

COMMONWEALTH OF PENNSYLVANIA
PUBLIC UTILITY COMMISSION

Investigation Regarding
Intrastate Access Charges
& IntraLATA Toll Rates of
Rural Carriers & the
Pennsylvania Universal
Service Fund

Docket No.: I-00040105

Pages 287-525

400 North Street
Keystone Building
Harrisburg, PA

February 17, 2009
Commencing at 10:00 a.m.

BEFORE:

SUSAN COLWELL, Administrative Law Judge

APPEARANCES:

JOEL CHESKIS, Esquire
Office of Consumer Advocate
555 Walnut Street, 5th Floor
Forum Place
Harrisburg, PA 17101-1923
For the Office of Consumer Advocate

MICHELLE PAINTER, Esquire
Painter Law Firm, PLLC
13017 Dunhill Drive
Fairfax, VA 22030
For AT&T

SUZAN PAIRA, Esquire
1717 Arch Street, 17 NW
Philadelphia, PA 19103
For Verizon

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SECRETARY'S BUREAU

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REPORTER: RYAN GRAFFIUS

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APPEARANCES (cont.):

SHELBY A. LINTON-KEDDIE, Esquire
McNees, Wallace & Nurick, LLC
100 Pine Street
Harrisburg, PA 17108
For Broadband Cable Association of PA

JOHN C. DODGE, Esquire
Davis, Wright, Tremaine, LLP
1919 Penn Avenue, Northwest
Suite 200
Washington, DC 2006-3402

JOSEPH STEWART, Esquire
50 West Broad Street
Suite 3600
Columbus, OH 43215

NORMAN KENNARD, Esquire
Thomas, Thomas, Armstrong & Niesen
212 Locus Street, Suite 500
P.O. Box 9500
Harrisburg, PA 17101

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JUDGE COLWELL:

This is the time and the place set for further hearing in the case captioned, Investigation Regarding Intrastate Access Charges and IntraLATA Toll Rates of Rural Carriers & the Pennsylvania Universal Service Fund at I-00040105. I am Administrative Law Judge Susan Colwell. This is the second day of the hearing.

And we stopped yesterday on our witness list after seven witnesses, which brings us to Verizon. Ms. Paiva?

ATTORNEY PAIVA:

Good morning, Your Honor.

JUDGE COLWELL:

Good morning.

ATTORNEY PAIVA:

Verizon calls Don Price.

JUDGE COLWELL:

All right. Good morning, Mr. Price.
Nice to see you.

MR. PRICE:

Good morning. Same here.

JUDGE COLWELL:

1 Can you raise your right hand, please?

2 -----

3 DON PRICE, HAVING FIRST BEEN DULY SWORN, TESTIFIED AS
4 FOLLOWS:

5 -----

6 JUDGE COLWELL:

7 Thank you. Please be seated. Go ahead,
8 Ms. Paiva.

9 DIRECT EXAMINATION

10 BY ATTORNEY PAIVA:

11 Q. Good morning, Mr. Price.

12 A. Good morning.

13 Q. Is the microphone on?

14 OFF RECORD DISCUSSION

15 BY ATTORNEY PAIVA:

16 Q. All right. Good morning, Mr. Price. Could you
17 state today your full name and business address?

18 A. Yes. My name is Don Price. My business address
19 is 701 Brazos, that's B as in boy, R-A-Z-O-S, Suite
20 600, Austin, Texas 78701.

21 Q. And do you have before you the three pieces of
22 testimony that you submitted in this matter?

23 A. Yes, I do.

24 Q. And is one of these Verizon Statement 1.0, Price
25 Direct, dated December 10th, 2008, consisting of 31

1 pages, Table 1 and eight exhibits?

2 A. Yes, it is.

3 Q. And another of these, Verizon Statement 1.1, Price
4 Rebuttal, dated January 15th, 2009 consisting of 43
5 pages and four exhibits?

6 A. That's correct.

7 Q. And is the third page Verizon Statement 1.2 Price
8 Surrebuttal consisting of 25 pages and two exhibits?

9 A. That's correct. Dated February 10th, 2009.

10 Q. Thank you. And do you have any corrections to
11 your Direct testimony?

12 A. Yes. One change that appears on page one of Price
13 Direct Table 1 which is at the end of the testimony
14 and before the exhibits. I think the numbers here are
15 proprietary, but I can --- I can make this change, I
16 believe, without revealing anything. If you look at
17 the line on page one, which is reflected as Frontier
18 Group total in column annual state USF subsidy, the
19 total amount has one too many digits in the last part
20 of the number. So the last digit, 8, should be
21 stricken. So if you do that, there's only one 8 at
22 the end instead of two. And that's the only change
23 that I have to my Direct.

24 Q. Okay. Thank you. Do you have any changes to your
25 Rebuttal testimony?

1 A. Yes. This is sort of a housekeeping matter. The
2 cover sheet reflects that this is Verizon Statement
3 1.1, but the headers on each pages of the testimony
4 incorrectly reflect it as Statement 1.0. So those
5 should all say 1.1. My understanding is that the
6 court reporter has been provided for the record copies
7 of these correct in that regard.

8 Q. Yes. The court reporter's copy says 1.1. And
9 other than that, do you have any corrections to your
10 Rebuttal testimony?

11 A. None to my knowledge.

12 Q. Did you have corrections to Exhibit Four, the
13 table?

14 A. Yes --- well, yes. There were some things that
15 were corrected in response to Mr. Laffey's Rebuttal
16 testimony, on Rebuttal Exhibit Four. My understanding
17 is that a corrected copy has been provided to the
18 parties and is part of the record. The specific
19 changes from the copy that was originally provided to
20 the parties is in Cell 2, where the usage rate group
21 was changed to reflect city as opposed to suburban.
22 And then the amount shown in Cell 2 for local area
23 unlimited usage was increased to reflect the
24 appropriate number there. So that number now for
25 unlimited usage is now \$8.85.

1 Q. And the sum was also affected; correct?

2 A. That's correct. And then the --- I'm sorry. The
3 \$8.85 that I just referenced is in the upper portion
4 which is the residential rates as of January 15 of
5 this year. If you go down below, there is a similar
6 change in Cell 2, where the usage rate group is city
7 instead of suburban, and the local area unlimited
8 usage is corrected upward. That total is also changed
9 accordingly.

10 The only other change is there is a typo on usage
11 rate group E. That should be F. And then we dropped
12 a footnote to reflect the --- to explain that
13 designation.

14 Q. And the court reporter's copy already has
15 corrected tables. And we got corrected tables to the
16 parties as well. And other than that, are there any
17 other corrections to your Rebuttal?

18 A. No.

19 Q. And any corrections to the Surrebuttal?

20 A. None to my knowledge.

21 Q. And with those corrections, if I asked you the
22 same questions today, would your testimony be the
23 same?

24 A. Yes, they would.

25 Q. And was your testimony prepared by you or under

1 your direction and control?

2 A. Yes, it was.

3 ATTORNEY PAIVA:

4 Your Honor, with that, we would move for
5 the admission of Verizon Statements 1.0, 1.1 and 1.2
6 with their associated tables and exhibits subject to
7 cross.

8 JUDGE COLWELL:

9 Subject to Cross.

10 ATTORNEY KENNARD:

11 Your Honor, we do have an objection to
12 the inclusion of the Commissions' brief to the
13 Commonwealth Court. I don't know if this would be the
14 perfect time to raise the objection to the inclusion
15 of the Commission appellate advocacy as an exhibit at
16 this point in time, we do have an objection to it.

17 JUDGE COLWELL:

18 Well, you brought it up. So let's talk
19 about it. What's the problem?

20 ATTORNEY KENNARD:

21 The problem is this. The Commission's
22 Orders are dispositive of the Commission's
23 determinations, and I'll cite to those core documents.
24 These are the documents underlying this case. The Law
25 Bureau's advocacy in Commonwealth Court is the Law

1 Bureau's advocacy to Commonwealth Court. It's not a
2 determination by the Commission. It's not a ruling by
3 the Commission. It's what this witness posits. And
4 then AT&T's witness goes a step further and claims the
5 Commission has dispositively ruled on the issues in
6 this case. The only point at which the Commission
7 dispositively ruled was in its orders. We have no
8 idea whether or not the Commissioners themselves
9 reviewed the briefs. We have no idea if the
10 Commissioners themselves voted upon the briefs. I
11 don't think that's the way it works in the Law Bureau.

12 JUDGE COLWELL:

13 It is not.

14 ATTORNEY KENNARD:

15 So the Law Bureau is free to defend the
16 Commission's orders to say what they say, but it's
17 nothing more than the advocacy of the Commission's Law
18 Bureau in the Commonwealth Court. The problem is ---
19 I think we all understand that, but the problem is it
20 carries too much danger of someone asserting that is,
21 in fact, the Commission's rulings. In fact, that's
22 what AT&T's witness does, having seen it in this
23 Rebuttal and the Surrebuttal and use it as a complete
24 shield against various issues that are in this case
25 that the Commission may or may not have ruled upon but

1 we'd only know that from an order. So it makes no
2 sense to us to include the Commission's brief, but
3 also to do that, then we have to get into other briefs
4 like OCA's brief. And I don't know. It doesn't stop
5 at a reasonable point and carries too much danger of
6 it being misinterpreted, as AT&T does. It doesn't add
7 to the record at all in this case to add that
8 document. So we object to it on that basis. It is an
9 insufficient document, immaterial document. It has
10 limited relevance and it doesn't bear on issues in
11 this case.

12 JUDGE COLWELL:

13 Ms. Paiva?

14 ATTORNEY PAIVA:

15 Well, Your Honor, the issues that Mr.
16 Kennard raises in the document really go more to the
17 weight of the evidence than whether it should be
18 attached to the testimony. The purpose of this
19 investigation is to create a record of evidence that
20 would be relevant for the Commission to consider to
21 the extent that it has weight. So I believe the
22 Commission would want to know what its Law Bureau is
23 saying to the Commonwealth Court about the exact
24 arguments that are being made in this investigation.
25 But of course, the Commission will give it the weight

1 it's due and Mr. Kennard would be free to point out in
2 his brief what he just said to us here on the record
3 about the fact that it's not actually an order and can
4 carry only so much weight, but it does carry some
5 weight, and I don't believe that it should be actually
6 hidden from the Commission. I believe it should be in
7 the record with the opportunity of the parties to
8 explain exactly what weight it does or does not carry.

9 JUDGE COLWELL:

10 Okay. This brief has already been filed;
11 right?

12 ATTORNEY PAIVA:

13 It has been filed.

14 JUDGE COLWELL:

15 So it is a public document?

16 ATTORNEY PAIVA:

17 Yes.

18 JUDGE COLWELL:

19 It's a public statement and you are free
20 to question whether or not it is being characterized
21 appropriately in the testimony, but I don't see any
22 point in striking it. You can even take the rest of
23 the briefs and attach them to your own if you'd like
24 because they are public documents. But I don't see
25 need to strike it.

1 ATTORNEY KENNARD:

2 Can we agree, though, that it's not
3 offered as a ruling of the Commission? It's not what
4 the Commission has said. The Commission hasn't
5 spoken.

6 JUDGE COLWELL:

7 That's correct.

8 ATTORNEY KENNARD:

9 The Commission probably knows what its
10 Law Bureau was saying. That's an evidentiary burden
11 for us to bear. It seems to me that's more internal.

12 JUDGE COLWELL:

13 You do not have to bear that burden. I
14 know what a brief is. I know what process the Law
15 Bureau goes through when they file briefs and I will
16 give it the appropriate weight. And I believe the
17 Commission can see it. It is a public document. I
18 don't see any harm in keeping it in. Any other
19 objections?

20 ATTORNEY KENNARD:

21 No, Your Honor.

22 JUDGE COLWELL:

23 Okay. Anything else for Mr. Price or is
24 he available?

25 ATTORNEY PAIVA:

1 No, he's available.

2 JUDGE COLWELL:

3 All right. Ms. Painter, we'll start with
4 you then.

5 ATTORNEY PAINTER:

6 No questions, Your Honor.

7 JUDGE COLWELL:

8 And Mr. Dodge?

9 ATTORNEY DODGE

10 Good morning, Your Honor.

11 JUDGE COLWELL:

12 Good morning.

13 ATTORNEY DODGE:

14 Given how much time Mr. Price spent
15 together the last time in Harrisburg, we will bank our
16 questions for him. Comcast has nothing at this time.

17 JUDGE COLWELL:

18 Okay. All right. That brings us over to
19 Mr. Cheskis.

20 ATTORNEY CHESKIS:

21 We do have some questions, but I believe
22 Mr. Kennard was going to go first.

23 JUDGE COLWELL:

24 That's fine. Go ahead.

25 ATTORNEY KENNARD:

1 I think Embarq's going to go first.

2 JUDGE COLWELL:

3 Okay. Do you think you're going first?

4 ATTORNEY STEWART:

5 I guess I am. No, actually Mr. Kennard
6 and I spoke earlier and I agreed to go before him. So
7 that's fine.

8 JUDGE COLWELL:

9 Okay.

10 CROSS EXAMINATION

11 BY ATTORNEY STEWART:

12 Q. Good morning, Mr. Price. I'm Joe Stewart from
13 Embarq.

14 A. Yes. Good morning, Mr. Stewart. Good to see you
15 again.

16 Q. Thank you. You, too. Would you please turn to
17 page four of your Direct? In the upper paragraph
18 there on line 11 where you discuss the reform of RLEC
19 subsidies, is it your position it is appropriate to
20 eliminate inputs and subsidies?

21 A. No, sir. I believe it's clear in my testimony
22 that the point that we're making is that excessive
23 implicit subsidies are harmful to the operation of the
24 market and to the carriers that provide services
25 within that market. But it is not my position that

1 they need to be eliminated.

2 Q. So then implicit subsidies should be reduced if
3 they are excessive?

4 A. Yes. And I realize there's a lack of precision
5 around those terms, but yes, excessive subsidies are,
6 as I said, harmful.

7 Q. And assuming there are excessive implicit
8 subsidies, do you believe that an appropriate use of
9 the Universal Service Fund is to replace those
10 excessive implicit subsidies?

11 A. No, I can't agree with that.

12 Q. What is your recommendation if excessive implicit
13 subsidies are to be eliminated?

14 A. I think it's clear throughout my testimony that
15 the first order of relief, if you will, would be for a
16 carrier to seek to recover those implicit subsidies
17 through its own end-user customers because in that
18 manner the signals that are received in the
19 marketplace are superior than if those subsidies are
20 simply shifted into a large fund and carried on backs
21 of other providers to customers.

22 Q. If shifting the excessive implicit subsidies to
23 users would result in an end-user charge that is too
24 high --- I'd use the term unaffordable --- would that
25 be an appropriate situation to utilize the USF?

1 A. It certainly could. The problem that we have in
2 this proceeding is that everything that's been
3 discussed is essentially hypothetical. There's no
4 concrete evidence that rates are or will be --- end-
5 user rates, that is --- are or will be at a level that
6 is excessive. And so positing that hypothetical as a
7 basis for Commission action, I don't think that's
8 appropriate at all.

9 Q. And it wasn't my intent to suggest that that was
10 anything other than a hypothetical. But given the
11 terms of the hypothetical, I take it you agree that
12 that's an appropriate situation in which to utilize
13 the USF.

14 A. I believe my answer was, it can be. It depends on
15 the circumstances.

16 Q. Well, if we assume that shifting the excessive
17 implicit subsidy to an end user would create an
18 unaffordable rate, then in what instance would it be
19 inappropriate to use the USF?

20 A. I'm sorry. I'm not sure I caught the last part of
21 your question. Did you ask me in what circumstances
22 is it inappropriate?

23 Q. Yes. Because I think you said earlier use of a
24 USF can be, and I'm interested to know when it would
25 not be appropriate to use the USF.

1 A. Well, I think the circumstances or the facts or
2 lack thereof that we're dealing with in this case is a
3 classic example of when it would not be appropriate.
4 Again, there's no concrete evidence that rates are at
5 a level that is unaffordable --- that aren't
6 affordable. There's also been no evidence at all
7 presented as to whether any of the carriers that are
8 --- might require this might or might not be in a
9 position to require that additional funding in order
10 to meet their operational requirements to serve the
11 customers.

12 Q. Well, my question really, I'd like to focus really
13 not on the concrete facts you believe to exist in this
14 case, but rather the theoretical situation where
15 moving the excessive implicit subsidies to the end
16 user would create a rate that's unaffordable. In that
17 situation, why is it not always appropriate to utilize
18 a USF?

19 A. Because of the reasons that I said earlier.
20 Primarily that without evidence of some form that the
21 carrier needs that funding, additional funding in
22 order to meet its operational requirements, then what
23 we've done is you've essentially taxed all of the
24 other customers in the state without any basis,
25 without any need, without any showing.

1 Q. In that situation, if you were to not utilize a
2 USF to replace the excessive implicit subsidy that is
3 being removed, and which given the terms are
4 hypothetical cannot all be moved to the end users
5 because the result is a rate that's unaffordable, is
6 it your view that other customers of that particular
7 carrier ought to cross subsidize the difference
8 between what's affordable to the end user and the
9 total implicit subsidy that's excessive and that's
10 been removed?

11 A. As I understand your question, you're asking about
12 the pricing internal to a specific carrier in this
13 example. We're not talking about shifting that burden
14 to another carrier. We're talking about questioning
15 relative to a specific carrier's internal operations.
16 And yes, I do believe that it is important for a
17 company to look first to its own customers.

18 Q. So in that situation, if there is a group of
19 customers that it is inordinately expensive to serve
20 and to charge those customers a rate that recovers the
21 excessive implicit subsidies can't be done because
22 that rate would be unaffordable. And you're saying
23 the other customers of that carrier, presumably those
24 in a lower cost area, ought to cross subsidy the
25 operations in a high-cost area? Is that correct?

1 A. I don't necessarily agree with the way that you
2 framed your question, but yes, I do believe that it's
3 important for a carrier to look to its internal
4 operations.

5 And in my view, one of the critical facts that's
6 been overlooked in this case is that the service areas
7 that each of the RLECs serve are territories that they
8 have specifically and voluntarily offered to provide
9 services. There is not a carrier in the state, to my
10 knowledge, who has been forced to provide service in
11 any of the territories within which they operate.

12 So you know, go back --- I know, Mr. Stewart, you
13 and I have been around for a few years. If we go back
14 for just a little bit, you'll understand that that's
15 part of the regulatory compact. In exchange for the
16 agreement to provide service to a specific territory,
17 the ILEC was afforded an opportunity to recover its
18 material operating expenses and generate a return on
19 its reasonable investments.

20 Now, we've seen it shift away from that particular
21 regulatory compact to Chapter 30, Alternative
22 Regulations in the state. And my understanding from a
23 policy standpoint, not from a legal perspective, but
24 my understanding of the way that that operates is that
25 the guarantees of rate of return regulation no longer

1 exists, but I don't see anything in the Chapter 30
2 plans or with the overall regulatory framework that
3 says that somehow or the other ILECs no longer have
4 the same obligation that they voluntarily stepped up
5 to decades ago to serve the customers within their
6 certificated areas.

