)

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

18 The first one I've got is, and this is going to be
19 ALJ-6 -- D&E Communications, I'll say also known as or also
20 operating as CEI Networks, will be ALJ 6.

21 (Whereupon, the document was marked
22 as Verizon Hearing Exhibit No. 6
23 for identification.)

24 MR. CLEARFIELD: Your Honor, off the record?

25 JUDGE SCHNIERLE: Yes.

1 (Discussion off the record.)

2 JUDGE SCHNIERLE: We're back on the record.

3 Z-Tel is going to be ALJ-7.

4 (Whereupon, the document was
5 marked as ALJ Exhibit No. 7
6 for identification.)

7 JUDGE SCHNIERLE: Level 3 is ALJ-8.

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

11 MR. BARBER: Did you jump over Allegiance, Your
12 Honor?

13 JUDGE SCHNIERLE: Yeah, I realized that's a mistake,
14 because we did Allegiance --

15 MR. BARBER: Okay. So Level 3 is 8?

16 JUDGE SCHNIERLE: Yes, Level 3 is ALJ-8.

17 Focal is ALJ-9.

18 (Whereupon, the document was
19 marked as ALJ Exhibit No. 9
20 for identification.)

21 JUDGE SCHNIERLE: RCN is ALJ-10.

22 (Whereupon, the document was
23 marked as ALJ Exhibit No. 10
24 for identification.)

25 JUDGE SCHNIERLE: CTC is ALJ-11.

1 (Whereupon, the document was
2 marked as ALJ Exhibit No. 11
3 for identification.)

4 JUDGE SCHNIERLE: Comcast is ALJ-12.

5 (Whereupon, the document was
6 marked as ALJ Exhibit No. 12
7 for identification.)

8 JUDGE SCHNIERLE: CTSI is ALJ-13.

9 (Whereupon, the document was
10 marked as ALJ Exhibit No. 13
11 for identification.)

12 JUDGE SCHNIERLE: Talk America is ALJ-14.

13 (Whereupon, the document was
14 marked as ALJ Exhibit No. 14
15 for identification.)

16 JUDGE SCHNIERLE: The original TelCove response is
17 going to be ALJ-15.

18 (Whereupon, the document was
19 marked as ALJ Exhibit No. 15
20 for identification.)

21 JUDGE SCHNIERLE: All of those are all proprietary.
22 Now, Metro Teleconnect, is ALJ-16.

23 (Whereupon, the document was
24 marked as ALJ Exhibit No. 16
25 for identification.)

1 MR. BARBER: Just to be clear, Your Honor, the only
2 document in that pile that ended up not getting marked were
3 those Allegiance responses?

4 JUDGE SCHNIERLE: Yes. Yes.

5 MR. BARBER: That's right, because they were part of
6 their testimony.

7 JUDGE SCHNIERLE: Yeah. Ms. Conover put that in
8 yesterday.

9 MR. BARBER: Right.

10 JUDGE SCHNIERLE: I think when this was being done,
11 we didn't know that you were going to --

12 MS. CONOVER: Right; right.

13 JUDGE SCHNIERLE: -- put it in, so we were going to
14 be prepared one way or the other.

15 All right. Is there any objection to the admission
16 of Exhibits ALJ-6 through 16?

17 MR. BARBER: No, Your Honor.

18 JUDGE SCHNIERLE: They're admitted.

19 **(Whereupon, the documents marked**
20 **as ALJ Exhibits Nos. 6 through 16**
21 **were received in evidence.)**

22 JUDGE SCHNIERLE: Thank you. With that, we'll be in
23 recess until we hear from --

24 MR. BARBER: Cavalier is here.

25 JUDGE SCHNIERLE: Oh, Cavalier is here. All right.

1 Well, I'll tell you what, let's just take a couple minute
2 break anyway. We'll take a five-minute break before we
3 start in again.

4 (Recess.)

5 JUDGE SCHNIERLE: Let's go back on the record, and we
6 have now got Cavalier.

7 MR. STUBBS: Yes, Your Honor.

8 JUDGE SCHNIERLE: Mr. Stubbs.

9 MR. STUBBS: First, a little housekeeping, Your
10 Honor. Next in progression would be ALJ-17, Cavalier, its
11 Appendix A responses?

12 JUDGE SCHNIERLE: Yes.

13 (Whereupon, the document was
14 marked as ALJ Exhibit No. 17
15 for identification.)

16 JUDGE SCHNIERLE: Is there any objection to ALJ-17?

17 MS. CONOVER: No objection.

18 JUDGE SCHNIERLE: It's admitted.

19 (Whereupon, the document marked
20 as ALJ Exhibit No. 17
21 was received in evidence.)

