

COMMONWEALTH OF PENNSYLVANIA
PUBLIC UTILITY COMMISSION

Investigation Regarding
Intrastate Access Charge
& IntraLATA Toll Rates
of Rural Carrier & the
Pennsylvania Universal
Service Fund

Docket No.: I-00040105

Pages 87 - 286

400 North Street
Keystone Building
Harrisburg, PA 17120
Tuesday, February 17, 2009
Commencing at 10:00 a.m.

**DOCUMENT
FOLDER**

BEFORE:

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P R O C E E D I N G S

JUDGE COLWELL:

1
2 -----
3
4 The time and the place set for the
5 evidentiary hearing in the matter captioned
6 Investigation Regarding Intrastate Access Charges and
7 IntraLATA Toll Rates of Rural Carriers in the
8 Pennsylvania Universal Service Fund at Docket
9 I-00040105. I am Administrative Law Judge, Susan
10 Colwell, assigned by the Commission to preside in this
11 matter.

12 As you know, this case goes back to
13 December 20, 2004, when the investigating Public
14 Utility Commission entered an order instituting this
15 proceeding to investigate whether to implement further
16 access charge reduction, and intral LATA toll rate
17 reduction in the service territories of rural,
18 incoming local exchange areas. The investigation was
19 stayed pending the outcome of a parallel federal
20 investigation, which will be expected to impact the
21 PUC's own investigation or until further
22 consideration.

23 By order entered April 24th, 2008, the
24 Commission reopened the matter and directed that my
25 office conduct appropriate proceedings and carry out

1 proceedings to obtain input from the industry
2 regarding a specific list of items. Parties have
3 filed direct rebuttal and surrebuttal testimony. The
4 matter is now ready for a hearing.

5 The parties. I note for the record the
6 attendance of the following counsel. On behalf of
7 Embarg, Joseph Stewart. On behalf of the Office of
8 Consumer Advocate, Joel Cheskis, Barrett Sheridan and
9 Christy Appleby. On behalf of the Office of Small
10 Business Advocate, Steven C. Gray. On behalf of the
11 Pennsylvania Telephone Association, Norman J. Kennard
12 and Regina Matz. On behalf of Comcast, John Dodge.
13 On behalf of Broadband Cable Association of
14 Pennsylvania, Shelby A. Linton-Keddie. On behalf of
15 AT&T, Michelle Painter. And on behalf of Verizon,
16 Suzan Paiva.

17 Parties have cooperated to the point
18 where they have given me a list of the appearance of
19 witnesses. We have ten witnesses listed to come here.
20 We are starting with the OCA. If you do not tell me
21 how you want to conduct the Cross Examination, you're
22 at my mercy. So you might want to get this out now.
23 But for the court reporter, I'm gonna ask the Counsels
24 to please identify yourselves so that we can who you
25 are and where you are, so that when we speak, he will

1 get that right. Go ahead, Mr. Stewart.

2 ATTORNEY STEWART:

3 I'm Joseph Stewart from Embarq.

4 ATTORNEY DODGE:

5 John Dodge on behalf of Comcast.

6 ATTORNEY LINTON-KEDDIE:

7 Shelby Linton-Keddie for BCAP.

8 ATTORNEY PAIVA:

9 Suzan Paiva for Verizon.

10 ATTORNEY PAINTER:

11 Michelle Painter for AT&T.

12 ATTORNEY CHESKIS:

13 Joel Cheskis for the Office of Consumer
14 Advocate.

15 ATTORNEY KENNARD:

16 Norm Kennard representing Pennsylvania
17 Telephone Association.

18 JUDGE COLWELL:

19 Mr. Gray's hiding back there.

20 ATTORNEY GRAY:

21 Steve Gray, Office of Small Business
22 Advocate.

23 JUDGE COLWELL:

24 Is that everybody? All right. And first
25 on my list of witnesses is the OCA. Mr. Cheskis?

1 ATTORNEY CHESKIS:

2 Thank you, Your Honor. The Office of
3 Consumer Advocate would like to call Dr. Robert Loube
4 to the stand please.

5 ATTORNEY Kennard:

6 Judge, in terms of order of Cross
7 Examination, it may make sense to the parties here
8 that maybe the parties, you know, that are on the side
9 of the witness that's then appearing should ask
10 questions first. Then the adverse parties could then
11 follow up with their Cross Examination. That's just a
12 suggestion, not instruction.

13 JUDGE COLWELL:

14 Does that suit everyone? All right.
15 Everybody is nodding to that. That's what we'll do
16 then.

17 -----
18 ROBERT LOUBE, HAVING FIRST BEEN DULY SWORN, TESTIFIED
19 AS FOLLOWS:

20 -----
21 JUDGE COLWELL:

22 Thank you. Please be seated. Mr.
23 Cheskis?

24 ATTORNEY CHESKIS:

25 Thank you, Your Honor.

1 DIRECT EXAMINATION

2 BY ATTORNEY CHESKIS:

3 Q. Good morning, Dr. Loube. Could you please state
4 your name, business address and business title for the
5 record, please?

6 A. Yes. My name is Robert Loube. I work at 10601
7 Cavalier Drive, Silver Spring, Maryland 20901. My
8 title is vice-president of Rolka Loube Seltzer
9 Associates.

10 ATTORNEY CHESKIS:

11 You might want to pull the microphone
12 closer to you a little bit.

13 JUDGE COLWELL:

14 Make sure it's on because it might not
15 be. It is.

16 BY ATTORNEY CHESKIS:

17 Q. Do you have your direct rebuttal and surrebuttal
18 testimonies in front of you?

19 A. I do.

20 Q. Dated respectively December 10th, 2008, January
21 15th, 2009 and February 10th, 2009?

22 A. Yes.

23 Q. And your direct testimony consists of 35 pages and
24 Exhibits RL-1 to RL-8, which includes your
25 qualifications; is that correct?

1 A. That is correct.

2 Q. And your rebuttal testimony consists of 28 pages
3 and no exhibits; is that correct?

4 A. That is correct.

5 Q. And your surrebuttal testimony consists of 27
6 pages and Exhibits RL-1S to RL-4S; is that correct?

7 A. That is correct.

8 ATTORNEY CHESKIS:

9 Your Honor, the Office of Consumer
10 Advocate has previously distributed a copy of his
11 testimony to the other parties in this proceeding.
12 And I ask that these be marked as OCA Statements 1, 1R
13 and 1S respectively.

14 (OCA Exhibit Numbers 1, 1R, 1S, marked
15 for identification.)

16 JUDGE COLWELL:

17 That's fine.

18 ATTORNEY CHESKIS:

19 I'm handing two copies to the court
20 reporter for inclusion in the official record. I'll
21 also note that both the direct testimony and the
22 surrebuttal testimony have material that's alleged to
23 be proprietary, so we have divided them up into
24 proprietary and public version of those two pieces. I
25 also wanted to note that Exhibits RL-8 in the direct

1 testimony was originally distributed as a public
2 document at the request of the Embarq Corporation. We
3 ask that we subsequently file that as a proprietary
4 exhibit. I made that change to the court reporter
5 copies. All of the parties have been notified to
6 treat that particular exhibit as proprietary and I ask
7 that you do the same as well.

8 BY ATTORNEY CHESKIS:

9 Q. Dr. Loube, aside from that change, do you have any
10 other changes that you'd like to make to your
11 testimony?

12 A. Yes. My exhibit from the surrebuttal, RL2-S, I
13 left off the Bell South companies that are associated
14 with AT&T. So I'm now --- Mr. Cheskis is passing out
15 the revised exhibit that includes the Bell South
16 companies. It's sometimes hard to keep up with all of
17 the mergers in the industry. So I now have a revised
18 exhibit RL-2S. And I want to make a conforming change
19 to my surrebuttal testimony on page seven, line eleven
20 the number 12.6 million should now read 90.6 million
21 to match the total that is shown on the revised
22 exhibit.

23 Q. And with those changes in mind, Dr. Loube --- I'm
24 sorry. Did you have anything further?

25 A. No, that's it.

1 Q. With those changes in mind, would your answers be
2 the same today if I were to ask you these same
3 questions?

4 A. Yes.

5 Q. And is everything contained in OCA Statements 1,
6 1R and 1S prepared by you or under your supervision?

7 A. Yes.

8 Q. And are these documents true and correct to the
9 best of your knowledge, belief and understanding?

10 A. They are.

11 ATTORNEY CHESKIS:

12 Your Honor, subject to Cross Examination,
13 and timely motions, the OCA moves for the admission of
14 OCA Statements 1, 1R and 1S and the accompanying
15 exhibits.

16 JUDGE COLWELL:

17 Subject to motions and Cross Examination.

18 ATTORNEY CHESKIS:

19 Dr. Loubé is now ready for Cross
20 Examination.

21 JUDGE COLWELL:

22 Okay. Can I assume we're staying on this
23 side of the room?

24 ATTORNEY KENNARD:

25 Yes. I think the aligned parties would

1 be the Advocate, Embarq and PTA.

2 JUDGE COLWELL:

3 Okay.

4 ATTORNEY KENNARD:

5 And PTA has no questions of this witness.

6 JUDGE COLWELL:

7 All right. Mr. Stewart?

8 ATTORNEY STEWART:

9 Thank you, Your Honor. Embarq has no
10 questions of Dr. Loube.

11 JUDGE COLWELL:

12 Then we'll go to this side of the room.
13 Who wants to go first?

14 ATTORNEY DODGE:

15 Comcast would be happy to go first, Your
16 Honor.

17 JUDGE COLWELL:

18 Volunteer.

19 ATTORNEY DODGE:

20 Good morning, Dr. Loube.

21 A. Good morning, Mr. Dodge.

22 ATTORNEY DODGE:

23 Comcast has no questions for Dr. Loube.

24 ATTORNEY LINTON-KEDDIE:

25 BCAP also has no questions for Dr. Loube.

1 A. Things are going well so far.

2 JUDGE COLWELL:

3 Ms. Paiva.

4 ATTORNEY PAIVA:

5 Well, I'm afraid to say that Verizon has
6 questions.

7 A. That's okay.

8 JUDGE COLWELL:

9 Verizon will go next and then AT&T.

10 CROSS EXAMINATION

11 BY ATTORNEY PAIVA:

12 Q. Good morning, Dr. Loube.

13 A. Good morning.

14 Q. First off, can you hear me all right?

15 A. Yes.

16 Q. If you could turn to page 29 of your direct
17 testimony.

18 A. I'm there.

19 Q. Starting on line eight, you say it's appropriate
20 to provide additional universal service support
21 because it is necessary to keep rural rates comparable
22 and affordable and also to enable a rural company to
23 meet their Chapter 30 broadband requirement.

24 Now, the first part of that, it is necessary to
25 keep rural rates comparable and affordable. That

1 means that you believe the issue on USF support is
2 necessary because it would give almost another source
3 of revenue other than raising the rates; correct?

4 A. That's correct. They have to keep the rates
5 comparable and affordable because that's my standard
6 of just and reasonableness.

7 Q. But the rates would not include the revenue of \$18
8 if they had another source of revenue?

9 A. At this time as long as the just and reasonable
10 benchmark is below \$18. When the just and reasonable
11 benchmark rises above \$18, then the rates would rise.
12 It's not a fixed long-term. In other words, it's not
13 in stone that it has to be \$18.

14 Q. I understand. So a benchmark, which you're
15 advocating \$18 today, but it may change in the future?

16 A. Yes. As the Verizon's rates go up and as compared
17 to our affordability standard, the benchmark rises.

18 Q. Actually that question's about the second part of
19 that sentence. The first part we just discussed. But
20 the second part is, and also to enable rural companies
21 to meet their Chapter 30 broadband requirements. So
22 my question is, are you assuming that the rural ILEC
23 actually need additional revenue to meet their Chapter
24 30 broadband requirement?

25 A. I'm assuming that they are allowed to have

1 increased revenues in order to meet those
2 requirements.

3 Q. But you don't know one way or another whether they
4 could meet those requirements without the funding?

5 A. There's no needs test involved here, no.

6 Q. So you don't know?

7 A. I didn't do a needs test analysis.

8 Q. What if you had information about a particular
9 audit that demonstrated to you that the company
10 actually did not need any additional revenue to meet
11 its broadband requirements, that it already met its
12 requirements and those were all paid for, would you
13 still be of the opinion that they need those USF
14 revenues?

15 A. Well, there's two parts to what you asked, and
16 that is whether or not they already met the
17 requirements. And I think that's the confusion here.
18 Even if you met as of December 31, 2008 and built out,
19 that doesn't mean that the financial support is
20 unneeded after December 31, 2008 because you still
21 have to pay your debt. You still have to make your
22 equities. You still have to cover your depreciation.
23 So that's an ongoing liability even after you built
24 out. So that's the one part of what you're asking
25 about.

1 The other part of what you're asking about is
2 whether or not, you know, if they have public
3 financial resources to meet those commitments. And to
4 me, that's beyond the scope of analysis here. There's
5 nothing that I've seen that says look at rate of
6 return, look at finances, look at any of those other
7 options. Those are not part of what I consider the
8 scope of this --- the proceeding's about. I really
9 believe that that's a matter that you --- if you
10 believe that, you should go back to the state
11 legislature and ask the law to be changed.

12 Q. Could you turn to page 33 of your direct?

13 A. Yes, I'm there.

14 Q. Line 1 on that page and it carries over, the
15 sentence is actually from page 32. But we recognize
16 that if the universal service support were to begin to
17 be used to fund Chapter 30 revenue increases that the
18 USF contribution factor may increase substantially;
19 correct?

20 A. Yes. I understand that.

21 Q. And by that, you mean that the individual carriers
22 that contribute to the USF will be contributing more
23 in the future than they're contributing today;
24 correct?

25 A. That's correct. That's what happens when you have

1 a universal service responsibility. Contribution
2 factors go up.

3 Q. So for example, if the bank the carriers that are
4 contributing stays the same, then if USF doubles, each
5 carrier's contribution is going to double as well;
6 correct?

7 A. That's correct. Given your if, then I suggest
8 that that if should not exist. I suggest that you
9 should widen your revenue base. And if you widen your
10 revenue base, the contribution from each carrier would
11 not go up.

12 Q. Assuming that you do not widen your revenue base,
13 do you think that there could come a point where the
14 size of the contribution that a particular carrier is
15 required to make could be so great that it could
16 actually harm that carrier's ability to operate?

17 A. No, because I think that my understanding is that
18 the future, as the benchmark rises, there won't be
19 that much of an impact on carriers. That would be
20 true if we froze at \$18 forever and ever, your
21 hypotheses. And my hypotheses is it won't increase at
22 \$18.

23 Q. Could you explain to me how that works? I think
24 you've actually mentioned that in your testimony
25 somewhere. You're talking about the Verizon rates

1 increasing when they're at a low benchmark, increasing
2 with them; right?

3 A. Correct.

4 Q. So what happens then if say four years down the
5 road Verizon's rates now are at \$19, but you are
6 collecting from the USF to avoid raising the rates.
7 Do their productions then stop or do they have to give
8 back any money that ---?

9 A. We wouldn't have to give back, but they wouldn't
10 --- if they were at the benchmark every year, then as
11 the benchmark goes up, they would have to raise their
12 rates to that benchmark and that would limit the
13 amount that they could get through the USF. So once
14 the benchmark is --- once Verizon's rates times 520
15 percent is greater than \$18, then ILECs would be
16 constrained from the amount that they could get from
17 the USF fund. If they did not raise their rates to
18 that benchmark with these extra constraint, it would
19 simultaneously then go and look at the affordability
20 constraint that Mr. Colton suggested.

21 Q. So say if we take an RLEC, you know, it had its
22 2010 PCOs, its rates were at \$18, so the Commission
23 allowed it to claim \$2 million from the Universal
24 Service Fund. But then in 2012, Verizon's rates
25 become high enough with your benchmark that now the

1 rates go up to \$19. Would they continue to get that
2 \$2 million that it was receiving or would it cease
3 getting that \$2 million?

4 A. They would still get it. But in a year when it
5 went up to \$19.20 under the next PCO, then it would
6 have to raise its rates up to \$19.20.

7 Q. So look at the 2012 PCO, it would have to raise
8 rates instead?

9 A. That is correct.

10 Q. Now, I want to jump over to the surrebuttal
11 testimony, if you could look at page 14.

12 A. Page 14 of the surrebuttal?

13 Q. Yes.

14 A. Okay. I'm there.

15 Q. And here you're talking about the use of the
16 synthesis model, the FCC Synthesis Model, which is the
17 model that you used for your cost estimates; correct?

18 A. Here I'm talking about the fact that AT&T used the
19 synthesis model and that the FCC adopted that use of
20 the synthesis model as proposed by AT&T in the
21 Virginia Arbitration proceeding.

22 Q. And that was for the purpose of setting unbundled
23 network element rates; correct?

24 A. Correct.

25 Q. Do you know if the synthesis model was ever

1 proposed to the Pennsylvania Public Utility Commission
2 for setting unbundled network element rates?

3 A. I don't believe it has.

4 Q. And you don't know whether the Pennsylvania
5 Commission had rejected the synthesis model for that
6 purpose?

7 A. I don't know if they rejected it or not. I don't
8 know if it's been before the Pennsylvania Commission.

9 Q. Turn now to page 16.

10 A. Sixty? (60).

11 Q. Yes, 16. Let me know if you having trouble
12 hearing me.

13 A. I thought you said 60 and I didn't know I did that
14 much.

15 Q. Those secret extra pages.

16 A. Yeah.

17 Q. At the top of page 16, starting at line 1, you say
18 that the purpose, your purpose of using the synthesis
19 model was to show that these costs are a very high
20 percentage of the total cost of service and those
21 costs increased as spending decreased; correct?

22 A. That's correct.

23 Q. But your analysis doesn't show for any particular
24 RLEC whether they're current revenues for the services
25 using the USF, unless they already recovered the

1 costs, does it?

2 A. I did not do a total revenue versus total cost
3 analysis in this instance, if that's what you're
4 asking for. What I did was show that residential
5 rates affect larger than the incremental costs of
6 service and those residential rates are not being
7 subsidized.

8 Q. In other words, you looked at the costs and you
9 looked at a rates, but you do not look at the revenue.

10 A. I didn't have access to total revenue.

11 Q. Next, if you could turn to page 21 of your
12 surrebuttal.

13 A. I'm there.

14 Q. And starting on line 16, you say that the fund,
15 meaning the Universal Service Fund should not lead to
16 waste, fraud or abuse. I was wondering if you could
17 give me an example of what you would consider a waste,
18 fraud or abuse in the context as it pertains to
19 Universal Service Fund.

20 A. People putting in the wrong revenue increases.
21 People putting in the wrong costs. We have costs in
22 Pennsylvania. Wrong line counts.

23 Q. In other words, miscalculating your ---?

24 A. Yeah. In other words, using --- say if the line
25 counts are going down or using last year's line counts

1 or something like that.

2 Q. Would you consider it to be abuse if the Universal
3 Service Funds are not actually needed to help a
4 company cover operator costs and were going to say
5 increase profits?

6 A. It depends on the situation that we have in front
7 of us. In this situation, they are not asked to make
8 that proof. What they are asked to do is to lead an
9 obligation to provide something that no other carrier
10 in their service territory is asked to do. So they
11 are given funds, additional funds to meet their
12 additional obligations.

13 Q. But they're not required to prove that they need
14 the funds to meet those obligations.

15 A. There's nothing rural would ask.

16 Q. Now, I want to ask you about the next sentence
17 after that sentence. You say, thus, it is imperative
18 that the fund solve an immediate problem in an
19 efficient manner. What is the immediate problem in
20 this case?

21 A. The immediate problem is that rates are going
22 above just and --- could go high --- local residential
23 rates could go higher than the just and reasonable
24 standard.

25 Q. So is the immediate problem then because the RLECs

1 have the right to make these annual inflation-based
2 rate increases?

3 A. Yes. There are two things. One, is that you have
4 the right to have rate increases on an annual basis.
5 And the second is that the Commission has the right to
6 determine a just and reasonable standard. And when
7 there's a conflict between those --- not so much a
8 conflict, but you have to develop a regular choice
9 setting that allows for both of those obligations to
10 be met simultaneously. And that's what I've done.
11 I've provided a regulatory environment where you can
12 have just and reasonable residential rates and we
13 allow revenue increases.

14 Q. Now, if the PUC were to rule that the rural LECs
15 cannot raise their residential rates over \$18 and that
16 if aren't to be given their annual revenue increases,
17 they need to find other rates to increase, would the
18 immediate problem go away?

19 A. That's the discretion that the Commission has.
20 Though, I've said that trying to do that would not be
21 reasonable because the revenue base left over is very
22 small and it would be extremely difficult for the
23 rural ILECs to have the opportunity to increase their
24 revenue on that basis.

25 Q. Well, what if the Commission were to rule that

1 they can't raise their rates and they have to bank
2 these opportunities, would the immediate problem go
3 away?

4 A. That's if the Commission authorizes it, but that's
5 not what I recommended.

6 Q. And it's not that you recommended because you
7 believe they will not be able to meet this revenue?

8 A. No. I think that they have to have an allowable
9 way to achieving their revenue, providing an allowable
10 way to achieve the revenue.

11 Q. And why do you think that they need allowable way
12 to achieve the revenue?

13 A. Because that's what the Chapter 30 allows.

14 ATTORNEY PAIVA:

15 I don't have any more questions for you.

16 Thank you.

17 JUDGE COLWELL:

18 Ms. Painter?

19 ATTORNEY PAINTER:

20 Thank you, Your Honor.

21 CROSS EXAMINATION

22 BY ATTORNEY PAINTER:

23 Q. Good morning, Dr. Loube. My name is Michelle
24 Painter. I represent AT&T.

25 A. Good morning.

1 Q. If you could turn to page 11 of your surrebuttal
2 testimony. I'm looking in particular at the top of
3 that page. I just want to be clear on the purpose for
4 which you're using the synthesis model in this case.
5 It states there that your purpose was to examine the
6 general relationship between loop costs and total
7 costs and to understand whether those costs varied by
8 density; correct?

9 A. That is correct. That's what I said.

10 Q. Is that the only purpose for the conclusion?

11 A. And also the relationship between residential
12 rates and these costs. I make that additional
13 comparison in other places in the testimony.

14 Q. Okay. And your conclusion there is that the rates
15 are covering that cost; correct?

16 A. That the rates are greater than the incremental
17 costs.

18 Q. Turning to the --- on that same page, lines five
19 through seven you talk about a significant change that
20 you made to the model, which was to determine
21 customer locations based on street address and geo-
22 coded locations; correct?

23 A. That's correct.

24 Q. Isn't it true that you did not have a complete set
25 of data, current data, for any carrier in the state?

1 A. I had a complete set of street addresses from
2 Armstrong. I had a complete set from Embarq.

3 Q. Did you have a complete set of line counts from
4 Embarq?

5 A. I believe I did.

6 Q. Please turn to page 24 of your direct testimony.
7 You state there at lines 19 through 20 that Embarq
8 provided geo-coded information that you were able to
9 use for many, but not all of its customers?

10 A. Yes. What happened was that when I used all their
11 customer data that they gave me, for some reason I was
12 not able to determine the input files required by the
13 model in a proper fashion. For some reason, as I
14 dropped them into the model, some bug got into a small
15 number of wire center input tables and the model was
16 not able to run them. It had nothing to do with the
17 fact that Embarq didn't give me the data. It was a
18 problem of processing the data as I was trying to use
19 it in the model.

20 Q. Well, and then on lines 22 to 24 it says with
21 regard to Armstrong, there were a number of inputs for
22 which current data were not available.

23 A. Those our cost inputs not line count inputs.

24 ATTORNEY PAINTER:

25 I have a document I would like marked

1 AT&T Cross Examination Exhibit One.

2 (AT&T Cross Examination Exhibit One
3 marked for identification.)

4 JUDGE COLWELL:

5 That's fine.

6 BY ATTORNEY PAINTER:

7 Q. Dr. Loube, have you had a chance to review this?

8 A. Well, the table of contents and two paragraphs
9 from the executive summary of what is generally known
10 as the rural task force order.