7 Q. When the former regulatory compact existed, the
8 ILECs had exclusive rights in those certificated
9 areas; right?

10 A. No, I wouldn't agree with that because that
11 specifically went away with the passage of the '96
12 Act.

13 Q. I agree with you. I'm talking the regulatory
14 compact that existed before the '96 Act.

15 A. I certainly agree with that.

16 Q. And now the exclusive right to serve should no
17 longer exist?

18 A. Exactly.

19 Q. But nonetheless, the LECs, the RLECs retained the
20 obligation to serve everyone in their certificated
21 areas?

22 A. Well, an obligation that they voluntarily stepped
23 up to. If for some reason an RLEC has determined that
24 it's no longer appropriate for it to have an
25 obligation to serve a particular territory, one would

1 think that there would be relief mechanisms available
2 through the Commission for the carrier to come and
3 say, you know, the rules have changed. I need
4 something other than what I originally obligated
5 myself to do. Here what we're talking about is the
6 creation of this new mechanism that would simply
7 provide inflation-based additional revenues to
8 carriers without any showing whatsoever based solely
9 on this hypothetical of some possible high-cost area
10 that is hypothetically under water.

11 Q. Do you think there are such areas in rural
12 Pennsylvania that are, to use your phrase, under
13 water? Do you think that's purely a hypothetical
14 supposition?

15 A. There certainly may be. We've seen no evidence of
16 that in this proceeding.

17 Q. Please turn to page 30 of your Direct testimony.

18 A. Is that 3-0?

19 Q. Yes.

20 A. All right.

21 Q. Here you discuss a needs-based test. And I would
22 like you to explain how you think such a needs-based
23 test should operate?

24 A. I'm not sure I understand your question. Are you
25 asking me what information would be required in order

1 for an RLEC to demonstrate that need?

2 Q. What I'm saying --- starting on line 21, the
3 second step would be to conduct a thorough needs-based
4 test to determine which of the remaining carriers
5 actually need USF support. What would constitute a
6 thorough needs-based test? Part of that would be, I
7 suppose, what information is gathered and from there
8 on, what next?

9 A. Well, it wasn't the purpose --- it's not the
10 purpose of my testimony to actually specify those
11 steps so much as it was to say without some kind of
12 showing, there's actually no basis for the mechanism
13 that was proposed in the RLECs testimony. In terms of
14 the kinds of information, I would assume that that
15 would be Pennsylvania-specific financial information
16 and it would also include information on the cost of
17 operations. It would include information on the
18 amount of support that was obtained through the
19 Interstate High Cost Fund and portions of the
20 Interstate Universal Service Fund.

21 But I don't have --- sitting here today, I can't
22 give you specifics of what that outline should be. It
23 needs to be something more than the vague references
24 to hypothetical high-cost areas that are under water
25 that we've seen so far in the record here in this

1 case.

2 Q. Could you please turn to page ten of your
3 Rebuttal?

4 A. All right.

5 Q. I don't know whether this question asks for an
6 answer that includes proprietary information, but let
7 me ask the question and if it does, then ---. Mr.
8 Price, do you know what Verizon's annual contribution
9 to the Pennsylvania USF is?

10 A. I believe it's somewhere in the range of 17 and a
11 half million dollars.

12 Q. And do you know --- and again, I'm not sure
13 whether this is proprietary. What is Verizon's
14 intrastate Pennsylvania revenue for the last year for
15 which that information would be available?

16 A. Before I answer that, Mr. Stewart, I need to
17 qualify my previous answer.

18 Q. Sure.

19 A. First, the figure that I provided was the
20 contribution from Verizon Pennsylvania. There's also
21 additional contribution from the former GTE portion of
22 Verizon and there's additional contribution from MCI
23 Metro. So the 17 and a half million dollar figure
24 that I gave you is not the total. It's just the
25 portion that was provided by Verizon PA.

1 Q. Fair enough. And my last question let's limit
2 that only to Verizon PA. Do you know what Verizon
3 PA's annual intrastate telecommunications revenue is?
4 I'll stop there.

5 ATTORNEY PAIVA:

6 Yes. I believe it is a proprietary
7 number, but I think the first question is whether he
8 knows.

9 A. And I do not know.

10 BY ATTORNEY STEWART:

11 Q. Do you have knowledge as to the approximate
12 percentage of Verizon PA's intrastate
13 telecommunications revenue that Verizon PA's
14 contribution to the Pennsylvania USF constitutes?

15 A. No, I do not.

16 Q. Does Verizon have CLEC that serves in
17 Pennsylvania?

18 A. MCI Metro, doing business as Verizon Access, is a
19 certificated CLEC in Pennsylvania.

20 Q. Do you know what parts of the state it provides
21 service in?

22 A. The operations include some or all of the
23 operating territory of Verizon including Verizon PA
24 and the former GTE properties, as well as, I believe,
25 in North Pittsburgh and Embarq.

1 Q. Do you know whether MCI Metro provides service
2 predominantly in metropolitan areas versus rural
3 areas?

4 A. I couldn't hear all of that question, Mr. Stewart.

5 Q. Sorry. Do you know whether MCI Metro
6 predominantly provides CLEC services in metropolitan
7 as opposed to rural areas?

8 A. With the qualification of predominantly, yes, I
9 would say that's true, that is it's primarily
10 predominantly in the metro areas.

11 Q. And is it your belief that MCI Metro chooses to do
12 that because those areas are lower cost than the rural
13 areas?

14 A. Not necessarily. And I say that because I think
15 most of us here in the room understand the difficulty
16 or the --- I shouldn't say difficulty --- the effort
17 that is needed in order to obtain an interconnection
18 agreement particularly with smaller carriers. And so
19 to the extent that the company has not yet stepped up
20 to serving certain areas of the state, I would think
21 that the difficulty in obtaining interconnection would
22 be another important factor beyond simply the density
23 of the serving area itself.

24 Q. So I think that you're agreeing that the density
25 of serving area is a factor, but not the main factor?

1 A. Yes.

2 ATTORNEY STEWART:

3 Thank you, Mr. Price. I have no other
4 questions.

5 CROSS EXAMINATION

6 BY ATTORNEY KENNARD:

7 Q. Good morning, Mr. Price. My name is Norman
8 Kennard. I represent the Telephone Association in
9 this proceeding. Let's go back to early in Cross
10 Examination with Mr. Stewart when you talked about
11 rate-based return and about the obligation to serve
12 and talked about the regulatory compact. Even back in
13 rate-of-return days, there were concerns raised that
14 rate making was designed on the basis of a concept
15 called residual pricing.

16 A. Yes, sir. Having testified in rate cases in my
17 early days, I'm certainly familiar with that term.

18 Q. Under residual rate-making, the cost of service
19 revenue requirement was established at a company, and
20 then when it went into its rate design phase. A
21 determination was made of what residential rates
22 should be based on various concepts, including
23 affordability and then the remainder of the rate base
24 was spread out across other elements, including the
25 toll. Other elements the company services.

1 A. Yes. That's generally true. I would point out
2 that at that time the number of services and scope of
3 services that the carriers provided was much different
4 than it is today. But with that said, I do agree with
5 your question.

6 Q. And then in the '90s, the rate-based rate of
7 return regulation was replaced by price cap
8 regulation; correct?

9 A. In many instances. Not all.

10 Q. Well, in Pennsylvania it was for a number of
11 common carriers; correct?

12 A. Correct. That's what I meant when I said not in
13 all cases.

14 Q. Basically price cap is a substitute mechanism to
15 determine the company's revenue requirements, one of
16 the attributes which it doesn't rely upon the rate
17 based rate of return; correct?

18 A. No, I can't agree with that because there's no
19 determination of the revenue requirement in the
20 alternative regulation plan.

21 Q. Well, under --- I think I asked you two questions.
22 Let me break it down. The price cap form of
23 regulation is based upon a formula which compares the
24 company's revenues to the rate of inflation; correct?

25 A. As I understand the Pennsylvania Chapter 30

1 process, yes.

2 Q. And there is no aspect of that rate-making formula
3 that relies upon cost to establish the revenue
4 requirements of the common local exchange carriers; is
5 that correct?

6 A. I agree with that. And that's why I said in my
7 Surrebuttal testimony that it appears that the
8 proposal here is to have the best of both worlds, to
9 have all the guarantees, if you will, of a traditional
10 regulatory model with all the freedoms of the
11 alternative regulation plan under the statutes.

12 Q. Would you also agree that one of the other
13 benefits of price cap regulation is that costs are not
14 put through and that places management in a position
15 of having to find some efficiencies to maintain its
16 profitability as much as possible within the formula?
17 Would you agree with that?

18 A. I agree that the theory underlying alternative
19 regulation is as you stated, but certainly as is
20 proposed in this proceeding there's no incentive
21 whatsoever for management to be efficient because they
22 would be guaranteed an ever-increasing revenue stream
23 through funding from other carriers through the USF.

24 Q. When this price cap regulation was established in
25 Pennsylvania, there was no opportunity --- for

1 example, there is no cost formula for a company, a
2 common local exchange carrier to flow through
3 competition losses; is that correct?

4 A. I'm not sure I understand your question.

5 Q. Let's back up again, then. The rate-making
6 formula of the price cap is based upon inflation not
7 cost.

8 A. I agree.

9 Q. And the price-cap formula is based upon --- uses
10 revenues received last year from actual operations
11 times the inflation factor, plus or minus an offset;
12 correct?

13 A. That is generally my understanding. I am not an
14 expert on the operations of the plan. But that
15 generally comports with my understanding.

16 Q. So if a local exchange carrier loses access lines,
17 there is no provision or plan that allows them to
18 recover revenues that are associated with those lost
19 lines; is that correct?

20 A. I think it --- well, I don't agree with your
21 question and I'll explain why. The plans only relate
22 to a portion of the RLECs' operations. As I
23 understand it, there's a whole class of services that
24 are not subject to the plan, competitive services.
25 And so your --- as I understand your question, really

1 looking at that subset of the RLECs' operations as if
2 it were the whole, which it is not, because as I
3 understand Chapter 30 plans it's only a portion of the
4 total operation of the RLEC.

5 Q. Limit your answer, if you would, to noncompetitive
6 service revenues. Would you agree that a price-cap
7 formula applies only to noncompetitive revenues, it
8 does not apply to competitive services; is that
9 correct?

10 A. I agree that that's correct. But I think it's
11 impossible to have a complete view of the RLECs'
12 operations looking only at a portion of services and
13 revenues that are obtained from those.

14 Q. To the extent that revenues are lost in this so-
15 called noncompetitive category to a competitor with
16 access lines are picked up by a CLEC, or picked by a
17 cable company, and the customer no longer obtains
18 voice service from the local exchange carrier, those
19 revenue losses are not put through the price-cap
20 formula; is that correct?

21 A. That's a bit of a long question, but I think the
22 short answer is I agree that, focusing on the
23 noncompetitive services, I believe from the way you
24 framed your question, the answer is yes. Again, I
25 don't believe that gives a clear picture of the RLECs'

1 operations.

2 Q. Your client, Verizon, operates under price-cap
3 formula; correct? Let's focus on Verizon PA.

4 A. Yes. Thank you. Yes.

5 Q. And its price-cap formula operates as we had
6 previously described price caps generally inflationary
7 form with an offset deducted in Verizon's case; is
8 that correct?

9 A. Yes. Again, with the caveat, I'm not a Chapter 30
10 expert, but that is my understanding.

11 Q. Can the PUC deny Verizon Pennsylvania a rate
12 increase if that increase is consistent with the terms
13 of its price-cap formula and its Chapter 30 plan?

14 ATTORNEY PAIVA:

15 Your Honor, I would object. That calls
16 for a legal conclusion whether the Commission can or
17 cannot deny an increase depends on the terms of the
18 statute.

19 ATTORNEY KENNARD:

20 I understand it's out of order, but we
21 are talking about the rate-making mechanisms and how
22 they operate.

23 JUDGE COLWELL:

24 I'll allow it.

25 A. I am not fully aware of the scope of the

1 Commission's authority in regard to the situation
2 which you posited.

3 BY ATTORNEY KENNARD:

4 Q. Would it be appropriate in your opinion for the
5 PUC to deny Verizon Pennsylvania an increase in
6 revenues if the increase was consistent with the terms
7 of its plan and the statute?

8 A. I can't answer that question with the information
9 you provided.

10 Q. Let's go to your exhibit, Rebuttal Exhibit Number
11 Four, your revised version.

12 A. All right. I have it.

13 Q. And we're looking at two charts, if you will. The
14 top one of which is current rates, the bottom one of
15 which is proposed rates.

16 A. That's correct. I'm not sure if proposed is the
17 right terminology. It's my understanding that those
18 rates will take effect March 1st.

19 Q. Under the terms of Verizon Pennsylvania's Chapter
20 30 rate-making formula; correct?

21 A. That is my understanding.

22 Q. And in this, Verizon is obtaining approximately
23 \$13 million in total revenue increase; is that
24 correct?

25 A. I don't have that figure.

1 Q. Would you accept that?

2 A. I don't really have any way to check it.

3 Q. Well, Verizon is your client. Why don't you ask
4 them?

5 A. I can ask. I mean, if that can be established,
6 I'm certainly not disagreeing. I'm just saying I have
7 no basis for ---.

8 Q. I'm going to show you this rate filing. I need it
9 back, though. What's the amount of revenue increase
10 Verizon has proposed in its currently-pending
11 application?

12 A. Based on this document, it appears that the
13 original submission was for additional revenues
14 totaling \$13,447,000.

15 JUDGE COLWELL:

16 And for the record, could you tell me
17 what the document is, please?

18 A. The document that I was handed is on Verizon
19 letterhead dated October 31st, 2008 to Mr. James P.
20 McNulty, Secretary, et cetera, et cetera. And the
21 subject is Verizon Pennsylvania, Inc.'s 2009 PCO
22 filing.

23 JUDGE COLWELL:

24 Thank you.

25 A. And it's date stamped October 31st, 2008.

1 BY ATTORNEY KENNARD:

2 Q. What's Verizon Pennsylvania's current earnings
3 level in Pennsylvania?

4 A. I don't know.

5 Q. Was there any earnings information presented to
6 support the \$14 million worth of revenue related to
7 Verizon?

8 ATTORNEY PAIVA:

9 You're showing him a public version of
10 the document?

11 ATTORNEY KENNARD:

12 That's all I have, yes.

13 ATTORNEY PAIVA:

14 The proprietary versions are filed.

15 ATTORNEY KENNARD:

16 Are you representing that there is this
17 information presented to the Commission in the filing?

18 ATTORNEY PAIVA:

19 The total noncompetitive revenue is on
20 the filing.

21 ATTORNEY KENNARD:

22 Are expenses included in it? Is there a
23 rate of return in the filing?

24 ATTORNEY PAIVA:

25 Yes.

1 ATTORNEY KENNARD:

2 There is no statement of expenses, rate
3 base or otherwise a representation by Verizon that it
4 has earned at a certain level with respect to return
5 on equity, return overall, or any other earnings?

6 ATTORNEY PAIVA:

7 Are you asking to --- a stipulation of
8 Counsel, or are you cross examining me?

9 ATTORNEY KENNARD:

10 I'm asking you for a stipulation. This
11 is an outside expert. He may not be versed on the
12 filing. Perhaps you and I can ---.

13 ATTORNEY PAIVA:

14 I think we can stipulate that there's no
15 cost information.

16 ATTORNEY KENNARD:

17 Earnings information is what I'm asking.

18 ATTORNEY PAIVA:

19 Earnings being revenue minus cost.

20 ATTORNEY KENNARD:

21 There's any number of ways to determine
22 earnings. There is --- none of those appear in the
23 filing.

24 ATTORNEY PAIVA:

25 The filing is based on noncompetitive

1 revenue and change in the rate of inflation.

2 ATTORNEY KENNARD:

3 Okay. Thank you.

4 BY ATTORNEY KENNARD:

5 Q. Mr. Price, should the Commission require an
6 earnings test be passed by Verizon before 13 and a
7 half million dollars is awarded to them?

8 A. No. I think the critical difference between what
9 we're talking about with this document and Verizon's
10 filing, and what's being proposed in this proceeding
11 is all these revenues would be obtained, if they're
12 obtained, from Verizon's customers. And what's being
13 proposed in this proceeding is that the revenues above
14 a certain benchmark for the RLECs would be recovered
15 from other carriers' customers. That's an exceedingly
16 important distinction and one that I think is the
17 fatal flaw in the proposal that we're talking about
18 here.

19 Q. The price-cap formula in Pennsylvania, the
20 noncompetitive service revenues to which the inflation
21 factors apply includes access rates; does it not?

22 A. That is my understanding.

23 Q. Recently a local exchange carrier, World Com,
24 increased access. Did Verizon oppose that increase;
25 do you know?

1 A. If you're talking about the D&E companies, yes, we
2 did.

3 Q. And Verizon in that case was a customer for the
4 access service provided by them; correct?

5 A. Well, the term customer, when you're talking about
6 access is somewhat misleading because clearly access
7 customers are not similarly situated as end-user
8 customers. End-user customers ---.

9 Q. I'm going to --- I was asking if they were a
10 customer. I didn't ask if they were similarly
11 situated to other customers. Obviously access
12 services differ from local services. The simple
13 question is, is Verizon a customer for access service
14 through D&E?

15 JUDGE COLWELL:

16 I think the explanation was fair.
17 Since you had been talking about the customers of the
18 company, and he was explaining the use of the term is
19 slightly different.

20 ATTORNEY KENNARD:

21 It might help if he answered first. And
22 I don't mind explaining, obviously.

23 BY ATTORNEY KENNARD:

24 Q. Is Verizon a customer for access service of D&E?

25 A. In the sense that Verizon and some of its

1 affiliated companies receive bills from the D&E
2 companies and pay those bills, you could term that a
3 customer. But unlike end-user customers, there is no
4 ordering of service in an attempt to obtain service.
5 The customer relationship is simply a function of the
6 carrier terminating traffic to --- primarily
7 terminating traffic to the D&E company.

8 Q. In essence D&E is providing a service to Verizon
9 in that circumstance which is simply a use of its
10 network to terminate a call on behalf of Verizon
11 services for its own end uses; is that correct?

12 A. Yes. There is a function that is being provided.
13 Again, the distinction that I'm making is the
14 difference between essentially an involuntarily
15 service where the customer in this case has no
16 alternative but to use the carrier's termination
17 functions and a true end-user customer/supplier
18 relationship where the alternatives can be sought and
19 used.

20 Q. When Verizon signs up an end-use customer for its
21 toll service, it charges that end-use customer for
22 that toll service; correct?

23 A. Yes.

24 Q. And what makes that offer is it not implicitly, if
25 not explicitly, representing that toll calls can be

1 originated and terminated? The end-use customer of
2 Verizon can pick up the phone, dial a call and it gets
3 to the end-use customer, the called end-use customer;
4 correct?

5 A. Yes.

6 Q. Implicit in that is an understanding by Verizon PA
7 that, when it offers toll service to end-use customers
8 it will be using the facilities of the terminating
9 carrier to complete that call; correct?