22 JUDGE SCHNIERLE: Mr. Stubbs.

23 MR. STUBBS: Your Honor, I have to add one more, if I
24 may, and I would suggest it be marked as ALJ-17A. It came
25 to our attention at the end of this past week that in the

1 transport portion of ALJ-17, when Cavalier had responded in
2 November 2003, we made a mistake as to two COs. ALJ-17A, if
3 so marked, would make the correction.

4 May we go on the proprietary record, Your Honor?

5 JUDGE SCHNIERLE: All right; we're on the proprietary
6 record.

7 (Whereupon, the following pages 703 through 704 were
8 designated proprietary and were sealed and bound
9 separately.)

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1 JUDGE SCHNIERLE: Any objection to ALJ-17A?

2 MS. COYNE: No.

3 JUDGE SCHNIERLE: It's admitted.

4 **(Whereupon, the document marked**
5 **as ALJ Exhibit No. 17-A**
6 **was received in evidence.)**

7 MR. STUBBS: Your Honor, based on those exhibits
8 being introduced, if Verizon will allow me, I think that it
9 would be best to explain how that error resulted in an error
10 to Cavalier's testimony, the direct testimony of Jim
11 Vermeulen. If Your Honor rather that I explain this now and
12 explain where we would strike the testimony, or would you
13 like to wait for Mr. Vermeulen to get on the stand?

14 JUDGE SCHNIERLE: Why don't you call him to the stand
15 and let him explain it. I'm assuming we're going to have to
16 go on the proprietary record.

17 MR. STUBBS: That's right.

18 JUDGE SCHNIERLE: All right. Why don't you get your
19 witness up here first?

20 MR. STUBBS: Cavalier calls Jim Vermeulen to the
21 stand.

22 JUDGE SCHNIERLE: Please raise your right hand.

23 **Whereupon,**

24 **JIM VERMEULEN**

25 **having been duly sworn, testified as follows:**

1 JUDGE SCHNIERLE: Please be seated.

2 **DIRECT EXAMINATION**

3 BY MR. STUBBS:

4 Q. Mr. Vermeulen, could you state your full name
5 and your position for the record?

6 A. Jim Vermeulen, Director of Engineering, Cavalier
7 Telephone Mid-Atlantic.

8 JUDGE SCHNIERLE: You've got to keep your voice up.

9 THE WITNESS: Okay. Jim Vermeulen, Director of
10 Engineering, Cavalier Telephone.

11 BY MR. STUBBS:

12 Q. Mr. Vermeulen, in connection with this
13 proceeding, did you prepare or oversee the preparation of
14 direct testimony?

15 A. Yes, I did.

16 Q. Do you have that testimony with you today?

17 A. Yes, I do.

18 MR. STUBBS: Your Honor, do you have a preference for
19 how the testimony should be marked?

20 JUDGE SCHNIERLE: Cavalier Statement 1.

21 **(Whereupon, the document was**
22 **marked as Cavalier Statement No. 1**
23 **for identification.)**

24 BY MR. STUBBS:

25 Q. Mr. Vermeulen, do you have before you a document

1 of ten pages, your testimony?

2 A. Yes, I do.

3 Q. Are there any corrections to be made to your
4 testimony?

5 A. Yes.

6 Q. Could you describe what they are?

7 A. Yes. At the footnote on page 2, this reference
8 should be to TRO paragraph 401.

9 Q. So that should read, "Id. paragraph 401"?

10 A. Correct.

11 JUDGE SCHNIERLE: Which line is that again?

12 THE WITNESS: The footnote.

13 JUDGE SCHNIERLE: Okay. I see it. Thank you.

14 BY MR. STUBBS:

15 Q. I'd like to jump to page 5, line 15. Is there
16 another error in your testimony?

17 A. Yes. "Mr. West" should be changed to "Ms.
18 Berry."

19 Q. Now, Mr. Vermeulen, in light of the amendment
20 made to ALJ-17 through ALJ-17A, and the resulting facts that
21 ALJ-17A reflect, are there any changes to be made to your
22 testimony on pages 4 and 5?

23 A. Yes. As a result of the mistakes that were made
24 in the preparation of this Exhibit A-1 under my direction,
25 lines 14 through 23 on page 4 --

1 JUDGE SCHNIERLE: Here's where we go on the
2 proprietary record, I believe.

3 MR. STUBBS: Yes.

4 (Whereupon, the following pages 709 through 710 were
5 designated proprietary and were sealed and bound
6 separately.)

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1 BY MR. STUBBS:

2 Q. Does it fairly and accurately represent your
3 position?

4 A. Yes.

5 MR. STUBBS: I move the introduction of Cavalier
6 Statement 1.

7 JUDGE SCHNIERLE: Any objection as amended?

8 MS. COYNE: No objection.

9 JUDGE SCHNIERLE: It's admitted.

10 **(Whereupon, the document marked**
11 **as Cavalier Statement No. 1**
12 **was received in evidence.)**

13 MR. STUBBS: Mr. Vermeulen, is available for cross --
14 actually, Your Honor, should -- would Your Honors rather
15 that I call Mr. Vermeulen as a rebuttal witness at this time
16 or wait until cross?