11 Q. Okay. Turn to page four of that document. It's
12 actually a two-sided copy. Do you have it?

13 A. I only have three. Yes, I now have four.

14 Q. Okay. Do you see there, the second bullet point
15 on page four that states that the task force
16 recommends the synthesis model not be used to
17 determine the forward-looking costs of rural carriers?

18 A. I see that and I know that they did recommend
19 that, and I know the Commission did not adopt this
20 model for rural carriers. I know the major reasons
21 for those were the fact that the inputs were not what
22 the rural carriers thought were legitimate inputs for
23 rural carriers. And those were the inputs that I
24 attempted to changed. And I think that I changed so
25 that the matter of what was in agreement with what the

1 rural carrier task force said.

2 The other reason why the task force recommended
3 that the synthesis model should not be used, was the
4 synthesis model's methods of allocating funds would
5 allocate funds on the basis of its state average. And
6 when you allocate them based on the state average
7 instead of individual carriers, most rural carriers
8 lost money. In other words, if the state average is
9 \$20 and a rural carrier's costs are \$50 or \$60, that
10 rural carrier did not get any support. Under the
11 mechanisms that were adopted, which compared a
12 carrier's costs to a benchmark, the same rural carrier
13 would get support. So it's the difference in method
14 and the difference in inputs. Not any difference for
15 whether or not the model itself considered that.

16 Q. Well, let me turn for a second to testimony on
17 page 14 regarding the fact that ---.

18 A. Is that the direct testimony?

19 Q. The surrebuttal testimony.

20 A. Surrebuttal?

21 Q. Your testimony, you discussed a little bit about
22 the fact that the FCC adopted a modified synthesis
23 model in the arbitration proceeding. Just to be
24 clear, that was for Verizon, a non-rural carrier;
25 correct?

1 A. Correct.

2 Q. Okay. And are you aware that prior to adopting
3 the synthesis model, that there was a full litigation
4 proceeding with a substantial amount of evidence
5 considering how to support the FCC?

6 A. Which one are you talking about? Which
7 proceeding?

8 Q. The Virginia Arbitration Proceeding.

9 A. Oh, yes. Definitely. There was.

10 Q. And you have not --- the change that you described
11 to me that you made to the synthesis model to apply in
12 this case, you did not submit any of those to the FCC,
13 have you?

14 A. No, I didn't --- A, I didn't make any submissions
15 to the FCC. The FCC's not part and parcel of this
16 proceeding. I would have had to get the FCC to sign a
17 proprietary agreement to come into this proceeding in
18 order to give them what I changed. What I changed is
19 only the inputs. Not the algorithms. So essentially
20 what I did was --- so as not to reveal any proprietary
21 information, essentially what I did was say
22 hypothetically the synthesis model said that the cost
23 of copper cable is \$20 per foot and Embarq told me
24 that the cost of copper cable was \$22 a foot, I
25 adopted what Embarq told me as \$22 a foot and put that

1 in as an input into the table. I don't think that
2 that kind of change needs the FCC's approval.

3 Q. Well, other than in this case, have you submitted
4 to any entity for any of those changes that you made?

5 A. No, but I gave you, all of the parties in this
6 case, a full list of all of my changes. They have a
7 right to review every one of those changes and ask me
8 about all of those changes. If any ---.

9 Q. Well, actually AT&T was not permitted to see them
10 because Embarq's data was not shown to AT&T. Were you
11 aware of that?

12 A. No, I was not aware of that. I didn't know you
13 did not sign a proprietary agreement.

14 Q. Well, we can get into that later. But I want to
15 get beyond that.

16 ATTORNEY STEWART:

17 Well, let me just clarify for the record
18 that, if I might, you recall that this issue was
19 addressed in a motion to compel that we had an oral
20 argument before you over the summer. I believe as
21 part of that your disposition of that issue, you
22 directed as part of your order that the data inputs
23 only be provided to Dr. Loubé so that he could conduct
24 the study and that only the results of the data --- of
25 the model, would be provided to the other parties.

1 And I believe that's what you're talking about now; is
2 that correct?

3 ATTORNEY PAINTER:

4 Yes. Because I have actually asked for
5 the data and it was not provided.

6 ATTORNEY STEWART:

7 Pursuant to your order over the summer
8 regarding the motion to compel.

9 BY ATTORNEY PAINTER:

10 Q. I'm going to turn to a different topic on page 17
11 of your surrebuttal testimony.

12 A. I'm there.

13 Q. Okay. At line --- really starting at 16, talking
14 about customers that have standalone basic service.
15 And starting at 17, the individuals purchasing that
16 service have only one provider, the ILEC; right?

17 A. That's correct.

18 Q. How many individuals are there purchasing only
19 standalone local service in Pennsylvania?

20 A. I don't know.

21 Q. Do you have any idea of the range, a hundred, a
22 thousand, a million?

23 A. I don't know.

24 Q. Do you know how many of those individuals that
25 have only standalone local service are also purchasing

1 wireless service?

2 A. Some of them.

3 Q. Turning to page 21 of the surrebuttal. You talked
4 about the changes that you advocate may lead to an
5 increase in the support provided by the Pennsylvania
6 Universal Service Fund. Have you calculated how large
7 that increase will be?

8 A. No, I have not.

9 Q. And I believe that I saw in your testimony,
10 somewhere in your testimony, that you're advocating
11 that the future increases and also the base revenues
12 be used or be a part of the Universal Service Fund; is
13 that correct?

14 A. I have a notation on the back bank revenues that
15 the carrier must also be at the benchmark.

16 Q. Right. But any gain in revenues that would push
17 it above the benchmark would be a part of the
18 Universal ---?

19 A. Yes. If the carrier was charging the \$18
20 benchmark then, yes --- and had the bank, that would
21 have an impact on the fund.

22 Q. Do you know the approximate size of the Universal
23 Service Fund?

24 A. Somewhere around \$32 million.

25 Q. Okay. And ---.

1 A. Possibly. Is that right?

2 Q. I think that's about right. Are you aware that
3 based on the results of your cost setting, that Embarq
4 calculated it only to received \$50 million a year from
5 Universal Service Fund?

6 A. I don't think that's correct.

7 ATTORNEY KENNARD:

8 I'm sorry. Is that 50 as in 5-0?

9 ATTORNEY PAINTER:

10 Five zero, yes.

11 A. No. I noticed that they had a lot of banked
12 revenues, but I did not ask the question. I don't
13 think anybody has, but maybe we should. How much of
14 that banked revenue occurred after they hit the \$18
15 mark. So, I need you- to do- your analysis?

16 BY ATTORNEY PAINTER:

17 Q. Well, let's say it was past that amount, \$25
18 million.

19 A. I'm not going to speculate on the amount.

20 Q. Okay. Well --- okay. You talked about the fact
21 that a mitigated factor to the increase of the fund
22 would a potential increase in the \$18 benchmark;
23 correct?

24 A. Correct.

25 Q. Okay. You testified in your direct testimony that

1 the benchmark would likely remain \$18 dollars for four
2 more years; is that correct?

3 A. That's correct. Hopefully, I'm pretty good at
4 predicting inflation.

5 Q. Well, you did that based on --- off the
6 comparability of Verizon's rates?

7 A. Correct. The past trend will continue into the
8 future.

9 Q. Have any calculated any type of numbers of what
10 you consider a reasonable increase in the Universal
11 Service Fund?

12 A. Not a specific number. No, I do not.

13 Q. Do you think \$50 million is a reasonable increase
14 for one company?

15 A. I don't agree that \$50 million is what one company
16 would get.

17 Q. Looking at page 21 of your surrebuttal, you talk
18 about the increase in the Universal Service Fund was
19 warranted. I know you stated that you don't believe
20 that the fund will increase by \$50 million for one
21 carrier, but have you calculated how much of an
22 increase is reasonable or would be warranted, or do
23 you have no limit?

24 A. It would be limited by the amount necessary to
25 maintain the just and reasonable rates.

1 Q. Okay. So however large that increase is, that
2 would be warranted and reasonable?

3 A. Well, yes. Just and reasonable rates are a
4 standard of the law, and rates should be used as a
5 basis for studying the size of the fund. If there is
6 a problem, I have also suggested that the revenue base
7 increase. And as the revenue base increases, then the
8 burden on any individual carrier would be very small.

9 ATTORNEY PAINTER:

10 I have no further questions, Your Honor.

11 JUDGE COLWELL:

12 I think I've asked everybody except Mr.
13 Gray.

14 ATTORNEY GRAY:

15 No questions, Your Honor. Thank you.

16 JUDGE COLWELL:

17 Mr. Cheskis, do you have any Redirect?

18 ATTORNEY CHESKIS:

19 Can we have one minute, please?

20 JUDGE COLWELL:

21 You may.

22 BRIEF INTERRUPTION

23 ATTORNEY CHESKIS:

24 We have no Redirect, Your Honor.

25 JUDGE COLWELL:

1 All right. If there's nothing further,
2 Dr. Loube, thank you very much.

3 A. You're welcome.

4 ATTORNEY PAINTER:

5 Well, Your Honor, I would like to move
6 the admission of AT&T Cross Examination Exhibit One.

7 JUDGE COLWELL:

8 Any objections? Hearing none, it is
9 admitted.

10 ATTORNEY CHESKIS:

11 And we'd also like to move for the
12 admission of OCA Statements 1, 1R and 1S.

13 JUDGE COLWELL:

14 Any objections? Hearing none, they are
15 all admitted.

16 ATTORNEY CHESKIS:

17 The OCA would like to call to the stand,
18 Roger Colton.

19 -----
20 ROGER COLTON, HAVING FIRST BEEN DULY SWORN, TESTIFIED
21 AS FOLLOWS:
22 -----

23 JUDGE COLWELL:

24 Please be seated, and go ahead, Mr.
25 Cheskis.

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ATTORNEY CHESKIS:

Thank you, Your Honor.

DIRECT EXAMINATION

BY ATTORNEY CHESKIS:

Q. Good morning, Mr. Colton. Can you please state your name, business address and business title for the record, please?

A. My name is Roger Colton, C-O-L-T-O-N. My business address is Fisher, Sheehan and Colton, Public Finance and General Economics, 44 Warwick Road in Belmont, Massachusetts.

Q. And do you have in front of you your direct, rebuttal and surrebuttal testimony in this proceeding on behalf of the Pennsylvania Office of Consumer Advocate, which are dated September 10th, 2008, January 15th, 2009 and February 10th, 2009 respectively?

A. I do.

Q. And your direct testimony consists of 41 pages, attachment one, which includes your qualifications and Exhibits RC-1 through RC-5; is that correct?

A. That's correct.

Q. And your rebuttal testimony consists of eight pages and no exhibits; is that correct?

A. That's correct.

1 Q. And finally, your surrebuttal testimony consists
2 of 17 pages and Exhibit RDC-1S; is that correct?

3 A. That's correct.

4 ATTORNEY CHESKIS:

5 Your Honor, the Office of Consumer
6 Advocate has previously distributed copies of these
7 statements to all parties and would like to have these
8 exhibits marked as OCA Statements 2, 2R and 2S for the
9 record. I've also presented to the court reporter two
10 copies of each of these statements for inclusion in to
11 the official record.

12 (OCA Statements 2, 2R and 2S marked for
13 identification.)

14 JUDGE COLWELL:

15 That's fine.

16 BY ATTORNEY CHESKIS:

17 Q. Mr. Colton, would you like to make any corrections
18 to these documents?

19 A. I do. I have three sets of corrections. In my
20 direct testimony at page seven, footnote four, there
21 is a date in the parenthetical that says May 8, 2007
22 and that should be May 8, 1997. So strike 2007 and
23 replace it with 1-9-9-7. Moving to page 23, line 22,
24 the last word in line 22 is seven and the word should
25 be eight.

1 And if you move to page 24, the town of
2 Williamsport should be inserted between Pittsburgh and
3 York. And then finally, on page two of my rebuttal
4 testimony, I provided an erroneous URL as I believe
5 AT&T's witness pointed out. There is a parenthetical
6 that says www.utilitychoice.org and that appears on
7 line 13, line 16 and line 18. And the correct URL
8 should be www.puc.pa.us\utilitychoice. Those are my
9 corrections.

10 Q. With those changes in mind, would your answers be
11 the same if I were to ask you the questions in these
12 statements today?

13 A. Yes.

14 Q. Is everything contained in OCA Statements 2, 2R
15 and 2S prepared by you or under your supervision?

16 A. Yes.

17 Q. Are these documents true and correct to the best
18 of your knowledge, belief and understanding?

19 A. Yes.

20 ATTORNEY CHESKIS:

21 Your Honor, subject to Cross Examination
22 and timely motions, the OCA moves for the admission of
23 OCA Statements 2, 2R and 2S and the accompanying
24 appendix and exhibits into the record in this
25 proceeding.

1 JUDGE COLWELL:

2 Subject to cross.

3 ATTORNEY CHESKIS:

4 Mr. Colton is now available for Cross
5 Examination.

6 JUDGE COLWELL:

7 Mr. Kennard?

8 ATTORNEY KENNARD:

9 No questions, Your Honor.

10 JUDGE COLWELL:

11 Mr. Gray?

12 ATTORNEY GRAY:

13 No questions, Your Honor.

14 JUDGE COLWELL:

15 Mr. Stewart.

16 ATTORNEY STEWART:

17 Thank you, Your Honor. No questions.

18 JUDGE COLWELL:

19 Mr. Dodge?

20 ATTORNEY DODGE:

21 Good morning, Mr. Colton. No questions
22 of you at this time.

23 JUDGE COLWELL:

24 Ms. Linton-Keddie?

25 ATTORNEY LINTON-KEDDIE:

1 BCAP has no questions for Mr. Colton.

2 JUDGE COLWELL:

3 Ms. Paiva?

4 ATTORNEY PAIVA:

5 Well, you're making me feel bad because
6 I'm the only one with questions. But, yes. Verizon
7 does have a few questions.

8 CROSS EXAMINATION

9 BY ATTORNEY PAIVA:

10 Q. And actually, my first question is whether there
11 needs to be another correction to your testimony. If
12 you would take a look at page 28 of your direct? Now,
13 line 11, when you calculate the affordability levels
14 for basic level exchange service to be .75 percent of
15 the median income correct?

16 A. Yes.

17 Q. And there on line 11 you say that that result is
18 \$31.00 correct?

19 A. Yes.

20 Q. Now, if you would flip over and take a look at
21 your exhibit schedule RDC-5, if you look at the first
22 column it's scenario one. Scenario one is the one
23 that which you had referred to; am I correct?

24 A. Yes.

25 Q. And in the first column there for 2008, does that

1 calculation come out to a figure of \$32? Should the
2 number on line 11 on page 28 be \$32?

3 A. If you use the 2008 number it would be \$32. \$31
4 you can see was for 2007.

5 Q. Well, we should use the most current number
6 available; correct?

7 A. I agree. I agree. I would agree that you can
8 change that and should change that to \$32.

9 Q. Correct. So the affordability level we're talking
10 about here is \$32?

11 A. I do.

12 Q. Now, keeping with schedule RDC-5, you based the
13 calculation of the \$32 on the assumption that the
14 customer would spend .75 percent of its income on
15 basic local service; correct?

16 A. I agree.

17 Q. Now, if the Commission were to assume that a
18 customer spends a larger percentage, say one percent,
19 then \$32 would be a larger number; correct?

20 A. Yes.

21 Q. Have you calculated what that number would be with
22 one percent of income?

23 A. No.

24 Q. Do you believe it would be around \$42?

25 A. I would need to calculate it. I don't know. I

1 can't do that in my head.

2 Q. In order to calculate it, you would multiply
3 51,500 times one percent; correct?

4 A. Just a second. It would be 5-1-5 divided by 5.

5 Q. Divided by --- 5-1-5 divided by 5?

6 A. Yes.

7 Q. Now, ---.

8 A. Which would be \$42.

9 Q. You're better at math than I am.

10 A. It would be --- what's that?

11 Q. You're better at math than I am. I had calculated
12 it with a calculator as \$42.92. Does that seem right?

13 A. \$42.92.

14 Q. Thank you. Now, if you could just turn back to
15 the schedule RDC-4, the one right before that one.
16 That's a two-page schedule and lists --- you want to
17 compare one of the columns in the schedule to the \$32
18 level in the column that compared the total; correct?

19 A. That's correct.

20 Q. And that is the RLEC base exchange rate plus the
21 prescriber line charge, Universal Service charge and
22 other fees; correct?

23 A. That's correct. And it is the sum of preceding
24 seven columns.

25 Q. Now, looking at each of the figures in the total

1 column on the right, am I correct that each one of the
2 RLECs currently have rates --- total rates below \$32?

3 A. Yes.

4 Q. So each one of the RLECs in this case currently
5 have basic service rates below the affordability
6 costs?

7 A. That's correct.

8 Q. At this point, based on the evidence we have on
9 affordability today, if there was any way to maintain
10 an \$18 cap, it would really be based on comparability
11 and not affordability; correct?

12 A. That's correct. The affordability would not come
13 into play today.

14 Q. Still looking at RDC-4, but I'm going to ask you a
15 slightly different question. Let's use the last one,
16 Frontier Communication/Oswego River. That also
17 happens to be the one with the highest total; correct?

18 A. Yes.

19 Q. Now, what you show here is the add up to the total
20 of \$27.10. That's what a customer does not subscribe
21 to LifeLine services pay; correct?

22 A. A residential customer not subscribing to LifeLine
23 would pay \$27.10, yes.

24 Q. Now, a customer who subscribes to LifeLine would
25 not pay some of these items in these columns; correct?

1 A. That's correct.

2 Q. Now, a lifelong customer would not pay the \$6.50
3 for the split column; right?

4 A. Not to quibble with words here, but rather than
5 saying that the LifeLine recipient would not pay the
6 \$6.50 split, the LifeLine recipient would receive a
7 bill credit equal to the combination of the others and
8 one of the numbers that goes into the bill credit
9 would be \$6.50. Yes.

10 Q. All right. So although the \$6.50 may appear on
11 the bill, it would be like a credit?

12 A. There would be a bill credit, as part of the
13 LifeLine credit bill, would include \$6.50.

14 Q. And the LifeLine customer also would not pay or
15 would be given credit for that 76 cents Federal
16 Universal Service Charge; is that correct?

17 A. That's correct.

18 Q. And a LifeLine customer would get a \$2.75 discount
19 on the first column there, the \$18 basic exchange.
20 The LifeLine customer would pay \$15.25; correct?

21 A. Yes.

22 Q. Or get a credit?

23 A. That's correct.

24 Q. Are there any other discounts the LifeLine
25 customers get?

1 A. I think you listed them.

2 Q. Now, I'm gonna turn over to your surrebuttal
3 testimony. Take a look at the exhibit, Schedule RDC1-

4 S. This is telephone penetration specifics by Public
5 Use Micro-Data Area, which you put in here as PUMA.

6 What exactly is a PUMA?

7 A. I'm sorry. I didn't hear.

8 Q. A PUMA, Public Use Micro-Data Area. What exactly
9 is that?

10 A. A PUMA is a geographic subdivision of a state,
11 which the census bureau has determined-- not large
12 enough to generate statistically significant results
13 and large enough such that the sampling did not
14 present privacy concerns in publishing data. So in
15 other words, when the census bureau does inter-census
16 data collection to conduct a survey, they don't do the
17 same sample size as the Decennial Census. Therefore,
18 rather than publishing the results in a county-by-
19 county basis, they developed this other geographic
20 separation.

21 Q. Now, if you took all the PUMAs on the chart here,
22 would that cover the entire state of Pennsylvania?

23 A. Yes.

24 Q. So not all of the PUMAs are going to follow that
25 service territory; correct?

1 A. That's correct. Yes.

2 Q. In fact, if you look at the second to last page of
3 the exhibit, one of the PUMAs that show areas that are
4 in Philadelphia; correct?

5 A. That's correct.

6 Q. And Philadelphia is not an RLEC territory is it?

7 A. That's correct. The second column that says rural
8 county indicates whether or not the PUMA is associated
9 with a rural or a non-rural area.

10 Q. But even the rural areas in Pennsylvania, there
11 are some rural areas that are served by Verizon;
12 correct?

13 A. There are. Yes.

14 Q. Now, in calculating these percentages, the
15 percentages in the column 2005, 2006 and 2007, is
16 there a margin of error?

17 A. There is. But the Census Bureau defines its PUMA,
18 as I said a few minutes ago, large enough such that
19 there is not a question of statistical significance
20 and changes. That's one of the reasons they climb in
21 geographic regions as they do, so that when you look
22 at a number from the census whether it's from the
23 Decennial Census or from the American Community Survey
24 Census Publication, you know that that number is a
25 reliable number. You don't --- as an analyst, you

1 don't need to calculate.

2 Q. So with this data, for example, if there was .1
3 percent change. In your view, you would still find
4 that to be statistically significant?

5 A. We can put --- yes. If there is a drop from 96.5
6 to 96.4, then we can accept the fact that there really
7 is a drop from 96.5 to 96.4. And if it's a sampling
8 error, it would not introduce uncertainty there.

9 Q. And why is that? Is it because their samples are
10 bigger than ours?

11 A. That's because the samples are set large enough so
12 as to eliminate the possibility that there would be a
13 lack of statistical significance due to sampling.

14 Q. Do you understand that one of the issues in this
15 case is whether or not there's to be an \$18 cap on the
16 RLEC residential basic service rate; correct?

17 A. It seemed to occur to me. Yes.

18 Q. Now, are you here to testify that there should or
19 should not be such a cap, or is your testimony limited
20 only to affordability analysis?

21 A. My testimony is limited to the affordability
22 analysis. As I indicate in my direct testimony, there
23 is a two-step analysis. One is the comparability
24 analysis presented by Dr. Loube, and that
25 comparability analysis is then made subject to

1 affordability constraint. And my chart is just to
2 determine that the affordability constraints are
3 capable.

4 Q. So based on what we know about affordability
5 analysis, we really need to look at Dr. Loube's
6 testimony to get it to \$18; correct?

7 A. My testimony does not inform whether the \$18
8 should be \$18 or \$16 or some other number. My
9 affordability analysis is a constraint on the number
10 that Dr. Loube developed. Did that answer your
11 question?

12 Q. Yes, it did. Thank you.

13 ATTORNEY PAIVA:

14 And actually I don't have any other
15 questions. Thank you.

16 JUDGE COLWELL:

17 Ms. Painter?

18 ATTORNEY PAINTER:

19 Thank you, Your Honor.

20 CROSS EXAMINATION

21 BY ATTORNEY PAINTER:

22 Q. Good morning.

23 A. Good morning.

24 Q. My name is Michelle Painter representing AT&T in
25 this case. I'd like to turn to page five of your

1 surrebuttal testimony. Now, looking at the sentence
2 at the end of line eight. It states here that this
3 case is about people who rely on their ILEC for basic
4 local exchange service and they have no other
5 affordable options, not wireless, not CLEC, not cable.
6 How many of those people are there?

7 A. I haven't calculated the number of people.

8 Q. Do you have any --- have you looked at even an
9 estimate, whether it be 10, 100, 1,000,000?

10 A. No.

11 Q. Do you know where those people are located?

12 A. No.

13 Q. Are you aware of how many of those people have
14 wireless service?

15 A. No.

16 Q. Are you aware of the fact that 77 percent of
17 people in Pennsylvania do have wireless service today?

18 A. I didn't --- no.

19 Q. Are you aware of the fact the Embarq testified
20 that it will need an addition \$50 million a year from
21 the Pennsylvania Universal Service Fund to support
22 these people?

23 A. I am not aware of that number, no.

24 ATTORNEY CHESKIS:

25 I'm sorry. When you say these people?

1 ATTORNEY PAINTER:

2 The people referenced in his testimony.

3 A. I'm neither aware of the number that Embarq had
4 testified to, nor am I aware of the population to
5 which the other testimony you've brought and
6 introduced so far.

7 BY ATTORNEY PAINTER:

8 Q. I want to kind of just go quickly to the LifeLine
9 testimony and you touched on that with Ms. Paiva. You
10 stated on page 16 of the surrebuttal testimony, it
11 looks like there you talk about a LifeLine discount
12 would be about \$8.25; is that correct?