10 A. I'd agree with that, but I think you're
11 overlooking a critical piece of that, which is there
12 is --- in that sense, there is a bit of a captive
13 customer kind of situation. I mean, the terminating
14 carrier --- and we've seen this in some instances ---
15 the terminating carrier uses that relationship in
16 order to avoid sending improper market signals to its
17 own end-user customer by shifting that burden to the
18 middle man, if you will, who would be in this case
19 Verizon. I mean, if the terminating carrier were to
20 suddenly decide that a dollar a minute is a good rate
21 because it generates more revenues, that doesn't make
22 it right, because Verizon and no other carrier would
23 have the ability to serve them at that charge. It
24 shows the fundamental difference that I alluded to
25 earlier between an end-user customer and a customer,

1 if you will, of an access service.

2 Q. And when Verizon makes that offer to the customer,
3 an end-use customer to provide a toll, it understands
4 that access charges are going to apply in terminating
5 that call; is that correct?

6 A. Yes.

7 Q. And going back to the question of ordering
8 previously, in order for Verizon to provide the
9 terminating access services, there is actually a
10 process of application and agreement between Verizon
11 and the RLEC that access service will, in fact, be
12 provided for terminating.

13 A. I don't understand your question.

14 Q. Is there a process called ASR?

15 A. Yes.

16 Q. And the originating carrier enters into an
17 understanding that there is an order form under that
18 service request. ASR, can you tell the Judge what ASR
19 stands for?

20 A. Yes. It's an access service request.

21 Q. And Verizon submits access service requests to the
22 RLECs, and on that basis, the access service is
23 provided, upon request.

24 A. I know that there is some truth to that. But I
25 also know that there are instances, perhaps more than

1 a few, where the traffic simply appears. Now, with
2 respect to Verizon and D&E that may be or may not be
3 the case, but it certainly is the case, for example,
4 with MCI Metro, we terminate traffic all the time for
5 carriers who've never issued an ASR to us.

6 Q. Isn't the ASR process, as the name implies, access
7 service request, a request provided terminating
8 access? Doesn't the request come from MCI in your
9 situation?

10 A. I didn't follow your question. I'm sorry.

11 Q. Who's the requestor in an ASR?

12 A. The request would come from the interchange
13 carrier.

14 Q. So in your situation, MCI would be the requestor?

15 A. The MCI Communications doing business as Verizon
16 Business Services would request ASRs from --- submit
17 ASRs to the carriers. Verizon would also do the same
18 as an interexchange carrier.

19 Q. And you're indicating that in some instances MCI
20 does not make such a request; is that correct?

21 A. No. I'm sorry. I was trying to make a separate
22 point. MCI Metro as a CLEC terminates traffic all the
23 time for carriers that have never issued an ASR. That
24 traffic simply appears on the network and it's the
25 obligation of the LEC to terminate the traffic whether

1 or not ASR was issued.

2 Q. An ASR is required but in many cases interexchange
3 carriers don't go through the steps, they just simply
4 terminate traffic; correct?

5 A. Well, there's different ways to terminate traffic.
6 Essentially, in generic terms the two ways are direct
7 and indirect. So if traffic is coming to a LEC via
8 indirect means, there is no need for an ASR. That
9 traffic will go through the tandem provider. The
10 tandem provider would have connectivity with the
11 terminating LEC and that traffic would simply show up
12 at the terminating LEC and be terminated to the end
13 user.

14 Q. Let's stick with Verizon PA. Verizon Pennsylvania
15 has submitted ASRs to the RLECs. There is an
16 agreement in place whereby Verizon Pennsylvania agrees
17 to pay terminating access charges; correct?

18 A. No, I can't agree with that. I mean, there is a
19 request for service. That's what the ASR is. The
20 agreement that you allude to is in the form of a
21 tariff. And to the extent that the tariff proposes
22 --- is proposed to be changed, then in my view there
23 is no agreement. There's now a unilateral effort to
24 modify the terms under which the companies have
25 operated.

1 Q. On a different subject, is there a price
2 competition between wireline and wireless carriers for
3 end users?

4 A. I'm sorry. Could you ask the question again?

5 Q. Is there a price competition between wireline and
6 wireless carriers for end users?

7 A. There's certainly competition. I'm not sure what
8 you mean by price competition.

9 Q. One of the means of competition is to compete not
10 only in service, but also to compete on price. Would
11 you agree?

12 A. To some extent. I'm hesitating because there are
13 qualitative differences, particularly between the
14 traditional basic local exchange service that would be
15 offered by a wireline carrier, and the kinds of
16 service packages that are provided by wireless
17 carriers. Certainly there are --- those can be seen
18 as substitutes in a large number of --- a large extent
19 of the population.

20 Q. Well, I understand and I think everybody
21 understands there's different packages, a dizzying
22 variety of different packages out there. If you
23 compare the wireless packages, the wireless are
24 different than packages offered by the wireline
25 carriers. Service is different. Technology is

1 different. Don't these carriers compete on the basis
2 of services made available, and don't they also
3 compete on the basis of price?

4 A. I think the difficulty that I'm having with the
5 question is when I think of price competition, I think
6 of two identical products or services that I go to one
7 store, I find it for one price and if I go to another
8 store, I find the exact same product at a different
9 price. That to me is price competition. And I'm not
10 willing to agree that there is that same kind of
11 identical product that we're looking at here. We're
12 looking at different bundles, different products. In
13 a consumer's mind, the price may not be the only
14 factor that goes into the buying decision.

15 Q. Well, would that be services --- like an iPod,
16 compared between Best Buy and what used to be Circuit
17 City, but we have to recognize there are differences
18 in packages. There are differences in services. So
19 we don't have the luxury of refining the question down
20 to the point where the services are completely
21 identical. I understand the services are different. I
22 understand the packages are different, but don't
23 consumers make purchasing decisions on the basis of
24 price, taking into account the relative advantages of
25 the services and the service packaging between

1 wireline and wireless carriers?

2 A. I agree that there are a variety of factors, and
3 price is one of those factors that consumers take into
4 account when making a buying decision.

5 Q. You use the term subsidy frequently in your
6 testimony. You used it this morning in response to a
7 question by Mr. Stewart. When you use the term
8 subsidy in your testimony, do you mean prices that are
9 in excess of cost? Is that true?

10 A. I think in my testimony I indicated that I used
11 the term in the same sense that the Commission has
12 used the term historically which is slightly different
13 than a pure economic definition of the term.

14 Q. Well, you're using the Commission's term. What is
15 the Commission's use of the term, to your
16 understanding?

17 A. In my understanding, the Commission has --- and
18 this does go back to the Global Order. The Commission
19 was well aware that traditional regulatory pricing
20 procedures over the decades had led to a situation
21 where access service rates were significantly in
22 excess of costs, and that for reasons that you and I
23 discussed earlier, the residual rate-making policies
24 of the Commission, that in many instances certain
25 residential local rates were below cost. So as I

1 understand the Commission's use of the term is to
2 refer to that use of above-cost pricing in access,
3 perhaps other services, to make up for the --- the
4 lack of relationship between cost and price for basic
5 residential services.

6 Q. Thank you. And the source of that definition is
7 the Commission's Global Order?

8 A. Well, and other orders. I mean, even in this
9 proceeding, the Commission has talked a little bit
10 about its traditional pricing policies and its
11 longstanding concern about how those pricing policies
12 need to change in light of the market that we find
13 today.

14 Q. Have local exchange carrier rates ever been set
15 based exclusively upon cost?

16 A. That's a pretty broad question, and I ---.

17 Q. I'm sorry if it is.

18 A. Sitting here today, I cannot remember a situation
19 where the Commission set local pricing only with
20 regard to cost. Now, certainly cost is a
21 consideration, particularly as over the last decade or
22 so Commission has attempted to restructure prices in
23 recognition of competition, but I don't remember a
24 particular instance in which rates were set at cost.

25 Q. Either access or local rates set at cost?

1 A. That's right. And I think Verizon has been clear
2 in its advocacy that Verizon is not advocating any
3 particular service be set solely at cost.

4 Q. Are Verizon's Pennsylvania's access rates now set
5 based upon cost? Are they currently established on
6 the basis of cost?

7 A. No, they are not.

8 Q. How about Verizon's local service rates?

9 A. Well, as we discussed earlier, the traditional
10 pricing mechanism in Pennsylvania was a residual
11 pricing mechanism, and not one where local service
12 rates are priced at cost. And as has been further
13 discussed with the Chapter 30 plan, cost is not a
14 factor that is considered. So I would think the
15 answer's no.

16 Q. Going back to your Rebuttal Exhibit Number Four,
17 and the document, the Verizon letter to Mr. McNulty
18 with respect to the present 13.5 million proposed
19 increase, there are proposed changes to service rates;
20 correct?

21 A. Yes.

22 Q. And has Verizon Pennsylvania provided any cost
23 support for these proposed increases in local rates?

24 A. No. And that's my understanding that that's
25 consistent with the Chapter 30 mechanism.

1 Q. You stated on page three of Direct, specifically
2 line 15, you say the PUC should be working to decrease
3 the enormous flow of revenues. That's a reference to
4 the current USF?

5 A. Not entirely. That's a reference to the USF, as
6 well as subsidies that are still embedded in the
7 RLEC's access rates.

8 Q. Looking at the rate filing, again, that is pending
9 before the Commission, is there a reference in there
10 to Verizon's current contribution to the Pennsylvania
11 USF?

12 A. Are you talking about the October 31 letter that
13 you just showed me?

14 Q. Yes.

15 A. Sitting here looking at the document this morning
16 with the understanding that I've not seen this
17 document before today, I don't see a reference.

18 Q. Could you agree that the current contribution is
19 \$15.5 million, approximately?

20 A. I don't know.

21 Q. Would you accept that subject to checking? You
22 can check that with your client and your client can
23 tell you, and if I'm wrong, I will stand corrected.

24 JUDGE COLWELL:

25 If you're going to use the term subject

1 to check, you need to tell me who's going to check it
2 and when they're going to get back to me on it.

3 ATTORNEY KENNARD:

4 All right. I'm asking the witness to
5 check, which places the burden upon him to actually
6 check it. If we don't hear, I can presume it's a
7 confirmed fact, or we can ask the witness to affirm
8 it, and endorse the number. Certainly, if the
9 number's wrong, the expectation is that it will be
10 corrected within some reasonable period of time. I
11 believe that's in Verizon's good graces in cooperation
12 with the Commonwealth.

13 JUDGE COLWELL:

14 Okay. I'm sorry. I really don't like
15 the use of that phrase because I think you're shifting
16 the burden in an inappropriate way. If you have a
17 fact and it's in the record, that's good. But if you
18 don't, then you have the requirement of establishing
19 before you use it.

20 ATTORNEY KENNARD:

21 I understand, Judge.

22 BY ATTORNEY KENNARD:

23 Q. Can you please read this sentence from the October
24 31st letter that I handed you today into the record?

25 A. Yes. Immediately after the cover letter, there's

1 a section that's headed Verizon Pennsylvania, Inc.
2 2009 ECO Filing, Executive Summary. And the sentence
3 that you pointed to is down on the page under the
4 heading Use of Banks 2003 PCO for Universal Service
5 Fund. The last sentence in that paragraph reads
6 Verizon PA projects that it will pay \$15,549,276 to
7 the Fund in 2008.

8 ATTORNEY KENNARD:

9 I withdraw the request for subject to
10 check.

11 BY ATTORNEY KENNARD:

12 Q. What was Verizon Communication, Inc.'s most
13 recently-reported level of revenues to the SEC?

14 A. I don't know.

15 Q. I'm going to hand you a copy of the most recent
16 10-K and a couple of excerpts of 10-Q submitted to the
17 United States Securities and Exchange Commission.
18 Exhibit 13 submitted in the Form 10-K December 31,
19 2007 indicates that on a consolidated basis. This is
20 all of Verizon Communication Inc.'s revenues. \$93,
21 rounded .5 billion dollars. Is that true? Is that an
22 accurate representation?

23 A. That's what appears --- we rounded the figure up
24 slightly, but yes, that is roughly what appears on the
25 December 13th document you handed me.

1 Q. And behind that is an excerpt from the most
2 recently Form 10-Q of Verizon Communications, Inc.
3 reportedly period ending September 30, 2008. And does
4 not that demonstrate that for the three-month period
5 ending September 30, 2008 that operating revenues
6 totaled approximately \$24.75 billion?

7 A. That's what appears from the document that you
8 handed me.

9 Q. Now, did you review the revenue levels of Verizon
10 Pennsylvania?

11 A. In my preparation for this case, no.

12 Q. Well, let me hand you a document entitled Verizon
13 Pennsylvania, Inc. Consolidated Financial Statements
14 for the three months ended March 31, 2008. Does not
15 Verizon Pennsylvania report operating revenues for the
16 three-month period ended March 31st, 2008 of \$828
17 million?

18 A. That is the figure that appears on the sheet you
19 handed me.

20 Q. And if you annualized that three-month figure,
21 what would be the annualized effect of this,
22 projecting this quarterly result?

23 A. Give me a second. I'm pretty good at math in my
24 head. It just may take a second. I think it's in the
25 range of --- I'm sorry, 330, 320 million dollars.

1 Q. You mean billion? \$328 million times four --- I'm
2 just a lawyer. I was not a math major at all, but I
3 think that's in billions.

4 A. Hang on a second.

5 ATTORNEY PAIVA:

6 Mr. Price, I do have a calculator in my
7 bag if you want it.

8 A. Oh. No thanks. How does \$3.1 billion sound?

9 BY ATTORNEY KENNARD:

10 Q. Closer. The source of Verizon's contribution to
11 the Pennsylvania USF is not Verizon Pennsylvania
12 itself. Rather, the contribution is derived from a
13 negative price change opportunity that resulted in
14 2003; is that correct?

15 A. I don't understand your question.

16 Q. The source of Verizon's contribution to the USF is
17 the credit end of a 2003 negative price change?

18 A. My hesitation is, yes, I do understand that there
19 is a negative PCO in the 2003 time frame. In fact, I
20 believe in the paragraph that I was reading in the
21 October 31st, 2008 letter makes reference to that 2003
22 PCO. But the monies actually do come from Verizon. I
23 mean, Verizon does make a payment. This is not just
24 an accounting transfer. There's actually money that
25 changes hands.

1 Q. I understand it's a bill sent to Verizon. Verizon
2 pays the bill. Source of the funding is as you have
3 frequently pointed out, Verizon's customers; correct?

4 A. Yes, as it is with every carrier that makes a
5 contribution to the Fund. I mean, that's where all
6 the revenues come from is the customers.

7 Q. Well, I understand that. In this case, there's a
8 specific mechanism whereby it is clearly --- not just
9 because all revenues come from the end users, but
10 there's a regulatory mechanism by which Verizon
11 instead of reducing its customers' costs sent this
12 contribution to the Universal Service Fund equal to
13 amounts they're billed from the Fund, et cetera;
14 correct?

15 A. Yes. Again, with the understanding we're talking
16 about only Verizon PA. There are other affiliated
17 companies that my answer does not apply to.

18 Q. Do you know if Verizon North ever requested to
19 become a recipient of the Fund?

20 A. Sitting here today, I don't recall.

21 Q. Do you know if Verizon PA ever requested to become
22 a recipient of the Fund?

23 A. No, I do not.

24 Q. Can you go to --- turn your attention to your
25 Rebuttal, page six.

1 A. Page six?

2 Q. You make a hypothetical calculation here of one
3 potential outcome of the proposed changes to Universal
4 Service Fund; correct?

5 A. My example addresses, as I understand the RLEC
6 proposal in this proceeding, one possible way in which
7 that could unfold.

8 Q. And you project this out over a ten-year period?

9 A. Yes.

10 Q. What will Verizon's revenues be? What would you
11 project Verizon's revenue to look like in ten years?
12 Verizon PA's?

13 A. I would not hazard a guess.

14 Q. Now, in your Direct at page 24, you note that some
15 of the RLECs have rates currently below the \$18 cap;
16 correct?

17 A. I believe that's reflected on Table 1, also in my
18 testimony.

19 Q. Now, is your understanding of the proposal that
20 --- as laid out by the Commission, that if a rural
21 company's local rates were to go above the benchmark
22 rates, then additional USF funding would be available.
23 But as a condition to that draw, the company's rates
24 first have to reach a level in excess of the benchmark
25 rate?

1 A. I'm a little confused. When you started the
2 question, I thought it was something about the
3 Commission proposal. I think the Commission sent the
4 issues for investigation. The proposal we're talking
5 about here is one that's been set forth by the RLECs
6 in this proceeding.

7 Q. I'm not sure. Is it your --- has anyone advocated
8 in this case going to the fund for rate increases if
9 service rates set by the Commission were below the
10 benchmark?

11 A. To answer completely, I think the first issue is
12 whether or not there is, in fact, a benchmark that we
13 use today. Obviously, there are different opinions on
14 that. It's a legal matter that's going to be briefed.
15 In terms of going forward, there are various
16 proposals, I guess one of which might be characterized
17 as a continuation, if you will, of this disputed
18 benchmark rate today of \$18. I say disputed because
19 there is a question of whether or not such a benchmark
20 even exists today.

21 Within that proposal, it's my understanding of the
22 way Mr. Laffey and others have set that up in their
23 testimony is that rates would go to the \$18 benchmark
24 or whatever benchmark is established, and then there
25 would be an automatic draw going forward of any

1 revenues that resulted from the PCO filings of that
2 RLEC once its rates were at cap, from the USF.
3 There's another piece to this, too, which is if \$18 is
4 the alleged residential cap, and we got testimony that
5 somehow or other there might even now be a business
6 cap, and that part of the proposal is a little bit
7 murky because there seems to be a conclusion that Mr.
8 Laffey reaches at least that there is some benchmark,
9 although it's not specific to any carrier. And
10 presumably, although that's not clear, that business
11 rates would have to be at the level of that separate
12 benchmark so that the monies can then flow from this
13 new and improved USF, and I say improved in quotes.
14 New, certainly.

15 Q. Well, let's go back to this. \$18 is the
16 residential cap. Let's set aside the business cap.
17 No party has proposed to draw price cap rate increase
18 monies unless the Commission were to set or find a
19 residential rate in excess of the benchmark to be
20 justified; is that correct?

21 A. My understanding of the RLEC proposal is that \$18
22 would be set as an arbitrary level that would be,
23 quote, the just and reasonable residential rate.

24 Q. And the Commission establishment of rates in
25 excess of that cap would be a Commission precedent

1 required before a company to withdraw from USF;
2 correct?

3 A. I don't think Mr. Laffey's testimony is that rates
4 would have to exceed that. They would simply have to
5 be at that benchmark.

6 Q. I understand. If the rate were set by the
7 Commission at the benchmark like Mr. Laffey's
8 proposal, there wouldn't be any USF draw; correct?

9 A. Again, putting aside the business --- the question
10 of the business cap, that's my understanding of the
11 proposal.

12 Q. And if Commission set the rate, found a rate at
13 \$18.01, then that one cent could be recovered from the
14 USF under Mr. Laffey's testimony?