17 JUDGE SCHNIERLE: Well, if you're going to do oral
18 surrebuttal, why don't you do it now?

19 BY MR. STUBBS:

20 Q. Mr. Vermeulen, do you have a copy of the Peduto
21 and West Rebuttal Statement 1.2?

22 A. Yes.

23 Q. If you would, would you turn --

24 MS. COYNE: Excuse me; let me object at this point.
25 This is the first I've heard of oral surrebuttal. When we

1 had our colloquy about how we were going to approach putting
2 on your witness, you did not mention oral surrebuttal.
3 Could we ask what it is that you're putting oral surrebuttal
4 on to cover?

5 JUDGE SCHNIERLE: We'll go off the record for this.
6 (Discussion off the record.)

7 JUDGE SCHNIERLE: Back on the record.

8 MR. STUBBS: Your Honor, Verizon and Cavalier weren't
9 able to come to any conclusions or a common ground on this,
10 but I've agreed to ask leave of Your Honors to ask two
11 surrebuttal questions as to Cavalier-specific information
12 raised by the Gilbert and Peduto rebuttal testimony.

13 JUDGE SCHNIERLE: Go ahead.
14 You can object and I'll rule on them as we go along
15 here.

16 MR. STUBBS: The one issue was as to the
17 Gilbert/Peduto statement at page 51, lines 14 and 15, that
18 Cavalier, among others, does not take issue with the general
19 conclusion that self-provisioned transport facilities may
20 take dark fiber. And then second, Your Honor, at page --

21 JUDGE SCHNIERLE: Wait a minute. That's the first
22 one.

23 MR. STUBBS: That's right.

24 JUDGE SCHNIERLE: Do you want to object?

25 MS. CONOVER: Yes, I do want to object. I believe

1 that that's essentially -- number one, I don't believe that
2 there is a right for the CLECs to provide surrebuttal, that
3 is essentially for the party with the burden of proof, and I
4 think that unless they are willing to assume that they have
5 the burden of proof, they should not have the right to have
6 surrebuttal.

7 Number two, it sounds to me like this is material
8 that should have come up in their defense. Essentially,
9 what they are saying is we made a comment after we saw their
10 rebuttal that they had not taken issue with something.
11 Their opportunity to take issue with that fact should have
12 been in their initial rebuttal testimony to our direct
13 testimony, not on surrebuttal after we make a comment in our
14 rebuttal that they did not take issue with this. To me,
15 that is completely sandbagging us.

16 MR. STUBBS: Your Honor, if I may, I'm not here to
17 say that this issue has not been addressed before by other
18 parties, such as AT&T and MCI, however, this was the first
19 instance where Verizon states that Cavalier, by its silence
20 on that point, is in effect agreeing with Verizon on its
21 point. I thought the whole thrust of Verizon's arguments in
22 most of this case is that AT&T and MCI, among others, are
23 attacking the Verizon case generally without going to a
24 route-specific and market-specific case. Well, Verizon does
25 compliment Cavalier at one point for its specific

1 particularized defense of its transport routes as UNEs, and
2 here is the one area where we are responding to a specific
3 implication by Verizon that Cavalier adopts Verizon's
4 position as to the implication one should gain from having
5 dark fiber -- having fiber facilities, that they necessarily
6 imply that you've got dark fiber available.

7 MS. CONOVER: Your Honor, I would just add one
8 further fact. Mr. Peduto, who may have had something to
9 raise or to respond to this has left. He was here through
10 last night. Had we known, we obviously would have had him
11 stay. He has left.

12 JUDGE SCHNIERLE: Yes. The objection is sustained on
13 that basis. I mean, you should have told them beforehand.

14 MR. STUBBS: It's simply, Your Honor, that again
15 being raised for the first time in the rebuttal testimony,
16 the Gilbert and West testimony states that Cavalier on its
17 Web site makes available metro dark fiber routes in the
18 Philadelphia area, and Mr. Vermeulen would very easily
19 dispose of that, and I believe that if the record does not
20 reflect Mr. Vermeulen's gloss on that, that it will be a
21 misstatement of Cavalier's dark fiber availability.

22 MS. CONOVER: Again, I would raise many of the same
23 objections. I mean, it seems to me that what Cavalier did
24 is they took a risk when they didn't put those things on in
25 their direct testimony. They essentially assumed that an

1 assumption would be made in their favor; and, in fact --

2 JUDGE SCHNIERLE: They're not the only ones.

3 MR. STUBBS: Your Honor, nothing that I'm raising
4 here was raised in the Verizon original case. It is solely
5 what has come up --

6 JUDGE SCHNIERLE: I'm going to let him respond to
7 that question, because if there is a mischaracterization of
8 the Web site, I'm going to let him put that on. I have some
9 real serious concerns about the whole Web site usage anyway.
10 I'm going to let him respond to that.