13 A. That's correct.

14 Q. Now, there are additional reductions that it
15 states in increments of \$1.75 and then the federal ---
16 the FCC will match that. Are you aware of that?

17 A. I'm aware that the FCC may match that and that
18 under Pennsylvania law there's no additional LifeLine
19 discounts, if the entire additional discount is
20 matched by the federal ---.

21 Q. Okay. And ---.

22 A. Or by the FCC program. Not by the fed, but by the
23 FCC.

24 Q. Okay. And is it your understanding that the
25 additional matching from the FCC is --- or the federal

1 fund is \$1.75? In other words, if the state were to
2 reduce --- to match and reduce by \$1.75, then the
3 federal matching would be \$1.75, an additional \$3.50
4 discount? Are you aware of that?

5 A. I think that's correct. Yes.

6 Q. Is there anything that you're aware of that
7 prohibits the state from further reducing rates for
8 LifeLine customers?

9 A. I believe there in the state statute it says that
10 LifeLine customers may receive additional discounts
11 only if the entire amount of the additional discount
12 is matched by the federal government. I believe the
13 state is free to offer the regular LifeLine at a
14 discount if it wishes.

15 ATTORNEY PAINTER:

16 I have nothing further, Your Honor.

17 JUDGE COLWELL:

18 Mr. Cheskis?

19 ATTORNEY CHESKIS:

20 Can I have one moment, please?

21 JUDGE COLWELL:

22 You may.

23 BRIEF INTERRUPTION

24 ATTORNEY CHESKIS:

25 Thank you, Your Honor. I did have one

1 brief question to clarify some of the testimony that
2 was elicited on cross. And that pertains to what I
3 think is really mostly a legal issue, but I think
4 should be cleared for the record.

5 REDIRECT EXAMINATION

6 BY ATTORNEY CHESKIS:

7 Q. Mr. Colton, do you remember when Ms. Painter was
8 asking you about the federal subsidy in her Cross
9 Examination?

10 A. Yes.

11 Q. And in order to get a federal subsidy for LifeLine
12 customers, does the state have to provide a match of
13 that fund?

14 A. Yes. Yes. The state has to provide a match.

15 Q. Okay.

16 ATTORNEY CHESKIS:

17 Sorry. Can I have one more moment,
18 please? I'm sorry. We have no further Direct ---
19 Redirect of this witness.

20 JUDGE COLWELL:

21 Ms. Painter?

22 RECROSS EXAMINATION

23 BY ATTORNEY PAINTER:

24 Q. Is there anything that prohibits the state from
25 providing that fund through an order of reduction in

1 the local rate?

2 A. That would be a legal question that I would need
3 to research. That would be --- the answer to that is
4 I would to do the legal research to figure it out.

5 ATTORNEY PAINTER:

6 Thank you, Your Honor.

7 JUDGE COLWELL:

8 Anybody have anything further for this
9 witness? Thank you very much, sir.

10 A. Thank you.

11 ATTORNEY CHESKIS:

12 The OCA would like to move for the
13 admission of OCA Exhibits 2, 2R and 2S.

14 JUDGE COLWELL:

15 Any objections? They are admitted.

16 ATTORNEY GRAY:

17 I need just a second.

18 JUDGE COLWELL:

19 Okay.

20 ATTORNEY GRAY:

21 All set, Your Honor.

22 JUDGE COLWELL:

23 Okay.

24 ATTORNEY GRAY:

25 Can you hear me okay?

1 JUDGE COLWELL:

2 I can hear you fine.

3 ATTORNEY GRAY:

4 Great.

5 JUDGE COLWELL:

6 You can begin by calling your witness.

7 ATTORNEY GRAY:

8 Your Honor, I would like to call Allen
9 Buckalew on behalf of the Office of Small Business
10 Advocate.

11 -----
12 ALLEN BUCKALEW, HAVING FIRST BEEN DULY SWORN,
13 TESTIFIED AS FOLLOWS:

14 -----
15 JUDGE COLWELL:

16 Thank you. Be seated. Mr. Gray?

17 ATTORNEY GRAY:

18 Thank you, Your Honor. Your Honor, the
19 OSBA has previously distributed three documents. The
20 first document is entitled the Direct testimony of
21 Allen G. Buckalew, and I have that pre-marked as OSBA
22 Statement Number One.

23 The second document is the rebuttal
24 testimony of Allen G. Buckalew, and we've pre-marked
25 that OSBA Statement Number Two.

1 And the third and final document is the
2 surrebuttal testimony of Allen G. Buckalew, and we
3 have that pre-marked as OSBA Statement Number Three.

4 JUDGE COLWELL:

5 Mr. Gray, do you have an extra Statement
6 Number Three? I don't seem to have one in my file.

7 ATTORNEY GRAY:

8 I do. Do you want it right now?

9 JUDGE COLWELL:

10 Yes.

11 ATTORNEY GRAY:

12 All right.

13 JUDGE COLWELL:

14 Thank you.

15 ATTORNEY GRAY:

16 Certainly. So Your Honor, we'd ask that
17 these three documents be marked as I've previously
18 outlined.

19 JUDGE COLWELL:

20 So marked.

21 (OSBA Exhibits Statements One through
22 Three marked for identification.)

23 ATTORNEY GRAY:

24 One, two, three. Thank you.

25 DIRECT EXAMINATION

1 BY ATTORNEY GRAY:

2 Q. Mr. Buckalew, do you have a copy of OSBA
3 Statements Number One, Two and Three in front of you?

4 A. Yes, I do.

5 Q. Mr. Buckalew, were the OSBA Statements One, Two
6 and Three prepared by you or under your supervision?

7 A. Yes, they were.

8 Q. And Mr. Buckalew, are there any changes or
9 corrections to any of these three statements?

10 A. No, there are not.

11 Q. Mr. Buckalew, if I asked you each question set
12 forth in Statements One, Two and Three, would your
13 answer be the same as set forth in those three
14 statements?

15 A. Yes, they would.

16 Q. Mr. Buckalew, are the answers in Statements One,
17 Two and Three true and correct to your best ability
18 and belief?

19 A. Yes, they are.

20 Q. Thank you.

21 ATTORNEY GRAY:

22 Your Honor, I ask that the Statements
23 Number One, Two and Three be moved into the record
24 subject to timely motions and Cross Examination.

25 JUDGE COLWELL:

1 Subject to motions and cross.

2 ATTORNEY GRAY:

3 Thank you, Your Honor. Mr. Buckalew is
4 available to cross.

5 JUDGE COLWELL:

6 All right. Do you want to do this side
7 of the table first?

8 ATTORNEY CHESKIS:

9 I think the OCA in this case is more
10 aligned with Verizon and AT&T. So maybe we should
11 reverse the order that we observed for the Consumer
12 Advocate.

13 JUDGE COLWELL:

14 All right, then.

15 ATTORNEY CHESKIS:

16 Opposites.

17 JUDGE COLWELL:

18 Mr. Dodge?

19 ATTORNEY DODGE:

20 Good morning, Mr. Buckalew. No questions
21 from Comcast.

22 JUDGE COLWELL:

23 Ms. Linton-Keddie?

24 ATTORNEY LINTON-KEDDIE:

25 No questions from BCAP, Your Honor.

1 JUDGE COLWELL:

2 Ms. Paiva?

3 ATTORNEY PAIVA:

4 I don't have any questions.

5 JUDGE COLWELL:

6 Ms. Painter?

7 ATTORNEY PAINTER:

8 I have no questions, Your Honor.

9 JUDGE COLWELL:

10 Well, if there's no cross, it appears ---
11 go ahead, Mr. Kennard.

12 ATTORNEY KENNARD:

13 Thank you, Your Honor.

14 CROSS EXAMINATION

15 BY ATTORNEY KENNARD:

16 Q. Good morning, Mr. Buckalew.

17 A. Good morning.

18 Q. Can you go to your rebuttal, pages five and six
19 please? You make the point there that the RLEC
20 decision should increase rates as discretionary. Is
21 that a fair characterization of your testimony?

22 A. It's not all discretionary. It's the law. I
23 mean, Chapter 30 allows you to increase rates based on
24 inflation. It's your discretion to increase them or
25 not.

1 Q. Is an RLEC that was price cap regulated entitled
2 to the revenues described in the price cap formula,
3 and it's discretionary as to whether or not they
4 decide to implement those increases?

5 A. Yeah. I think that's what you just said.

6 Q. And it's not discretionary in the PUC to deny the
7 rate regularly because with price cap form of
8 regulation in a company's Chapter 30.

9 A. That's a mouth full. The PUC cannot deny an
10 inflation increase, but it can deny how it's gotten.

11 Q. Now, also in your direct, sir, on page 12, there's
12 a reference there to --- I'm trying to find it here.

13 Excess profits. There's parts in your testimony that
14 said why should we --- RLECs have excess profits.

15 A. I'm sorry. I didn't hear the last part. You
16 trailed off.

17 Q. There's a statement here, a question actually, why
18 should RLEC be entitled to excess profits.

19 A. Yes. Page 12, lines 10 and 11. Is that what
20 you're asking?

21 Q. It would help if I was in your direct testimony
22 instead of your rebuttal. There's a question
23 following that. You're not testifying that you're
24 aware that ILECs are making excess funds. It's a
25 question of why should they if they are?

1 A. Well, it's more than that. It's not a statement
2 of fact and it certainly is a question that gets to
3 the heart of this case and that is whether we should
4 have increases coming from the Universal Service Fund
5 or rate caps for companies that earning excess
6 profits. And we don't know that unless we look at
7 their profits.

8 Q. Mr. Buckalew, how long have you been a consultant
9 for the OSBA?

10 A. You'd have to look at my resume, but probably
11 eight to ten years.

12 Q. Were you involved in the Global (phonetic)
13 Proceeding? Was it called Global Proceeding here in
14 Pennsylvania that you referred to?

15 A. I think I was involved in pieces of it. I'm not a
16 hundred percent sure, but I certainly know about the
17 Global Proceeding.

18 Q. Have you reviewed the 1648 and 1649 petitions in
19 preparation for your testimony in this case?

20 A. 1648 and 1649? You'll have to clarify what you're
21 talking about. Are these petitions for increased
22 rates?

23 Q. Well, are you aware that there were two competing
24 post-resolutions of the Global investigation?

25 A. Yes.

1 Q. And one was Verizon and the rural companies and
2 the caption in that had the core number 1649. So
3 you're familiar with 1649 petition. So there was a
4 Verizon ILEC petition, you were aware of that?

5 A. I'm not a hundred percent sure that I reviewed
6 both of those filings. I reviewed the Commission's
7 orders in that proceeding.

8 Q. So in preparation today, you did not review the
9 petitions and Commissioner's order?

10 A. Well, there's some of this that referenced some of
11 those petitions, but I'm not sure about which number
12 you're referring to. The Commission's order does
13 reference some of the petitions.

14 Q. So you reviewed the Global order to the extent it
15 refers to the petitions that were presented to the
16 Commission and you also vicariously reviewed the
17 petitions themselves?

18 A. Vicariously, no.

19 Q. Not directly? Indirectly?

20 A. Well, on some of the --- if you recall, some of
21 the Global order points to the Pennsylvania doctrine
22 accepted as petitions. So, you have to go back to the
23 petitions and read what they say.

24 Q. And did you go back to the petitions and read what
25 they say?

1 A. Not every one of them, but some of them.

2 Q. Well, let me ask you, are you aware that the 1649
3 petition references a proportionate business cap in
4 addition to a residential cap?

5 A. Yes.

6 Q. And are you aware that the 1648 petition refers to
7 a proportionate guarantee for business rates that ---
8 in addition to the residential rate cap?

9 A. You know, I know that that there's a proportionate
10 business cap because we discussed it among ourselves.
11 The second part I'm not too clear on.

12 Q. Now, it was the OCA's position at one point that
13 business rates should be subject to caps, public forms
14 of rate increase limitations. Were you aware of that?

15 A. Well, I think this continues to be their position
16 if condition continues with the capping. If capping
17 is going to continue, then certainly more small
18 business stuff's going to be capped also. But the
19 overriding position there is there's really no reason
20 to have a cap if you'd have Chapter 30 regulations.
21 Certainly not agree to having one salary cap when it
22 wouldn't apply to residential customers, because small
23 business customer you pick up all of the payments.

24 Q. Is there a business cap in place now?

25 A. Well, we assume that there's a business cap in

1 place.

2 Q. And does that cap apply to rate increases?

3 A. Yes, it does. But still --- since we've been
4 paying that against the cap, I think we've seen some
5 rates that are residential.

6 Q. Have you reviewed any of the RLEC's Chapter 30
7 plans?

8 A. Yes.

9 Q. Specifically which ones?

10 A. I looked at the time when they filed their
11 increases. So I recently looked at Embarq. I looked
12 at --- United is still Embarq. The ones that the
13 companies that you normally have on record.

14 Q. You were a witness in the case after the price cap
15 mechanism filing that spawned this proceeding.

16 A. If you say so.

17 Q. I think you were. You have rebuttal testimony in
18 that case filed January 5th, 2007. Do you recall
19 that?

20 A. I don't recall, but if you got it, I did it.

21 Q. Do you know if the D&E --- did you review the D&E
22 Chapter 30 plan as part of that proceeding?

23 A. Yes.

24 Q. And does D&E have a business rate cap in this
25 plan?

1 A. I don't believe that there's any in the actual
2 Chapter 30 plans that have a rate cap. I'd need to go
3 over that specifically. To the best of my knowledge,
4 they don't have rate caps in their plans, though.

5 Q. Did you personally go up to them and look or is
6 this, you know, this is one of those instances where
7 it was advice of counsel? It's not there and you
8 relied upon Mr. Gray to render that conclusion upon
9 which you have now relied?

10 A. I certainly didn't have time to go back through
11 every one, so I did rely on Mr. Gray.

12 JUDGE COLWELL:

13 Mr. Buckalew, could you please use the
14 microphone?

15 A. I'm sorry.

16 JUDGE COLWELL:

17 That's all right. Let me put it on the
18 other side because you're turning toward Mr. Kennard.

19 A. I should be talking to you.

20 JUDGE COLWELL:

21 Oh, no. That's all right. Thank you.

22 BY ATTORNEY KENNARD:

23 Q. Were you personally involved in the development of
24 the Chapter 30 plans of the rural telephone companies?

25 A. Was I personally involved as in did I design the

1 Chapter 30 plans? No.

2 Q. Were you involved at all in those cases that
3 generated the plans?

4 A. Well, generate the plans or evaluate the plans, I
5 was asked for my advice on several Chapter 30 claims
6 during the --- as these things were going on.

7 ATTORNEY CHESKIS:

8 Counsel, you're referring to, for
9 example, the filing of the amended claims back in say
10 2005 or are you going back further than that?

11 ATTORNEY KENNARD:

12 I'll accept --- I don't want to quibble
13 with the witness about what's generated and what's
14 small and what's --- so let's back up for a second.

15 BY ATTORNEY KENNARD:

16 Q. There's originally a 1993 piece of legislation
17 regarding Chapter 30 the Public Utility Code; correct?

18 A. 1993, yes. Chapter 30.

19 Q. And as part that process companies come forward,
20 submit a proposed plan to the Commission, and there
21 was a litigated process involved in developing those
22 plans. Are you aware of that?

23 A. Yes.

24 Q. Were you the OSBA's witness in those proceedings?

25 A. In --- what was the time period?

1 Q. 2000 and --- well, it's beginning in 1997. 1998,
2 I'm advised. But the final approval was in 2001,
3 though. Were you the OSBA's witness in this case?

4 A. Probably not in 1997 or '98. I didn't --- like I
5 said, this goes back about ten years, eight to ten,
6 yeah, plus or minus. I don't recall actually
7 testifying to any Chapter 30 plan. I did evaluate
8 some of the amended plans.

9 Q. Who was the OSBA's witness in those cases? Do you
10 know?

11 A. If I didn't do it, I have no idea who did.

12 Q. Would you accept that it was a Dr. Stanford L.
13 Levin?

14 ATTORNEY GRAY:

15 The OSBA will stipulate to that.

16 ATTORNEY KENNARD:

17 Thank you. And would OSBA also stipulate
18 to the authenticity of the document that's being
19 passed out entitled Direct Testimony of Stanford L.
20 Levin, Alltel Docket P-00981423, OSBA Statement Number
21 One, date served December 17th, 1998, at least
22 inasmuch as it reports to represent accurately the
23 pages that are depicted in this exhibit?

24 ATTORNEY GRAY:

25 Well, I'm taking this --- I did not do

1 this case. A former member of the OSBA attorney
2 staff. So if he says this is his testimony, I will
3 acknowledge for that limitation. I will also point
4 out that Bernie Rye was the Small Business Advocate at
5 that time.

6 ATTORNEY KENNARD:

7 I appreciate that. I'll set a full copy
8 of the testimony here if you'd like to review it, Mr.
9 Gray.

10 BY ATTORNEY KENNARD:

11 Q. Now, can you go to page 11 of this testimony?
12 Line three. It's in reference to the shortcomings of
13 traditional rate-base rate-of-return regulation. And
14 then it enumerates them down into line six to eleven;
15 correct?

16 A. What are you asking me?

17 Q. I'm asking you to acknowledge to the fact that the
18 witness is discussing the shortcomings of traditional
19 rate-based rate-of-return regulation and offers three
20 enumerated shortcomings?

21 A. Yes.

22 Q. Okay. And number two is the inability to
23 accurately allocate rate base expenses among service;
24 is that correct?

25 A. Yes. This is this one man's personal opinion.

1 Q. And this one man has represented the Office of
2 Small Business Advocate and states to that in the
3 Chapter 30 case of Alltel; correct?

4 A. Well, he's obviously represented them at the time,
5 but that doesn't mean that for all time that this
6 person is right or the OSBA has the same position.

7 Q. And then down on line 21 of that same page, 11, it
8 states his opinion proffered on behalf of the Small
9 Business Advocate, it is clear, I think that price cap
10 regulation offers the best alternative to traditional
11 regulations in today's telecommunication services and
12 still require regulation. Did I read that correctly?

13 ATTORNEY GRAY:

14 Excuse me. Actually you did not.

15 ATTORNEY KENNARD:

16 Okay.

17 ATTORNEY GRAY:

18 You actively inserted the word cap. You
19 said that price cap regulation. It says price
20 regulation.

21 ATTORNEY KENNARD:

22 I stand corrected.

23 BY ATTORNEY KENNARD:

24 Q. Mr. Buckalew, is that accurate?

25 A. Yes. There are those that believe that price

1 regulation alternative was better than traditional
2 regulation. And I think that, you know, in some cases
3 that's true and certainly in small companies, I don't
4 think it's true at all. We had virtually no increases
5 ---.

6 ATTORNEY KENNARD:

7 Let me stop the witness. I just asked
8 him, if this witness representing the OSBA in 1998
9 stated this. I didn't ask him for his ---.

10 A. I'm not going to agree to something that somebody
11 did in 1998.

12 ATTORNEY GRAY:

13 Right. A fair question now is what's the
14 relevance here? We're 11 years later. A lot has
15 happened in the telecommunication industry in 11
16 years, including changes in the law. Yes. When Mr.
17 Ryan was the Small Business Advocate, Dr. Levin had
18 testimony back in that regulatory --- now, we're in a
19 very different place today.

20 ATTORNEY KENNARD:

21 We are in a different place today, Judge,
22 but these plans of law control a large measure of the
23 outcome of this case. The PTA witnesses suggestion
24 will continue to state that these were alternative
25 regulatory plans that were in place that became rules.

1 And it's our position that some of the parties in
2 this case would like to change those rules, and we are
3 exploring their original input into the development of
4 those rules as to why those rules now exist. The OSBA
5 supported price cap regulation, did not like rate-of-
6 return regulation, offered that there should be
7 protections provided and that would be sufficient.
8 That is what the plan said, though. I do want to
9 point that out that the OSBA wants disavow that or
10 explain it's not now their opinion. They're free to
11 do that, and I won't object to that on Redirect
12 Examination. But I think the OSBA's input in the
13 development of those rules, is a relevant topic of
14 interest.

15 ATTORNEY GRAY:

16 Well, Your Honor, that, Mr. Kennard makes
17 an excellent point. The rural ILECs have amended
18 Chapter 30 plans and Chapter 30 very clearly states
19 that those plans set forth the rules. To use an old
20 phrase, those plans speak for themselves. Mr.
21 Kennard's clients have plans to state exactly what
22 type of cap and there are different types of caps such
23 as for accessing pole revenue purposes. And whatever
24 that Chapter 30 plan says, that is the rules. So we
25 agree with that. The question is, historically how

1 those individual plans were developed 10, 15 years ago
2 does not seem to be relevant to our inquiry right
3 here. But we'll stipulate to the United Chapter 30
4 plans state and we can argue in our briefs what we
5 think those plans state. I mean, as Mr. Kennard
6 knows, we've had this argument before.

7 ATTORNEY KENNARD:

8 Well, I appreciate the first agreeing,
9 but I think that OSBA's input in those rules and its
10 original interpretation of those rules is a relevant
11 topic of input. If they want to change their
12 interpretation, that's fine. But I think it's good
13 for Your Honor and the Commission to understand how
14 that interpretation has changed over time and what the
15 OSBA's original view of those with respect to the
16 virtues of price cap regulation, in reference of rate-
17 of-return regulation and why rate-of-return
18 regulation, which this witness now suggests should be
19 proposed was not a good idea at the time. And
20 further, why there are --- how business caps came into
21 play at the urging of the Office of Small Business
22 Advocate.

23 JUDGE COLWELL:

24 So what's the objection?

25 ATTORNEY GRAY:

1 Well, where we are right now is, I guess
2 my question is, what is the relevance of this document
3 to this proceeding? That's my --- it's a relevance
4 question.

5 JUDGE COLWELL:

6 Okay. I think Mr. Kennard has
7 established relevance. So go ahead.

8 ATTORNEY KENNARD:

9 Thank you, Your Honor.

10 A. This all came up because he won't let me answer
11 questions of mine.

12 JUDGE COLWELL:

13 Well, that's what happens when somebody
14 objects.

15 A. But the basic premises on --- this is not price
16 cap. This is price regulation.

17 ATTORNEY KENNARD:

18 Again, Your Honor, I'm just asking what
19 Mr. Levin's testimony reads in 1998, not his own
20 opinion. And again, as I said previously, I don't
21 object to the OSBA trying to distinguish this in
22 Redirect Examination but it's not within the scope of
23 Cross ---.

24 JUDGE COLWELL:

25 Right. Mr. Buckalew, Mr. Gray will have

1 an opportunity to give you free reign to explain your
2 answers at that point.

3 A. Well, Your Honor, the only thing I'm debating
4 about this is he keeps calling this price cap
5 regulation and that's not what this is. This doesn't
6 say anything about price cap regulation. It says
7 price regulation. And it says nothing about what your
8 question is.

9 JUDGE COLWELL:

10 Well, thank you for pointing that out.

11 BY ATTORNEY KENNARD:

12 Q. Over on page 18 --- 15, excuse me of the question
13 we're going discuss. It talks about limits to price,
14 price inflexibility. On line 18 it says there are
15 generally two methods. One is to create simple
16 baskets. The other is to put in place additional
17 rules; is that correct? Is that a fair
18 characterization?

19 A. I'm going to have to read the rest of this
20 section.

21 Q. Sure. Absolutely.

22 ATTORNEY GRAY:

23 What page are we on?

24 ATTORNEY KENNARD:

25 We're on page 15.

1 WITNESS REVIEWS DOCUMENT

2 A. Well, this basically describes, you know, two
3 different methods of regulation commonly used back at
4 this point in time. That is when services were put
5 into baskets. You have a non-competitive basket and a
6 semi-competitive basket and a competitive basket, and
7 different rules apply to each basket. And the other
8 alternative method is that were --- all of the
9 services were in baskets with certain constraints.
10 And I think the fair characterization of what Chapter
11 30, at least amended today is everything's in this
12 basket. There's things excluded from the basket as
13 far as inflationary increases go, but there's no caps
14 except for inflation.