15 A. I'm not sure I understand the question.

16 Q. If local exchange company's rates, residential
17 rates, were found by the Commission to be just and
18 reasonable above the \$18 cap, under Mr. Laffey's
19 proposal, their revenues would be derived from the
20 Universal Service Fund.

21 A. I'm hesitating because I think that the way that I
22 understand Mr. Laffey's proposal --- it's the part of
23 \$18.01 being quote, just and reasonable that's
24 throwing me because, the way I would see it operating
25 would be the Commission would be saying, assuming the

1 cap is established, \$18 is the just and reasonable
2 rate, if the PCO proposal would have raised that rate
3 to \$18.01, then that one cent difference, which is not
4 the just and reasonable, which is above what the
5 Commission had determined as the just and reasonable
6 rate would be recovered from the Fund.

7 Q. Okay. I think we're both on the same wavelength
8 with respect to the mechanics --- and these numbers,
9 we can talk later about which one is affordable and
10 which one is just and reasonable, but I think we agree
11 on the mechanics. So I thank you for that.

12 Would you agree that most of the rural exchange
13 companies in Pennsylvania have elected to complete the
14 ubiquitous broadband network as of the end of last
15 year?

16 A. Sitting here today, I believe that assertion is
17 contained in Mr. Laffey's testimony in this
18 proceeding, and I have no basis for disagreeing with
19 that.

20 Q. Did Verizon PA or North agree to complete a
21 ubiquitous broadband network in their respective
22 service territories at the end of last year?

23 A. I believe the schedule for Verizon ILECs is a
24 lengthier schedule. I can't --- sitting here today, I
25 can't tell you what that timetable is.

1 Q. Would you agree subject to check that that date is
2 end of calendar year 2015?

3 A. Are we back in a specific territory here?

4 ATTORNEY PAIVA:

5 Your Honor, we'll stipulate that the date
6 is December 31st, 2015.

7 JUDGE COLWELL:

8 Thank you.

9 ATTORNEY KENNARD:

10 Thank you, Counselor.

11 BY ATTORNEY KENNARD:

12 Q. Why did Verizon PA agree to provide regular
13 service in the west?

14 ATTORNEY PAIVA:

15 Your Honor, I have to object to this.
16 This is already getting to be pretty far afield, but
17 why is this relevant?

18 ATTORNEY KENNARD:

19 There've been representations, Your
20 Honor, that --- by this witness and certainly others,
21 that the cost incurred to deploy a broadband network
22 is not more expensive to provide service in rural
23 areas. There's been no demonstration. And the fact
24 that Verizon elected the tail end of the options for
25 deployment I think pretty clearly indicates difficulty

1 in deploying, and rolling out. And this is one of the
2 things through this testimony, Verizon's election to
3 not provide the network until the end of 2015 is an
4 implicit acknowledgement that it is difficult, it's
5 expensive. It's not always cost remunerative.

6 ATTORNEY PAIVA:

7 Your Honor, he's implying and assuming a
8 lot of things which are not in evidence and not
9 proven. Verizon --- the statute provides options and
10 Verizon to choose one of the options and in exchange
11 for that Verizon abides by the terms of the statute.
12 But everything else he's assuming are implications
13 without any evidence. I'm not sure the witness can
14 even answer these questions, but they're certainly not
15 relevant.

16 ATTORNEY KENNARD:

17 Well, that's certainly an answer. He's
18 an outside consultant. He may not know what I'm
19 trying to deduce through his testimony.

20 JUDGE COLWELL:

21 He does have to ask the questions in
22 order to justify the assumptions and he's allowed to
23 do that. And if Mr. Price doesn't know, he can say
24 so. But before we go on further, I am looking for a
25 place to take a 15-minute break. Are you going to be

1 finished soon?

2 ATTORNEY KENNARD:

3 I hope to be finished very soon.

4 JUDGE COLWELL:

5 Okay. Then go ahead.

6 BY ATTORNEY KENNARD:

7 Q. Do you know why Verizon elected the very tail of
8 the allowable completion of a broadband network?

9 A. No, I don't. Just for the record, I am an
10 employee of Verizon. I'm not an outside ---.

11 Q. I apologize.

12 A. No apology. I just wanted to be clear.

13 Q. Going back to your Exhibit Four, Rebuttal. We
14 appreciate the work we did together to get to the
15 right numbers. I think we now agree that Verizon's
16 urban rates are those which are published in Cell 1
17 and Cell 2; is that correct?

18 A. Generally, yes.

19 Q. And we also agree, do we not, that Verizon's rural
20 rate is in Cell 4; correct?

21 A. That is my understanding.

22 Q. What is the current rate differential in the
23 category of the usage rate group element --- I'm
24 sorry, dial tone line between Verizon's urban rates
25 and Verizon's rural rates?

1 A. Well, I haven't done a percentage calculation. I
2 think just glancing across the row entitled dial tone
3 line, you're looking at the rates as of January 15 or
4 the rates effective March 1, that difference is about
5 a dollar.

6 Q. Percentage terms in the present rates the
7 differential is approximately 13.5 percent under the
8 --- what we're calling proposed rates, which is
9 subject to check, and in the calculation now that
10 difference is 12.7 percent.

11 A. Again, I have to do the math. The calculations
12 are pretty straightforward.

13 Q. So if we were to take the present rates in Cell 1
14 dial tone line add the Cell 2 dial tone line and
15 divide by two, then divide that by the \$7.80 rate in
16 Cell 4, we would get 13.5 percent; correct?

17 A. I have no reason for disputing that.

18 Q. And if we do the same calculation with respect to
19 the proposed rates, that differential between urban
20 and rural would be 1.27 percent.

21 ATTORNEY PAIVA:

22 Norm, can you explain what calculation
23 you're doing?

24 ATTORNEY KENNARD:

25 I think I just explained it.

1 ATTORNEY PAIVA:

2 I'm sorry. I didn't understand it.

3 ATTORNEY KENNARD:

4 Well, you blend the city rates.

5 ATTORNEY PAIVA:

6 But you're adding the two dial tone line
7 rates and dividing by two.

8 ATTORNEY KENNARD:

9 To come up with a blended city dial tone
10 rate.

11 ATTORNEY PAIVA:

12 A blended dial tone line.

13 ATTORNEY KENNARD:

14 Then you divide that by dial tone line
15 charge for rural area. That's in Cell 4. And then
16 you come out with a differential of the dial tone line
17 rate contained within Verizon's current and proposed
18 rate structure.

19 ATTORNEY STEWART:

20 I think after you do that division you
21 have to subtract that result from a hundred percent to
22 get a percentage.

23 ATTORNEY KENNARD:

24 Well, sure. Then you have a hundred ---
25 in other words you have in present rates, 1.35 and

1 that's 13.5 percent difference between the two.

2 ATTORNEY PAIVA:

3 I think Mr. Price is checking the math.

4 ATTORNEY KENNARD:

5 As he well should.

6 OFF RECORD DISCUSSION

7 A. Okay. Looking at dial tone line, that disparity
8 is about 13 and a half percent.

9 BY ATTORNEY KENNARD:

10 Q. And under proposed rates the ones that are listed
11 as effective March 1st, 2009, that same delta between
12 rural and urban for Verizon, PA is 12.7; correct?

13 A. 12.7 roughly.

14 Q. Thank you.

15 A. And again, that's just a dial tone line. We
16 haven't included the other parts of the basic service
17 rates, or what would add up to the basic service rate.

18 Q. If we include the other components, the local area
19 usage, in fact, Verizon's rural rates are less than
20 Verizon's urban rates; correct?

21 A. That's right.

22 Q. Now, in your --- one final item, if you go to your
23 Surrebuttal, page nine.

24 A. All right, sir.

25 Q. There's a statement there that there's 1.1 million

1 rural access lines in Pennsylvania served by Verizon
2 Pennsylvania and Verizon North combined; correct?

3 A. Yes.

4 Q. And that's according to the classification under
5 Chapter 30 Plan of Verizon, Verizon PA and Verizon
6 North?

7 A. The footnote refers to the network modernization
8 plan. Again, the caveat I gave earlier, I'm not a
9 Chapter 30 expert. Assuming that the network
10 modernization plan is a part of that Chapter 30
11 filing, then yes.

12 Q. And what are the other categories in addition to
13 rural access lines, or classic internet lines in the
14 network modernization plan?

15 A. I don't know other classifications.

16 Q. You looked at the plans and apparently the reports
17 to determine it was 1.1 million; correct?

18 A. That information was provided to me in preparing
19 this testimony, so I did not personally review those
20 plans.

21 Q. Do you know what the total number of access lines
22 served on an aggregate basis by Verizon PA and Verizon
23 North is?

24 A. No, I do not.

25 ATTORNEY KENNARD:

1 We ask that that be provided.

2 ATTORNEY PAIVA:

3 You're asking for the total access lines?

4 You want the total access lines.

5 ATTORNEY KENNARD:

6 If you could provide the total number of
7 access lines for the two companies as of the same time
8 frames so as to compare apples to apples, as of
9 December 31, 2007. If you could provide us with a
10 number, I don't know what's proprietary or not. What
11 I want is comparable total access lines to compare 1.1
12 million in that same time frame.

13 ATTORNEY PAIVA:

14 In the updated network modernization plan
15 was updated and there is a public version filed with
16 the Commission on part of Verizon PA. If you're
17 asking for Verizon North, then ---.

18 ATTORNEY KENNARD:

19 I am because that's the way it's
20 presented by the witness.

21 ATTORNEY PAIVA:

22 All right. We can provide that.

23 ATTORNEY KENNARD:

24 Thank you. And that's all we have,
25 Judge.

1 JUDGE COLWELL:

2 Okay. And at this point, we'll take a
3 15-minute break and we'll meet back here at ten after
4 11:00.

5 SHORT BREAK TAKEN

6 JUDGE COLWELL:

7 Mr. Cheskis, it must be your turn.

8 ATTORNEY CHESKIS:

9 Thank you, Your Honor.

10 CROSS EXAMINATION

11 BY ATTORNEY CHESKIS:

12 Q. Good morning, Mr. Price. My name's Joel Cheskis,
13 from the Office of the Consumer Advocate.

14 A. Yes. Good to see you again.

15 Q. Likewise. I wanted to focus initially on your
16 Surrebuttal testimony page 17 and specifically line 13
17 and elaborate a little bit on an issue that Mr.
18 Kennard touched briefly in his Cross. At line 13
19 where you discuss what you call Chapter 30's own
20 internal inflation-based safeguards, do you see that?

21 A. Yes, I do.

22 Q. And you are familiar generally with price
23 stability mechanisms contained in the RLECs' Chapter
24 30 Plans; is that correct?

25 A. Yes.

1 Q. In fact, Verizon files similar inflation-based
2 formulas on an annual basis as part of its Chapter 30
3 Plan; is that correct?

4 A. That is my understanding.

5 Q. And you were involved in a recent proceeding
6 involving the 2006 Chapter 30 Plan filings of the D&E
7 companies; is that correct?

8 A. Yes, I was.

9 Q. And those D&E companies are part of the Rural
10 Telecom --- the Pennsylvania Telephone Association
11 that is involved in this investigation; is that
12 correct?

13 A. Yes, I understand Mr. Laffey is representing ---
14 that the member companies are part of his client base.

15 Q. And are you familiar with the fact that the
16 Commission has had a policy for the past ---
17 approximately the past decade to reduce intrastate
18 access charges?

19 A. Yes. And obviously there's been a rather
20 checkered history over the last few years with the
21 question of whether or not to initiate investigation
22 of the RLECs' access rates. But in terms of the
23 policy, yes, I understand that was enunciated as early
24 as the 1999 Global Order.

25 Q. And now, when you talked about inflation-based

1 increases, that's based on the company's total
2 noncompetitive revenue; is that correct? And again, I
3 apologize. Some of these preliminary questions are
4 things you've already discussed with Mr. Kennard, but
5 I'm just trying to follow the flow of my questions
6 here.

7 A. That is my understanding of the way that the PCO
8 process works, yes.

9 Q. And are you also aware that access charges and
10 basic global service rates are two of the primary
11 sources of noncompetitive revenue upon which the RLECs
12 can recover and are allowed inflation-based increases
13 pursuant to their annual price stability mechanism?

14 A. Well, I understand that access is considered a
15 noncompetitive service and that it's also considered a
16 protected service. And I do understand that basic
17 service rates are in the noncompetitive category.
18 There may be a few other things as well, but I would
19 believe that the primary sources of revenue are the
20 basic local rates and access services.

21 Q. But under the Commission policy, access rates are
22 not supposed to increase and certainly not at the rate
23 of inflation every year; is that correct?

24 A. Well, I think so. I think that it was most
25 recently articulated in the Commission's Order after

1 the case.

2 Q. So wouldn't you agree with me that we have to
3 raise another noncompetitive charge more than rate of
4 inflation to make up the difference if one
5 noncompetitive rate can't be raised at all? Is that
6 correct?

7 A. I think that that can be classified as a
8 mathematical truism, yes.

9 Q. And if we reduce access rates, those other
10 noncompetitive charges would go up even further to
11 make up the difference; is that correct?

12 A. Well, with the clarification that we're talking
13 about the possibility of increasing those rates.
14 There's nothing to my understanding in the Chapter 30
15 Plans that requires any increase of rates. And in
16 fact, that's why we have evidence in this case where
17 banked revenue opportunities ---. Rather than
18 increasing rates, the carrier can simply bank that
19 revenue potential.

20 Q. But if the company wanted to recover a hundred
21 percent of its allowed revenue increase pursuant to
22 its annual price stability mechanism, isn't it true
23 that if we reduce --- I'm sorry. Let me back up.

24 I think that you weren't focusing necessarily on
25 the question that I was asking. But the question I

1 said was if we reduce access rates, those
2 noncompetitive charges would go up further to make up
3 the difference, that can be down outside the context
4 of an annual price stability mechanism filing; is that
5 correct?

6 A. Well, if you're asking me whether the Commission
7 has the authority in some other proceeding to allow
8 such a rebalancing, it sounds a bit like a legal
9 question and I'm not sure exactly what the
10 Commission's authority is. But I don't think this is
11 a proceeding that would accomplish what I understand
12 your question to be.

13 Q. Fair enough. Isn't it true that the inflation-
14 based rate increases that you discussed in your
15 testimony can really be more than the rate of
16 inflation on basic service rates in particular, if the
17 RLECs are prohibited from recovering any of their
18 allowed noncompetitive revenues from access rates?

19 A. Again, with the qualification that the rate
20 increases under the PCO plan would not be required,
21 but would be rather at the discretion of the RLEC,
22 then I agree that the mathematics are as we stated
23 earlier, with the potential for more than a rate-of-
24 inflation increase to basic service rates.

25 Q. So for example, let me put some numbers to this

1 here, if an RLEC was allowed to incur \$10,000 as a
2 result of the application of their annual price
3 stability mechanism and without a policy that
4 prohibits increasing intrastate access rates, that
5 \$10,000 would be recovered, \$5,000 from access rates
6 and \$5,000 from basic service rates. But with a
7 policy that prohibits increasing intrastate access
8 charges, that \$10,000 would have to be recovered
9 entirely from basic local service rates, and nothing
10 from intrastate access charges; is that correct?

11 A. Well, I take issue with the words had required ---
12 or would require part of your question. Again, it's a
13 potential, but yes, there is a potential that the full
14 \$10,000 in your hypothetical would be recovered from
15 basic service rates.

16 Q. And as a result of that hypothetical, the real
17 impact on basic local service rate is an increase that
18 is more than the rate of inflation and possibly, as I
19 detailed in that hypothetical, twice the rate of
20 inflation; is that correct?

21 A. Under the hypothetical and with the qualifications
22 that I've made throughout this, yes, I agree.

23 Q. Similarly, are you aware that the Federal
24 Communications Commission is currently conducting a
25 proceeding that may force further reductions in

1 intrastate access rates?

2 A. Not to be flippant, but that's really a
3 hypothetical. Yes, there have been proposals before
4 the FCC. Some of those proposals go back to the 2001
5 time frame. As of yet, there's no black smoke
6 appearing to resolve all this for us.

7 Q. So the answer's yes, that the FCC is considering
8 --- currently conducting a proceeding that may force
9 further reduction in intrastate access rates?

10 A. I wouldn't even give it that much credibility at
11 this point. There was a proposal at the end of 2008
12 that was championed by then Chairman Martin. Under
13 the changed administration and changed leadership at
14 the FCC, I have no idea whether that's actively being
15 considered or not.

16 Q. If the FCC decides to further reduce intrastate
17 access rates, could that also put additional pressure
18 on the basic local service rate in Pennsylvania by
19 requiring additional revenue-neutral rate reductions?

20 A. Well, without knowing the specifics of the
21 proposal, I guess you could say, yes, it could. But
22 again, that's purely hypothetical, because without
23 looking at a particular proposal and the specifics as
24 it relates to Pennsylvania, I don't think you can say
25 one way or the other.

1 Q. Can you turn to page 18 of your Surrebuttal, line
2 16?

3 A. All right.

4 Q. There you're responding to a question regarding
5 whether or not competition will discipline rates; is
6 that correct?

7 A. Yes.

8 Q. As part of your response, you contend that the
9 ways in which available competitive alternatives are
10 offered might influence the RLECs' decision to
11 increase regulated basic service rates; is that
12 correct?

13 A. My answer here is to indicate that I think Mr.
14 Colton's formulation was simplistic, in that the
15 operations of the market are really more complex than
16 what he was positing in his answer.

17 Q. If you focus specifically on your answer at page
18 19, line three, you provide as an example there that a
19 cable carrier may offer a package that is \$20 that
20 includes unlimited local and long distance calling and
21 some features that would temper the RLECs' ability to
22 increase their basic local service rate beyond \$18; is
23 that correct?

24 A. Yes.

25 Q. Are you speaking hypothetically there, or are you

1 aware of any cable competitor that actually offers
2 that package of services for \$20 in any RLEC territory
3 in Pennsylvania?

4 A. As I said at line three, this is an example and
5 it's not intended to be a particular real world
6 example.

7 Q. So you don't know of any particular cable offering
8 in any RLEC territory in Pennsylvania for \$20?

9 A. I have not attempted to study that as part of my
10 preparation of this testimony.

11 Q. Would you agree with me as well, that even an
12 additional \$2 increase in a monthly phone bill for a
13 household despite the additional features that that \$2
14 might bring, could be cost prohibitive for some of the
15 RLECs' customers who instead currently pay only \$18
16 for telephone service?

17 A. I think my answer would be, it could be. It could
18 be. But again, one of the problems that I have with
19 the evidence in this case is that it's all purely
20 hypothetical. There's been no showing of any
21 particular customer class that is --- or would face a
22 hardship. There's been no indication by the RLECs
23 that they have any need for the additional revenues
24 that they're proposing through Mr. Laffey's testimony.

25 Q. But nonetheless, it could be a case that even an

1 additional \$2 increase would put that cost out of
2 reach for certain customers?