11 MR. STUBBS: Thank you, Your Honor.

12 JUDGE SCHNIERLE: The objection is overruled.

13 BY MR. STUBBS:

14 Q. Mr. Vermeulen, is it true that the Cavalier Web
15 site does state generally that metro dark fiber rings are
16 within Cavalier's competency?

17 A. It does.

18 Q. And are metro dark fiber rings available in
19 Pennsylvania?

20 A. They are not.

21 Q. Why is that?

22 A. Because Cavalier owns no fiber outright in
23 Pennsylvania. As in the case of Delaware, we own fiber. We
24 do lease dark fiber on routes where we have excess capacity
25 available.

1 Q. Can you state where that might be the case?

2 A. Delaware.

3 Q. Does Cavalier provide dark fiber to any other
4 carriers in Pennsylvania?

5 A. No, they do not.

6 MR. STUBBS: Nothing further, Your Honor.

7 JUDGE SCHNIERLE: All right. Do any of the CLECs
8 want to cross?

9 (No response.)

10 JUDGE SCHNIERLE: Ms. Conover, Ms. Coyne?

11 MS. COYNE: Let me hand out as -- I'm not sure how to
12 designate this. Would this be a Verizon cross exhibit?

13 JUDGE SCHNIERLE: Yes.

14 MS. COYNE: Thank you. A complete copy of the
15 Cavalier Web site material that Mr. Vermeulen just provided
16 testimony on so we can walk through this Web site document.

17 JUDGE SCHNIERLE: Verizon Cross 17 is what I've got.

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

21 **CROSS-EXAMINATION**

22 BY MS. COYNE:

23 Q. Mr. Vermeulen, do you have the document in front
24 of you?

25 A. Yes, I do.

1 Q. Do you see that this is a print-off from the
2 Cavalier Web site consisting of maybe seven pages, and the
3 date in the right-hand corner on the bottom is 1/24/2004?

4 Do you see that, sir?

5 A. Yes, I do.

6 Q. And that was last Sunday; isn't that correct?

7 A. That's correct.

8 Q. Do you see that in the middle of the document
9 under "Voice and Data Services," the first item is "Private
10 Line," the second item is "Private OC-48 and Gig-E Rings,"
11 and the third item is "Metro Dark Fiber Rings"?

12 A. Yes.

13 Q. Mr. Vermeulen, help me out here. What's a Gig-E
14 ring?

15 A. It's SONET over Ethernet -- excuse me. More
16 appropriately, Ethernet over SONET.

17 Q. And, Mr. Vermeulen, the private line service
18 that you're describing, could you explain what that is?

19 A. Yes. We have in the past constructed a SONET
20 network solely for the use of a third-party customer.

21 JUDGE SCHNIERLE: Before you go any further, Ethernet
22 over SONET, Ethernet is what is used to -- is the network
23 protocol for the Internet and for internal networks, data
24 networks?

25 THE WITNESS: Yes.

1 JUDGE SCHNIERLE: So I'm assuming that Ethernet over
2 SONET means you're running data over a SONET ring?

3 THE WITNESS: That's correct.

4 JUDGE SCHNIERLE: Thank you. You may continue.

5 BY MS. COYNE:

6 Q. So, sir, the private line that you have
7 identified here is a SONET network; is that correct?

8 A. It can be. It doesn't have to be. There are
9 also instances where we connected a company's facilities
10 together via specific data equipment that did not involve
11 SONET.

12 Q. If you could turn two page to the document that
13 says, "Cavalier Business Communications," and then in all
14 caps bold at the top, it says, "Wholesale Service."

15 A. Yes.

16 Q. Are you there, sir?

17 A. Yes, I am.

18 Q. And if you look down, do you see where it says,
19 "Roll your cursor over the map to view detailed information
20 on our network here"?

21 A. Yes, I do.

22 Q. And Philadelphia is one of the items that a Web
23 browser could look at; isn't that correct?

24 A. That is correct.

25 Q. And if you could then turn two more pages, you

1 will see that we now have the information on Philadelphia.

2 Are you there, sir?

3 A. Yes.

4 Q. And it says "62 Verizon COs."

5 A. Yes.

6 Q. Do you have collocation arrangements at 62
7 Verizon COs?

8 A. No, we do not.

9 Q. So that information on your Web site was
10 incorrect?

11 A. That's true. It is incorrect.

12 Q. And do you have 8 OC-48 fiber rings?

13 A. Yes, we do.

14 Q. And do you own those 8 OC-48 fiber rings?

15 A. Yes, we do.

16 Q. And where --

17 MS. COYNE: We probably should make this proprietary.

18 JUDGE SCHNIERLE: All right.

19 MR. STUBBS: No need, Your Honor. This is on the Web
20 site.

21 MS. COYNE: I'm going beyond that since you've opened
22 the topic up.

23 BY MS. COYNE:

24 Q. Where are those 8 OC-48 --

25 JUDGE SCHNIERLE: Hold on.

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MS. COYNE: I'm sorry.