15 BY ATTORNEY KENNARD:

16 Q. On page 16, there's specific recommendations by
17 Dr. Levin --- or specific discussion of protections
18 that might be appropriate for small business rates;
19 correct?

20 A. Where are you reading from?

21 Q. I'm on lines --- on line one, page 16.

22 A. How would that work in this case?

23 Q. Yes.

24 A. And what's your question?

25 Q. Is that true, that he discusses ways in which rate

1 changes for small business might be ---?

2 A. Well, it discusses a way here of how small
3 business rates can increase based on inflation.

4 ATTORNEY KENNARD:

5 Your Honor, I'm gonna ask that this
6 document be marked as PTA Cross Examination Exhibit
7 One.

8 (PTA Cross Examination Exhibit One marked
9 for identification.)

10 JUDGE COLWELL:

11 Okay.

12 BY ATTORNEY KENNARD:

13 Q. Now, don't you think that Dr. Levin was speaking
14 of price cap regulation in the context of the case,
15 which was proposing to take Alltel from traditional
16 rate-based rate-of-return regulation to inflation of
17 base --- of establishing revenue from it?

18 A. You're asking me to tell you what Dr. Levin was
19 thinking?

20 Q. No. No. You said that, do I hear you correctly,
21 to state that price regulation is different from price
22 cap regulation?

23 A. Yes, because you have to find exactly what the
24 context is. I mean, there are some --- for example,
25 there are some places that have price regulations and

1 put things in different baskets and limits the free
2 local exchange rates at one level. Yes, that's price
3 cap.

4 There are some that allow the cap to increase
5 based on inflation, the rates increase based on
6 inflation. But I have not seen anything that would
7 allow inflation to be applied but then capped on the
8 segment of that population.

9 Q. Okay. But the context in which Dr. Levin was
10 discussing it was inflation-based establishment of
11 revenue requirement.

12 ATTORNEY GRAY:

13 Objection. That is not what he said.

14 ATTORNEY KENNARD:

15 I asked him what his opinion is.

16 JUDGE COLWELL:

17 Ask your question again, please.

18 BY ATTORNEY KENNARD:

19 Q. If in this document --- let me ask it a different
20 way. You would agree that in the case Alltel was
21 proposing to replace the traditional rate-based rate-
22 of-return formula of ratemaking known as inflation-
23 based; correct?

24 A. In this case? You're referring to this document?

25 Q. The Alltel case. It's referenced in the face of

1 this testimony presented by Dr. Levin.

2 A. You're asking me my opinion on a case that I
3 wasn't involved in and ---?

4 Q. If you don't know, you can say you don't know.

5 A. Well, I'm just trying to get your question right.
6 You're question didn't make a lot of sense to me.

7 Q. Well, do you know ---?

8 A. I'm not sure what you're asking me.

9 Q. Do you know what was at issue in the Alltel case?

10 A. I know that right now it says the issue was for
11 form of regulation and network modernization. That's
12 just reading petition.

13 Q. Well, let me show you the testimony.

14 ATTORNEY KENNARD:

15 May I have the court reporter's copy?

16 JUDGE COLWELL:

17 You may.

18 BY ATTORNEY KENNARD:

19 Q. Let me show the full testimony here of Dr. Levin.
20 You're free to look at it and then when you're done,
21 please read into the record page 12, lines 4 through
22 8.

23 A. First of all, I don't have to read this entire
24 piece of testimony if you want me to give my opinion
25 on it. And I don't read other people's testimony into

1 the record.

2 ATTORNEY CHESKIS:

3 I'm looking at the top of page one. Your
4 Honor, if I could point out what I do have on page 16,
5 line 11 through 15, Dr. Levin gave his summary of what
6 he said Alltel's proposals were and alternative
7 regulations. And that little brief one-line summary,
8 of course, makes a lot of sense because those are the
9 elements we expect to see in a rate-related plan. So
10 if that's Mr. Kennard's question, we can just refer to
11 page 16, lines 9 to 18.

12 JUDGE COLWELL:

13 Mr. Gray, would you like to comment on
14 that? Maybe Mr. Kennard can share one of his
15 microphones with you. Thank you.

16 ATTORNEY GRAY:

17 Yes, that's definitely how it would read.

18 JUDGE COLWELL:

19 Okay.

20 ATTORNEY GRAY:

21 Big difference.

22 ATTORNEY KENNARD:

23 Well, that's --- obviously there's
24 discussion pertaining to the price regulation, price
25 cap regulation. I apologize to the witness for

1 bringing up a topic that he was not involved in. I
2 think the court would establish the OSBA's
3 interpretation of the case at that time.

4 The one thing I really wanted to do is
5 substitute the excerpts that I provided with a full
6 and complete copy of Dr. Levin's testimony, and then
7 if a question does legitimately arise relative to what
8 is the topic of conversation in the testimony, and if
9 there is a difference between price regulation versus
10 cap regulation, then we would all have the entire
11 document for those purposes.

12 ATTORNEY GRAY:

13 I don't have an objection to putting in
14 Dr. Levin's full testimony. I'd like to review it
15 because the question Mr. Kennard started to ask was
16 whether there was a price cap with purposes, I gather,
17 would be annual rate increases due to the price
18 stability mechanism funds. There can be rate caps for
19 a variety of purposes. So if Mr. Kennard is
20 suggesting that Dr. Levin testified positively in
21 favor of rate caps under the situation where there's a
22 price stability mechanism increase, I'd like you to
23 point that out to me.

24 ATTORNEY KENNARD:

25 What I'm offering at this time, Judge, to

1 get over this hump is we'll present the whole
2 testimony of Dr. Levin, this whole exhibit and then
3 we're free to have this discussion formally if
4 necessary with a form ---.

5 JUDGE COLWELL:

6 For what purpose?

7 ATTORNEY KENNARD:

8 For the purposes of demonstrating the
9 OSBA's position and recommendations that led
10 ultimately to the adoption of Chapter 30, one. And
11 number two, the OSBA's positions have changed. Now,
12 it's taking a different view of what's appropriate.
13 It's a different interpretation of plans and what's
14 appropriate in plans than was originally offered by
15 their witness.

16 JUDGE COLWELL:

17 I think you've made that point.

18 ATTORNEY KENNARD:

19 Okay. So I would ask for the admission
20 of the full and complete copy of Dr. Levin's 1998
21 testimony in the Alltel case.

22 ATTORNEY GRAY:

23 I'm going to object, though. Your Honor,
24 just make sure we understand that that is Mr.
25 Kennard's interpretation of what Dr. Levin's position

1 is. I am not --- I don't object to the testimony
2 going in, but I don't agree to his characterization of
3 it.

4 ATTORNEY KENNARD:

5 And that's fine and I understand that. I
6 would ask that --- that's one of the reasons we're
7 putting in the whole document, so you can preserve
8 your right to ---.

9 JUDGE COLWELL:

10 You're going to have this witness sponsor
11 you're Cross Examination then?

12 ATTORNEY KENNARD:

13 No, they stipulate.

14 JUDGE COLWELL:

15 Okay. It's admitted.

16 BY ATTORNEY KENNARD:

17 Q. Let's turn to your testimony in this case, shall
18 we?

19 A. Which one?

20 Q. Can you go to your rebuttal, please, sir, to page
21 two? Do you agree that the law requires comparability
22 between urban and rural rates?

23 A. Actually federal law is quoted here. It says that
24 there are a reasonable comparability services provided
25 in urban areas that are available at rates that are

1 reasonably comparable to the rates charged for similar
2 services in urban areas. The law's right there.

3 Q. And that law, in your opinion, applies to
4 deliberations of the Pennsylvania Public Utility
5 Commission?

6 A. Well, I'm not a lawyer, but usually federal law
7 supercedes state law.

8 Q. So this Commission should require comparability in
9 establishing state rates?

10 A. Well, I think the Commission has done that. The
11 Commission's done that part. This is a federal law
12 and the federal law is applied by using universal ---
13 the Universal Service Fund to make those rates more
14 comparable. Now, you're asking, I think, is there an
15 additional comparability standard in this state? I
16 don't think there is. So since the feds have applied
17 that law and use that law for the Universal Service
18 Fund, the Federal Universal Service Fund, it'd be
19 double counting on the state's case.

20 Q. Does PA PUC have to consider comparability in
21 establishing rural rates? Must it?

22 A. Must it? No, I don't think it must because the
23 rural rates that are established are based on Chapter
24 30, and there's nothing in Chapter 30 that says that
25 they'd have to take that into account. There is a

1 federal law that has been applied that tries to make
2 those rates comparable by giving rural carriers access
3 to universal service lines.

4 Q. So the PA PUC can set local rates without
5 requiring its comparability? Do you know?

6 A. I think the PUC can set rates anywhere that sides
7 within the rural law. The rural law that's applied
8 today is Chapter 30. Chapter 30 plans are very
9 specific. They allow you to increase your rates at
10 your discretion based on inflation.

11 Q. You still don't understand my question. Must the
12 PA PUC consider comparability establishing rural local
13 rates?

14 A. The PUC does not establish rural rates anymore.
15 PUC is under a Chapter 30 regulation. You establish
16 your rates. You define what your rates are going to
17 be. Those rates are at your discretion. PUC might
18 step in and say that those rates aren't appropriate.
19 And they might even use some interpretation of
20 comparability that they so desire. But I don't think
21 there's any specific rule that requires this
22 Commission to make your comparability. Since this
23 rule is applied to the federal --- remember the phone
24 company is divided up into two segments, interstate
25 and intrastate. And that comparability standard is

1 applied on a federal basis.

2 Q. The answer is no because the Public Utility
3 Commission is not required to look at comparabilities?

4 ATTORNEY GRAY:

5 Objection, Your Honor. Mr. Buckalew has
6 answered the question.

7 ATTORNEY KENNARD:

8 Well, I don't think he has, Judge.

9 JUDGE COLWELL:

10 Mr. Kennard, I think he answered as well
11 as anyone can answer it.

12 ATTORNEY KENNARD:

13 All right. I've got an answer.

14 BY ATTORNEY KENNARD:

15 Q. Can you go to your direct testimony, page 11? All
16 the parties have spent a fair amount time in this case
17 trying to ensure that they have the right Verizon
18 rates and the right rural rates. And you cite
19 Verizon's rates as \$21. That includes the subscriber
20 line share?

21 A. Sure.

22 Q. And the \$16 original cap did not include the
23 subscriber line share; correct?

24 A. That's correct.

25 Q. Now, can you reference your rebuttal, please, 12.

1 Specifically line 11. Comcast may have broadband
2 facilities in the very same location. Does Comcast
3 ---?

4 BRIEF INTERRUPTION

5 BY ATTORNEY KENNARD:

6 Q. For example, Comcast may have broadband ---. Do
7 you know whether or not Comcast lists and carrier of
8 last resort obligations?

9 A. I don't know whether Comcast in Pennsylvania has
10 requested, but they have in some other places see
11 those stats and see that status. In addition to that,
12 you can get ETC status or competitive local exchange
13 carrier status. With that, you can draw from federal
14 money. In other states, I know that many, many
15 competitors, that's why it was included --- one of the
16 reasons the Universal Service Fund with federal
17 increases has grown so high. There's several eligible
18 telecommunication carriers in a single area. What
19 that means is they all have carrier of last resort
20 obligations. So I don't know that Comcast has done
21 that in Pennsylvania, but they probably could.

22 Q. Is Comcast has not applied for competitive
23 eligible telecommunication service tests in
24 Pennsylvania, then it has no obligation to employ
25 services, voice services ---.

1 A. You said a mouthful there. There's carrier of
2 last resort standard that's part and parcel to the
3 eligible communication standard, which means that all
4 customers that come where we provide a service --- for
5 that you get the money. That's why you've become an
6 eligible telecommunications carrier. Comcast may not
7 have that, but they didn't get the money either.

8 ATTORNEY KENNARD:

9 That's all I have now. Thank you, Mr.
10 Buckalew.

11 JUDGE COLWELL:

12 Mr. Cheskis?

13 ATTORNEY CHESKIS:

14 Thank you, Your Honor. I do have a few
15 questions for Mr. Buckalew.

16 CROSS EXAMINATION

17 BY ATTORNEY CHESKIS:

18 Q. Mr. Buckalew, let's start at page four, line four
19 of your direct testimony, please. Got that?

20 A. Yes.

21 Q. There you set forth essentially the OSBA position
22 is receiving that the Commission should make a finding
23 that there is no \$18 cap on residential local exchange
24 rates and no corresponding cap on business local
25 exchange rates for purposes of the annual Chapter 30

1 revenues; is that correct?

2 A. That's correct.

3 Q. And am I correct that it's your position that the
4 rate cap is not necessary in part because consumers
5 always a choice of services to purchase from, such as
6 wireless carriers, VOIP providers, et cetera?

7 A. Well, I think the first part of this is the fact
8 that --- is that Chapter 30 regulation as it's applied
9 doesn't envision a cap, doesn't envision excluding one
10 group of consumers versus the other group of
11 consumers. In fact Chapter 30 accounts do that.

12 But part and parcel to that is that we have more
13 competition. It's like looking at proposals from 1998
14 when competition was just starting out. In fact,
15 there was some question in 1998 whether it would even
16 grow. The competition is growing. Now, we have
17 choices that I would say virtually every place in the
18 state of Pennsylvania for all kinds of carriers. So,
19 yeah, it's part of it. You can't ask to subsidize,
20 you know, rural carriers with residential consumers
21 for Verizon. It doesn't make any sense for
22 residential ---.

23 ATTORNEY CHESKIS:

24 Your Honor, if I can just stop him for a
25 second. He's gone well beyond the scope of my simple

1 question. I'm just asking to respond to the question,
2 provide a brief explanation to it.

3 A. You asked me if that is the only consideration.

4 BY ATTORNEY CHESKIS:

5 Q. I didn't ask you if it was the only consideration.
6 I asked you if as part of that if a specific rate cap
7 is not necessary, in part because consumers always
8 have a choice of services to choose from.

9 A. Well, you said in part. I'm asking --- I'm
10 answering the whole question.

11 Q. So is it your position in the case today that
12 increases in an RLEC's basic local service rate should
13 be allowed because consumers have their choice of
14 service providers to provide basic local service?

15 A. Say that again.

16 Q. Is it your position in this case today that
17 increases in an RLEC's basic local service rates
18 should be allowed because consumers will always have a
19 choice of service providers to provide basic local
20 service?

21 A. No, no, no. The reason they have to be allowed is
22 Chapter 30 regulations and legislature has required
23 --- it's not a matter of the fact that there are
24 alternatives out there. That's just an added benefit.
25 But the rules are such that Chapter 30 regulation

1 supercedes that. So you don't have a choice. A
2 company can't come in based on it's license inflation
3 and increase their rates. It's the law.

4 Q. But you did previously say in response to one of
5 my earlier questions that there are choices in
6 virtually every part of Pennsylvania in the case of
7 local telephone service; is that correct?

8 A. Yes.

9 Q. Mr. Buckalew, do you recall providing testimony
10 dated January 5th, 2007 in the Commission's
11 reconsideration in giving companies 2006 Chapter 30
12 plan?

13 A. Yes.

14 ATTORNEY CHESKIS:

15 May I approach the witness, Your Honor?

16 JUDGE COLWELL:

17 Yes.

18 ATTORNEY CHESKIS:

19 I'd like to have marked as OCA Cross
20 Examination Exhibit Number One, the rebuttal testimony
21 of Allen G. Buckalew dated January 5th, 2007.

22 (OCA Cross Examination Exhibit Number One
23 marked for identification.)

24 JUDGE COLWELL:

25 That's fine.

1 BY ATTORNEY CHESKIS:

2 Q. Do you recall providing this testimony two years
3 ago, Mr. Buckalew?

4 A. Do I recall testimony specifically? I mean, it's
5 got my name on it.

6 Q. Well, we we're certainly not going back 11 years
7 here and talking about someone else's testimony.

8 A. Thank goodness.

9 Q. And the D&E companies who were involved in that
10 proceeding are also part of this proceeding as part of
11 the Pennsylvania Telephone Association; is that
12 correct?

13 A. I think so.

14 Q. And do you recall who was the ALJ that presided
15 over that proceeding?

16 A. Is this a test?

17 Q. Well, it was, Your Honor, Judge Colwell. I wanted
18 to make sure you saw that.

19 JUDGE COLWELL:

20 I hardly remember it myself.

21 ATTORNEY CHESKIS:

22 I don't blame you.

23 BY ATTORNEY CHESKIS:

24 Q. Would you please turn to page 4 at line 25 of what
25 we've now marked as OCA Cross Examination Exhibit

1 Number One? There you begin addressing why access
2 rates should not be lowered, and if you turn to page
3 5, line 1, one of the reasons you give there for not
4 lowering access rates is that placing that revenue on
5 basic local exchange rates is not appropriate because
6 quote, customers had direct --- I'm sorry --- because
7 those consumers, quote, have very little choice in
8 their carriers for services. Do you see that?

9 A. Yes.

10 Q. And on page 7 of that testimony at lines 12 to 13,
11 do you see where you use the phrase if markets were
12 actually competitive? And there again you're
13 referring to the local telephone market; is that
14 correct?

15 A. Correct.

16 Q. And can you turn to page 14 of that document? At
17 line 19, do you see where you state that quote
18 continued local exchange rate increases will impact
19 these rural carriers in a way that is
20 counterproductive and negative?

21 A. Yes.

22 Q. And finally on page 15, line 4, you're responding
23 to a question regarding Verizon's claim that access
24 rate increases would sharpen rather than diminish the
25 historical disparity in urban and rural rates on the

1 prior page. And you responded in part that quote, in
2 addition, as the companies have pointed out, the
3 Universal Service Fund is there to help rural ILECs
4 retain customers in high cost areas; is that correct?

5 A. Yeah. I lost you for a second there.

6 Q. I'm sorry.

7 ATTORNEY DODGE:

8 What page?

9 ATTORNEY CHESKIS:

10 The question begins on page 14.

11 A. Where it says once again offers no proof to
12 support the statement. Is that what you're talking
13 about?

14 BY ATTORNEY CHESKIS:

15 Q. Well, specifically I'm talking about line 4 on
16 page 15 as part of the answer.

17 A. In addition?

18 Q. In addition, as the companies point out, the
19 Universal Service Fund is there to help rural ILECs
20 retain customers in high cost areas; is that correct?

21 A. And that's what the Universal Service Fund is
22 designed to do and does do. That's what we've been
23 talking about with respect to the Federal Universal
24 Service Fund.

25 Q. Are you aware that the current telephone

1 penetration rate in Pennsylvania is about 96 percent?

2 A. Yeah, it's generally it's about 97 percent across
3 the country or 98 percent. High penetration, most
4 states and most customers have some choice. That
5 doesn't necessarily mean that there's workable
6 competition, it just means that there's alternatives
7 there.

8 Q. So if there's a penetration rate of 96 percent,
9 that means that there's about four percent of
10 households in Pennsylvania that don't have any
11 telephone service at all?

12 A. It means that 96 percent of the households don't
13 have access to a telephone --- have access to a
14 telephone or wireless, because the FCC's standards,
15 rules for that particular survey changed to include
16 wireless. So that means that four percent ---
17 whatever the number is. I don't know exactly where it
18 stands today. I assuming that it's four percent.
19 Four percent do not have services and may not want
20 service for all I know. You can't make everybody
21 happy.

22 Q. So the answer to my question is yes, four percent
23 of households in Pennsylvania don't have telephone
24 service?

25 A. According to those numbers, yes.

1 Q. Is it your position in this proceeding that basic
2 local service rates should be allowed to increase,
3 even if it results in more customers being without
4 basic telephone service?

5 A. Well, I don't think --- again, you don't have a
6 choice about the increase. I think I prefaced
7 everything I have said in my testimony and today is
8 that the law is the law. Chapter 30 allows these
9 increases. So we don't really have a choice in those
10 increases. If the companies come with inflation going
11 up, then they have a right to increase their rates.
12 Unless Chapter 30's wrong, but that's a different
13 argument.

14 Q. So if 50 percent of households in Pennsylvania
15 could not afford basic local telephone service, it's
16 your position today that that's acceptable because
17 that's what's allowed by Chapter 30?

18 A. You just made a huge, huge leap. You're saying
19 that customers can't afford basic service. All those
20 numbers say is that four percent don't have service.
21 You don't have any idea why they don't have service.

22 Q. Well, in your opinion, how much higher --- I'm
23 sorry, are you done answering the question?

24 In your opinion, how much higher can the
25 percentage of household in Pennsylvania without

1 telephone service get?

2 A. How high can it get? What do you mean, how high?

3 Q. Is it acceptable to you that five percent of
4 Pennsylvania households don't have telephone service
5 because they can't afford it as a result of increases
6 in basic service rates?

7 A. I think that if that's --- if you can actually
8 isolate that cause and effect, that that's not
9 acceptable. But a way to address that is through the
10 federal LifeLine program. In other words, direct the
11 customer specifically, rather than what you want to
12 do, which is to penalize every single customer in
13 Verizon's territory to subsidize your areas or Century
14 or Embarq's territory. That makes zero sense to me.
15 That's like treating everyone in a rural area as
16 requiring a subsidy. That's just crazy. That doesn't
17 protect the existing residential customers in this
18 state by doing that. But LifeLine does.

19 Q. So is it acceptable to you again, that let's say
20 ten percent of households in Pennsylvania don't have
21 telephone service?

22 A. If I said that it wasn't acceptable for five
23 percent, why would I say ten percent?

24 Q. I didn't hear you say that it wasn't acceptable
25 for five percent.

1 A. You're assuming cause and effect. And I'm saying
2 that if that is cause and effect, then the way to
3 address that is through targeted programs, not general
4 subsidy programs. And you have no basis for five
5 percent, and you have no basis for ten percent.

6 Q. All right. Would you agree with me that without
7 phone service, customers would not access the life
8 saving medical assistance at the time of a medical
9 emergency?

10 A. Say that again.

11 Q. Would you agree with me that without phone
12 service, customers are without access to lifesaving
13 medical assistance at the time of a medical emergency?

14 A. Would you say that if I walk down the street and I
15 don't have my cell phone and I have a heart attack in
16 the street, I don't have --- I have a problem. You're
17 right.

18 Q. Well, likewise, if you're sitting in your home and
19 you don't have telephone service in your home, you
20 have a problem?

21 A. Yeah. I mean, if you don't have a way of
22 contacting the outside world, you have a problem. And
23 that's a thing that should be addressed is to helping
24 those consumers with a lower income and can't afford
25 to have that telephone service, rather than

1 subsidizing the general body of consumers.

2 Q. So would you agree with me as well that without
3 phone service, customers are without access to
4 businesses and doctor's office and schools because
5 they don't have a working phone in their house?

6 A. I'm trying to be as nice as I can about this
7 answer, but the question just doesn't make any sense.
8 You're saying that somebody can't walk in the store if
9 they don't have access, because they don't have a
10 phone. That doesn't make any sense.

11 Q. Well, that's one option. If they don't have a
12 phone, they'd have to walk to the store.

13 A. Yes. If you don't have a phone ---.

14 Q. In rural areas the store might be ---.

15 A. If you don't have a phone, you can't use a phone.
16 I will agree with that. If you don't have a phone,
17 you can't use a phone.

18 Q. Okay. Would you agree with me that a customer
19 will pay more overall if being offered a ten percent
20 discount by a competitor on an incumbent service
21 offering --- after that incumbent had increased that
22 rate by 20 percent, than the customer would have paid
23 without the increase at all?

24 ATTORNEY GRAY:

25 I'm sorry. Could you repeat that?

1 A. I didn't understand it.

2 BY ATTORNEY CHESKIS:

3 Q. Well, let's say that the offer is \$10 and the
4 incumbent raises it 20 percent and it's now \$12. And
5 a competitor comes in and provides a 10 percent
6 discount on that \$12 offering. That results in an
7 approximate \$10.80 charge, which is still higher than
8 the original \$10 offering; is that correct?

9 A. Yeah. By definition.

10 Q. If four percent of Pennsylvania households don't
11 have telephone service and the one --- I'm sorry. If
12 four percent of Pennsylvania households don't have
13 telephone service so that a competitor can come in and
14 offer a 10 percent discount on a rate that's increased
15 by 20 percent, then they outdo them better than they
16 had without the increase, is that an acceptable
17 situation for you?