3 A. It's not completely out of the question. I just
4 think it's not relevant in my mind for the Commission
5 to be making significant policy decisions that would
6 impact every rate payer in the state based on the
7 possibility, the unproven possibility, that one
8 household might be impacted. I think that's not the
9 way that good public policy works in my view.

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

12 A. No, I have not. In my professional career, I've
13 seen it, but no, I have not.

14 ATTORNEY CHESKIS:

15 We have no further questions of this
16 witness, Your Honor.

17 JUDGE COLWELL:

18 Anybody who hasn't asked questions have
19 any now? Mr. Gray? Okay. Then we'll go back to Ms.
20 Paiva.

21 ATTORNEY PAIVA:

22 Yes. I have a very short Redirect.

23 REDIRECT EXAMINATION

24 BY ATTORNEY PAIVA:

25 Q. Mr. Price, when you were talking with Mr. Kennard,

1 he asked you about how the proposal would work if a
2 particular RLEC had rates that had not yet reached the
3 benchmark. For example, if the benchmark were \$18,
4 and the RLEC had rates of \$15, this RLEC would not be
5 able to claim from the Universal Service Fund, and I
6 believe you agreed with Mr. Kennard that that would be
7 the case. But would the creation of the Universal
8 Service Fund, as Mr. Laffey's testimony proposes,
9 provide any other incentives to a carrier like that
10 whose rates are below the benchmark?

11 A. Well, yes. As I said in my Rebuttal testimony and
12 I think in my Surrebuttal testimony, to the extent
13 that the opportunity exists under Mr. Laffey's
14 proposal to recover all a carrier's inflation-based
15 increases on an annual basis going forward from other
16 carriers. In other words, without having to face its
17 own customers for those revenues, it creates a strong
18 incentive in my view for carriers who might otherwise
19 bank their PCO revenue opportunities to go ahead and
20 increase rates as quickly as possible to whatever cap
21 is established, say \$18 so that they could then take
22 advantage of the flow of revenues from other carriers
23 and from other ratepayers.

24 ATTORNEY PAIVA:

25 Thank you. I have no further questions.

1 JUDGE COLWELL:

2 Mr. Kennard?

3 ATTORNEY KENNARD:

4 No questions.

5 JUDGE COLWELL:

6 Mr. Stewart?

7 ATTORNEY STEWART:

8 Thank you. I have no further questions.

9 JUDGE COLWELL:

10 Mr. Cheskis?

11 ATTORNEY CHESKIS:

12 No questions, Your Honor.

13 JUDGE COLWELL:

14 All right. Thank you very much, Mr.

15 Price. You may step down.

16 MR. PRICE:

17 Thank you, Your Honor.

18 JUDGE COLWELL:

19 Okay. So we'll mark those three as

20 admitted, then.

21 (Verizon Exhibits 1.0, 1.1 and 1.2 marked

22 for identification and admitted.)

23 JUDGE COLWELL:

24 And with that, I believe it's Ms.

25 Painter's turn.

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ATTORNEY PAINTER:

Thank you, Your Honor. AT&T calls Mr. Nurse and Dr. Oyefusi to the stand.

OFF RECORD DISCUSSION

JUDGE COLWELL:

Now, then. Would you raise your right hands, please?

E. CHRISTOPHER NURSE, AND OLA OYEFUSI, HAVING FIRST BEEN DULY SWORN, TESTIFIED AS FOLLOWS:

JUDGE COLWELL:

Please be seated. Go ahead.

ATTORNEY PAINTER:

Thank you.

DIRECT EXAMINATION

ATTORNEY PAINTER:

Would each of you individually please state your name and business address for the record?

DR. OYEFUSI:

Ola Oyefusi. My address is 7125 Columbia Gateway Drive, Columbia, Maryland. I'm the AT&T Landscape Access Manager.

MR. NURSE:

My name is Christopher Nurse. My

1 business address is 1120 20th Street NW, Suite 1000,
2 Washington, D.C. 20036.

3 ATTORNEY PAINTER:

4 And do you have before you three pieces
5 of testimony that was offered?

6 MR. NURSE:

7 Yes, I do.

8 DR. OYEFUSI:

9 Yes.

10 ATTORNEY PAINTER:

11 Okay. And although it's not the versions
12 that were distributed, these are the versions for the
13 court reporter, your Direct testimony which is AT&T
14 Statement 1.0, is that before you?

15 MR. NURSE:

16 Yes, it is.

17 DR. OYEFUSI:

18 Yes.

19 ATTORNEY PAINTER:

20 That consists of 21 pages of testimony
21 and one attachment?

22 MR. NURSE:

23 Yes, it does.

24 ATTORNEY PAINTER:

25 Okay. And the Rebuttal, which is AT&T

1 Statement 1.1, which consists of 29 pages of testimony
2 and three attachments?

3 MR. NURSE:

4 Yes, it does.

5 ATTORNEY PAINTER:

6 And your Surrebuttal testimony which is
7 marked as AT&T Statement 1.2, and it consists of 28
8 pages of testimony and eight attachments?

9 MR. NURSE:

10 Yes, it does.

11 ATTORNEY PAINTER:

12 I'll just note, Your Honor, that
13 Surrebuttal testimony in and of itself does not have
14 proprietary data, but there are two attachments,
15 Attachments Six and Seven, that contain proprietary
16 data and we're providing a copy with the proprietary
17 attachments included and then also a copy of the
18 proprietary attachments redacted.

19 JUDGE COLWELL:

20 Okay.

21 ATTORNEY PAINTER:

22 Do you have any corrections to any of the
23 pieces of the testimony?

24 MR. NURSE:

25 Yes, I do. Starting with Direct

1 testimony, on page one, line six, insert regional
2 before vice president. On page two, line three, insert
3 Connecticut before Delaware. The last line on page
4 12, strike the text and put note 15.

5 ATTORNEY STEWART:

6 I'm sorry, sir. Could you slow down a
7 little bit? What page number?

8 MR. NURSE:

9 The first one was page one. The second
10 one was page two. The third one is page 12, put note
11 15, strike the entirety of the text and replace it
12 with the word "it" referring that to footnote 14.
13 There's one change on Rebuttal ---. Oh, one more on
14 Direct.

15 DR. OYEFUSI:

16 Page 14, line 16, that should be carriers
17 instead of carries.

18 ATTORNEY PAINTER:

19 So the word carries should be replaced
20 and say carriers?

21 DR. OYEFUSI:

22 Yes.

23 MR. NURSE:

24 And no changes on the Rebuttal. And on
25 the Surrebuttal, page 20, line 21, replace PTA Witness

1 Laffey with Embarq Witness Lindsey.

2 ATTORNEY KENNARD:

3 What page is that?

4 MR. NURSE:

5 It should be page 20, line 21.

6 ATTORNEY KENNARD:

7 Page 20?

8 MR. NURSE:

9 In Surrebuttal.

10 ATTORNEY KENNARD:

11 Surrebuttal page?

12 MR. NURSE:

13 Page 20, within the question, PTA Witness
14 Laffey testified at page 8 and 9, should say Embarq
15 Witness Lindsey.

16 ATTORNEY PAINTER:

17 Does that complete your corrections?

18 MR. NURSE:

19 Yes, it does.

20 ATTORNEY PAINTER:

21 Was this testimony prepared by you or
22 under your direct supervision?

23 DR. OYEFUSI:

24 Yes.

25 MR. NURSE:

1 Yes, it was.

2 ATTORNEY PAINTER:

3 And if you were asked any questions
4 today, would your answers be the same?

5 DR. OYEFUSI:

6 Yes, they would be.

7 MR. NURSE:

8 Yes, they would.

9 ATTORNEY PAINTER:

10 Is the information contained in this
11 testimony true and correct to the best of your
12 information and belief?

13 DR. OYEFUSI:

14 Yes.

15 MR. NURSE:

16 Yes, it is.

17 ATTORNEY PAINTER:

18 With that, I would move for the admission
19 of AT&T Statements 1.0, 1.1 and 1.2 subject to Cross
20 Examination.

21 ATTORNEY KENNARD:

22 I do have objections. I have objections
23 to certain aspects of the Surrebuttal testimony.

24 JUDGE COLWELL:

25 Go ahead.

1 ATTORNEY KENNARD:

2 There are two subject matters. The first
3 relates to the Commonwealth Court brief we discussed
4 which is included as an exhibit to Mr. Price's
5 testimony. As I indicated previously, AT&T argues
6 that these are Commission --- this is Commission
7 pronouncements. For example, page three of the sur
8 starting at line six, "and neither does the
9 Pennsylvania Commission. In a pleading filed with the
10 Commonwealth Court the Commission has
11 publicly called the PTA and OCA position "absurd."
12 That alone is sufficient to dispose
13 of their arguments." It's not, as we discussed
14 before, a Commission pronouncement. It's an advocacy
15 brief submitted by the Law Bureau to the Commonwealth
16 Court. It does not reflect any determination by the
17 Commission, and we propose to strike, starting with,
18 "and neither does the Commission" all the way down to
19 the end of the discussion on line nine. It's not
20 accurate. It's not legally accurate. It's not
21 factually accurate.

22 ATTORNEY PAINTER:

23 Your Honor, I disagree that it's not
24 factually accurate. To the extent that Mr. Kennard
25 would like to argue in his brief that --- it's what we

1 talked about before. The weight goes to the fact that
2 everybody knows what this brief was, who filed it.
3 You and the Commission can assign the appropriate
4 weight to it. Mr. Kennard can certainly argue in
5 brief to the extent of the testimony.

6 JUDGE COLWELL:

7 I have to agree with Ms. Painter on this
8 one. It's a Commonwealth Court brief filed by
9 Commission staff.

10 ATTORNEY KENNARD:

11 I understand, and that should be the
12 representation. That's not the representation. The
13 witness asserts that neither does the Commission.
14 They have written a brief.

15 JUDGE COLWELL:

16 Commission Counsel is representing the
17 Commission, and they can speak for the Commission like
18 you speak for your client.

19 ATTORNEY KENNARD:

20 It's not a determination by the
21 Commission.

22 JUDGE COLWELL:

23 That's correct.

24 ATTORNEY KENNARD:

25 It is the Commission's Law Bureau's

1 brief.

2 ATTORNEY PAINTER:

3 Your Honor, I would also point out PTA
4 attached the Commission's comment to the FCC in the
5 Direct testimony and cited that testimony to support
6 their position as well.

7 JUDGE COLWELL:

8 It does seem inconsistent.

9 ATTORNEY KENNARD:

10 Those were comments to the FCC, and we
11 acknowledged that they were written by the Law Bureau,
12 stating the Commission's concern in those staff
13 comments. We did not assert that this is a ruling of
14 the Commission, or that we disagree. Commission
15 orders speaks for themselves.

16 JUDGE COLWELL:

17 Yes. They obviously do. However, this
18 is a pleading, and it says it's a pleading. I don't
19 see where you ---.

20 ATTORNEY KENNARD:

21 So why does the witness get to assert
22 that this is a position of the Pennsylvania Public
23 Utility Commission? It's the Law Bureau writing an
24 advocacy brief. Why should we even allow this in the
25 record in the first place and create a whole ---

1 create arguments in brief? It's just not factually
2 accurate. It speaks for itself. The witness is
3 unfairly characterizing. It's not factually accurate
4 to say it's the Commission. It's not legally
5 accurate. It's attached. It stands in record. We
6 can argue about it. We don't need these witnesses
7 telling us what the legal import of it is or how it
8 was --- became the determination of the Public Utility
9 Commission. Your Honor ---.

10 JUDGE COLWELL:

11 Mr. Kennard, the Law Bureau attorneys are
12 entitled to represent their client just like you
13 represent yours. And that is what they did in that
14 pleading. We can't discount the importance of that.
15 We can't give it any more than it is, but yeah, it's
16 not an order. The order is what is being defended in
17 that case. But still it is what it is. We all know
18 what it is.

19 ATTORNEY PAINTER:

20 Well, Your Honor, I mean I'll point that
21 Dan's testimony when they cited to the comment that
22 this Commission cogently described the negative
23 impacts that the rating system would have. So again,
24 it would be entirely inconsistent because they're
25 taking comments and representing it as the position of

1 the Commission. Now, in this case they don't want it
2 to happen.

3 ATTORNEY KENNARD:

4 We'll stipulate that was the Commission
5 staff.

6 ATTORNEY PAINTER:

7 We'll stipulate it was the Commission
8 staff that filed the brief.

9 JUDGE COLWELL:

10 Fair enough.

11 ATTORNEY KENNARD:

12 The second aspect of our motion to strike
13 includes a long discussion of access charges and the
14 anticompetitive effects in this Surrebuttal starting
15 on page 23. We're good right up until Surrebuttal.
16 We were good right up until Surrebuttal. Obviously,
17 access is a factor and we can do Cross Examination on
18 that. The Commission clearly stayed its consideration
19 of local access charges and it's too bad that
20 Surrebuttal testimony --- we now have starting on page
21 23, line eight and all the way through to page 25,
22 line 17, as well as on page 26, starting at line 15
23 and going over to page 27, line 13 a long involved
24 discussion of why access charges are too high and need
25 to come down. I respect these are positions and there

1 have been other proceedings where it's expressed not
2 quite as capably as he does here. This is well
3 outside the scope of the proceedings. It's not
4 background. It's a direct attack on access charges.
5 It's outside the scope of this case and we've agreed
6 upon it all throughout this proceeding until we come
7 to the Surrebuttal. We move that it be stricken as
8 irrelevant.

9 ATTORNEY PAINTER:

10 I have two responses, Your Honor. First,
11 the testimony is responding to the Direct and Rebuttal
12 testimony of Dr. Loube, where he specifically --- and
13 in fact, Mr. Cheskis asked questions today about
14 access charges. I understand --- this testimony is
15 not requesting as far as this case that any party's
16 access charges be reduced. That is what is not a part
17 of this case. However, to simply ignore the fact that
18 access charges impact issues in this case is
19 impossible. Mr. Cheskis just asked questions about
20 the fact that if you do not increase or --- yes, do
21 not increase access charges, then local rates have to
22 increase further. It's impossible --- and AT&T has a
23 right to discuss the competitive impact of that
24 position and what happens to competition and what
25 happens in the grand scheme of this case if something

1 like that were to happen. That is what Dr. Loube
2 testified to and that is why AT&T is responding to it.

3 Even PTA --- and I'm trying to find the
4 reference. PTA's witness even talked about the fact
5 that access charges are interrelated with the issues
6 in this case. Again, this testimony does not anywhere
7 request that the Commission as part of this case
8 reduce any party's access rates. It simply puts into
9 context that issue when you're looking at the other
10 issues in this case.

11 One of the issues in this case is whether
12 there is any anti-competitive impact to increasing the
13 Universal Service Fund, and AT&T's position is yes, we
14 need to now also consider access rates. Mr. Cheskis
15 talked about if you further reduced access rates,
16 local rates will have to go up further and that will
17 again impact the issues in this case. That is what
18 this testimony is going to.

19 ATTORNEY KENNARD:

20 Two levels of response, Your Honor.
21 First, Mr. Cheskis asked questions about the mechanics
22 of the operation mathematically. He didn't ask about
23 whether we should or shouldn't. He simply said if you
24 don't increase access, you're doubling up on local.
25 It was for another witness, Mr. Price, not for a

1 witness here. The degree to which this whole thing is
2 pretext is revealed on page 24 of the Surrebuttal,
3 where Mr. Laffey's discussion on page 49 to 51 of
4 whether or not there should be funding from the Fund,
5 which is clearly an issue in this case, there's no
6 reference at all to access in the cited sections that
7 have simply become a pretext for the witness to launch
8 into an attack on the witness on access charges, to
9 which he hasn't testified, in an attempt to bring in
10 information from another proceeding. He never said
11 --- if you go back to PTA, 49 of 51 there's nothing
12 there about access. Yet there is about the Fund, but
13 this witness uses that as a complete pretext and
14 that's not responsive testimony. That's outside the
15 scope.

16 ATTORNEY PAINTER:

17 Well, it absolutely is responsive to Dr.
18 Loube's testimony. He cited PTA's testimony, and this
19 was responsive to Dr. Loube's testimony in those
20 questions. It's absolutely responsive. Several
21 parties put in, including tables, argument about
22 access charges, not to argue that they be reduced as
23 part of this case. It was simply to put it into
24 context. And the Commission should have a full record
25 about how they impact the issues in this case.

1 JUDGE COLWELL:

2 Unfortunately, you're both right. There
3 won't be any recommendations about access charges for
4 the reasons you all understand. This testimony seems
5 like it does push the envelope just a little. And I
6 caution you to not enlarge this discussion in your
7 argument in your briefs. But I am going to allow it
8 because it is responsive to other testimony. Anything
9 else?

10 ATTORNEY KENNARD:

11 I think that what's on page 26 and 27 is
12 completely non-responsive. Mr. Laffey doesn't testify
13 about the level of access charges with respect to
14 subsidization. This one is completely false.

15 JUDGE COLWELL:

16 Starting on 27, you mean?

17 ATTORNEY KENNARD:

18 Page 26, starting on line 15 through and
19 including page 27, line 13. Did I say it wrong?
20 Page ---.

21 JUDGE COLWELL:

22 I'm not sure because you're starting in
23 the middle of testimony and then ---.

24 ATTORNEY PAINTER:

25 You know what? There was an electronic

1 version that I sent to you that I actually cautioned
2 not to use here because some of the ---. I do recall
3 I have ---.

4 ATTORNEY KENNARD:

5 It could be the pagination.

6 ATTORNEY PAINTER:

7 Okay.

8 ATTORNEY KENNARD:

9 Its question is --- it appears on my page
10 26 as it came out of my printer, "Mr. Laffey testified
11 at pages 49 to 51."

12 JUDGE COLWELL:

13 Okay. And that starts on the top of page
14 27 in mine.

15 ATTORNEY KENNARD:

16 Okay. And then that question and the
17 entirety of the answer up through and stopping at the
18 next question, "Does this conclude your rebuttal
19 testimony." That whole question and answer, as well
20 as the associated footnotes.

21 JUDGE COLWELL:

22 Okay. Could you state your objection
23 again?

24 ATTORNEY KENNARD:

25 It's not responsive to any testimony.

1 It's outside the scope of this proceeding.

2 JUDGE COLWELL:

3 Ms. Painter?

4 ATTORNEY PAINTER:

5 It says Mr. Laffey testified at pages 49
6 through 51 that it is not anti-competitive for
7 competitors to increase their subsidization of RLECs
8 in lieu of increased retail rates. The question on 49
9 said several --- well, first of all, the subheading of
10 this is anticompetitive effects of availability of E-A
11 Web Tech Support. And the question is several
12 witnesses argue that recovering rate increases from
13 the Fund will have an anti-competitive effect. Do you
14 agree. And then he goes on to answer and he says no,
15 that additional funding would have --- he does not
16 agree that additional funding will have an anti-
17 competitive effect.

18 JUDGE COLWELL:

19 Okay. You completely lost me. What I'm
20 still stuck on is testified at pages 49 to 51 of which
21 pleading?

22 ATTORNEY PAINTER:

23 The Rebuttal testimony.

24 JUDGE COLWELL:

25 Thank you.

1 ATTORNEY PAINTER:

2 The question in AT&T's testimony stated
3 that Mr. Laffey testified that it is not anti-
4 competitive for competitors to increase their
5 subsidization RLECs in lieu of increased retail rates.
6 That is what this entire section is about.