JUDGE SCHNIERLE: You heard the question she's going to ask, do you want that on the proprietary record?

MR. STUBBS: The proprietary record, yes, Your Honor.

JUDGE SCHNIERLE: We're on the proprietary record.

(Whereupon, the following pages 721 through 727 were sealed and bound separately.)

1 MR. STUBBS: Your Honor, I will object to the extent
2 that Ms. Coyne asked for a legal conclusion from a fact
3 witness.

4 MS. COYNE: I have no intention of doing that.

5 BY MS. COYNE:

6 Q. There's a distinction between "currently
7 providing dark fiber" and being ready and willing to provide
8 dark fiber. Do you understand that, sir?

9 A. No, not really.

10 Q. When you say you are not currently providing
11 dark fiber, it might be that you currently have no
12 customers.

13 A. We are not willing to provide dark fiber in the
14 Philadelphia market.

15 Q. So despite your web site material as of Sunday,
16 your testimony is you are not willing to provide dark fiber?

17 A. That's correct. I do not manage the web site,
18 but I do manage the -- (inaudible) --

19 THE REPORTER: Manage what?

20 THE WITNESS: The network.

21 BY MS. COYNE:

22 Q. Mr. Vermeulen, in what way have you manifested
23 your unwillingness to provide dark fiber to other carriers
24 in Pennsylvania?

25 MR. STUBBS: Objection, Your Honor, calls for double

1 negative.

2 JUDGE SCHNIERLE: Overruled.

3 BY MS. COYNE:

4 Q. Have you issued a press release?

5 A. I'm not responsible for press releases.

6 MR. STUBBS: Is Verizon saying that we should put out
7 a press release to say we don't sell dark fiber? Is that
8 what you're asking the witness?

9 BY MS. COYNE:

10 Q. Well, given the web site material, which is
11 pretty unambiguous, I'm wondering if for example you issued
12 a press release, you've in some way taken steps to remove
13 this document from your web site, if there's any other
14 concrete manifestation of your unwillingness to provide dark
15 fiber other than your testimony here.

16 A. Well, obviously there isn't any on the web site,
17 so I guess the answer would be no. But I can tell you that
18 if a request comes in to my organization for an estimate to
19 be applied to a business case for dark fiber, it will be
20 rejected because we have none. So it's kind of hard to sell
21 it if you don't have any.

22 MS. COYNE: No more questions.

23 JUDGE SCHNIERLE: Let me just -- the six rings that
24 you talked about in Pennsylvania are all obtained from
25 either City Signal or Verizon?

1 THE WITNESS: Right, with the exception of the
2 segment coming from Delaware to West Chester, which is owned
3 by Cavalier Telephone Company.

4 JUDGE SCHNIERLE: And that one's fully lit? That
5 one's --

6 THE WITNESS: The piece of the cable that we own is,
7 yes.

8 JUDGE SCHNIERLE: And when you lease fiber from the
9 other companies, you lease as much as you need?

10 THE WITNESS: Correct. Specifically, with Verizon
11 dark fiber, we do have some spare capacity to accommodate
12 network growth from City Signal, but it's strictly for our
13 growth on our own network for lit services, in support of
14 those services.

15 THE REPORTER: What services?

16 THE WITNESS: Lit services, I'm sorry.

17 MS. COYNE: One last question, Your Honor, if you
18 don't mind.

19 JUDGE SCHNIERLE: Go ahead.

20 MS. COYNE: And this will undoubtedly be proprietary.

21 JUDGE SCHNIERLE: All right.

22 (Whereupon, the following page 731 was sealed and
23 bound separately.)
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JUDGE SCHNIERLE: We're off the proprietary record.
Redirect?

MR. STUBBS: Yes, Your Honor, just a few.

REDIRECT EXAMINATION

BY MR. STUBBS:

Q. Mr. Vermeulen, turning your attention to the Verizon cross-exam exhibit that shows the Philadelphia specific page for wholesale services?

A. Yes.

Q. You said that it's incorrect that Cavalier has 62 Verizon CO collocations?

A. That is correct, that is incorrect.

Q. And how many collocations are there?

A. I believe there are 51.

Q. Now, turning your attention to the Delaware specific web page, you see about a third of the way down it indicates the 19 Shea Way, Newark address; is that right?

A. Yes.

Q. And below that there are several lines describing apparently product offerings.

A. Yes.

Q. Can you read into the record what it says after the line that says, "Three OC-48 fiber rings"?

A. Eight hundred route miles of dark fiber.

Q. Now, would you turn back to the Philadelphia

FORM 2

1 specific page?