18 ATTORNEY GRAY:

19 I'm going to object to that, Your Honor.
20 I'm not sure I understand the basis of that question.
21 How is any of that related?

22 JUDGE COLWELL:

23 Mr. Cheskis?

24 ATTORNEY CHESKIS:

25 He's claiming in this proceeding, if I

1 understand his testimony correct, that the rate cap is
2 not necessary because there's competitors. And I'm
3 indicating that if the rate goes up 20 percent overall
4 and a competitor comes in at 10 percent, then the
5 customer is originally paying higher than what they
6 were --- I'm sorry. The customer is now paying what
7 they --- higher than what they originally were paying.
8 So my question then is, is it acceptable that four
9 percent of households in Pennsylvania go without
10 telephone service if all people were getting as a
11 result of that is actually not better than what they
12 were getting before?

13 ATTORNEY GRAY:

14 I guess my objection is, how are those
15 two related whatsoever? How is the penetration rate
16 of telephone service across the Commonwealth based
17 upon --- related to the fact that we have Chapter 30
18 increases?

19 JUDGE COLWELL:

20 I will sustain that objection.

21 BY ATTORNEY CHESKIS:

22 Q. Is it your testimony today that it is acceptable
23 for four percent of Pennsylvania households without
24 telephone service because of increases to the basic
25 rate, due to elimination of the rate cap, and as such

1 not be able to call the police department in the event
2 of a break-in in your home?

3 ATTORNEY GRAY:

4 I think I just objected to that question.

5 JUDGE COLWELL:

6 I think you did, Mr. Gray. But there may
7 be a question in there Mr. Cheskis can have him
8 establish.

9 BY ATTORNEY CHESKIS:

10 Q. If four percent of households in Pennsylvania no
11 longer have telephone service and the line loss
12 results for the RLEC create a situation where the line
13 --- where the RLEC is no longer financially viable and
14 thus goes out of business, would you agree with me
15 that that would then cause more Pennsylvania
16 households to no longer have telephone service?

17 ATTORNEY GRAY:

18 Okay. Okay. That one I'm stumped on.
19 There's four --- there's 96 percent penetration, so
20 there's 4 percent that don't have telephone service
21 for whatever reason. Okay. And then what happens
22 next? The RLEC goes out of business?

23 ATTORNEY CHESKIS:

24 As a result of additional line loss, the
25 RLEC would not longer financially be able to provide

1 telephone service in their service territory and would
2 go out of business.

3 ATTORNEY GRAY:

4 Okay. So there's the penetration rate
5 and then there's something else called line loss,
6 which ILECs can experience for a variety of different
7 reasons. So we've got three moving pieces here. So
8 I'm not sure I understand what the nexus is between
9 penetration rate and line loss and RLECs going out of
10 business. So I guess I'm --- what's the foundation
11 for this?

12 ATTORNEY CHESKIS:

13 Well, if we've established, I hope, that
14 without telephone service, customers don't have
15 access, for example, to a lifesaving medical attention
16 in the event of a medical emergency.

17 JUDGE COLWELL:

18 We'll give you that one.

19 ATTORNEY CHESKIS:

20 Thank you.

21 BY ATTORNEY CHESKIS:

22 Q. To the extent that the increase in the number of
23 households --- to the extent that the number of
24 households that don't have telephone service in
25 Pennsylvania increases, that means that there's then

1 more customers in Pennsylvania that also don't have
2 access to lifesaving medical treatment in the event of
3 a medical emergency; is that correct?

4 A. Who you asking?

5 Q. I'm asking you.

6 A. Your questions just assumes stuff that doesn't
7 make any sense. You're assuming that the four percent
8 of the customers who don't have phone service for the
9 pure reason that it's priced too high. That's not a
10 valid assumption right there. If there are some
11 customers out there that don't have phone service
12 because the price is too high, then what should be
13 done, is those customers need to be targeted with
14 targeted subsidies for low-income people, as the
15 LifeLine program does today, and to get those people
16 on the system.

17 Q. So are you saying that if the rate goes up, then
18 more people can afford it?

19 A. Everything's going up. It's based on inflation.
20 The rate's going up based on inflation. And ---.

21 Q. Does that mean that more people can afford that?

22 A. What do you mean that more people can afford that?

23 Q. I'm just saying in general. If something goes up
24 ---.

25 A. But you can't make these general statements. They

1 don't make any sense. You know, when something goes
2 up, everything's going up. Your salary's going up.
3 You get an inflation increase based on what --- I'm
4 giving you a bump up based on inflation. So if your
5 rates go up by that same bump up, well, you're hacked.
6 Not a fat chance. Your whole example needs to be
7 focused on --- and that's problem with your case. It
8 needs to be focused on public LifeLine help, not
9 general subsidies.

10 Q. Have you ever lived in a home that did not have
11 access to telephone service?

12 A. No.

13 Q. Would you agree with me that the more people
14 without basic service, the less valuable the network
15 is to everyone, including small businesses?

16 A. You know, that's an old value service argument
17 that's been around for, you know, 100 years and I
18 suppose that's got some validity, but it's got less
19 validity because, you know, we have more cell phones
20 than we have landline phones today. So ---.

21 Q. Well, I said without phone service. I didn't say,
22 you know, what kind of service.

23 A. But there's always some kind of service out there.
24 So if a customer goes off one service, and if they're
25 going off it because of the price and if they're going

1 off if because they have low incomes, then they need
2 to be targeted for those low-income programs. General
3 subsidies don't help.

4 Q. Well, you said a couple times now that there's
5 always an alternative out there.

6 A. I said that there are alternatives out there.
7 Whether there are alternatives in every nook and
8 cranny in Pennsylvania, I don't know.

9 Q. Is it possible then that there may be a
10 Pennsylvania residential customer that doesn't have
11 any alternatives whatsoever?

12 A. Alternatives except for the local telephone
13 company?

14 Q. Correct.

15 A. So it's not the local phone company. It's their
16 service.

17 Q. So you're saying that that is a possibility that
18 someone might have no other alternative other than the
19 telephone service that their local telephone company
20 is providing?

21 A. I'm sure that there are places around that --- you
22 know, there's some dead zones that don't happen to
23 have wireless service. Customers might not have a
24 choice. But they're probably communicating. And
25 again, if you're looking at only those customers of

1 the RLEC that don't have any choice, and also have no
2 income, that's when you have no choice.

3 Q. Can you please turn to page one of your
4 surrebuttal testimony? It's only two pages long, so
5 there's not much other option there. All right. Can
6 you review the answer that begins there and continues
7 on page two, line five? I'm sorry, line 18? Excuse
8 me page 1, line 18, page 2, line 5.

9 A. Yep.

10 Q. There you claim that OCA witness Dr. Loube ignores
11 the fact that rural carriers have discretionary
12 decision whether to increase the rate or bank some of
13 the authorized increase; is that correct?

14 A. Yep.

15 Q. Isn't it true that in Dr. Loube's Direct testimony
16 on page 29, line 3 to 5, he states that if a carrier
17 banks the amounts and it's rates are below the rural
18 ILEC benchmark, then the carrier has no claim on the
19 Pennsylvania Universal Service Fund? And I have his
20 testimony here if you would like to see that.

21 A. Well, the notion here is that it's discretionary,
22 It's completely the discretion of the company. What
23 are you arguing?

24 Q. I'm arguing that it's our position in this case
25 that if a company is not already at the \$18 benchmark,

1 or \$18 rate, then they can't draw from the Universal
2 Service Fund.

3 A. You're arguing that ---.

4 Q. I'm trying to clarify your interpretation of Dr.
5 Loube's testimony.

6 A. Well, why don't read the entire answer.

7 Q. Which entire answer?

8 A. He provides no factually analytical basis to his
9 claim. Treating all rural ratepayers as low-income
10 consumers as the OCA wants to do is discrimination.
11 And it goes on. What are you arguing? Where is the
12 mistake?

13 Q. One moment, please. Well, it's all in the
14 testimony. So we can just deal with it later. We'll
15 move on at this point. At line eight of page two of
16 your surrebuttal testimony, you claim that subsidizing
17 the marginal costs, some players in the market will
18 eventually drive out the non-subsidized carriers; is
19 that correct?

20 A. And that's just basic economics.

21 Q. Would it also be correct to say that increasing
22 the cost of service for some players will eventually
23 drive out most players with carriers that have not had
24 their increase, their costs increased by regulation?

25 A. Well, you mixed a lot of things there. You said

1 cost increase and cost increase by ---.

2 Q. Okay. Well, let me restate the question.

3 A. I don't understand what that means.

4 Q. Let me restate the question. Would it also be
5 correct to say that increasing the cost of service for
6 some players will eventually drive out those players
7 compared to the carriers that have not had their costs
8 increased?

9 ATTORNEY GRAY:

10 Can I have just a clarification? What
11 does it mean to increase the cost of service to one of
12 the players?

13 A. Well, that's the question. You're saying that one
14 of the players costs increased. Well, if the costs
15 increased, then they've got charge more for their
16 costs. If you're saying some other players' costs
17 don't increase because they're better competitors,
18 well, in the competitor's market, the better
19 competitor wins.

20 BY ATTORNEY CHESKIS:

21 Q. Well, does the regulatory obligation to provide
22 broadband service to 100 percent of customers in their
23 service territory increase the cost of service?

24 A. Broadband increase the cost of service. If
25 Broadband increases it, you can't pay for it.

1 Q. So that's a yes?

2 A. Well, it's a cost and it's going up. So, yes.

3 Q. Isn't it correct that the results of the synthesis
4 model presented by Dr. Loube in his Direct testimony
5 demonstrated that no party's marginal costs are being
6 subsidized through the basic rate?

7 A. Well, I suspect that's probably true, from a
8 marginal cost standpoint. Residential rates are
9 priced above the marginal costs. Looking at business
10 rates, they're generally below residential market
11 costs. The business rates are way below market costs.

12 ATTORNEY CHESKIS:

13 I have no further questions for this
14 witness, Your Honor.

15 JUDGE COLWELL:

16 Okay. Is that everybody?

17 ATTORNEY CHESKIS:

18 I'd like to move for the admission of OCA
19 Cross Examination Exhibit One.

20 JUDGE COLWELL:

21 Any objection?

22 ATTORNEY GRAY:

23 None, Your Honor.

24 JUDGE COLWELL:

25 It's admitted. Mr. Stewart, I don't

1 think we've asked you if you had any questions.

2 ATTORNEY STEWART:

3 Thank you, Your Honor. I do.

4 CROSS EXAMINATION

5 BY ATTORNEY STEWART:

6 Q. Good afternoon, Mr. Buckalew. I'm Joseph Stewart
7 from Embarq.

8 A. Good afternoon. You're going to have to speak up
9 over there.

10 ATTORNEY STEWART:

11 Your Honor, I have several motions to
12 strike. I'll start on the Direct testimony, page
13 five, the answer beginning on line 14, on advice of
14 counsel. Then it actually runs through page 6, line
15 3. I move to strike the entire answer on the basis
16 that it's hearsay and legal argument.

17 ATTORNEY GRAY:

18 Well, Your Honor, it's fairly common
19 practice in a lot of PUC cases that parties like to
20 know what we're going to be briefing. And you know,
21 if you had this on advice of counsel, then that's
22 going to indicate a legal matter that we are
23 interested in. So we are using this is as a way of
24 notifying the parties what our legal position is
25 without having Mr. Buckalew delve into any details.

1 So commonly if such notification is not given, the
2 parties would then object when we brought up an issue
3 on briefing. So this is simply a methodology of us
4 explaining to the parties where we're heading with our
5 legal position. He's not testifying to anything
6 legal. He's not giving any kind of legal opinion.

7 ATTORNEY STEWART:

8 Well, speaking for Embarq, we're willing
9 to be surprised in the briefs with respect to the
10 legal arguments that any party makes. I guess I'm not
11 that familiar with Pennsylvania practice, but if
12 there's a need to be notified in advance of legal
13 arguments, then I suppose this might be justified.
14 But that news to me. Mr. Buckalew is not a lawyer. I
15 don't see why he's have to be arguing law in his
16 testimony.

17 JUDGE COLWELL:

18 Well, Mr. Gray is correct that it is a
19 common practice to start by saying on advice of
20 counsel. And usually that's to introduce a law that
21 might be used as a basis for the facts that then
22 follow. So the legal argument itself should not be
23 included. But the fact that basically it's setting a
24 foundation that you can accept because it's using it
25 in a written form. And it's a lot harder to do it

1 that way, and that is traditional practice. Legal
2 argument has no place here. That's correct. But I
3 don't know how you can argue that the first sentence
4 is a problem. And is there anybody here who's going
5 to say that that's not true? That's not legal
6 argument. That's just fact.

7 ATTORNEY STEWART:

8 I'll concede the first sentence, Your
9 Honor, regarding when New Chapter 30 took effect. The
10 second sentence certainly is an interpretation of
11 Chapter 30.

12 ATTORNEY GRAY:

13 Your Honor, I'm sorry. That's what
14 Chapter 30 states and this is --- he's basically
15 summarizing what Chapter 30 says and what our position
16 is. So there is certainly a non-rural rate cap set
17 forth in Chapter 30.

18 JUDGE COLWELL:

19 All right. Mr. Stewart, are you going to
20 take issue with this particular page?

21 ATTORNEY STEWART:

22 Well, I don't know. But my point is is
23 that whatever the law is, the law is. And the
24 appropriate place to argue that is in the briefs, and
25 if not in testimony from a non-lawyer regarding what

1 the statute may or may not say.

2 JUDGE COLWELL:

3 And strictly speaking I agree with you.
4 You're right. But when you have a situation where you
5 --- if everyone agrees what the law says, then I don't
6 see any point in striking it. If you're saying that
7 this is incorrect and you're going to take issue with
8 it, then okay. Then I see that's legal argument and
9 we'll strike it.

10 ATTORNEY STEWART:

11 Well, I'm not willing to concede that any
12 characterization made by the witness accurately
13 reflects New Chapter 30.

14 ATTORNEY GRAY:

15 And the OSBA understands that, Your
16 Honor. This is like you said. This is basically our
17 way of setting forth where we are headed in our
18 interpretation of Chapter 30. And I'm certainly, with
19 all due respect to Mr. Buckalew, we're not going to be
20 quoting Mr. Buckalew's testimony for this proposition.
21 We'll cite chapter and verse in Chapter 30.

22 ATTORNEY STEWART:

23 Well, then there's no harm in striking
24 it.

25 JUDGE COLWELL:

1 Where there is no harm, especially since
2 you've already made your point and everybody knows
3 where you're going. So we're going to have to --- all
4 right. I'll strike lines 16, 17 and 18 on page 5.

5 ATTORNEY STEWART:

6 Also, Your Honor, that motion includes
7 the first three lines on page six.

8 JUDGE COLWELL:

9 All right. Strike that out, too.

10 ATTORNEY STEWART:

11 I have the same motion with respect to
12 the answer on page 6, lines 8 through 10 and on page
13 6, the answer begins on page 15 and runs through line
14 2 of page 7.

15 JUDGE COLWELL:

16 All right. Lines 8 through 10 don't look
17 to be particularly contentious, so I'll deny that one.
18 Fifteen (15), 16 and then onto page 7 you said?

19 ATTORNEY STEWART:

20 Yes, Your Honor. Through line two on
21 page seven.

22 JUDGE COLWELL:

23 Now, those words will speak for
24 themselves, and I don't see any harm in leaving those
25 lines in. Those are denied. What else do you have?

1 ATTORNEY STEWART:

2 Thank you, Your Honor. Page 7, lines 4
3 through 11, the characterization of the Commission
4 orders. As you just noted, orders speak for
5 themselves. And accordingly, the witness'
6 interpretation of the order is irrelevant. That's
7 another argument to brief.

8 ATTORNEY GRAY:

9 And again, I'll put it on the record. I
10 understand that we are not relying upon Mr. Buckalew's
11 interpretation of these orders. It's OSBA's practice
12 to inform its fellow parties where it's headed legally
13 so there isn't a surprise. It's nice that he's happy
14 to have surprise. A lot of the Counsel at this table
15 would not be so happy. So this is our way of setting
16 forth for everyone to see where we are headed so
17 there's no misunderstanding and no issues later,
18 because other parties would then bring a motion when
19 we filed our brief saying this is not timely and it's
20 improper.

21 JUDGE COLWELL:

22 There's a fine line between stating what
23 a Commission order does and what it effects to do and
24 what it assumes. Arguably, you have crossed that line
25 here. But I don't think striking the entire paragraph

1 is necessary. But in the case of the second sentence,
2 however, that's all I'm marking and we will cross that
3 out because it says the Commission order assumes
4 something. But the next one is a matter of fact,
5 really.

6 ATTORNEY GRAY:

7 And of course the problem is, Your Honor,
8 other parties have responded to this. And so now
9 you've got to go through a whole chain of what's
10 properly responded to and what's not.

11 JUDGE COLWELL:

12 Not unless somebody objects to it.

13 ATTORNEY GRAY:

14 Well ---.

15 JUDGE COLWELL:

16 Just that one sentence. Part of line
17 six, seven and part of line eight. What else do you
18 have, Mr. Stewart?

19 ATTORNEY STEWART:

20 No further motions to strike.

21 BY ATTORNEY STEWART:

22 Q. Mr. Buckalew, with respect to those portions of
23 your testimony that discuss your advice of Counsel,
24 who was your Counsel with respect to this?

25 A. Mr. Gray.

1 Q. Did Mr. Gray advise you in writing with respect to
2 any of the matters contained in your testimony?

3 ATTORNEY GRAY:

4 Objection. What's the relevance?

5 ATTORNEY STEWART:

6 Well, if you're not --- we're talking
7 about advice of Counsel and if there was additional
8 advice of Counsel that bears on any of the issues
9 addressed in the testimony. I think that parties are
10 entitle to see that.

11 ATTORNEY GRAY:

12 Your Honor, they'll see that in our
13 briefs. We'll set forth our legal opinion there.

14 ATTORNEY STEWART:

15 Well, Your Honor, that's a completely
16 separate matter. If Counsel advised Mr. Buckalew with
17 respect to an issue that he's testifying about, and
18 for example say, it's my opinion that the Commission
19 here doesn't say, but there's counterargument on that
20 point, et cetera, et cetera. If there was advice of
21 Counsel given and the witness is permitted to testify
22 with respect to it, I think we're entitled to know the
23 entirety advice from Counsel. And certainly if there
24 was a qualification with respect to that advice, I
25 wouldn't expect the OSBA to include it in the brief.

1 ATTORNEY GRAY:

2 Is he suggesting that the confidential
3 discussions and work product between Bill Lloyd
4 (phonetic), the Small Business Advocate, myself and
5 Mr. Buckalew are discoverable?

6 ATTORNEY STEWART:

7 Absolutely. The door's been opened when
8 the witness testifies with respect to the advice of
9 Counsel. If a witness is going to be permitted to
10 testify on the advice of Counsel, I think the parties
11 are entitled to know what all the advice of Counsel
12 was with respect to the issue.

13 JUDGE COLWELL:

14 Mr. Stewart, that door is open as far as
15 it's going. Your objection is sustained.

16 ATTORNEY STEWART:

17 Thank you, Your Honor.

18 BY ATTORNEY STEWART:

19 Q. Mr. Buckalew, would you turn to page 15 of your
20 direct? Are you there?

21 A. Yes.

22 Q. Now, looking at the question that starts on page
23 --- I'm sorry, line 17, page 15. What did you mean by
24 overall financial help of the rural ILECs?

25 A. How would a needs test impact the overall

1 financial health? And your question is what do I mean
2 by overall financial help?

3 Q. Yes, sir.

4 A. Whether the company is earning a reasonable rate
5 of return. If it needs money for support, then that
6 ought to be part of it.

7 Q. And is your analysis of overall financial help
8 limited to the intrastate operations, regulated
9 operations of a company in Pennsylvania?

10 A. It's an overall financial help --- maybe I can
11 answer it the same way. Overall financial help means
12 the entire company. It means it's regulated
13 operations interstate and intrastate. If you got
14 something else going on, that's a different story.

15 Q. Within Pennsylvania; correct? As opposed to a
16 company that may operate in more than one state?

17 A. Well, we're talking about the Pennsylvania
18 interstate and intrastate regulated operations. We're
19 not talking about Texas.

20 Q. Fair enough. Now, do you agree that rural ILECs
21 may serve exchanges in which the cost of dividing the
22 services exceeds the revenues that the RLEC obtains
23 from it's ratepayers in that exchange?

24 A. Are you asking is there a possibility? Is that
25 the question?

1 Q. I'm asking you whether you believe that is in fact
2 the case in the exchanges that rural ILECs serve in
3 Pennsylvania.

4 A. Well, I think that's a reasonable question.
5 That's part of the reason for giving the answer. And
6 the answer is is that the Commission ought to be
7 looking at all of these rural exchange companies that
8 are getting money from the federal fund and the
9 state's fund to see if they actually need the money.

10 Q. Well, let's go back to the exchange level. If
11 there is an exchange in which the cost of providing
12 service through the RLEC exceeds the revenues the RLEC
13 earns in that exchange, is that a situation in which
14 it would be appropriate to provide some sort of a
15 subsidy to the RLEC?

16 A. I think we'd have to look at the entire company.
17 Any particular exchange is making more money than some
18 other exchange. Some exchange is making a lot of
19 money and another exchange is not making as much.
20 That's pretty nitty gritty and pretty focused. And I
21 think the first thing to do is to find out whether the
22 company actually needs any support money coming into
23 it. And then how it gets used is a different story.
24 There are some states that are starting to target and
25 look at it to say, okay, if you're taking support

1 money, you better be using it at this exchange because
2 this is the exchange that needs the support because
3 you only have 80 percent of customers in that
4 exchange.

5 Q. All right. Are you saying that in your view it's
6 appropriate to require an RLEC to subsidize higher
7 costs of exchange with the profits that it might be
8 earning in a lower cost of exchange?

9 A. What do you mean by appropriate? I mean, we're
10 not forcing you to do anything. You're in a business,
11 you're getting money because you're a certified local
12 exchange carrier. You're getting ETC money from the
13 Federal Universal Service Fund. You're getting USF
14 money from the state fund. And so with those funds,
15 come requirements and part of the requirement is to
16 serve everybody. You want to look at it in terms of
17 exchange level and particular exchanges. Well, I
18 think that's a good thing to do and I think we should
19 be doing that. We should be looking at it. But the
20 question here is required. I mean, what do we
21 required? You're required of all those customers
22 because you're taking support money.

23 Q. Well, I don't think you answered the question.
24 Given that the various things you discussed in that
25 answer, are you saying that in your opinion, it's an

1 appropriate arrangement to require the RLEC to serve
2 an unprofitable exchange and subsidize that service
3 with revenues earned in a more profitable exchange?

4 A. If you're getting Universal Service money, that is
5 part and parcel for the gain. That you in fact are
6 getting money to subsidize those unprofitable
7 exchanges --- are you saying that is there a
8 Commission rule that says that I'm going to subsidize
9 a profitable exchange with an unprofitable exchange?

10 That's a twofold decision. If your company is not
11 getting any support from anybody, and you're still the
12 only carrier in town, then --- and you're earning,
13 let's say 50 percent profits on one exchange and a
14 minus on another, yeah, it's perfectly appropriate.

15 Q. Now, to clarify, I was not suggesting that there's
16 a Commission rule. I was just asking whether you
17 think that's an appropriate arrangement to require
18 that subsidy?

19 A. Appropriate to what?

20 Q. Appropriate to the way the telecommunications
21 industry ought to be regulated in Pennsylvania and
22 appropriate to whether they are ---.

23 A. The way that companies regulate ---.

24 Q. May I finish the question? Appropriate to whether
25 the RLEC in that situation, for example, ought to be

1 entitled to funding from the Pennsylvania USF targeted
2 to the unprofitable exchange?

3 A. You're going to have to ask the question again
4 because the first part of it didn't make any sense
5 based on when I interrupted you and the second part.
6 So what's your question?