7 JUDGE COLWELL:

8 Yes. I think the question is a fair one.

9 ATTORNEY KENNARD:

10 Well, the problem is it's a pretext for
11 answering another question. The question for Mr.
12 Laffey --- the issues addressed by Mr. Laffey on pages
13 41 --- 49 through 51 are answering the Commission's
14 question, whether or not funding would have an anti-
15 competitive effect. This is not --- there's not one
16 mention of access in here. How then is it within the
17 scope of either responses to Rebuttal testimony or in
18 the scope of this case where the Commission has said
19 access is not an issue, for the witness to make large
20 leap of linkage to access rates, access rate changes,
21 rate changes made by the company in 2002, 2003.
22 There's just no linkage there.

23 JUDGE COLWELL:

24 Well, I think there's enough of a linkage
25 for you to be able to cross examine him at length and

1 you can certainly do that and point out what you think
2 the flaws are. But I'm not going to strike it.

3 Okay. Ms. Painter, you made a motion,
4 subject to motions and Cross, so now your witnesses
5 are available for Cross?

6 ATTORNEY PAINTER:

7 Yes, they are, Your Honor.

8 JUDGE COLWELL:

9 Ms. Paiva?

10 ATTORNEY PAIVA:

11 I have no Cross, Your Honor.

12 JUDGE COLWELL:

13 Mr. Dodge?

14 ATTORNEY DODGE:

15 Surprise, no questions.

16 JUDGE COLWELL:

17 Do you have an order of questioning?

18 ATTORNEY CHESKIS:

19 We do, Your Honor. I believe OCA will be
20 going first.

21 JUDGE COLWELL:

22 All right. Go ahead.

23 ATTORNEY CHESKIS:

24 Thank you, Your Honor.

25 CROSS EXAMINATION

1 ATTORNEY CHESKIS:

2 Good morning.

3 DR. OYEFUSI:

4 Good morning.

5 ATTORNEY CHESKIS:

6 I'm Joel Cheskis with the Office of
7 Consumer Advocate. I wanted to turn first to your
8 Rebuttal testimony at page 11, line 16. There you
9 begin your response to the economic cost study
10 provided in this proceeding by the OCA through the
11 Direct testimony of Dr. Robert Loubé; is that correct?

12 DR. OYEFUSI:

13 Yes.

14 ATTORNEY CHESKIS:

15 Is it true that AT&T did not submit its
16 own cost study in this proceeding?

17 DR. OYEFUSI:

18 Yes, we did not submit any cost study.

19 ATTORNEY CHESKIS:

20 And likewise, no other parties to this
21 proceeding has submitted their own economic cost
22 study; is that correct?

23 DR. OYEFUSI:

24 That's correct.

25 ATTORNEY CHESKIS:

1 I'm sorry?

2 A. No one's submitted a model. We're not accepting
3 that Dr. Loube's model is an economic model. No one
4 else filed one.

5 Q. And I apologize. I don't know which witness to
6 ask questions to and so I will just ask them.

7 Isn't it true --- I'm sorry, is it true that AT&T
8 has not provided any evidence in this proceeding based
9 either on an invented cost analysis or a forward-
10 looking cost analysis that local rates are below costs
11 and that access rates are above costs?

12 A. No. AT&T didn't file an access rate cost study
13 because changing access rates was not within the scope
14 of the case. We well understood PUC and FCC orders
15 that access is several hundred times higher than cost
16 and lots of the parties here have taken the position
17 that local has historically been under cost depending
18 how you measure cost.

19 Q. Well, my question is, has AT&T provided any
20 evidence in this proceeding either --- based either on
21 an invented cost analysis or a forward looking cost
22 analysis that local rates are below cost?

23 A. No. I think both of those are in the general body
24 of knowledge of people in the industry.

25 Q. So the answer to my question is no?

1 A. The answer is no. The filing of a cost study
2 would have been improper.

3 Q. And likewise, no other party in this proceeding
4 has submitted such evidence either; is that correct?

5 A. That is correct.

6 Q. Does AT&T have any intention to submit its own
7 economic cost study to any proceeding in Pennsylvania
8 in the future?

9 ATTORNEY PAINTER:

10 Objection, Your Honor. I'm not sure how
11 those proceedings are relevant to the issues in this
12 case.

13 ATTORNEY CHESKIS:

14 Well, it's not that you're asking for ---
15 or you've got some cost study in the works right now
16 that you're preparing somewhere else that might be
17 relevant to these proceedings; is that correct?

18 ATTORNEY PAINTER:

19 Can I have that question again?

20 BY ATTORNEY CHESKIS:

21 Q. Does AT&T have any intention to submit its own
22 economic cost study in a separate proceeding in
23 Pennsylvania on these issues?

24 A. We hope the Commission will let the stay or
25 whatever on access proceedings and at that time based

1 on the requirements of the Commission at the time we
2 would issue something that would be responsive. About
3 establishing I think it would be proper for us to
4 introduce an access cost model at that time.

5 Q. If you could turn to page 15 of your Rebuttal
6 testimony. And I'm specifically looking at the
7 question at the bottom and then your answer goes to
8 the following page 16. You argue that Dr. Loube is
9 absolutely wrong on line 23, when he stated that loop
10 costs are joint cost and not part of the incremental
11 cost of local service; is that correct?

12 A. Yes.

13 Q. And you even go so far as to say tired old
14 argument later in your testimony; is that correct?

15 A. Yes.

16 Q. Are you aware that as recently as August 7th of
17 2008 Chairman Cawley has stated, quote, that the
18 Commission has consistently adopted the position that
19 the fixed costs associated with loop plan and
20 facilities of ILECs should be allocated and covered by
21 services that utilize the local loop including an
22 ILEC's intrastate carrier access services, end quote?

23 A. The statement speaks for itself. I thought access
24 rates ----.

25 Q. I'm sorry. I didn't understand the last part of

1 your answer.

2 A. I said yes, but there's an access case with AT&T
3 introduced evidence about why that was incorrect.

4 DR. OYEFUSI:

5 I may say, if I can join in, developing
6 cost for the service, and when they designed it costs
7 were covered, so now Chairman Cawley's statement is
8 talking about how the company's cost is going to be
9 covered. Here we're talking about cost of the
10 service.

11 ATTORNEY CHESKIS:

12 Does --- I'm sorry. Are you done?

13 DR. OYEFUSI:

14 We also talk about the danger in the
15 difference between when people develop costs and when
16 we determine how they try to recover that cost.

17 ATTORNEY CHESKIS:

18 I appreciate that. Mr. Nurse is claiming
19 that Chairman Cawley's statement speaks for itself, so
20 I ---.

21 BY ATTORNEY CHESKIS:

22 Q. Would you agree with me in light of that that it's
23 not possible to complete a long distance call without
24 using the local loop?

25 A. I would agree that a long distance call is

1 completed using the local loop, but I would not agree
2 that completing a long distance call changes the cost
3 of the local loop.

4 Q. Would you also agree with me that it's not
5 impossible for a customer using DSL service to access
6 the internet without using a local loop?

7 A. Not to be argumentative, but I don't think that
8 DSL technology is necessarily limited to wireline
9 technology, so you probably want to limit your
10 question to ILEC DSL.

11 Q. Fair enough.

12 A. So if you have ILEC DSL service and you were using
13 an over the top service like Vonage, that DSL service,
14 would use the local loop in allowing service, but
15 would be an application of that DSL service providing
16 that local loop and once that DSL service was
17 installed, there would be no changes in the cost of
18 the loop, whether it's used 24 hours a day or not at
19 all.

20 Q. And would that be the same --- you referenced
21 using Vonage over the top service, would that be
22 saying that it was --- using the DSL service provided
23 by the ILEC?

24 A. You lost me on your question there. The DSL
25 service --- the ILEC DSL service and then Vonage is an

1 application that rides over the DSL service. So the
2 long distance call will be made using the Vonage
3 application using the DSL service on the loop.

4 Q. Well, I wasn't talking about on long distance
5 calls. I was talking about using the DSL service to
6 access the internet.

7 A. Yes. If you're using DSL service from an ILEC,
8 that DSL service would be using the local loop
9 facility, but the use or non-use of the DSL service
10 would not change the cost of the loop.

11 Q. Would you agree with me that it is not possible
12 for a consumer with no high speed internet access to
13 access the internet without using the local loop,
14 what's commonly referred to as dialup?

15 A. I think the question is circular. You said if you
16 don't have internet access, it's not possible to
17 access the internet, so ---.

18 Q. No, I said if you have no high speed internet
19 access.

20 A. Oh. So if you have dialup rather than high speed,
21 correct.

22 Q. Is it possible to access the internet without
23 using the local loop?

24 A. Yes, you could do dialup wireless service. But
25 yes, I take your point that if you have AOL internet,

1 dialup internet, that you're going to be typically
2 using that over your dialup provider. If it were
3 cable, you might be using theirs.

4 Q. Can you next turn to your Surrebuttal testimony,
5 page three? And specifically looking at line nine.

6 A. Yes.

7 Q. And we've already had some discussion about this
8 earlier this morning. You note that in a Commonwealth
9 Court pleading the Commission has called absurd the
10 PTA and OCA position on Act 183 mandates an \$18 rate
11 cap remain in place? Do you see that?

12 A. Yes.

13 Q. Are you familiar with the Federal Universal
14 Service Fund and its purpose?

15 A. Yeah. I mean, that's a multibillion dollar
16 enormous monstrous program, but yes.

17 Q. Is it your position that the Federal Universal
18 Service Fund is also ridiculous or absurd?

19 A. No, I disagree with the premise of your question.
20 We just said that the Universal Service Fund was
21 absurd.

22 Q. Meaning the Pennsylvania Universal Service Fund?

23 A. Right. That wasn't our testimony.

24 Q. You've just been referring to the Commonwealth
25 Court brief that was filed by the Commission that uses

1 that word?

2 A. Well, I mean, the brief speaks for itself and it
3 says what it says. They're characterizing PTA and
4 OCA's position.

5 Q. And you used the word absurd or ridiculous
6 elsewhere in your testimony in this case to describe
7 the OCA position?

8 A. I think it appears elsewhere.

9 Q. So then is it your contention that --- is it your
10 contention, back to the original question, that the
11 Federal Universal Service Fund is also absurd or
12 ridiculous?

13 A. No. I mean, I think the intent of the Universal
14 Service Fund is an excellent idea.

15 Q. I'm sorry. Can you just be specific as to which
16 one you're referring to?

17 A. Yes.

18 Q. Pennsylvania or federal?

19 A. I think the question's compound. So we --- with
20 the Federal Universal Service Fund, yes, it's AT&T's
21 position that that's a legally-required objective of
22 the Telecom Act. That's a social good thing to do.
23 That said, like any large government program they're
24 not perfect. The Fund's not very large. There's
25 concern about the rate of growth. There's concern

1 about the efficiency which it achieves the objective
2 and I think in a multibillion dollar program, there's
3 always room for improvement. And different people
4 have different takes on how that would work such as
5 the issue do you have multiple ETCs. You know, is
6 that ---? If you have multiple carriers, do you
7 really need to --- do you really need a subsidy, you
8 know ---.

9 Q. I apologize for cutting you off. So I guess to
10 not belabor the point, you just admitted that you used
11 the words absurd or ridiculous to describe the OCA
12 position in this case but are you saying that the FCC
13 or the Federal Universal Service Fund is or is not
14 ridiculous?

15 A. No, I'm not saying that either the Federal
16 Universal Service Fund or the State Universal Service
17 Fund in proceeding to achieve their objections are
18 ridiculous or absurd. It's your position that the
19 Commission's Counsel characterized it as absurd. We
20 don't have a problem with the Universal Service.
21 Universal Service is a good idea. Everybody should
22 have communication. Particularly we want to make sure
23 that as things get competitive that it doesn't get so
24 expensive that poor people can't afford it and make
25 sure that everybody can move along.

1 Q. So it's essentially affordability?

2 A. Well, I think when you go to affordability, it's a
3 --- you know, it's by definition poor people can
4 afford less because they have less money. So the
5 price of something is going to be a strain first for
6 people who have the least money.

7 Q. Is it your contention that it is absurd or
8 ridiculous for Pennsylvania consumers to pay into a
9 Federal Universal Service Fund that benefits customers
10 in other states?

11 A. I think the point you're getting at is that the
12 Pennsylvania Universal Service Fund --- that
13 Pennsylvania pays in as a state warranted Federal
14 Universal Service Fund than it draws out of it.

15 Q. Are you asking me?

16 A. I'm trying to --- is that the question?

17 Q. No. My question is, is it your contention that it
18 is absurd or ridiculous for Pennsylvania consumers to
19 pay into a Federal Universal Service Fund that
20 benefits customers in other states?

21 A. Well, I don't think you can say that there's no
22 benefit to Pennsylvania customers. Even if
23 Pennsylvania was a net payer into federal Fund, paid
24 in more than it took out or paid in and took nothing
25 out, Pennsylvanians calls people in other states. And

1 to the extent that the Federal Universal Service Fund
2 provides telephone service to your relatives or your
3 friends or your employers, or your business partners
4 in other states, there's utility to Pennsylvania
5 customers from that.

6 Q. Is it ---?

7 A. Let me just finish here. Obviously when you take
8 a national program and you establish national
9 standards and you collect money and you send out
10 benefits there's going to be net beneficiaries and net
11 payers whether it's title funding or Social Security
12 or grants or whatever.

13 Q. Is it likewise your contention that it is absurd,
14 ridiculous for federal law to say that rural and
15 insular rates must be comparable to urban rates?

16 A. That's not our testimony. We didn't say that.

17 Q. So the answer's no?

18 A. No, that's not our testimony. We didn't say that.

19 OFF RECORD DISCUSSION

20 JUDGE COLWELL:

21 Excuse me. Could you move the microphone
22 around so that when you face Counsel that you're
23 speaking into it? Thank you very much.

24 BY ATTORNEY CHESKIS:

25 Q. My last "is it absurd or ridiculous" question, is

1 it your contention that it's absurd or ridiculous that
2 AT&T gets Federal Universal Service funding throughout
3 much of the country where it is an incumbent provider
4 and not a toll provider competitor as it is here in
5 Pennsylvania?

6 A. No, the --- there was a piece of the testimony
7 that went to that. Our position is that the carriers
8 across the country receive whatever funding they're
9 entitled to under the Federal Universal Service Fund.
10 And if you're the country's biggest provider of
11 service to rural customers, it's no surprise that you,
12 like AT&T, would be the biggest recipient of federal
13 Universal Service. We serve some extremely rural
14 areas. And Pennsylvania, there's a chart in our
15 testimony, is the tenth most densely populated state.
16 I know a lot of people think that Pennsylvania is
17 relatively rural, but when you rank order them,
18 there's 40 states that are less densely populated than
19 Pennsylvania and we serve large portions of them like
20 large portions of California which is like 25 percent
21 less dense than Pennsylvania, or Texas which is, you
22 know, close to three times less dense than
23 Pennsylvania. So there's no surprise and there's no
24 problem, and it's a good thing. Everybody that gets
25 money from the Universal Service Fund is getting it

1 because they qualified. You know, there's no problem
2 with that.

3 Q. And I think you previously answered one of my
4 questions anticipating this question I'm now about to
5 ask. But just for clarity's sake, would AT&T find a
6 network that serves only, let's say, 80 percent of
7 homes and businesses as valuable to one that serves 99
8 percent of homes and businesses?

9 A. There's a general notion of network economics that
10 the more people you can reach the more valuable it is.
11 I mean, I think that the textbook example was, what
12 would be the value of a telephone network with one
13 telephone? Zero, because there would be nobody to
14 call. So as you get the ability to call more people,
15 the utility gets more valuable. I think it's an
16 asymptotic approach.

17 Q. I'm sorry. What was that?

18 A. I think it's asymptotic approach that ---.

19 Q. I don't know what that word means. I'm sorry.

20 JUDGE COLWELL:

21 Can you spell it?

22 A. I'm sorry. Asymptote. As you try to get to a
23 high percent of penetration it gets increasingly
24 difficult. There are some people that would not take
25 telephone service if it were free. They just ---

1 they're antisocial or they find it annoying or it's
2 bothersome and they just don't want it. So you can't
3 get to a hundred percent telephone penetration.
4 Somebody moved out of their house and moved in. You
5 have a little window of time, they didn't have
6 telephone for a couple days. So you can't ever get to
7 a hundred percent penetration. It gets increasingly
8 difficult and expensive to try to get that last little
9 bit.

10 BY ATTORNEY CHESKIS:

11 Q. Okay. But my question is at 99 percent.

12 A. Ninety-nine (99) percent is getting there. I
13 mean, when you're trying to get that last percent or
14 two, it's like trying to get to zero percent
15 unemployment. Three percent unemployment is
16 considered typically sort of full employment. They
17 can't really get down below there. And I think that
18 that's probably a fair analogy with market penetration
19 that you get up into the high 90s and that's probably
20 about as high as you're going to get.

21 Q. Could you please turn to page one of your
22 Surrebuttal testimony? At line 24 you are commenting
23 on the impact of subsidies on competition. Do you see
24 that?

25 A. Line 24?

1 Q. Yes.

2 A. When those subsidy burdens?

3 Q. Yes. Beginning on line 24. When those subsidy
4 burdens are imposed on carriers in other parts of
5 Pennsylvania, those carriers will be hindered in their
6 ability to compete.

7 A. Yes.

8 Q. Would it also be correct to say that increasing
9 the cost of service for some players in a competitive
10 market would eventually drive out those players to
11 carriers that have not had service costs increased by
12 inflation?

13 A. Over time, yes.

14 Q. And ---.

15 A. It's obviously an issue of magnitude.

16 Q. And regulatory obligation to provide broadband
17 service to a hundred percent of your customers
18 increases cost of service; is that correct?

19 A. Well, on net basis. If you build a more expensive
20 network, the network will cost more, but that would
21 have to be offset by the additional broadband revenues
22 that you receive from that. So you may be --- the
23 firm may be wealthier for building broadband network
24 and getting broadband revenues.

25 Q. And you agree that your cost of service would

1 increase?

2 A. Well, no, I think there was evidence in the case
3 that North Pittsburgh said in their financial
4 statement that they would spend much more on their
5 Chapter 30 network accelerated deployment than they
6 planned to spend anyway.

7 Q. On page ten of your Surrebuttal testimony, line
8 17, you begin your response to Mr. Colton's analysis
9 of the state of competition in Pennsylvania based on
10 his review of the UtilityChoice.org web site. Do you
11 see that?

12 A. Yes, correct.

13 Q. At line 24 on that page, you argue that whether
14 companies --- whether competitors are actively
15 marketing the global basic service is irrelevant, they
16 offer it and they are required to notify customers
17 about that service. It continues on page 11. Do you
18 see that?

19 A. Yes.

20 Q. Can you identify for me what competitors you
21 indicate there are offering it and notifying customers
22 about it?