2 A. Yes.

3 Q. And in that what I'll call interactive section,
4 is there any such reference to dark fiber?

5 A. No.

6 MR. STUBBS: I have nothing further.

7 JUDGE SCHNIERLE: I've got a question. If I want to
8 order something from you, this isn't like Amazon where I can
9 click on it and --

10 THE WITNESS: No.

11 JUDGE SCHNIERLE: -- it will tell me what's left or
12 whether or not it's in stock?

13 THE WITNESS: You have to contact a sales
14 representative.

15 JUDGE SCHNIERLE: And probably provide additional
16 information about what I want and --

17 THE WITNESS: Specifics, exactly, amount of
18 bandwidth, end points.

19 THE REPORTER: I'm sorry, what was that?

20 THE WITNESS: The amount of bandwidth that you are
21 requesting and the end points.

22 JUDGE SCHNIERLE: Anything further, Mr. Stubbs, Ms.
23 Coyne?

24 MS. COYNE: Not on --

25 JUDGE SCHNIERLE: Do you want to move your exhibit?

1 MS. COYNE: Yes, I'd like to have that --

2 JUDGE SCHNIERLE: Any objection to Verizon Cross 17?

3 MR. BARBER: Your Honor, just, I'm curious. I know
4 Mr. Stubbs asked some questions about this particular page,
5 but for example I'm not entirely sure of what the relevance
6 of whether Cavalier's got collocations in Delaware has to
7 this particular proceeding.

8 JUDGE SCHNIERLE: Well, are you objecting?

9 MR. BARBER: I guess I'm just raising a point of
10 clarification. Perhaps Verizon can explain the relevance of
11 the Delaware collocation.

12 MS. COYNE: Your Honor, I thought I already did. I
13 apologize if perhaps I wasn't speaking loudly enough.

14 MR. BARBER: No, I understand your position that you
15 think that transport is on a LATA-wide basis. I think the
16 Delaware State Commission would be very interested in the
17 fact that you think that this Commission can adjudicate
18 whether their fiber and collocations in their particular
19 state are this state's jurisdiction.

20 MS. COYNE: Your Honor, Mr. Barber is, first of all,
21 objecting out of turn, but also misstating my position.
22 Verizon's position is that we are going to present to the
23 Pennsylvania Commission all routes that have at least one
24 end in Pennsylvania and we will also present to the Delaware
25 Commission all routes with one end in Delaware.

1 MS. COYNE: And Your Honor, you asked me if I was
2 completed with questions. I don't think I was very clear.
3 I do have some cross-examination questions --

4 JUDGE SCHNIERLE: Oh, I'm sorry --

5 MS. COYNE: -- for Mr. Vermeulen.

6 JUDGE SCHNIERLE: Oh, I'm sorry.

7 MS. COYNE: I just was finished with that
8 particular --

9 JUDGE SCHNIERLE: All right, go ahead.

10 **RE-CROSS-EXAMINATION**

11 BY MS. COYNE:

12 Q. Mr. Vermeulen, if you could go back to your
13 testimony?

14 A. Okay.

15 Q. And if you could go to page four --

16 MR. STUBBS: Your Honor, I'm just going to object. I
17 think that everyone in this courtroom except Verizon thought
18 that cross was over. I had an opportunity to redirect.

19 JUDGE SCHNIERLE: It's overruled.

20 BY MS. COYNE:

21 Q. And Mr. Vermeulen, I understand that you have
22 now stricken the portion of your testimony that starts at
23 line 14 and ends on this page on line 23?

24 A. Correct.

25 Q. And you've stricken that portion of your

1 testimony because it was erroneous; isn't that correct?

2 A. That is correct.

3 Q. But do you see on lines 14 and 15, you offered
4 that testimony as an example of how Verizon's visual
5 inspection has produced flawed evidence.

6 A. Yes.

7 Q. And if you turn to page five, you've stricken
8 this testimony up to line seven. Do you see that, sir?

9 A. Yes.

10 Q. And so that example you gave of the supposed
11 flaw in Verizon's visual inspection process has now been
12 eliminated from your testimony; isn't that correct?

13 A. That is correct.

14 Q. Do you see the next line on eight? It starts --
15 let me read it into the record. "Are there -- I can't read
16 the next word -- but other --

17 MR. STUBBS: Your Honor, we will stipulate that it
18 should not read, "are other flaws." Verizon and Cavalier
19 discussed this off the record and I believe we stipulated
20 that it should instead say, "Are there flaws in Verizon's
21 data as they relate to Cavalier," is that right?

22 MS. COYNE: That's --

23 BY MS. COYNE:

24 Q. So, Mr. Vermeulen, you also agree to strike the
25 word "other" from your testimony?

1 A. Yes.

2 Q. Thank you, sir. Now, Mr. Vermeulen, if I
3 understand Cavalier's testimony correctly, it is not
4 disputing Verizon's claim that Cavalier offers retail
5 customers, retail end used DS-1's and DS-3's; is that
6 correct?