7 Q. What part didn't make sense?

8 A. Your first part and your second part when I
9 interrupted you. Sorry. I'm not getting the
10 question.

11 Q. Is it your view that an appropriate or desirable
12 structure for the regulation of RLEC operations in
13 Pennsylvania is to require the RLEC to serve the
14 unprofitable exchange even with --- even though it's
15 still unprofitable given subsidies that may be
16 received say from the federal government? So if
17 serving that exchange was still unprofitable, is it
18 your opinion that the RLEC should or should not give
19 money from the Pennsylvania USF targeted to that
20 unprofitable exchange?

21 A. Well, I think the problem with your question, is
22 you're wanting some specifics that says, oh, we're not
23 requiring that. Your question is too compounded.
24 Because we have existing rules and existing
25 regulations the Commission uses. That's Chapter 30

1 regulations. You're allowed to increase rates based
2 on inflation. You have other obligations based on the
3 fact that you're a telecommunications carrier and
4 you're getting federal money. You have other
5 obligations because the Commission lowered your access
6 charges and in compensation for that gave you
7 Universal Service money. I'm saying that simply it's
8 time to look at that entire picture over again and see
9 whether, in fact, you know, you need that money to
10 continue the operations on a profitable basis.

11 Q. Do you agree that in this case the Commission is
12 investigating how the Pennsylvania Universal Service
13 Fund ought to operate?

14 A. I think that the Commission is asking whether the
15 Universal Service Fund ---. It's multiple questions
16 again. You know, whether it should continue? And
17 then, if it should continue, how it should operate? I
18 think the way it's operating now and how any real
19 analysis as to what a company that's getting that
20 money actually looks like from a financial standpoint
21 is wrong.

22 ATTORNEY STEWART:

23 Your Honor, I move to strike the last
24 sentence in the answer. I didn't ask for the witness'
25 opinion with respect to how the fund's operating now.

1 I asked him whether one of the purposes of this case
2 was to investigate the operation of the Universal
3 Service Fund, which is a simple yes or no answer, I
4 believe.

5 JUDGE COLWELL:

6 Mr. Gray?

7 ATTORNEY GRAY:

8 I thought Mr. Buckalew was responding to
9 the question that was presented.

10 JUDGE COLWELL:

11 I sounded responsive to me, too. I think
12 we all have a list of the questions we need to address
13 here in this proceeding. I think we all know what
14 those are. Why would you need this witness to say
15 that? You're the one who earlier was upset because he
16 was saying things that were in Commission orders.
17 Well, here's another case where the Commission order
18 speaks for itself.

19 ATTORNEY STEWART:

20 Your Honor, but I lost that argument. So
21 I'm figuring it's appropriate to ask questions with
22 respect to orders since the witness has been allowed
23 to testify with respect to orders. But I can move on.

24 JUDGE COLWELL:

25 Okay.

1 BY ATTORNEY STEWART:

2 Q. Mr. Buckalew, if we have an exchange that is
3 unprofitable for the RLEC to serve, even with the
4 subsidies that currently exist, would it be
5 appropriate for this Commission to allow that RLEC to
6 get more money from the Pennsylvania USF to make up
7 for the unprofitability in that particular exchange?

8 A. No. Again, you'd have to look at the
9 profitability of the entire company as I said so in my
10 testimony. You can't isolate one loss and say that
11 I'm going to collect for that loss if the rest of the
12 company isn't very profitable.

13 Q. Do you recognize that incumbent RLECs have the
14 obligation to serve all customers in their certified
15 territory?

16 A. Actually it's got nothing to do with incumbent
17 ILECs. It's got to do with if you're an eligible
18 telecommunications carrier by federal law, you are a
19 carrier of last resort. If you're a competitive
20 eligible telecommunications carrier, you have that
21 same obligation.

22 Q. Do you believe that prior to the existence of the
23 concept of the federal eligible telecommunications
24 carrier, ILECs in Pennsylvania were legally required
25 to serve all customers in the certified areas?

1 ATTORNEY GRAY:

2 Objection. What's the relevance of this
3 question?

4 ATTORNEY STEWART:

5 Mr. Buckalew was talking about ---
6 there's a problem within his testimony. He was
7 talking about choices of the company to serve in
8 certain areas. The relevance is that RLECs don't have
9 a choice whether to serve in the certified areas.

10 JUDGE COLWELL:

11 I don't think anybody questions that.
12 What was the question? I'm sorry, I ---.

13 ATTORNEY STEWART:

14 Well, I was asking the witness whether he
15 agreed that independently of the ETC certification
16 from the federal government, the rural ILEC has to
17 serve all the customers in its certified territory.
18 If as you said no one disagrees with that and Counsel
19 wants to stipulate to that point, I'm fine.

20 ATTORNEY GRAY:

21 I thought he answered the question, Your
22 Honor.

23 BY ATTORNEY STEWART:

24 Q. Let me try again. Now, the answer talked about
25 the obligation to serve based on the ETC status. I'm

1 talking about the obligation to serve independently to
2 that.

3 A. Well, if you go back in time and you were
4 certified in the state of Pennsylvania to serve
5 different areas, is that what you're talking about?

6 Q. Yes.

7 A. Prior to today's competition. Well, that law
8 changed in 1996. In 1996, competition was authorized.
9 Not so much in the rural areas, but what could have
10 been in the rural areas. That's an exemption to the
11 rural carriers. But if you were a carrier, you were
12 put on notice that competition was coming. All of the
13 existing, we'll call them incumbent LECs, local
14 exchange carriers, were pretty much across the board
15 granted ETC status at that time in 1996.

16 Q. Without a legal obligation to serve an
17 unprofitable area, isn't it true the rational business
18 would choose not to serve in that area?

19 A. Would a business that's not making money continue
20 to serve an area that's not making any money?

21 Q. That wasn't the question.

22 A. Well, I don't understand it. I'm trying to
23 understand the question. It's not making sense to me.

24 Q. Can I have the question read back?

25 OFF RECORD DISCUSSION

1 BY ATTORNEY STEWART:

2 Q. Mr. Buckalew, my question is, if an RLEC did not
3 have a legal obligation to serve an exchange that was
4 unprofitable, would the rational RLEC choose not to
5 provide the service in that exchange?

6 A. If you didn't have an obligation, would you serve
7 it the exchange, is that the question, because it's
8 unprofitable? But you do have an obligation and that
9 obligation comes with the funding. So, the two are
10 mixed together. And are you asking me, if you did get
11 funding will you continue to serve it?

12 Q. I'm asking you, if there were not a legal
13 obligation to serve that exchange would a rational
14 RLEC serve that exchange? And you can assume in your
15 answer that if the RLEC chose not to serve, they
16 wouldn't get the funding for that exchange.

17 A. Well, if there's a telephone company that has
18 exchanges that are unprofitable, you're asking me
19 would it continue to serve those if they're
20 unprofitable and didn't have subsidies rolling in from
21 the Universal Service Fund? That answer would be it'd
22 depend. It would depend on how unprofitable it was.
23 I mean, what would be the alternative? Is my
24 alternative to making me two percent return versus a
25 ten percent return. There's degrees of

1 unprofitability. In the long run, those aren't really
2 viable questions, because those exchanges as they're
3 --- if they're unprofitable and they're getting
4 subsidy money to support those exchanges, that needs
5 to be examined.

6 And all we're saying here is that we don't know.
7 We don't know what that answer is. We don't know that
8 they have unprofitable exchanges. We don't know that
9 you need the money that you're getting. We don't know
10 that you don't need more money than what you're
11 getting to support those exchanges. We don't know the
12 degree of competition in those exchanges. And all
13 those things need to be looked at before we continue
14 down this path of subsidizing everybody.

15 Q. If you look at the exchange and took account of
16 the various subsidies the RLEC received and asserting
17 that exchange was still unprofitable, do you agree
18 that a rational RLEC, if it had a choice, would not
19 provide service in that exchange? Now, I'm not
20 talking about a two percent return, I'm talking about
21 a negative return.

22 A. You're asking things in an extreme --- you're
23 saying if I got the subsidy and the subsidy's not
24 enough in that exchange, would it continue to provide
25 service? And again, that answer would depend on

1 whether that exchange allows you to get the subsidy
2 for other exchanges that are more profitable. Your
3 isolating an exchange has no meaning.

4 Q. Are you saying that the subsidy received isn't
5 dependent on the number of access lines served? In
6 other words, if an RLEC stopped serving an
7 unprofitable exchange, wouldn't the subsidy that it
8 receives based on being an ETC be increased?

9 A. If you stop serving an exchange that you have an
10 obligation to serve, you not only lose the subsidy
11 from that exchange, but you lose the entire subsidy
12 because you're not holding up to your commitments as a
13 carrier of last resort. So, your question doesn't
14 make sense that way either.

15 Q. Well, with all due respect, your answer ignored
16 the premise of the question that assume no obligation
17 is served, thus giving the RLEC, the rational RLEC,
18 the ability to choose not to serve. Assume that the
19 RLEC doesn't have the obligation. If you assume the
20 obligation, then the question makes no sense. You got
21 to serve. So you must exclude the obligation for the
22 RLEC to have a choice; right?

23 A. If you're saying that if I look at a company that
24 has no obligation to serve, and it has no subsidy and
25 it's not making money, it would leave the market,

1 probably, yes, if that's the question.

2 Q. And it would leave the market even if it had a
3 subsidy, if notwithstanding that subsidy, it was still
4 unprofitable to serve; right?

5 A. Well, it'd depend on what the subsidy --- you'd
6 give the money over the problem. You know, anybody
7 can do that. It doesn't make any sense.

8 Q. Well, it certainly makes sense that there are
9 exchanges in which those facts are true; doesn't it?

10 A. See, now you go back to your original question,
11 which is the wrong premise. You go back to exchanges
12 rather than looking at the whole company. You can't
13 focus just on the exchange, you got to look at the
14 whole company.

15 Q. Well, I understand that.

16 A. You actually get your subsidy based on access
17 lines, not just on the access lines in that exchange.

18 Q. Well, I understand it's your position that one
19 ought to look at the whole company. My point is, is
20 that it's appropriate to look at things on an
21 exchange-by-exchange basis. And I take it you just
22 disagree with that.

23 A. Well, yeah, because it's wrong. You can't look at
24 it on an exchange-by-exchange basis if you're making
25 lots of money, and you have exchanges and you're

1 getting money for those other access lines. It's just
2 wrong. I mean, you know, I know why you're here. I
3 know that you want to hide the ball and not collect
4 the money from it. But that's not the question.

5 ATTORNEY GRAY:

6 Your Honor, I object to --- and move to
7 strike the answer beginning with I know why you're
8 here and you're trying to hide the ball. I mean,
9 that's out of line.

10 JUDGE COLWELL:

11 Sustained.

12 ATTORNEY STEWART:

13 No further questions.

14 JUDGE COLWELL:

15 All right. Well, it's been a while so
16 I'm having trouble remembering, but I think everybody
17 had a chance to ask their questions in the first
18 round; right? Okay. Mr. Gray, do you have anything
19 additional, and is it going to take a long time?

20 ATTORNEY GRAY:

21 Well, we can we have a moment or two?

22 JUDGE COLWELL:

23 Yes.

24 ATTORNEY GRAY:

25 Your Honor, no questions, no Redirect.

1 Thank you.

2 JUDGE COLWELL:

3 All right.

4 ATTORNEY KENNARD:

5 Judge, for the record we will provide a
6 full copy of Dr. Levin's 1998 testimony as PTA Cross
7 Examination Exhibit One.

8 JUDGE COLWELL:

9 Okay. I think this is a great time to
10 take a lunch break. My watch says five after 1:00.
11 We'll be an hour and be back here at five after 2:00.
12 We're off the record.

13 LUNCH BREAK TAKEN

14 JUDGE COLWELL:

15 We're back on the record.

16 ATTORNEY DODGE:

17 Good afternoon, Your Honor. Thank you.
18 Comcast will call Dr. Michael Pelcovitz to the stand.

19 -----

20 MICHAEL D. PELCOVITZ, HAVING FIRST BEEN DULY SWORN,
21 TESTIFIED AS FOLLOWS:

22 -----

23 JUDGE COLWELL:

24 Thank you. Please be seated and don't be
25 afraid to hug the microphone.

1 DIRECT EXAMINATION

2 BY ATTORNEY DODGE:

3 Q. Good afternoon, doctor.

4 A. Good afternoon, Mr. Dodge.

5 Q. For the record ---.

6 JUDGE COLWELL:

7 Is the mike turned on first?

8 OFF RECORD DISCUSSION

9 BY ATTORNEY DODGE:

10 Q. For the record, Dr. Pelcovitz, could you give your
11 name, business address and affiliation, please?

12 A. Yes. My name is Michael D. Pelcovitz. I work for
13 the firm Microeconomic Consulting and Research
14 Associates, MICRA. My business address is 1155
15 Connecticut Avenue Northwest, Washington, D.C. 20036.

16 ATTORNEY DODGE:

17 And for the convenience of the court
18 reporter Micra is spelled M-I-C-R-A.

19 BY ATTORNEY DODGE:

20 Q. Do you have the testimonies that you have prepared
21 in this case in front of you doctor?

22 A. I do.

23 Q. Are those your direct and surrebuttal pre-filed
24 written testimonies?

25 A. Yes.

1 Q. Does your direct comprise of 24 pages plus
2 exhibits and your surrebuttal 8 pages plus exhibits?

3 A. Yes.

4 ATTORNEY DODGE:

5 And Your Honor, I've already delivered to
6 the court reporter what I've preliminarily marked as
7 Comcast Statement One, which is Dr. Pelcovitz's direct
8 testimony and Comcast Statement 1-S, which is his
9 surrebuttal testimony and I delivered both proprietary
10 and nonproprietary versions.

11 (Comcast Exhibits Statements 1 and 1-S
12 marked for identification.)

13 JUDGE COLWELL:

14 Would you happen to have an extra copy of
15 the surrebuttal?

16 ATTORNEY DODGE:

17 I do, Your Honor.

18 JUDGE COLWELL:

19 I don't have that.

20 ATTORNEY DODGE:

21 May I approach?

22 JUDGE COLWELL:

23 Yes. Thank you.

24 ATTORNEY DODGE:

25 Again, Your Honor, we've marked those as

1 Comcast Statement 1 and 1-S. Those are the
2 proprietary and nonproprietary copies as one.

3 BY ATTORNEY DODGE:

4 Q. Dr. Pelcovitz, do you have any changes to your
5 ---?

6 JUDGE COLWELL:

7 Hold on. Before you go too far here ---

8 ATTORNEY DODGE:

9 Sure.

10 JUDGE COLWELL:

11 --- the direct testimony is 1.0?

12 ATTORNEY DODGE:

13 Correct.

14 JUDGE COLWELL:

15 The surrebuttal, you have it as 1.0, in
16 the middle drawn at the corner; is that right?

17 ATTORNEY DODGE:

18 That's not right, Your Honor.

19 JUDGE COLWELL:

20 Okay. Got it. Go ahead. I'm sorry.

21 BY ATTORNEY DODGE:

22 Q. Dr. Pelcovitz, at this time, do you have changes
23 or corrections to make to either of your pre-filed
24 written testimonies?

25 A. No, I do not.

1 Q. If I asked you the questions posed in written form
2 or orally today, would your answers be the same?

3 A. Yes.

4 Q. Were these testimonies prepared under your
5 direction supervision or control?

6 A. Yes.

7 Q. And do you affirm here today that your answers to
8 those questions are truthful to the best of your
9 knowledge and ability?

10 A. I do.

11 ATTORNEY DODGE:

12 And Your Honor, at this time, Comcast
13 would move the admission of Comcast Statements One and
14 1-S, subject to timely motions and Cross Examination.

15 JUDGE COLWELL:

16 Subject to motions and cross.

17 ATTORNEY DODGE:

18 And Dr. Pelcovitz is available for Cross
19 Examination.

20 JUDGE COLWELL:

21 All right. We can start with you, Ms.
22 Linton-Keddie.

23 ATTORNEY LINTON-KEDDIE:

24 BCAP has no Cross Examination, Your
25 Honor.

1 JUDGE COLWELL:

2 Ms. Paiva?

3 ATTORNEY PAIVA:

4 No questions.

5 ATTORNEY PAINTER:

6 No questions, Your Honor.

7 JUDGE COLWELL:

8 All right. Then we'll go over here.

9 Anybody over here care which --- who goes first?

10 ATTORNEY CHESKIS:

11 We have no questions for this witness,

12 Your Honor.

13 JUDGE COLWELL:

14 Okay. Mr. ---?

15 ATTORNEY KENNARD:

16 I do have a couple, Judge.

17 JUDGE COLWELL:

18 Go ahead.

19 CROSS EXAMINATION

20 BY ATTORNEY KENNARD:

21 Q. Good afternoon, sir. My name is Norman Kennard,

22 representing the Telephone Association, composed of

23 the RLECs, the majority of the RLECs in this case.

24 A. Good afternoon, Mr. Kennard.

25 Q. Is the current contribution that Comcast makes to

1 the Universal Service Fund a burden to Comcast?

2 A. I would more put it as a burden to its customers.

3 Q. How much is --- you note in your testimony that
4 Comcast is the tenth largest contributor of this new
5 USF Fund? I think that's in your direct testimony,
6 perhaps.

7 ATTORNEY DODGE:

8 Norm, could you repeat the page, please?
9 We can't really hear you down here.

10 ATTORNEY KENNARD:

11 I didn't have a page. He's looking for a
12 reference.

13 A. I can give that to you and I'll tell you what it
14 said in my testimony, which is page four, line twelve.
15 I said Comcast is among the top ten contributors to
16 the fund.

17 BY ATTORNEY KENNARD:

18 Q. How much did Comcast contribute most recently to
19 the fund?

20 A. I believe that's an answer in response to data
21 requests and it's proprietary, if I'm not mistaken.

22 Q. Does Comcast consider that information
23 proprietary?

24 A. I believe it does, yes.

25 Q. What were Comcast's consolidated revenues in 2007,

1 if you know, the most recent ---?

2 ATTORNEY DODGE:

3 Objection, Your Honor. Relevance.

4 ATTORNEY KENNARD:

5 Well, the witness said he thinks it's a
6 burden. Paying to the fund is a burden. And I'm
7 trying to put it in context.

8 ATTORNEY DODGE:

9 Your Honor, we've already disposed of
10 this potential line of questions, you may recall.
11 There was a refusal to the answer by Comcast a similar
12 series of questions, and Your Honor ruled that things
13 like Comcast's consolidated revenues simply aren't
14 relevant to the issues raise by the Commission in this
15 proceeding. We're here to examine RLECs and the
16 Pennsylvania Universal Fund, not the contributor's
17 consolidated earnings.

18 ATTORNEY KENNARD:

19 What we asked for in discovery was a
20 balance sheet and statement that was objected to.
21 What I'm focusing now on is revenues and its
22 relationship to Comcast's contributions to the
23 Pennsylvania Universal Service.

24 JUDGE COLWELL:

25 It seems to me that if he's going to

1 testify that these payments are a burden, then we're
2 allowed to know why.

3 ATTORNEY DODGE:

4 I believe just for the clarity of the
5 record, he testified that he thought they were a
6 burden to the Comcast customers, not to Comcast.

7 JUDGE COLWELL:

8 What are you looking for?

9 ATTORNEY KENNARD:

10 The gross revenues of Comcast in the
11 period for which it most recently reported to the FCC
12 on its form 10K.

13 JUDGE COLWELL:

14 Pennsylvania USF payment's based on the
15 gross revenue?

16 ATTORNEY KENNARD:

17 Yes. I'm trying to do a comparison of
18 one to the other. When the witness says it's a burden
19 to the customers, essentially he's arguing that
20 Comcast passes it through to its customers. I can
21 neither verify that nor refute it on this record. But
22 it's an amount that's billed to Comcast. Whether they
23 pass it along is unknown to me. Is it a bill that is
24 charged to Comcast that they pay? What they do with
25 it after that. I don't know. I'm just trying to put

1 it in context of the amount of contribution they make
2 as compared to their gross earnings.

3 JUDGE COLWELL:

4 It seems like a fair question to me.

5 ATTORNEY DODGE:

6 I'll hold my objection for now.

7 JUDGE COLWELL:

8 Is this proprietary?

9 ATTORNEY DODGE:

10 We have marked the response as
11 confidential. My understanding from the client was
12 that they preferred to keep the information
13 confidential. With that said, I'm not sure if Dr.
14 Pelcovitz can quote dollar figures in any event. And
15 if Mr. Kennard has a form 10K or another business
16 filing, that's obviously public information and we
17 don't need to go in-camera during examination.

18 BY ATTORNEY KENNARD:

19 Q. Let me know when you're done reviewing the doc.

20 A. Excuse me?

21 Q. Let me know when you're done reviewing the
22 document.

23 A. Oh.

24 WITNESS REVIEWS DOCUMENT

25 A. All right. I have looked at it. Yes.

1 BY ATTORNEY KENNARD:

2 Q. Does the 10K filed for the company with the FCC
3 for the fiscal year ending December 31, 2007 indicate
4 year revenues of approximately \$31 billion?

5 A. This is for Comcast as a whole for the corporation
6 has indeed what it shows, \$30,895,000,000 in revenues.

7 Q. And if you go to the company's most recent
8 consolidated 10Q for the quarterly period ending
9 September 30, 2008, the revenue figure reported is
10 \$8,549,000,000; is that correct?

11 A. Yes. Quarterly records say \$8,549,000,000 for the
12 corporation as a whole.

13 Q. Are Comcast's own local service rates based upon
14 cost?

15 A. In a sense, yes. In a sense that markets --- it's
16 subject to market price competition and rates in a
17 competitive market are affected by many things,
18 including the costs of the company and marketplace
19 competition. So it tends to be the case in market
20 situations, that prices really are determined by the
21 market as a whole. Intersections as supply and demand
22 occurs. An individual firm's prices, one would expect
23 are reasonably closely related to its costs. But
24 there can be deviation depending on the specific
25 operation of the company relative to its competitors.

1 But broadly speaking, I would expect it would be
2 related to its costs.

3 Q. What is the rate that Comcast publishes for local
4 dial tone service?

5 A. I believe the rates vary depending on the specific
6 service the customer is purchasing and whatever
7 bundles of service the customer is purchasing.

8 Q. Are Comcast's local rates, local service rates
9 regulated by any agency in Pennsylvania?

10 A. To the best of my knowledge they are not.

11 Q. I just handed you ---.

12 A. You didn't hand me anything.

13 Q. Well, it should have been handed to you. It will
14 be shortly handed to you. Here, not it's been handed
15 to you.

16 JUDGE COLWELL:

17 Do you have another copy?

18 ATTORNEY KENNARD:

19 I just have one.

20 BY ATTORNEY KENNARD:

21 Q. Will you accept, sir, that these are printouts
22 made last evening from the Comcast website regarding
23 local service pricing?

24 A. I would accept that this is a printout of some
25 portion of a Comcast web page describing prices and

1 features. I cannot say whether it's the entire set of
2 prices. And it's also dependent on the location,
3 which I think as I see here, it's ZIP code 17101.

4 Q. Will you accept, subject to check, that's downtown
5 Harrisburg, Pennsylvania?

6 A. Sure.

7 Q. If you go to the second page, there's a service
8 called Comcast digital voice local with more; is that
9 correct?

10 A. Yes.

11 Q. What's the price on that service?

12 A. \$24.95.

13 Q. And could you please read for the record the
14 description of that service?

15 A. Sure. Do you want me to start with enjoy?

16 Q. Please.

17 A. Enjoy reliable unlimited local calling so you can
18 talk as much as you want. Plus get in-state and out-
19 of-state long distance for a flat five cents a minute.
20 This moneysaving home phone plan also includes 12
21 popular calling features like caller ID, three-way
22 calling and anonymous call blocking, online account
23 summary and call details. Keep your number or change
24 it. You decide. Please note this starting price is
25 for customers that subscribe to Comcast cable and/or

1 Comcast high speed Internet. And then there's lots
2 more on the following two pages. Do you want me to
3 read all of that?

4 Q. No, I don't. And I wanted to just simply provide
5 as much information as I could to you on this
6 particular service so you were privy to that as well.
7 Now, this would appear to be local and basic dial tone
8 that does not include a long distance package, but
9 does include various vertical calling features;
10 correct?