23 A. The Commission's web site indicates that that's an
24 obligation of carriers. I understand that obligation
25 would apply to all certificated carriers providing

1 service to their retail customers.

2 Q. Well, what are you referring to there on the top
3 of page 11?

4 A. We didn't conduct a compliance audit to assure
5 that carriers are fulfilling that obligation. That
6 would be something for the Commission to do. I think
7 since the carriers' rates are tariffed, it's a
8 straightforward compliance issue to look through the
9 CLECs' tariffs on the Commission web site and see if
10 they're offering a standalone service and are holding
11 themselves out as offering that service.

12 Q. Are you aware if AT&T's in line with that, those
13 provisions?

14 A. Yes. Yes, I am and yes, we are.

15 Q. And just to follow up on that answer, do you know
16 what the AT&T standalone offer is in Pennsylvania and
17 where it's available?

18 A. It's available on our tariff and web page. I'm
19 not a marketing guy but I'd be happy to supply a
20 printout of the terms and conditions and the pricing.

21 Q. Can you please turn to page eight now of your
22 Surrebuttal? I apologize that it's a little bit out
23 of order here. At line 18 of your Surrebuttal on page
24 eight, there you discuss the Lifeline and the Link Up
25 Program. Do you see that?

1 A. Yes.

2 Q. And you say for example that AT&T fully agrees
3 that Lifeline services should continue to be available
4 to those customers at existing rates.

5 A. Yes.

6 Q. Isn't it true that there is no such thing as a
7 Lifeline rate in Pennsylvania, but the Lifeline
8 program provides a discount to a separately
9 established basic local service rate?

10 A. Well, that's a good question. I'm glad you asked
11 that. In looking at it, it brings up a good point.
12 As you said, the Lifeline Program operates by applying
13 a credit to your bill, so you pay, you can see
14 nominally a full retail price and then you'll see a
15 credit. The way we structure Lifeline in New Jersey,
16 for example, is that the rate was set and the carriers
17 provide additional credit when necessary. So for
18 example ---.

19 Q. You mean basic local service rate is set?

20 A. Yeah, the Lifeline. The Lifeline rate is set.
21 And then when we increase our local rate, you have to
22 increase by an equal and offsetting amount, the
23 discount. So the net rate to Lifeline customers stays
24 the same. That's what I intended by referencing the
25 existing rate. I take your point about the mechanism

1 of a federal program, but ---.

2 Q. No, it wasn't the terminology.

3 A. Yeah, the terminology. The point that we're
4 getting at is yes, if the rate went up and we're going
5 to leave a strata of customers priced out of the
6 network, that would be a bad thing. But our point is
7 that if the strata of customers who would get priced
8 out is two percent of the market, something like that,
9 it's a very blunt instrument to say we're going to
10 subsidize the price to a hundred percent of the
11 customers ---

12 Q. Well, I think you're jumping ahead.

13 A. --- and if we ignore ---.

14 Q. If I can interrupt you for one second. Thank you
15 very much. I appreciate ---.

16 JUDGE COLWELL:

17 Stop.

18 ATTORNEY CHESKIS:

19 He wasn't answering my question.

20 JUDGE COLWELL:

21 Stop. Stop. Please stop. The court
22 reporter can only do one of you at a time. If you are
23 going to object to him, that's fine. But you have to
24 say it and then you, sir, have to stop. Okay.

25 ATTORNEY CHESKIS:

1 And I think in general --- I mean, I
2 appreciate Mr. Nurse's tendency to elaborate on his
3 initial responses to my questions, but it does seem
4 like at this point he is starting to take advantage of
5 that opportunity.

6 JUDGE COLWELL:

7 I'm certain Mr. Painter can give you this
8 opportunity when you are finished. She's very
9 capable.

10 ATTORNEY PAINTER:

11 So what's the question?

12 ATTORNEY CHESKIS:

13 Well, yes, I think he answered the
14 question. And then he went on, so I'm just moving on
15 to my next question now.

16 BY ATTORNEY CHESKIS:

17 Q. And I think this is again part of the question
18 that you were starting to answer just a while ago.
19 Isn't it true that --- I'm sorry. I'll take one more
20 step back. Are you aware of what the Lifeline
21 discount is in Pennsylvania?

22 A. It's in some of the elements they covered
23 yesterday, it's \$6.50 plus. So \$1.75 plus the \$6.50.
24 About \$8. It's in the testimony.

25 Q. Isn't it true as well that what was calculated as

1 \$8 --- approximately \$8.25, that discount remains the
2 same regardless of whether the basic local service
3 rate is \$20 or \$50?

4 A. That is the current mechanism. Our reference
5 there on page eight is that that mechanism --- the
6 Commission could modify that mechanism so that as the
7 rate went up, the current net rate, \$18 minus eight,
8 if you will, the \$10 net rate stays the same.

9 DR. OYEFUSI:

10 And also according to the point
11 administered by YUSA (phonetic) the structure is a
12 problem and we're up to about \$19.50. It varies from
13 state to state, so whatever the state wants to do.

14 BY ATTORNEY CHESKIS:

15 Q. So if the basic local service rate in Pennsylvania
16 raises to a hundred dollars, for example, isn't it
17 true that the Lifeline discount would remain \$8.25?

18 A. Well, I can't accept the premise that the service
19 would increase to a hundred dollars, but --- because
20 that would be absurd. But I do take your deeper
21 point. The current federal mechanism provides
22 discount off of rate and we clarified that our
23 proposal would accommodate just as we do in New
24 Jersey, and have the discount increase as the rate
25 goes up, so the customers pay --- the lowest level

1 customers that need that support get that same sort of
2 support and get a fair amount of insulation from
3 rising prices.

4 Q. Isn't it true that rural ILECs in Pennsylvania
5 interstate are funded --- they have only what's called
6 the tier one and tier two federal Lifeline programs?

7 A. You're talking about rural companies drawing on
8 federal money?

9 Q. Yes.

10 A. Can you restate your question?

11 Q. Isn't it true that rural RLECs in Pennsylvania
12 have no state-funded Lifeline, but that they only have
13 the minimum tier one and tier two federal Lifeline
14 programs?

15 A. I'm sorry. Are you saying --- are you asking if
16 the RLECs, the PTA companies, draw out of the
17 Pennsylvania State Universal Service Fund?

18 DR. OYEFUSI:

19 [INAUDIBLE]

20 ATTORNEY CHESKIS:

21 And I believe what you were --- Dr.
22 Oyefusi, what you were referring to is actually what's
23 referred to as the tier three, and the tier three
24 requires a state match in order to get the federal
25 discount.

1 DR. OYEFUSI:

2 There are four tiers, so I ---.

3 JUDGE COLWELL:

4 Excuse me. Doctor, you're getting too
5 far from the microphone.

6 DR. OYEFUSI:

7 I'm sorry. I was saying that there are
8 four tiers in the Lifeline Program. So tier one I
9 believe is the state charge and usually for the
10 Lifeline customer, or the customer in that program the
11 FCC will make sure the maximum benefit.

12 ATTORNEY CHESKIS:

13 I appreciate that.

14 BY ATTORNEY CHESKIS:

15 Q. Again, my question is, isn't it true that rural
16 RLECs in Pennsylvania have no state-funded Lifeline,
17 but that they only have minimum tier one and tier two
18 federal Lifeline programs? Is that correct?

19 A. In the state --- state fund, you're referring to
20 the federal program or are you talking about the state
21 program?

22 Q. Federal program.

23 A. You're referring to the state fund and the federal
24 program?

25 Q. In order to get to tier three, it requires

1 matching state funds in order to receive the tier
2 three fund from the Federal Universal Service Fund.

3 A. Well, you go to like the \$8, \$13 level, there's a
4 matching requirement.

5 Q. Right. And my question is, isn't it true that the
6 RLECs in Pennsylvania only have tier one and tier two?

7 A. What do you mean only have?

8 Q. Are you aware of the term eligible
9 telecommunications carrier or it's also abbreviated as
10 ETC?

11 A. Yes.

12 Q. And isn't it true that the rural RLECs in
13 Pennsylvania are all ETCs?

14 A. That's my understanding that all RLECs generally
15 are ETCs. There are also CETCs, competitive ETCs.

16 Q. Can you please turn to page 11 of your Rebuttal
17 testimony? And again, I apologize for jumping back
18 and forth here. On line 19 you're commenting on the
19 cost analysis presented by Dr. Loube; is that correct?

20 A. Yes, it is.

21 Q. And in there you state that it's a clear and
22 indisputable error to attempt to employ a non-rural
23 carrier model to produce costs for rural carriers; is
24 that correct?

25 A. Yes.

1 Q. Would you consider density areas where lines per
2 square mile are zero to five to 100 to 200 lines per
3 square mile to be rural or non-rural areas?

4 A. How many?

5 Q. Zero to five to 100 to 200 lines per square mile
6 to be rural or non-rural areas.

7 A. You said zero to five?

8 Q. Right.

9 A. Is that like part A, and part B is 100 to 200?

10 Q. Okay. At what level would you consider as part of
11 that model to be rural or non-rural areas, to
12 distinguish between rural and non-rural areas?

13 DR. OYEFUSI:

14 Actually, the application to determine
15 what is rural, it has nothing to do with more density.
16 The idea is, when they issued that model, was that the
17 model has within it --- it is highly correlated to
18 dispersion, so when you get to ---.

19 ATTORNEY CHESKIS:

20 I'm sorry. Highly correlated to ---?

21 DR. OYEFUSI:

22 To dispersion.

23 ATTORNEY CHESKIS:

24 Dispersion.

25 DR. OYEFUSI:

1 They don't live close together.

2 ATTORNEY CHESKIS:

3 Thank you.

4 DR. OYEFUSI:

5 As long as you have that kind of area,
6 the more that exaggerates how much cable you're going
7 to need to service the areas because it was originally
8 programmed and designed for a more urban setting. And
9 up to the point when you start going through this you
10 have to at least understand that if you get to more
11 wider dispersed area, you are not going to spread
12 cable throughout the whole area. So that --- I would
13 take that into consideration. So the decision was not
14 to say, okay, what part of this is suitable to be used
15 for rural area. It's completely different.

16 A. But just to clarify my point, I think costs do
17 tend to correlate with density, but they correlate
18 more closely with route miles than they do with square
19 miles. You could have like a ski area that might have
20 50 square miles of mostly ski trails and then maybe a
21 thousand ski condos in a cluster and that would be
22 pretty economical to serve with such a high density
23 where all those --- you know, base camp condos were
24 and you wouldn't have any wires at all all over the
25 mountains. In contrast to that, say like farmland, if

1 you had, you know, maybe 50 homes spread over 50
2 miles. That would be very expensive. It is related
3 to density, but it's really more closely related to
4 carrying structures and pole lines and having enough
5 cable to go up the street.

6 And that's where the dispersion issue comes in.
7 It's not just a matter of density of people, but it's
8 how people are clustered together. In an urban area,
9 those two tend to converge. But when you're on a
10 quarter acre lot, you can't really --- you know, you
11 can't really disperse that far, because it's not that
12 big. When you get into, you know, homes, you know, a
13 couple homes square mile, ten-acre lots and stuff,
14 then dispersion becomes a big factor and that's why
15 the model works in urban applications and not rural
16 applications.

17 ATTORNEY CHESKIS:

18 Did either of you participate in any of
19 the workshops or the ex partes at the FCC that focused
20 on the details of this model?

21 DR. OYEFUSI:

22 Yes. We attended a few of the workshops.

23 ATTORNEY CHESKIS:

24 Are you aware that the model generates
25 outputs for density areas where the lines per square

1 mile are 0 to 5, 5 to 109 and 100 to 200 lines per
2 square mile?

3 DR. OYEFUSI:

4 Yeah. It is true that --- you can do a
5 density scenario that way for a non rural carrier.

6 A. We don't accept that because the model prints out
7 an output that that's the right answer. And I think
8 that's what the FCC said. If you get down to zero to
9 five, that's a rural company and at that point they
10 said the model doesn't generate the right answer. So
11 yes, the model will help with the answer, but it's not
12 the right answer.

13 BY ATTORNEY CHESKIS:

14 Q. And Mr. Nurse, did you say that you participated
15 in any of these workshops or ex partes?

16 A. No, I didn't.

17 Q. Are either of you familiar with any of the AT&T
18 forward-looking models such as Sintville (phonetic)
19 model that is used to determine costs as part of the
20 California High Cost B Fund or the Bellsouth Model?

21 DR. OYEFUSI:

22 I'm not experienced in any of the AT&T
23 cost developments.

24 A. We did some work on some similarities between the
25 Embarq model and the Bellsouth model.

1 BY ATTORNEY CHESKIS:

2 Q. Jumping back to your Surrebuttal testimony, and
3 specifically looking at page eight.

4 Do you have that?

5 A. Yes.

6 Q. At lines one and three you state that the OCA
7 indicated in a Discovery response that it has not
8 conducted or reviewed any study or documentation
9 regarding wireless service penetration in
10 Pennsylvania; is that correct?

11 A. So you're in the Surrebuttal on page eight?

12 ATTORNEY PAINTER:

13 Line seven.

14 A. Line seven.

15 BY ATTORNEY CHESKIS:

16 Q. I'm sorry.

17 A. Yes. AT&T asked OCA if they had any studies or
18 documentation regarding wireless penetration in
19 Pennsylvania and they said they had none.

20 Q. And then you provide as your Attachment One to
21 your Surrebuttal testimony that Discovery response; is
22 that correct?

23 A. Yes.

24 ATTORNEY CHESKIS:

25 I have no further questions of this

1 witness, Your Honor, or these witnesses.

2 JUDGE COLWELL:

3 Okay. At this point, it's 12:30. And it
4 seems to me that it's a pretty good time to take a
5 lunch break. So why don't we do that and we'll meet
6 back here at 1:30? We're off the record.

7 LUNCH BREAK TAKEN

8 JUDGE COLWELL:

9 All right. Let's go back on the record.
10 I believe we were about ready to switch attorneys.
11 Mr. Stewart?

12 ATTORNEY STEWART:

13 Yes. Thank you, Your Honor. Mr. Kennard
14 and I talked, and we would like to go next.

15 JUDGE COLWELL:

16 Okay.

17 CROSS EXAMINATION

18 BY ATTORNEY STEWART:

19 Q. Good afternoon, gentlemen. My name is Joe
20 Stewart. I represent Embarq.

21 DR. OYEFUSI:

22 Good afternoon.

23 A. Good afternoon.

24 BY ATTORNEY STEWART:

25 Q. Please look at page 15 of your Direct testimony.

1 A. Yes.

2 Q. On line 15 there you discuss cross-subsidization
3 and I'd like you to tell me how you define that term.

4 DR. OYEFUSI:

5 What we said here was allowing one
6 service to be priced way above cost and we've seen
7 evidence in the record in this case that historically
8 access rates have been priced way above cost to
9 subsidize and to allow local retail rates to be priced
10 way below cost. That is cross-subsidization in our
11 view.

12 A. And to do that cross-subsidy you also have to
13 consider where's it come from, where's it go to. Your
14 basic types there were traditionally business services
15 were priced high to keep residential services low.
16 Urban services were priced high to keep rural prices
17 low. And the access versus the retail services and
18 here in particular, the Pennsylvania mechanism works
19 to transfer money from the PTA companies to the
20 Verizon customers. So there's a geographic cross-
21 subsidization.

22 BY ATTORNEY STEWART:

23 Q. Is it your view that cross-subsidization in those
24 various instances that you described is an undesirable
25 phenomenon?

1 A. In the scenario that's been discussed, it's
2 something you should be very cautious about doing.
3 Generally if you're shifting costs from somebody to
4 somebody else, you really want to think very
5 carefully, you know, why am I doing this and is this
6 necessary. Generally speaking for efficiency, to get
7 an efficient economy, efficient society, you want
8 people to see the price of things and then people will
9 optimize their purchases of goods and services based
10 on the price. So if you distort the price, you
11 distort the allocation of what people buy. So if it's
12 free, they're going to use a lot of it. If
13 something's very expensive and they're going to use
14 less of it and you're going to have distortion and
15 society will be worse off, so ---. If the PTA
16 company's prices were lower than they reasonably
17 should be and that was cross-subsidized by funds from
18 Verizon customers, I would say if you ignore
19 affordability for a minute, that would be undesirable.
20 That said, I think the testimony on affordability is
21 affordability not shifting price lower.

22 Q. Do you agree that in high-cost areas where RLECs
23 serve the cost of providing service there result in
24 local rates that are higher than what you would deem
25 affordable and that's an appropriate situation in

1 which to utilize the Universal Service Fund?

2 A. A couple of things in there that I just want to
3 parse out. First, I don't equate RLEC and high cost
4 because a lot of RLECs are not high cost, so there's a
5 factual threshold question that we can put to the side
6 there ---.

7 Q. Let's assume a high-cost area.

8 A. Right. And RLECs are not exclusive high-cost area
9 operators. So if you have a high-cost area and then
10 you can look at how that's going to work and you have
11 a little bit of an issue on definition. All types of
12 businesses have customers that are sometimes more
13 profitable and sometimes less. I went to McDonald's
14 and bought a dollar hamburger on the value meal and
15 walked out. I'm sure it cost them more than a dollar.
16 But the next time I come in, I buy something more.
17 They'll make some more money. So depending on the
18 area, we get more granularly you want to look at
19 costs, the more difficult it is to calculate costs.
20 It's easier to calculate cost on a state basis,
21 company basis. But when you get down to looking at
22 costs on an exchange or part of an exchange --- we had
23 some testimony about residential customers in an
24 exchange versus business customers in an exchange. We
25 have strata like residential customers at high cost

1 versus other strata, it's get to be very difficult.
2 But yes, there are areas where costs are very high,
3 where the density will be so low, ten homes a square
4 mile, where you might have root costs that would
5 generate local rates that would be several hundred
6 dollars a month and those would be genuinely
7 unaffordable, and those should be subsidized and they
8 are. And that's what the federal program is about.
9 And AT&T's a recipient of a lot of that, because we
10 serve a lot of that area.

11 Q. Is it your understanding that the Federal
12 Universal Service Fund focuses on costs that are in
13 the interstate arena, or do you believe it subsidizes
14 intrastate costs?

15 A. Well, the first ---.

16 DR. OYEFUSI:

17 Repeat the question, please.

18 BY ATTORNEY STEWART:

19 Q. Is it your understanding that the Federal
20 Universal Service Fund subsidizes costs that are
21 interstate costs as opposed to intrastate costs?

22 DR. OYEFUSI:

23 The Federal system is based upon looking
24 at the company's total costs, the total company cost
25 unseparated.

1 ATTORNEY STEWART:

2 Did you say unseparated?

3 DR. OYEFUSI:

4 Yes, unseparated. Each company costs are
5 reported to the federal government every year and the
6 administrator looks at those costs, compares them to a
7 certain benchmark, and if the carrier's costs exceed
8 that benchmark, they determine how much that company
9 will collect.