7 A. That's correct.

8 Q. And if I also understand Cavalier's testimony,
9 you're not disputing Verizon's claim that Cavalier offers
10 special access services to other carriers?

11 MR. STUBBS: Objection to the terminology "special
12 access."

13 BY MS. COYNE:

14 Q. Offers transport and other type of services to
15 other carriers.

16 A. We do.

17 Q. So you are a wholesale provider of transport;
18 isn't that correct?

19 A. Correct.

20 Q. Okay. And if I understand your testimony,
21 you're also not disputing that Cavalier offers transport to
22 other carriers of DS-1's and DS-3's; isn't that correct?

23 A. We do offer DS-1 and DS-3 transport.

24 Q. So the portion of -- the only item on which
25 there was some disagreement was whether Cavalier, in

1 addition to offering DS-1's and DS-3's, offers dark fiber to
2 other carriers, correct?

3 A. Correct.

4 MR. STUBBS: Objection to the characterization.

5 THE WITNESS: Correct.

6 BY MS. COYNE:

7 Q. Thank you. Mr. Vermeulen, do you have
8 Cavalier's responses to Verizon Set III on loops?

9 (Witness perusing documents.)

10 Q. Mr. Vermeulen, I have an extra copy and your
11 counsel can show it to you. I'm not going to mark this as
12 an exhibit because I only have one copy.

13 Mr. Vermeulen, could we start with Verizon III with
14 the little chart on it that addresses the loop facilities?

15 A. Yes.

16 Q. I just need to ask you a couple clarifying
17 questions about this. On this document, you identify 401
18 North Broad Street, Philadelphia --

19 A. Yes.

20 Q. -- as a location where you obtain DS-3 loop
21 facilities at wholesale.

22 A. Where we offer.

23 MS. COYNE: We probably should go on the
24 proprietary --

25 THE WITNESS: Did you say "obtain"?

1 MR. STUBBS: We might want on the proprietary record.

2 JUDGE SCHNIERLE: All right. How much more do you
3 have?

4 MS. COYNE: One question.

5 JUDGE SCHNIERLE: All right.

6 (Whereupon, the following pages 741 through 742 were
7 sealed and bound separately.)

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FORM 2

1 JUDGE SCHNIERLE: We're off the proprietary record.
2 Let's go off the record a minute.

3 (Discussion off the record.)

4 JUDGE SCHNIERLE: Back on the record.

5 Mr. Clearfield?

6 MR. CLEARFIELD: Your Honor, we have endeavored to
7 identify the testimony as a courtesy of the CLEC Coalition
8 and we have determined that a package of that testimony had
9 been left in Harrisburg for submission into the record.

10 We pulled what we found out and we're prepared to
11 describe that and allow you to have it admitted in the
12 record if Your Honor pleases.

13 JUDGE SCHNIERLE: All right.

14 MR. CLEARFIELD: The caveat is, I can't be certain
15 that we've identified everything exactly correctly.

16 JUDGE SCHNIERLE: I understand.

17 MR. CLEARFIELD: What we have initially is the direct
18 testimony and exhibit of Joseph Gillan on behalf of the CLEC
19 Coalition. It is a public and proprietary version.

20 JUDGE SCHNIERLE: That will be marked as CLEC
21 Coalition Statement No. 1.0.

22 (Whereupon, the document was marked
23 as CLEC Coalition Statement No. 1.0
24 for identification.)

25 JUDGE SCHNIERLE: Off the record for just a second.

(Discussion off the record.)

1
2 JUDGE SCHNIERLE: Back on the record. Okay, so
3 Gillan Direct will be CLEC Coalition Statement 1.

4 MR. CLEARFIELD: Your Honor, there's a rebuttal
5 testimony of Joseph Gillan, and I assume that counsel for
6 Verizon has seen this.

7 JUDGE SCHNIERLE: All right. That will be CLEC
8 Coalition Statement 1.1.

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

12 MR. CLEARFIELD: Next, Your Honor, there is a direct
13 panel testimony of Peter Karoczkai and Michael Hou for the
14 CLEC Coalition.

15 JUDGE SCHNIERLE: And that will be CLEC Coalition
16 Statement 2.0.

17 (Whereupon, the document was marked
18 as CLEC Coalition Statement No. 2.0
19 for identification.)

20 MR. CLEARFIELD: It appears there's only one version
21 of that, I guess the public version. Your Honor, following
22 that is the direct testimony of Rebecca H. Sommi, and it
23 appears that this testimony is proposed to be submitted for
24 the coalition.

25 JUDGE SCHNIERLE: It will be CLEC Coalition Statement

1 3.0.

2 (Whereupon, the document was marked
3 as CLEC Coalition Statement No. 3.0
4 for identification.)