11 A. Well, in that sense, it's beyond basic dial tone.
12 It is a feature rich package of voice services, which
13 does not include long distance service for that flat
14 pricing. Now, it does it include the calling feature
15 and unlimited local calling.

16 Q. And you can't purchase this on a standalone basis.
17 You have to subscribe to either the cable television
18 service or the Internet services offered by Comcast;
19 right?

20 A. Are you representing that?

21 Q. Well, no. I'm asking for your interpretation.
22 Please note what you just read in the record. It says
23 if you want this price, you have to subscribe to cable
24 or high speed Internet as well.

25 A. It doesn't say what the price is if you just want

1 to subscribe to this alone. To the best of my
2 knowledge, this service is available to customers who
3 want to purchase just voice service and none of the
4 other services from Comcast.

5 Q. Now, what are the add-ons? What are the
6 additional charges does a customer receive when they
7 get their bill? The \$24.95 is the basic rate and then
8 is 9-1-1 added to this?

9 A. I believe there are some fees and taxes, but there
10 is no subscriber line charge.

11 Q. Now, is this the same --- as you noted, this was
12 inquired of, the service availability was inquired as
13 of the ZIP code 17101, the city of Harrisburg. Do you
14 know if this is the same rate that Comcast offers in
15 other portions of the state, Tioga County, more rural
16 areas of the state?

17 A. I'm sorry. I didn't catch all of the words in
18 your question. So I'm just making sure I understand.
19 First of all, you're saying this is for Harrisburg?

20 Q. Yes.

21 A. The second page of the printout says this does
22 specifically apply to a customer in Harrisburg; is
23 that right?

24 Q. That's my understanding, yes.

25 A. And the question is, what does Comcast charge

1 elsewhere in Pennsylvania?

2 Q. What does Comcast charge in the more rural areas
3 of Pennsylvania? Is it this same rate?

4 A. Well, I think that Comcast has not yet started
5 service other than in Verizon and Embarq territories.
6 Obviously there are rural territories served by both
7 Verizon and Embarq. I don't know the rates there. I
8 do know that it delayed in providing voice service in
9 some of the RLEC territories because of the problems
10 getting arrangements.

11 ATTORNEY KENNARD:

12 Your Honor, I'd like to ask for a data
13 request for the record. Is this \$24.95 rate the same
14 applied across Comcast's footprint in Pennsylvania for
15 this particular service?

16 ATTORNEY DODGE:

17 We're happy to provide that, Your Honor.

18 JUDGE COLWELL:

19 Okay.

20 BY ATTORNEY KENNARD:

21 Q. Is it a fair statement of your testimony, sir,
22 that you do not recommend eliminating the current fund
23 or the Pennsylvania Universal Service Fund as it's
24 currently constituted? Specifically, if you go to
25 your Direct testimony, page 24. There's been a

1 recommendation in the summary of your conclusions that
2 the current Pennsylvania Universal Service Fund be
3 revised, discontinued or revised.

4 A. Well, if you go back on page 23, the question is,
5 how do you recommend the Commission should proceed in
6 terms of providing support to rural ILECs? And the
7 answer on line 17 is, I recommend the Commission end
8 all support payments that are based on revenue offset
9 or make whole payments calculated in reference to the
10 ILEC's regulated accounts or regulated revenues. So,
11 yes. I do recommend to the Commission and the current
12 program and establish a much more tailored, directed
13 Universal Service subsidy program.

14 I did not go into detail on that here.
15 Specifically in this proceeding, the focus seems to be
16 on whether the PA USF should be increased, to which I
17 gave an unequivocal no. As far as reforming the
18 system as a whole, I believe it has to be reformed, it
19 should be reformed and that would entail starting in
20 some sense from nothing and going from there rather
21 than starting from the current fund and going from
22 there.

23 Q. Would you also agree that the current USF was not
24 established to guarantee revenue, it was not
25 established to ---?

1 A. I do not think it was --- it was established to
2 offset access and toll revenue rate decline, access
3 and toll rate declines. In that sense, it is a
4 neutral swap of one source of revenue for another
5 dating back several years. So in that sense, it has
6 elements to make whole, but it is not going forward
7 really a make whole mechanism, nor do I think it
8 should be a make whole mechanism. But in any event,
9 it certainly has very little to do with, at least what
10 I determined, are the costs of the ILECs that provide
11 the service in rural areas. It's pretty clear from
12 the evidence in my surrebuttal testimony.

13 Q. And in your surrebuttal testimony on page five,
14 you do a correlation of density to USF receipts;
15 correct?

16 A. To USF on a per line basis, yes.

17 Q. And you find that the fund receipts are not
18 correlated to density; is that correct?

19 A. They are very mildly correlated. The R square,
20 which is the square of the correlation coefficient is
21 .0599, page five, line 11 of my surrebuttal testimony.
22 So there is some correlation. If you look at the
23 picture, which is the last page of the surrebuttal ---
24 I'm sorry, the last attachment to the surrebuttal, the
25 last page there, you'll see that the line is slightly

1 downward sloping. So there is some correlation, but
2 it's very little and very, very, very weak.

3 Q. Now, as you had mentioned before, the current USF
4 draw is based upon the revenue losses associated with
5 the access charge reductions that were undertaken in
6 2000 and 2003; correct?

7 A. Yes.

8 Q. So you would expect the fund to correlate to those
9 revenue reductions driven by the level of access
10 charges prior to the reduction and to the level of
11 access minutes that were in existence at that time.
12 There would be a heavy correlation would you expect
13 leading to density?

14 A. Well, expect if it was established to replace the
15 access revenues, it should be nearly perfectly
16 correlated to that. As far as minutes, that's
17 probably not as close a correlation. The access rates
18 would have been different from carrier to carrier.
19 That's precisely the point I make in my testimony.
20 We're just agreeing the plan ---. This is an access
21 replacement mechanism. It has, from what I can tell,
22 very little to do with Universal Service, in terms of
23 all of the, you know, public policy aspects of
24 Universal Service that I talk about in my testimony
25 that the Mr. Laffey and other witnesses talk about in

1 their testimony when they're talking about the need to
2 serve the customers ---.

3 ATTORNEY KENNARD:

4 Your Honor, I ---.

5 A. Let me finish my sentence.

6 ATTORNEY KENNARD:

7 No, I prefer not to. With all due
8 respect, all I asked him about was the correlation of
9 the fund receipts to variables, and he gave me a very
10 clear answer and I'm satisfied with that, Your Honor.
11 I don't think this is the opportunity for the witness
12 to go off and present rebuttal.

13 JUDGE COLWELL:

14 Sir, we'll give you that opportunity if
15 you need it.

16 ATTORNEY KENNARD:

17 And that's all the questions I have.
18 Thank you, Mr. Pelcovitz.

19 JUDGE COLWELL:

20 Mr. Cheskis?

21 ATTORNEY CHESKIS:

22 We have no questions for this witness.

23 JUDGE COLWELL:

24 Oh, I asked you that already, didn't I?
25 Sorry about that. And I assume that because Mr. Gray

1 has moved to the back, he has no more questions for
2 anybody?

3 ATTORNEY GRAY:

4 No more questions, Your Honor. Thank
5 you.

6 JUDGE COLWELL:

7 Fair enough. Mr. Stewart.

8 ATTORNEY STEWART:

9 Thank you, Your Honor. I do have a few
10 questions.

11 CROSS EXAMINATION

12 BY ATTORNEY STEWART:

13 Q. Good afternoon, Dr. Pelcovitz. My name is Joe
14 Stewart. I represent Embarq.

15 A. Good afternoon, Mr. Stewart.

16 Q. Looking at page two of your direct testimony, line
17 ten, you indicate who you're testifying for. Do you
18 know what services Comcast phone provides here in
19 Pennsylvania?

20 A. Yes. I believe that is explained in response to
21 data requests. You can read the response. I'll just
22 refer you to it. PTA1-1.

23 Q. Could you please say what that response says?

24 A. It says it provides time of carrier interstate and
25 intrastate telecommunication services to the public,

1 and further explains the successor name to AT&T
2 broadband phone.

3 Q. And can you also tell us what services Comcast
4 Business Communications, LLC provides in Pennsylvania?

5 A. Yes. Again, the same response says that it
6 provides --- back up a second. Comcast Business
7 Communications, LLC provides time of carrier,
8 interstate and intrastate telecommunication services
9 to the public.

10 Q. And more specifically, do you know what those
11 telecommunication services are?

12 A. For which one?

13 Q. Well, let's start with Comcast phone.

14 A. I understand that Comcast phone provides wholesale
15 telecommunication services including interconnection
16 provision of numbering resources. I believe that
17 Comcast Business Communications provides some
18 wholesale services as well as some retail services to
19 business customers.

20 Q. Thank you. Do you agree that both of those
21 companies are --- I'm sorry. Do you agree that both
22 of those companies are free to choose what parts of
23 Pennsylvania they provide their services in?

24 A. Yes.

25 Q. What is your understanding of the carrier of the

1 last resort obligation that incumbent LECs have in
2 Pennsylvania?

3 A. I'm not sure I can precisely define legal
4 obligation. But from a policy and economic
5 standpoint, I understand that to be an obligation to
6 provide services to all customers in their serving
7 area where they have facilities or --- and here's
8 where it gets fuzzy, because I think it certainly does
9 not apply to every customer under any circumstance
10 without the customer potentially having to pay a
11 special construction tariff. So they might have an
12 obligation to provide service to the customer, but the
13 question is, at what price? So as an economist, I
14 always look at the price.

15 Q. Is it your belief that the carrier of last resort
16 obligation can and does result in certain instances in
17 a rural LEC being required to provide service in
18 exchange where the costs of providing that service are
19 greater than the revenues it earns in that exchange?

20 A. Let me just make sure I understand --- clarify
21 this. Revenues, are you meaning just revenues from
22 customers or revenues also from Universal Service? Or
23 do you include revenues from other carriers in the
24 form of interconnection and access charges?

25 Q. Well, to start with, let's include them all.

1 A. Well, that's probably impossible to know because
2 the subsidy payments are not tied to exchanges. If we
3 had a --- I listened to a nice interesting colloquy
4 with of Mr. Buckalew on that. So I won't try to
5 repeat it.

6 So on an exchange area, once you start including
7 subsidies, I think it's very hard to tell. When you
8 look at, let's say, the revenues from the customers in
9 that exchange, again, I'd expect there might be cases
10 where those revenues don't cover all of the costs.
11 But I don't think that can be answered without looking
12 at all sources of revenues that the carrier receives
13 as a result of being a multi-service firm that's
14 offering many different products to that customer
15 base. So I've not seen a rigorous analysis of that.
16 It's hard for me to tell.

17 Q. If the situation did exist where taking into
18 account of the various revenues that you described and
19 excluding subsidy payments, the cost of providing
20 service was greater than the revenue received, is that
21 a situation where, with respect to that particular
22 exchange, it would be your view that some sort of
23 subsidy payment is appropriate?

24 A. Well, I think that that gets close to what I
25 believe is a reasonable approach to the Universal

1 Service issue, which is to the extent that it's not
2 profitable to serve an area without a subsidy or,
3 let's say, without policy acceptable rates charged
4 customers, then that might be a place to part in the
5 subsidy. That's the focus of the subsidy. It's the
6 reason for a subsidy. The relationship of what that
7 subsidy is likely to be if it were examined as we just
8 described it in current subsidies is hard to tell.

9 Q. Is it your view that, assuming exchanges that are
10 unprofitable to serve, it is appropriate to expect a
11 rural LEC to subsidize the cost of providing service
12 in those exchanges with profits it earns in other
13 exchanges?

14 A. As a matter of policy, if we were to design the
15 policy going forward on a, I think, a reason of the
16 basis, I would say it's generally not appropriate to
17 cross-subsidize from one geographic area to another.
18 So to answer your question, it would be no. I would
19 not recommend the use of revenues from one exchange to
20 offset costs in another exchange. Again, assuming you
21 construct this problem as we just described, which is
22 to look at this on a proper basis, the cost to serve
23 the exchange and the revenues from that entire
24 enterprise serving the exchange. I would also say
25 that it would be very important, if you're going to be

1 as targeted as we just talked about, to see if it can
2 be done. And hopefully it can be done on a
3 competitive and reasonable basis so the ILEC doesn't
4 automatically get the money. And also, that the ILEC
5 doesn't get the money based on historic costs, based
6 on going forward costs.

7 Q. Would you look at page 11 of your direct
8 testimony, please? There toward the bottom, starting
9 on line 19, you discuss some characteristics of
10 several holding companies. Is it true that Comcast
11 offers service in many geographic areas also?

12 A. Yes.

13 Q. And Comcast offers service nationwide to millions
14 of customers; right?

15 A. It often offers the --- holds itself out or sells
16 to it.

17 Q. That's fair. Sells to?

18 A. It sells to, yeah, millions of voice customers.

19 Q. And does the Comcast family of corporations also
20 provide a diversity of services to its customer base?

21 A. Yes, it does.

22 Q. Comcast is not rate-of-return regulated is it?

23 A. Not rate-of-return regulated. It does not receive
24 subsidies. It operates as a competitive firm in a
25 competitive market.

1 ATTORNEY STEWART:

2 Thank you, Dr. Pelcovitz. I have no
3 other questions.

4 JUDGE COLWELL:

5 Mr. Dodge?

6 ATTORNEY DODGE:

7 May I have a moment, Your Honor?

8 JUDGE COLWELL:

9 You may.

10 ATTORNEY DODGE:

11 No Redirect, Your Honor.

12 JUDGE COLWELL:

13 All right.

14 ATTORNEY DODGE:

15 Your Honor, at this time, if appropriate,
16 we would move the admission of Comcast Statements 1
17 and 1-S into the record.

18 JUDGE COLWELL:

19 Any objections? They are admitted. I
20 believe we're moving to Embarq now.

21 ATTORNEY STEWART:

22 Thank you, Your Honor. Embarq calls
23 Russell Gutshall to the stand.

24 JUDGE COLWELL:

25 Can you raise your right hand, please?

1 -----
2 RUSSELL R. GUTSHALL, HAVING FIRST BEEN DULY SWORN,
3 TESTIFIED AS FOLLOWS:
4 -----

5 JUDGE COLWELL:

6 Thank you. You may be seated. Go ahead,
7 Mr. Stewart.

8 DIRECT EXAMINATION

9 BY ATTORNEY STEWART:

10 Q. Mr. Gutshall, do you have in front of you, three
11 documents, one marked Direct Testimony of Russell
12 Gutshall Statement 1.0, the second titled Rebuttal
13 Testimony of Russell R. Gutshall Statement 1.1 and the
14 third, unfortunately titled Rebuttal Testimony of
15 Russell R. Gutshall Statement 1.2.

16 A. Yes, I do.

17 ATTORNEY STEWART:

18 Your Honor, I'm going to give two copies
19 of each of those documents to the court reporter.

20 (Embarq Exhibit Statements 1.0, 1.1 and
21 1.2 marked for identification.)

22 BY ATTORNEY STEWART:

23 Q. Mr. Gutshall, were the statements that I just
24 referred to prepared by you or under your supervision?

25 A. Yes, they were.

1 Q. Do you have any corrections to make to any of
2 those documents?

3 A. I have one correction I would like to make. On my
4 Surrebuttal Testimony Statement Number 1.2, the front
5 cover page erroneously is marked as Rebuttal
6 Testimony. That should be Surrebuttal Testimony.
7 That's Statement 1.2.

8 Q. Mr. Gutshall, any other changes?

9 A. None that I'm aware of.

10 Q. If I were to ask you today, the same questions
11 that are set forth in those three testimonies, would
12 your answers be the same as written in those
13 testimonies?

14 A. Yes, they would.

15 Q. All right. To the best of your knowledge, are
16 your statements in each of those testimonies true and
17 accurate?

18 A. Yes.

19 ATTORNEY STEWART:

20 Your Honor, Embarq would move the
21 admission of the Direct, Rebuttal and Surrebuttal
22 Testimonies of Mr. Gutshall subject to Cross
23 Examination and motions.

24 JUDGE COLWELL:

25 Subject to cross and motions.

1 ATTORNEY CHESKIS:

2 We have no questions for this witness.

3 JUDGE COLWELL:

4 I was waiting for him to turn over. All
5 right. Any questions?

6 ATTORNEY KENNARD:

7 No, Your Honor.

8 ATTORNEY CHESKIS:

9 No, Your Honor.

10 ATTORNEY DODGE:

11 Comcast has no questions, Your Honor.

12 JUDGE COLWELL:

13 Ms. Paiva?

14 ATTORNEY PAIVA:

15 Yes, Your Honor. I have a few questions.

16 JUDGE COLWELL:

17 Go ahead.

18 CROSS EXAMINATION

19 BY ATTORNEY PAIVA:

20 Q. First question is, can you hear me?

21 A. Yes, I can. Thank you.

22 Q. Good afternoon, Mr. Gutshall.

23 A. Good afternoon.

24 Q. Could you take a look at your Direct testimony at
25 page four? Beginning at line 12, you discuss

1 Commission's order that approved a settlement --- or
2 approved a recommended decision seeking approval of
3 settlement, in which Embarq agreed with limited
4 exceptions to not implement any additional increases
5 in their business and residential exchange rates
6 contained in the company's 2005 annual price cap
7 filing.

8 JUDGE COLWELL:

9 Ms. Paiva, I really can't hear you. I
10 think you just have to speak a little closer to the
11 mike.

12 BY ATTORNEY PAIVA:

13 Q. Okay. Do you need me to repeat the question?

14 A. I think you were referring me to page four
15 starting on line 12; is that correct?

16 Q. Yes. In there you discuss the Commission's
17 approval of the settlement?

18 A. Yes.

19 Q. And under that settlement ---.

20 ATTORNEY PAIVA:

21 Actually, I think it wasn't working
22 before. Can you hear me better now?

23 JUDGE COLWELL:

24 Yes.

25 BY ATTORNEY PAIVA:

1 Q. Under that settlement, Embarq agreed not to
2 increase its basic exchange rates for business or
3 residential service for a period of time; correct?

4 A. Correct.

5 Q. And did Embarq also agree not to increase its
6 residential basic exchange rates over \$18; correct?

7 A. In addition to business single-party base as well.

8 Q. And it agreed not to increase the business single-
9 party rates over the \$26.53?

10 A. That is correct, until, I think the date was June
11 30th of 2009.

12 Q. And in the passage in your testimony, you say it
13 begins --- not to raise them above the rates contained
14 in the 2005 annual price cap filing. So as of the
15 2006 PCO filing, Embarq did not raise its rates?

16 A. That is correct.

17 Q. And you just said that this cap lasts until June
18 30, 2009, so how many PCO filings ---?

19 A. We filed since that agreement was approved, we
20 filed the 2006 price cap filing, 2007 price cap filing
21 and the 2008 price cap filing, all three of which have
22 been approved.

23 Q. And will the 2009 filing also still be subject to
24 those rate caps?

25 A. They will not be subject to the rate cap as I

1 outlined here on this page 12 of my testimony. It
2 could be constrained, however, based on the outcome of
3 this proceeding.

4 Q. But the June 30th, 2009 date would have expired by
5 the time of the 2009 PCO filing?

6 A. Correct.

7 Q. Well, what is Embarq doing with the revenue
8 opportunities from the PCO filing they can't use. Are
9 they banking that?

10 A. It has been banking a majority of those revenue
11 opportunities, yes.

12 Q. And maybe some of them and these other rates?

13 A. I'm sorry. I can't hear.

14 Q. You said you were banking the majority of them.
15 With the rest of them, have you been implementing
16 those in the other rates increases?

17 A. Yes. We have been using a few increases on some
18 other services other than basic exchange rates.

19 Q. Do you know how much Embarq has paid to the bank
20 as a result of the settlement?

21 A. Well, this settlement didn't result in a specific
22 banking arrangement. It did --- this settlement did
23 constrain us as far as increasing basic 1R service and
24 1B service. And I think I did answer an interrogatory
25 requests, which stated how much we have banked each

1 year since this settlement was approved. And I think
2 that amount totals in those three price cap filings a
3 little of \$8 million.

4 Q. And in your direct testimony on page 18 at line 8,
5 you say that Embarq has banked \$8,577,000, so that
6 most or all of that had been after the settlement cap
7 took effect?

8 A. Yes. I say, starting in line six, that since we
9 eliminated the offset in the 2005 filing, we have the
10 potential to increase rates by \$12 million but we've
11 actually increased rates by only \$3.9 million
12 resulting in a banked amount of approximately \$8.5
13 million.

14 Q. Now, what happens to that \$8.5 million after June
15 30th, 2009? Is Embarq able to then use those ---that
16 money you've banked for rate increases?

17 A. It certainly is available for us to use. Yes.

18 Q. So the settlement did not wipe out the rate
19 increase opportunity, but only delayed your
20 opportunity to use them; is that correct?

21 A. Those net bank amount remains there today and will
22 remain there tomorrow and is available for us to use.

23 Q. Now, am I correct that depending on the outcome of
24 this case in the future, Embarq may ask the Commission
25 to allow it to recover those \$8.5 million from the

1 Universal Service Fund.

2 A. We certainly have not made that specific decision,
3 but we certainly --- excuse me. We certainly want to
4 make sure that everybody knows that there's a
5 potential there that we certainly could come in at
6 some point in time and ask the Commission or petition
7 them for the availability of that towards there. Yes.

8 Q. Now, going back to the --- you've had several
9 price change filings since the settlement effect. Do
10 you know generally what is the amount of the price
11 change opportunity that Embarq's formula generates
12 each year?

13 A. With our amended Chapter 30 plan that is effective
14 in mid-2005, we no longer have productivity offset.
15 So basically the increase is largely geared by the
16 inflation method. And what that is specifically from
17 each year, I don't recall. But obviously when you
18 equate that formula against the potential revenue, we
19 have the potential, as I say in page 18, the potential
20 to increase by approximately \$12.5 million.

21 Q. But you don't remember how that breaks down year
22 to year?

23 A. I don't have it here with me. No.

24 Q. If you could just take a minute, I'm going to ---.

25 A. I think there was an interrogatory that we

1 responded to that provided that information by year.

2 Q. I'm going to pass out a document. Have you
3 finished looking at the document?

4 A. I'm sorry?

5 Q. Have you finished taking a look at the document?

6 A. Yes, I have.

7 Q. Now, this document ---.

8 ATTORNEY PAIVA:

9 Which I would ask to be marked Verizon
10 Cross Exhibit Number One.

11 (Verizon Cross Exhibit Number One marked
12 for identification.)

13 BY ATTORNEY PAIVA:

14 Q. On the front page, it says Recommended Decision
15 Before Susan D. Colwell, Administrative Law Judge.
16 And two dockets, the first one A-313200F007. Is this
17 the recommended decision that you referred to on page
18 12 of your testimony?

19 A. Yes, it is.

20 Q. That's for the settlement?

21 A. Yes, it is.

22 Q. And attached to it is the petition for settlement
23 itself; correct?

24 A. Yes, it is.

25 Q. I'm going to turn to a different subject, but hang

1 on to that document because I might have a question
2 about it later on. Please take a look at Exhibit RRG-
3 2 of your direct testimony.

4 A. Yes.

5 Q. That is Embarq's currently effective alternative
6 regulation plan; correct?

7 A. Correct.

8 Q. This is the plan as amended after Act 23?

9 A. Correct.

10 Q. Now, I looked through the plan, and I didn't see
11 any language specifically stating that Embarq could
12 make a claim against the State Universal Service Fund
13 to recover its revenue opportunities which raises to
14 be of a certain level. Is there any language in her
15 to your knowledge that states that?

16 A. No, there's no explicit language in our Chapter 30
17 plan that says we are entitled to it. It does mention
18 several references within the plan that the plan is
19 amended and certainly consistent with Act 183. And I
20 would certainly add that there's nothing in the plan
21 that prohibits us from coming in and requesting that
22 in the future.

23 Q. Now, the plan does say at page 20 subparagraph
24 B2(c) that any Universal Service Funding received by
25 the company shall be on a revenue neutral basis and

1 shall be used to reduce access rates or to reduce
2 other rates; does it not?