5 MR. CLEARFIELD: And there is a public and a
6 proprietary version of that testimony.

7 JUDGE SCHNIERLE: All right.

8 MR. CLEARFIELD: Also, I should note that the
9 Appendix A answers for Broadview are appended as Appendix A
10 to that statement that you've marked as CLEC Coalition
11 Statement 3.0.

12 JUDGE SCHNIERLE: That's fine.

13 MR. CLEARFIELD: And that's what we were able to find
14 in the box. We have at least two copies of each of those,
15 public and proprietary, for the court reporter.

16 JUDGE SCHNIERLE: Okay. Is there any objection to
17 admission of CLEC Coalition Statements 1.0, 1.1, 2.0 and
18 3.0?

19 MS. CONOVER: No.

20 MR. CHESKIS: Your Honor, in order for this process
21 to get undertaken, the OCA has entered into a stipulation
22 with CLEC Coalition that I'd like to have admitted into the
23 record. I showed the stipulation to Verizon's counsel
24 earlier. They indicated to me they did not have a formal
25 objection, but they had a concern and I'll let them speak

1 for themselves if they want.

2 MR. CLEARFIELD: Could we also see it? With all due
3 respect, we haven't reviewed it.

4 MR. CHESKIS: Absolutely.

5 MR. HICKS: May I ask it be marked?

6 JUDGE SCHNIERLE: Yes, I guess you'd better mark
7 that. We'll call it CLEC Coalition Exhibit 1.

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

11 MR. CHESKIS: If there's no objection to it, I move
12 the admission of CLEC Coalition Exhibit No. 1 into the
13 record.

14 MS. CONOVER: Your Honor, having read -- and I
15 believe some of it is really duplicative of what was in the
16 testimony, I am not going to interpose an objection.

17 However, I would like to state for the record that we
18 had, when we heard that there was an attempt to reach a
19 stipulation, asked that it be shared with us.

20 I understand it wasn't provided or reached until late
21 last night. However, I am concerned that -- obviously, had
22 Mr. Buntrock been here, we would have been able to discuss
23 it and decide if there were any modifications that we wanted
24 to make.

25 At the moment, however, I am not going to object to

1 it, but I just wanted to state my concern for the record.

2 JUDGE SCHNIERLE: Well, and I believe somebody else
3 -- this was discussed with somebody else somewhere along the
4 line. I don't think it's anything new at this point.

5 MR. CHESKIS: The beginning portion of it is similar
6 to the cross the OCA did on AT&T Witness Nurse. The second
7 half of it I think is the portion that Ms. Conover pointed
8 out was duplicative of Mr. Gillan's testimony.

9 JUDGE SCHNIERLE: All right.

10 MR. CHESKIS: As Ms. Conover said, I was also
11 expecting Mr. Buntrock to be here today to be able to
12 discuss this, but I guess we're doing that on his behalf,
13 also.

14 JUDGE SCHNIERLE: Well, with that, I take it there's
15 no objection to the CLEC Coalition statements or to this
16 exhibit?

17 MR. HICKS: No, Your Honor.

18 JUDGE SCHNIERLE: All right. All that is admitted,
19 CLEC Coalition Statements 1, 1.1, 2, 3 and CLEC Coalition
20 Exhibit 1.

21 (Whereupon, the documents marked as
22 CLEC Coalition Statements 1.0, 1.1,
23 2.0 and 3.0 and CLEC Coalition
24 Exhibit 1 were received in
25 evidence.)

1 JUDGE SCHNIERLE: I think, he says cautiously, that
2 that covers it. The briefing dates have already been set.
3 I had asked early on, and I don't know if you've done
4 anything about it, to try and agree on the order in which
5 you're going to brief the issues.

6 At least everybody do the switching triggers first
7 and the transport second, at least do that much.

8 MS. CONOVER: And loops third?

9 JUDGE SCHNIERLE: And then loops third, yeah, at
10 least keep that much order to it, please.

11 MR. BARBER: Page limits? Can we go off the record,
12 Your Honor?

13 JUDGE SCHNIERLE: We can go off the record.

14 (Discussion off the record.)

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

16 I'm not going to place a page limit on the briefs,
17 but try to keep it under a hundred pages for the main and
18 under 50 pages for the replies, and that doesn't include any
19 appendices that have to do with the specific switches or
20 routes that you're claiming are impaired or not impaired.

21 If you are going to cite to some other Commission's
22 case or something like that, if it's on a web site or
23 something like that, or if it's available on LEXIS, give us
24 a good cite. If it's not available publicly, attach a copy.
25 Don't get carried away with that, though, and that doesn't

1 count against the page limit, but try not to get carried
2 away with that.

3 Is there anything else we need to discuss this
4 morning?

5 (No response.)

6 JUDGE SCHNIERLE: The hearing's adjourned.

7 (Whereupon, at 12:54 p.m., the proceedings were
8 concluded.)

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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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By: John A. Kelly

John A. Kelly,
Certified Verbatim Reporter

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