3 A. I'm sorry. What was the reference, on page 20?

4 Q. Page 20, it's right above paragraph three.

5 A. Okay. And it says above, you are correct in
6 saying what the words say. And right above that in
7 paragraph (b), it also says that the company shall
8 have the opportunity to petition the Commission to
9 increase or eliminate the aforementioned residential
10 rate cap after December 31, 2003.

11 Q. To the extent that Embarq would --- to be able to
12 claim from the Universal Service Fund for its rate
13 increases is not relying on the plan. It's actually
14 relying more on the Commission's decision to allow
15 that; correct?

16 A. In my opinion, I think it ---.

17 ATTORNEY STEWART:

18 Objection. If I heard the entire
19 question, it appears she's asking the witness to
20 speculate on the basis of what hat Embarq would use if
21 it came in ---. If I heard the question correctly, it
22 appears to be asking the witness to speculate
23 regarding the bases upon which Embarq would rely if it
24 subsequently made an application to the Commission to
25 obtain more money from the Pennsylvania Universal

1 Service Fund. And on that basis, I object to the
2 question because it calls for his speculation. Who
3 knows what arguments Embarq would make if it ever
4 comes in and asks for more money.

5 ATTORNEY PAIVA:

6 I think I can rephrase the question so we
7 can move forward.

8 JUDGE COLWELL:

9 Okay.

10 BY ATTORNEY PAIVA:

11 Q. In this case, Embarq is arguing that it, in the
12 future has the right to ask for Universal Service
13 Funds to cover its annual rate revenue increases;
14 correct?

15 A. We certainly have that right to ask the Commission
16 for that.

17 Q. In arguing that you have that right, you're not
18 relying on the revenues from your plan, are you?

19 A. Well, the plan itself is certainly in conformance
20 with Act 183 as is stated several places in the plan.
21 And Act 183 certainly covers a broad spectrum of
22 broadband availability as well as Universal Service.
23 So I think that that coupled with the fact that no
24 place does it say we're prohibited from coming in, and
25 therefore, it certainly gives us the right, if we so

1 choose to do so, to come in and petition the
2 Commission and ask them for such.

3 Q. So it sounds to me like you said, you're actually
4 relying on Act 183 as your support for this to the
5 extent that your plan incorporates Act 183 with
6 federal law?

7 A. I can go on ---.

8 ATTORNEY STEWART:

9 Excuse me. I'd like to object again.
10 Not only does this call for speculation, but inasmuch
11 as Embarq is not here applying for more money, I don't
12 see the relevance of exploring what basis Embarq might
13 use to argue when it does apply for more money from
14 the USF.

15 ATTORNEY PAIVA:

16 Your Honor, I think Embarq has
17 participated in this case because whatever rules are
18 established in this case to govern if and when it
19 chooses to ask for more money. So in that sense,
20 aren't we entitled to explore the basis of their
21 argument?

22 ATTORNEY STEWART:

23 Well, I'm not sure that that responds to
24 my point. We'll stipulate that whatever rules the
25 Commission adopts regarding Embarq's ability to

1 recover additional money from the USF will govern
2 Embarq's ability to do that. But to the extent the
3 question asks Mr. Gutshell to predict what arguments
4 Embarq might rely on if and when it makes such an
5 application is not in respect --- a side point of this
6 proceeding.

7 ATTORNEY PAIVA:

8 Well, I'm not asking him to predict. I'm
9 sorry if the question sounded like that. I'm only
10 asking him what he's relying on today in the testimony
11 he's submitted before the Commission.

12 JUDGE COLWELL:

13 Honestly, I just thought you were trying
14 to point out that there's not specific provision in
15 their Chapter 30 plan.

16 ATTORNEY PAIVA:

17 That is basically the gist of it.

18 JUDGE COLWELL:

19 Okay. I think you got that.

20 BY ATTORNEY PAIVA:

21 Q. And do you have your surrebuttal testimony up
22 there?

23 A. Yes, I do.

24 Q. On page 4, starting with line 12. First of all,
25 you start talking about the formula for calculating

1 the rural revenues. By that you're referring to the
2 formula that multiplies noncompetitive revenue by rate
3 of inflation.

4 A. Basically, yes. The formula is a little bit more
5 complicated than that, but at high level that sums it
6 up quite well.

7 Q. And that formula calculates the permanent increase
8 to noncompetitive revenue for that year?

9 A. Correct.

10 Q. And then you say that the calculations performed
11 annually, if you go down to line 14, the calculation
12 represents the need to maintain the integrity of the
13 legacy network and management of the current
14 infrastructure as well as the necessary revenues to
15 meet the statutorily-mandatory deployment of advanced
16 services. Are you saying that Embarq needs the
17 additional revenue calculated by this formula each
18 year in order to maintain the integrity of its
19 network?

20 A. Among other things, yes. The revenues needed to
21 keep abreast of the current pricing opportunities that
22 are there or the products and services, as well as, as
23 I state there, both continuing to maintain the legacy
24 network that we have and to continue to develop the
25 infrastructure that we're committed to do in Chapter

1 30.

2 Q. So are you saying then that without this revenue
3 each year, Embarq would not be able to maintain the
4 integrity of its network?

5 A. I don't say that here in my testimony. No. But
6 it would be difficult for us to do that without these
7 revenue opportunities and that's basically the premise
8 on which we received from Act 183 that was blended
9 into our Chapter 30 plan. You know, we certainly do
10 see the right for additional pricing flexibility and
11 we also have to have --- to build the broadband
12 network.

13 Q. The revenue opportunity in the settlement that was
14 approved, Embarq gave up four years ago it's revenue
15 opportunities largely; did it not?

16 A. Actually, in 2005, at our annual price cap filing,
17 we established the \$18 residential single-party rate
18 for our company in Pennsylvania as well as the \$26.53
19 single-business access fund rate. So we basically
20 reached the cap at that point.

21 Q. So then in the settlement, you were not admitting
22 to anything more that you were already required to do?

23 A. We weren't sure at that time whether this
24 proceeding would have produced --- a Commission's
25 ongoing access proceeding would have produced any

1 additional changes. Well, we didn't know at that time
2 if, for instance, in the 2006 or 2007 price cap fund,
3 if we were going to petition the Commission to ask for
4 a rate greater than the \$18, which was for 2005, or
5 greater than \$26.53. So at the time we settled and
6 agreed to the agreement, we didn't know if we were
7 going to be doing that in the upcoming years or not.

8 Q. Well, in either case, Embarq has basically not
9 received its revenue increases for the last two years;
10 correct?

11 A. Out of the revenue opportunity of the \$12.5
12 million we had used a portion of that, but we banked
13 the majority of that.

14 Q. And during this time period, has Embarq been able
15 to maintain the integrity of its network in
16 Pennsylvania?

17 A. We certainly continue to provide good quality
18 service and are continuing towards our commitment for
19 the broadband infrastructure.

20 Q. And your commitment date is the end of 2013;
21 correct?

22 A. Correct.

23 Q. Are you familiar with the testimony that was
24 submitted by Embarq in support of the --- I guess it
25 was it was called a spin-off that was the subject of

1 the settlement?

2 A. I was involved in a support role at that time. I
3 don't recall specifically everything unless you had
4 something you wanted me to review.

5 Q. Well, I do want you to take a look at a portion of
6 the recommended decision in Verizon Cross Examination
7 Exhibit One. Take a look at page ten.

8 A. And that's in the recommended decision and not the
9 order; correct?

10 Q. Correct.

11 A. I'm there.

12 Q. About halfway down the page it starts talking
13 about the testimony of Kent Dickerson, CPA. Are you
14 familiar with his testimony?

15 A. I was at that time.

16 Q. Was or was not?

17 A. I was at that time. I may have forgotten what
18 specifically was said, but if you have something you
19 want me to read, I'll certainly review it quickly.

20 Q. Well, part of the recommended decision, Mr.
21 Dickerson stated that 2004 financial statements
22 demonstrate that United Pennsylvania, which is now
23 Embarq; correct? United Pennsylvania is now Embarq?

24 A. United is still the official legal name, but our
25 d/b/a is Embarq, Inc.

1 Q. States it demonstrates that United Pennsylvania
2 has been a financially solid company and because there
3 will be no significant change to its operation and
4 financial status as a result of the separation, it
5 will continue to have the financial capability to
6 invest in its network, generate sufficient cash to pay
7 all expenses and pay a dividend to its shareholders.
8 Therefore, post-separation it will possess all of the
9 attributes of financial capabilities that it has now.
10 Do you recall that testimony?

11 A. Yes, I do.

12 Q. Now, what Mr. Dickerson said, that Embarq would
13 continue to be financially capable, even with to
14 settlement that Embarq agreed to, the recommended
15 decision; correct?

16 A. Yes, because when this recommended decision was
17 provided, I think it included the settlement as well.

18 Q. So even though under the settlement Embarq would
19 be agreeing not to increase its rates to implement its
20 pricing opportunities for a number of years, it would
21 still retain its financial capability to invest in its
22 network and operate its business; correct?

23 A. I think Mr. Dickerson was saying here in his
24 testimony that we will continue to have the financial
25 ability and capability to invest and invest in our

1 network. Now, are you suggesting that that includes
2 the broadband commitment in your question?

3 Q. No. I'm just asking if you continue to have that
4 capability despite the fact that Embarq would not be
5 achieving its price change opportunities each year for
6 a number of years.

7 A. We certainly have an obligation through being a
8 regulated company to provide reasonable services,
9 quality services as well as characterize your
10 responsibility. And that certainly has a cost related
11 to it, and I'm assuming that that's what Mr. Dickerson
12 was referring to here, to continue to invest in this
13 network. Because the network doesn't grow on its own,
14 you must nurture it and maintain it and there's
15 certainly a cost associated with that.

16 Q. And Embarq would be showing the Commission that it
17 would continue to be able to meet those obligations?

18 A. Sure.

19 Q. Well, were you here earlier today when Mr. Stewart
20 was cross examining Mr. Buckalew?

21 A. Yes.

22 Q. Did you hear the question about whether particular
23 exchanges were profitable or not profitable?

24 A. Yes.

25 Q. In this case, has Embarq demonstrated its profit

1 or lack of profits for any individual exchange?

2 A. We had not submitted a cost study in this
3 proceeding.

4 Q. And similarly, in this proceeding, has Embarq
5 demonstrated its overall profitability?

6 A. We have not submitted a cost study here or revenue
7 requirement in this proceeding.

8 Q. Based on your knowledge, giving your employment
9 with Embarq Pennsylvania, is Embarq Pennsylvania
10 profitable?

11 ATTORNEY STEWART:

12 Objection. This is outside the scope of
13 Mr. Gutshell's testimony.

14 ATTORNEY PAIVA:

15 Your Honor, he was the one that was
16 asking about profitability and it's relevance to the
17 issues in this case. I think it's a fair question if
18 the witness knows. If he doesn't know, he just says
19 he doesn't know.

20 ATTORNEY STEWART:

21 Your Honor, if the claim is that because
22 I asked another witness a question on a particular
23 subject that that makes that subject fair game for my
24 witnesses, I completely disagree. Either the question
25 relates to his testimony or it doesn't, and I submit

1 that it does not. If there's a reference in Mr.
2 Gutshell's testimony that can be made to justify this
3 cross question, then that's one thing. But just
4 asking him a question based on something I asked
5 another witness, that's not right?

6 JUDGE COLWELL:

7 Sustain that.

8 ATTORNEY PAIVA:

9 Your Honor, he does testify that they
10 need the revenues to maintain the integrity of their
11 network, et cetera. Wouldn't a question as to whether
12 they're profitable be relevant as to whether they need
13 it or not?

14 JUDGE COLWELL:

15 No. You're talking about revenue.
16 That's not the same thing as profitability.

17 ATTORNEY PAIVA:

18 I have no further questions.

19 JUDGE COLWELL:

20 Ms. Painter?

21 ATTORNEY PAINTER:

22 I have no questions.

23 JUDGE COLWELL:

24 All right. Anything further for Mr.
25 Gutshell?

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ATTORNEY STEWART:

No, Your Honor.

JUDGE COLWELL:

Thank you very much, sir.

ATTORNEY PAIVA:

Your Honor, I would like to move the admission of Verizon Cross Exhibit One.

JUDGE COLWELL:

Any objection?

ATTORNEY STEWART:

No objection.

JUDGE COLWELL:

It is admitted. Would you raise your right hand, please?

CHRISTY LONDERHOLM, HAVING FIRST BEEN DULY SWORN, TESTIFIED AS FOLLOWS:

JUDGE COLWELL:

Go ahead, Mr. Stewart.

ATTORNEY STEWART:

Thank you, Your Honor. I'm giving the court reporter two copies of each of Embarq's Statement 3.0, which is the public version of the rebuttal testimony of Christy Londerholm and two

1 copies of Statement 3.0 proprietary version of the
2 rebuttal testimony of Christy Londerholm.

3 (Embarq Statement 3 and 3-A marked for
4 identification.)

5 DIRECT EXAMINATION

6 BY ATTORNEY STEWART:

7 Q. Ms. Londerholm, do you have before you copies of
8 your public and proprietary versions of your rebuttal
9 testimony?

10 A. I just brought my proprietary version.

11 JUDGE COLWELL:

12 Would you ask her to identify herself and
13 to spell her name for the record, please?

14 ATTORNEY STEWART:

15 Sure.

16 BY ATTORNEY STEWART:

17 Q. Would you tell us your name, employer and
18 position?

19 A. Christy V. Londerholm, with Embarq Corporation and
20 I am a manager in cost support.

21 Q. Can you identify those two documents?

22 A. Yes. My rebuttal testimony, both a public version
23 and a proprietary version, Statement 3.0.

24 Q. Were they both prepared by you or under your
25 supervision?

1 A. Yes, they were.

2 Q. Do you have any changes or corrections to make to
3 either version?

4 A. No, I do not.

5 ATTORNEY STEWART:

6 Your Honor, I made all parties aware of
7 this as I sent them a letter. With respect to page 17
8 of the public version, when we distributed it to
9 counsel, we made a mistake on line four and included a
10 proprietary number that begins on line four in the
11 rebuttal testimony. The version of the public
12 testimony that I gave the court reporter, corrects
13 that here, and that's that number on page 17, line 4
14 of the public testimony. I hope everyone's aware of
15 that. If not, I apologize.

16 BY ATTORNEY STEWART:

17 Q. Ms. Londerholm, if I were to ask you today, the
18 same questions that appear on your rebuttal testimony,
19 would your answers be the same?

20 A. Yes, they would.

21 Q. And are those answers true and correct to the best
22 of your knowledge and belief?

23 A. Yes, they are.

24 ATTORNEY STEWART:

25 Your Honor, Embarq moves the admission of

1 both the confidential and public versions of Ms.
2 Londerholm's rebuttal testimony subject to Cross
3 Examination.

4 JUDGE COLWELL:

5 Subject to cross and timely motions. Mr.
6 Cheskis, any questions?

7 ATTORNEY CHESKIS:

8 No.

9 JUDGE COLWELL:

10 Mr. Kennard, any questions?

11 ATTORNEY KENNARD:

12 No, Your Honor.

13 JUDGE COLWELL:

14 Mr. Dodge?

15 ATTORNEY DODGE:

16 Comcast has no questions, Your Honor.

17 JUDGE COLWELL:

18 Ms. Paiva?

19 ATTORNEY PAIVA:

20 Verizon has no questions for this
21 witness.

22 JUDGE COLWELL:

23 Ms. Painter.

24 ATTORNEY PAINTER:

25 AT&T has no questions for this witness.

1 JUDGE COLWELL:

2 All right. No questions for this
3 witness. There should be a prize or something. That
4 never happens in telephone cases. I have to tell you.

5 ATTORNEY STEWART:

6 I may have some Redirect.

7 JUDGE COLWELL:

8 In that case, there is no Cross
9 Examination or motions, so your Statement Number Three
10 is admitted for the record.

11 ATTORNEY STEWART:

12 Thank you, Your Honor. Embargo next calls
13 Jeffrey Lindsey.

14 JUDGE COLWELL:

15 Could you raise your right hand, please?

16 -----
17 JEFFREY LINDSEY, HAVING FIRST BEEN DULY SWORN,
18 TESTIFIED AS FOLLOWS:

19 -----
20 JUDGE COLWELL:

21 Go ahead, sir.

22 ATTORNEY STEWART:

23 Thank you, Your Honor.

24 DIRECT EXAMINATION

25 BY ATTORNEY STEWART:

1 Q. Mr. Lindsey, please tell us your name, your
2 employer and what your job is.

3 A. Yes. My name is Jeffrey L. Lindsey. I'm employed
4 by Embarq Corporation and my title is director of
5 regulatory policy.

6 ATTORNEY STEWART:

7 I'm giving the court reporter two copies
8 of a document titled surrebuttal --- strike that.
9 Rebuttal testimony of Jeffrey Lindsey, Statement 2.0
10 and two copies of a document titled Rebuttal Testimony
11 of Jeffrey Lindsey.

12 (Embarq Exhibits Statements 2 and 2.1
13 marked for identification.)

14 JUDGE COLWELL:

15 I have to tell you. I don't think I have
16 this. I have a cover letter that says I have it, but
17 then I don't have it attached.

18 ATTORNEY STEWART:

19 Well, let me see if we've got extra
20 copies, Your Honor.

21 JUDGE COLWELL:

22 Okay.

23 OFF RECORD DISCUSSION

24 BY ATTORNEY STEWART:

25 Q. Mr. Lindsey, do you have before you copies of your

1 rebuttal testimony and surrebuttal testimony?

2 A. Yes, I do.

3 Q. Were those prepared by you or under your
4 supervision?

5 A. Yes.

6 Q. Do you have any changes or corrections to make to
7 either of your testimonies?

8 A. No, I do not.

9 Q. If I were to ask you today the same questions that
10 appear in those testimonies, would your answers be the
11 same as reflected in the testimony?

12 A. Yes.

13 ATTORNEY STEWART:

14 Your Honor, Embarq moves for the
15 admission of Mr. Lindsey's rebuttal and surrebuttal
16 testimony subject to Cross Examination and motions.

17 JUDGE COLWELL:

18 Subject to cross and motions. Mr.
19 Cheskis?

20 ATTORNEY CHESKIS:

21 We have no questions, Your Honor.

22 JUDGE COLWELL:

23 Mr. Kennard?

24 ATTORNEY KENNARD:

25 No question for the PTA, Your Honor.

1 JUDGE COLWELL:

2 Mr. Dodge?

3 ATTORNEY DODGE:

4 No questions, Your Honor.

5 JUDGE COLWELL:

6 Ms. Paiva?

7 ATTORNEY PAIVA:

8 Your Honor, I have a couple questions.

9 CROSS EXAMINATION

10 BY ATTORNEY PAIVA:

11 Q. Good afternoon, Mr. Lindsey.

12 A. Good afternoon.

13 Q. One of your arguments is that the RLECs need
14 additional USF funding because they have a carrier
15 last resort obligation; correct?

16 A. Correct.

17 Q. And by carrier of last resort, or sometimes called
18 COLR, this is the obligation to be able to serve any
19 requesting customers in the RLEC service territory;
20 correct?

21 A. Correct.

22 Q. Now, are you aware that Verizon also has two RLECs
23 in Pennsylvania?

24 A. Yes, ma'am.

25 Q. And those would be Verizon Pennsylvania, Inc. and

1 Verizon North, Inc.?

2 A. Yes.

3 Q. Now, the two Verizon ILECs also has a carrier of
4 last resort obligations; do they not?

5 A. Yes, my understanding is that commonly all ILECs
6 irrespective of whether their rural or not.

7 Q. Now, you are aware that these Verizon ILECs
8 contribute to the Universal Service Funds; correct?

9 A. Yes.

10 Q. Are you aware that the Verizon ILECs do not
11 receive support from the Universal Service Fund?

12 A. In Pennsylvania specifically I was not, but I take
13 that word.

14 Q. But you have no independent knowledge?

15 A. Correct.

16 Q. Now, are you aware that the Verizon ILECs in
17 Pennsylvania serve a large number of rural lines?

18 A. That is my understanding, yes.

19 Q. Are you aware that the Verizon ILECs in
20 Pennsylvania serve low-density areas?

21 A. That would be my expectation, yes.

22 Q. And are you aware that the Verizon ILECs are
23 subject to competition in the service territory?

24 A. Without knowledge of specifics, generally, yes. I
25 would believe Verizon ILECs would have some degree of

1 competition in their service areas.

2 ATTORNEY PAIVA:

3 I have no further questions. Thank you.

4 A. Thank you.

5 JUDGE COLWELL:

6 Ms. Painter?

7 CROSS EXAMINATION

8 BY ATTORNEY PAINTER:

9 Q. Good afternoon.

10 A. Good afternoon.

11 Q. Could you turn to your rebuttal testimony, please?

12 A. Yes, which pages?

13 Q. Page five.

14 A. I'm there.

15 Q. Okay. Starting at line 17, you talk about where
16 competition is less than robust, generally in those
17 rural areas in Pennsylvania, Pennsylvania residents
18 are even more dependent on the ILEC network. Do you
19 have any information about where these areas are in
20 Pennsylvania?

21 A. In terms of specificity or generally?

22 Q. Specifically.

23 A. In terms of doing maps or things like that, we've
24 not submitted any into the record. But generally
25 those tend to be outside incorporated areas, areas

1 that are more rural, further ---.

2 Q. But do you have specific information? I'm sorry
3 to interrupt you. Do you have specific information
4 about where those areas are?

5 A. I did not submit any specific information into the
6 record. No.

7 Q. Do you have any information about how many
8 Pennsylvania residents are dependent on the ILEC
9 network alone, without presented alternatives?

10 A. A specific numbers? No.

11 Q. Do you know whether it's 10, 1,000, 1,000,000 or
12 even a range?

13 A. It would be a wild speculation at this point. It
14 would take more of a study to get a reasonable number.

15 ATTORNEY PAINTER:

16 I have nothing further, Your Honor.

17 JUDGE COLWELL:

18 Anything further, Mr. Stewart?

19 ATTORNEY STEWART:

20 No, Your Honor. Thank you.

21 JUDGE COLWELL:

22 Thank you, sir.

23 ATTORNEY PAINTER:

24 Your Honor?

25 JUDGE COLWELL:

1 Yes.

2 ATTORNEY PAINTER:

3 The parties had spoken before the break,
4 even though we had agreed to go sequentially and keep
5 going, Mr. Gray is actually not here because of a
6 family emergency. So we're hoping that we can break
7 for the day since there's only three sets of witnesses
8 left --- or three parties left to cover tomorrow. I
9 think it's safe to say we'll be done tomorrow. So
10 we'd like to just break for the day and come back
11 tomorrow.

12 JUDGE COLWELL:

13 I think that is a fine idea.

14 ATTORNEY STEWART:

15 Your Honor?

16 JUDGE COLWELL:

17 Yes.

18 ATTORNEY STEWART:

19 I talked to most, perhaps all Counsel
20 with respect to tomorrow's schedule, and everyone's
21 agreeable to starting at 9:00 a.m., subject of course
22 to your convenience and the court reporter's
23 availability. So I propose that.

24 JUDGE COLWELL:

25 All right. 9:00 is fine. I'll be here

1 already anyway. It doesn't matter to me.

2 ATTORNEY STEWART:

3 Thank you.

4 JUDGE COLWELL:

5 Okay. Then ---.

6 ATTORNEY KENNARD:

7 I just want to say, Judge, for the
8 record, we did distribute Dr. Levin's 1998 testimony
9 in its complete entirety.

10 JUDGE COLWELL:

11 Did I get one?

12 ATTORNEY KENNARD:

13 We are doing it right now.

14 JUDGE COLWELL:

15 Okay. All right. Is there anything else
16 we need to cover before we break for the day? All
17 right, then. We're off the record. We'll see you
18 tomorrow.

19

20 * * * * *

21 HEARING CONCLUDED AT 4:00 P.M.

22 * * * * *

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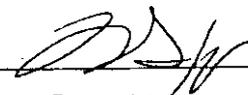
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CERTIFICATE

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.



Court Reporter

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