10 A. Those are actual book costs. They're not
11 hypothetical costs. And then the benchmark is
12 relative to other companies. So they have to have two
13 thresholds, but they look at a company's true costs
14 relative to other telephone companies' and that's
15 designed to sort of deal with the high SKF of
16 distribution.

17 BY ATTORNEY STEWART:

18 Q. I believe you said earlier when you were talking
19 about cross-subsidies that you regard those as
20 economically inefficient; is that right?

21 A. By definition, it's economically inefficient.
22 It's equity versus efficiency tradeoff. And society
23 does that frequently. I mean, we provide free health
24 care to uninsured people in emergency rooms even
25 though efficiently you would say if you don't have any

1 money, you don't have any care. But from an equity
2 standpoint, say that's inequitable, we'll take care of
3 everyone that's bleeding when they come to the
4 emergency room and we'll deal with cross-subsidizing
5 the revenues later to pay for that. So it's an
6 equity, efficiency tradeoff.

7 So you want to do as little of it as necessary.
8 You want to give up as little efficiency as necessary
9 to achieve the desired equity.

10 Q. And do you agree that it's preferable to have
11 subsidies made explicit rather than implicit?

12 A. It's both preferable and required.

13 ATTORNEY STEWART:

14 No further questions.

15 JUDGE COLWELL:

16 Mr. Kennard?

17 ATTORNEY KENNARD:

18 Yes, Your Honor. Thank you.

19 CROSS EXAMINATION

20 BY ATTORNEY KENNARD:

21 Q. Good afternoon, gentlemen.

22 A. Good afternoon.

23 DR. OYEFUSI:

24 Good afternoon.

25 BY ATTORNEY KENNARD:

1 Q. I want to go back to something that was said
2 earlier, Mr. Nurse, that there's an understanding that
3 access rates are in excess of a hundred times the
4 cost. Is that what you said?

5 A. No. I think I said hundreds of percent several
6 times.

7 Q. Hundreds. So more than 200? That's in
8 Pennsylvania, not just a general understanding?

9 A. Yes.

10 Q. Can you point me to any specific information to
11 that effect?

12 A. I think that that's an understanding because, you
13 know ---. If this is an access question, so I can
14 give an access answer, then it ---.

15 Q. Well, I'm just commenting on what you said.

16 A. I'm happy to discuss this as long as you'd like.
17 The Commission has set rates for reciprocal
18 compensation on a cost basis that are a fraction of a
19 penny, a fifth of a penny, for the functionality for
20 local call termination, network functionality for
21 intrastate or interstate or national call termination.
22 And the access rates are several times that, several
23 pennies a minute. So a penny would be five times or
24 five hundred percent of that rate.

25 The FCC has set and your company clients today

1 charge 0.0007 cents a minute, almost nothing, to
2 terminate intra-MTA, metropolitan trading area,
3 telephone calls in Pennsylvania for wireless carriers.
4 And your companies charge that rate today for large
5 volumes and growing volumes of traffic today. And
6 obviously, if that rate were confiscatory, I would
7 assume that, you know, Counsel would be filing suit
8 against that and I know of no such pending actions.
9 So yeah, I think it's pretty clear that the cost of
10 terminations, network call termination are a small
11 fraction, and the rates are many multiples of that.

12 Q. That .0007 applies to Verizon, correct?

13 A. Yes.

14 Q. Are you aware of any finding of this Commission
15 that access charges --- expressed language, not
16 implicit, an explicit finding by this Commission that
17 access rates are hundreds of times in excess of cost?

18 A. That wasn't my testimony that they were hundreds
19 of times. We covered that the first time. I said
20 hundreds of percent several times.

21 Q. Hundreds of percents, sorry. Are you aware of any
22 explicit filing by the Commission that access rates
23 are hundreds of percentages in excess of costs?

24 A. I would have to research going back to the '96
25 access case. But I think in reviewing those orders in

1 those cases over the decade plus that the Commission
2 has generally recognized access is substantially
3 underpriced. Its precise characterization in any
4 order is going to speak for itself.

5 Q. Now, you, Mr. Nurse, also said that --- you
6 characterized North Pittsburgh report, I believe?

7 A. I'm sorry.

8 Q. You characterized --- you summarized a document
9 related to North Pittsburgh. What is that document?

10 A. That --- the document is actually footnoted in the
11 testimony.

12 Q. Can you show --- can you tell me where?

13 A. I know we make a cross reference to it in our
14 testimony.

15 Q. Well, without making you look for it, what you
16 were doing was not offering new evidence, but you were
17 summarizing that?

18 A. Yes.

19 Q. There was a question by Mr. Cheskis about AT&T's
20 stand-alone policy?

21 A. Yes.

22 Q. And you said you provided that.

23 A. Yes.

24 Q. And that would be a tariff reference?

25 A. What I looked at was a web site, an AT&T web site

1 which may be cross-referenced from the tariff. But it
2 was a publicly-available document

3 Q. And you talked about the tariff as well. Please
4 indicate to us whether or not that's a statewide rate
5 or the geographic scope of that rate.

6 A. Looking at the terms and conditions.

7 Q. Is AT&T's current level of contribution to the
8 Pennsylvania USF burdensome?

9 A. I would say it's burdensome to our customers.

10 Q. What is the level of contribution that AT&T
11 provided most recently to the USF?

12 A. The percentage rate was put into the record.

13 Q. What was the dollar amount?

14 A. The contribution rate is set --- AT&T's
15 contribution is around ---.

16 Q. What is it currently?

17 A. It's currently just under \$2 million. It's been
18 as high as \$3.5 million, and \$25 million over the
19 course of the Fund.

20 Q. The current contribution rate is \$2 million per
21 year?

22 A. Approximately, yes.

23 Q. What is that as a percentage of AT&T's ---? I'm
24 going to show you a document filed by AT&T, Inc. to
25 United States Securities and Exchange Commission for

1 the fiscal year ending December 31, 2007. What were
2 AT&T's operating revenues in 2007?

3 A. This is AT&T, Inc. And we're not testifying on
4 behalf of AT&T, Inc. but rather on behalf of AT&T
5 Communications Pennsylvania.

6 Q. What is the amount of gross revenues AT&T, Inc.
7 made in 2007 as represented in the SEC filing?

8 A. For 2007?

9 Q. Yes.

10 A. \$118 million.

11 Q. Billion?

12 A. What's that?

13 Q. Billion?

14 A. Billion.

15 Q. If you round, it's \$119 billion; correct?

16 A. Yes.

17 Q. And in the most recent 10-Q from December 30,
18 2008, AT&T, Inc. reported operating revenues of
19 \$31.342 billion; correct?

20 A. That's based on your second document?

21 Q. Yes.

22 A. That's what it says.

23 Q. And if we were to annualize that figure, what
24 would the annualized revenues of AT&T, Inc. be?

25 A. I don't know that I could agree to an

1 annualization, given the current economy. AT&T I
2 don't think provided forward guidance on earnings.

3 Q. With all that said, what's the annualized figure
4 based on this December 30 filing?

5 A. It's unknown.

6 ATTORNEY PAINTER:

7 Objection, Your Honor.

8 A. It's unknown. You can't guarantee what the
9 economic condition will produce over the next nine
10 months. There are a lot of people on Wall Street that
11 would like to know.

12 ATTORNEY KENNARD:

13 I didn't ask that, Judge. I just --- I
14 didn't ask him to verify those numbers. I didn't ask
15 him to ---.

16 A. You asked me to annualize the number. I don't know
17 what the annualized number would be.

18 BY ATTORNEY KENNARD:

19 Q. You simply multiply ---.

20 JUDGE COLWELL:

21 Let's stop for a second, because I
22 believe there's an objection on the floor.

23 ATTORNEY KENNARD:

24 Okay.

25 ATTORNEY PAINTER:

1 Two really. I think that it stretches
2 the bounds of relevance when you get into AT&T, Inc.'s
3 numbers and we're talking about AT&T Pennsylvania in
4 this case. In fact, Mr. Nurse has already testified
5 that he was not given an annualized number with
6 respect to this. I understand Mr. Kennard would like
7 one, but Mr. Nurse testified he cannot do that. He's
8 also testified he's not here on behalf of AT&T, Inc.

9 ATTORNEY KENNARD:

10 I'm going to withdraw the question. Just
11 multiply it times four, that's the annualized figure.
12 So we can do math ourselves if AT&T doesn't want to do
13 it.

14 JUDGE COLWELL:

15 Okay.

16 BY ATTORNEY KENNARD:

17 Q. Can you go to your Direct testimony at page five,
18 please? Now, you would agree that in 2004 the General
19 Assembly eliminated the offset in the formula for
20 certain carriers?

21 A. Close. In Act 183 the legislature eliminated the
22 productivity offset for the price-cap formula for
23 Chapter 30 companies that were under the price cap.
24 And if they accelerated it by the greater number of
25 years, the productivity cap went to zero. If they

1 accelerated it by the lesser number of years then they
2 planned to have one percent. o you could have a
3 productivity factor today in a Chapter 30 Plan at half
4 a percent.

5 Q. I understand. 2008 companies in the price cap
6 were placed ---?

7 A. I'm sorry?

8 Q. Companies that agreed to employ by the end of
9 2008 ---

10 A. Yes.

11 Q. --- under price cap regulation have an offset.

12 A. Yes.

13 Q. And that inflation rate factor was applied to all
14 of that company's noncompetitive service revenues;
15 correct, in the formula.

16 A. I'm sorry, the last word?

17 Q. End formula, the price cap formula.

18 A. Yeah. Let me clarify. If you call it non-
19 competitive, if you want to call it protected. It's
20 the services which are non-competitive, predominantly
21 access.

22 Q. Access revenues included in the revenues to which
23 the inflation rate offset applies?

24 A. Yes.

25 Q. Yet you made the point repeatedly in your

1 testimony that this was intended or directed by the
2 legislature in some cases to be applied only to the
3 local rates. Is that your position?

4 A. Yes, it is.

5 Q. Can you tell me where in Chapter 30 the Commission
6 says --- the legislature says that?

7 A. Yes, I think it's in an answer which went section
8 by section on that. But basically it goes to the
9 objectives of the Act and how you read that in total
10 to achieve the overall objective. So in 30.11.3 they
11 stated that it was a policy of the Commission to
12 enable the customers to pay only reasonable charges
13 for protected services which will be available on a
14 nondiscriminatory basis.

15 Chapter 30.11.4 it states it's the policy of the
16 Commonwealth to ensure rates for protected services be
17 not subsidized. Chapter 30.11 sub 5 stated that it's
18 the policy of the Commonwealth to provide diversity in
19 supply consistent with future telecommunications
20 services and products in telecommunications markets
21 throughout the Commonwealth by ensuring rates, terms
22 and conditions for protected services are reasonable
23 and that that did not include the DIP development
24 competition.

25 30.11.8 states that it's the policy of the

1 Commonwealth to promote and encourage the provision of
2 competitive service by a variety of service providers
3 on equal terms throughout all geographic areas in this
4 Commonwealth without jeopardizing the provision of
5 universal services at the local rates. And 30.11.9
6 states it's the policy of the Commonwealth to
7 encourage competitive supply and service to any region
8 where there's market demand.

9 So when you take those together, the legislature
10 has established a clear pro-competitive policy,
11 looking for competition, and at the same time it says
12 to do so without jeopardizing the provisions of
13 universal service. And so I think where we differ is
14 your testimony is typically you have ---.

15 ATTORNEY KENNARD:

16 I'm going to object at this point. I
17 didn't ask him what our testimony was. I just asked
18 him where he got the notion that any local rates could
19 increase, and access rates not increase. It's his
20 interpretation. I appreciate the answer.

21 A. It's a complex question, and requires a more
22 complex answer.

23 JUDGE COLWELL:

24 I think you did answer the question, and
25 if your Counsel wants you to develop it, she'll have

1 you do that.

2 BY ATTORNEY KENNARD:

3 Q. Can you go to your Rebuttal testimony, please, at
4 pages 21 and 22? Is it your testimony, Mr. Nurse,
5 that USF was only conceived to be a rebalancing fund,
6 it was never conceived to be a --- provide and help
7 fund rate increases that would otherwise occur?

8 A. Two points. One is it's our testimony that the
9 Fund that's doing this rebalancing was expressly
10 designed to be a short-term fund to terminate, and the
11 testimony goes all through that about what terminate
12 means at a date certain. So our vision of the Fund
13 during the case that created was it was a short-term
14 fund that had a two-year life, and the Commission
15 looked into that as well --- at access as well.

16 The other issue at the time the Fund was created
17 in '99 that was four or five years before Act 183
18 created this broadband incentive that's financed by
19 the removal of the productivity factor. So clearly
20 when the Fund was created, it was not envisioned as a
21 vehicle to replace the productivity factor, which the
22 legislature decided to remove. Had the legislature
23 wanted to do that they would have taken the
24 productivity factor out of the formula and they would
25 have put in a USF explicitly.

1 Q. When the Fund was created in 1999 it was
2 envisioned to be a source of funding for rate
3 increases; was it not?

4 A. I don't think --- I don't think so as a practical
5 matter. There were three companies at the time the
6 Fund was created that had rates over the then cap of
7 \$16. And those three companies' rates were brought
8 down. It wasn't --- didn't cost much money to do that
9 and the schedule lists those companies and how much
10 that was. Given that the Fund at that point had a
11 date certain for its termination, I don't think that
12 there was much exposure in that short period of time
13 by another company as a practical matter to come in
14 and get a rate rebalancing approved and get into the
15 Fund. I suppose it's hypothetically possible, but I
16 don't think pragmatically in that short window of time
17 that a carrier could have filed for a rate increase
18 and had got it financed through the Fund. And at that
19 period of the time, the Fund terminated and that would
20 have been impossible for the Fund to finance it.

21 Q. But the offer was outstanding, was made, in the
22 Global that companies could do that. Whether you
23 think it's likely or not, the offer was made to all
24 the RLECs, they could use the Fund for purposes of
25 rate increases?

1 A. I think that's a --- I don't think that that is a
2 practical reading of what it stood for because the
3 companies at that time had rates, most of them, that
4 were in the lower teens. Those rates were increased
5 later in the Sprint RTCC case. And so if the rate cap
6 then was \$16, for companies to get from rates like \$11
7 to \$16 would be a \$5 increase. And given that rates
8 could go up at that point either through access
9 restructuring, which didn't happen because the
10 Commission didn't do the access case, or would have
11 gone up by inflation, and it's hard to imagine we
12 could have had, you know, that kind of inflation in
13 that short period of time, it could have gotten to
14 \$16. So I agree that there are words that apparently
15 say that, but I think when you test what it means, I
16 don't think as a practical matter there was really an
17 opportunity that anybody could exercise it.

18 Q. Were you heavily involved in the Global
19 proceeding?

20 A. Yes.

21 Q. And you were involved in the AT&T's participation
22 in that case?

23 A. Yes, I was a primary negotiator.

24 Q. And there were two competing settlement petitions
25 presented to the Commission that proposed to resolve

1 the outstanding issues, including USF?

2 A. There were two partial settlements. The CLECs had
3 their petition and the Bell petition.

4 Q. And the CLECs petition was the so-called 1648
5 petition; correct?

6 A. Yes.

7 Q. And AT&T participated and supported the 1648
8 petition; correct?

9 A. Yes.

10 Q. I just handed out what's been marked up in the
11 corner as PTA Cross Examination Exhibit Number Two.
12 And does this appear to be an accurate photocopy
13 of ---?

14 ATTORNEY KENNARD:

15 Off the record.

16 OFF RECORD DISCUSSION

17 BY ATTORNEY KENNARD:

18 Q. Is this an accurate reproduction of excerpts from
19 that petition and would you accept that?

20 A. I'll accept it. I'll accept the representation
21 that this is an excerpt.

22 Q. On the last page you can see AT&T Communication's
23 signature by its counsel on its behalf.

24 A. Yes.

25 Q. If you look at page ten, paragraph eight of the

1 1649 section?

2 A. Yes.

3 Q. That establishes a rate ceiling and caps for
4 residential local rates; correct?

5 A. Yes.

6 Q. Next sentence, if an ILEC rate above the cap is
7 found to be just and reasonable, the revenues
8 associated with the difference between rate ceiling
9 and the approved rate will be recovered from the USF.

10 A. Right. That's what I was referring to earlier.
11 But that doesn't mean that ten years later rate
12 increases go through --- because the Fund was
13 envisioned at that time to have a short life
14 expectancy, so when you read this in compound or in
15 conjunction with the other material, it essentially
16 means for the short life of the Fund, after we've
17 increased the rates of the three companies that get
18 that increase here --- if there were any other
19 companies who merited an increase, they would have
20 gotten it at that time, so I assume that immediately
21 after the Global Order, nobody would have qualified
22 and you get about a year down the road and nobody put
23 in a rate case and got through before the Fund
24 expired. So this as a pragmatic matter, primarily
25 refers to the three companies who got their rates

1 above \$16 lowered to \$16, and financed out of the
2 Fund.

3 Q. Let's explore that last proposition. If you turn
4 to page 41.

5 A. Forty-one (41) of what?

6 Q. The 1649 petition --- 1648, excuse me.

7 A. Yes.

8 Q. Paragraph 104(i), in addition to the funding
9 provided by the USF. So by that language, we're
10 beyond the three you're talking about; correct?

11 A. Just give me a minute. I'm sorry, your question?

12 Q. In addition to the funding provided by the USF ---
13 the funding provided by the USF at the time already
14 encapsulated this, so we're talking about
15 representations made to the Commission and the rural
16 exchange carriers as a whole, not just for those
17 three; correct?

18 A. Well, I'm not sure who's representing what to whom
19 because the previous sentence is saying the Bells
20 Small Company Proposal.

21 Q. The 1648 petitioner proposed to modify small
22 company ---? The 1648 petitioners proposed that the
23 Commission to adopt small company plan with
24 modifications?

25 A. Yes.

1 Q. Modification number one, in addition to the
2 funding provided by the USF included in the Small
3 Company Plan, USF will operate prospectively to
4 support and reduce residential customer bills when the
5 Commission determines that an ILEC's just and
6 reasonable residential local rate exceeds a local rate
7 ceiling of \$16 per month for the term of this partial
8 settlement. Correct? Did I read that accurately?

9 A. Yes.

10 Q. Next sentence, future local rate increases beyond
11 the level of the rate ceiling, will be offset by the
12 USF to ensure that the effective residual residential
13 rate ceiling will not exceed \$16, paren, with a
14 proportionate guarantee for business rates. Correct?

15 A. Yeah.

16 Q. If insufficient funds --- I apologize for the hole
17 punches here --- exist ---. Let me just start the
18 sentence again. I'm reading through the hole punches.
19 If I'm inaccurate, let me know. If insufficient funds
20 exist to recover the new level of USF support to
21 assure compliance with the \$16 rate ceiling, the
22 Commission will require that the USF be increased to
23 the required level with all contributors paying their
24 respective share of the increase. Did I read that
25 accurately?

1 A. Yes, you did.

2 Q. And, in fact, I believe Mr. Laffey's testimony
3 describes support of this; correct?

4 A. Yes, but what AT&T expressly said was that the
5 Fund had a date certain for its termination. So the
6 Fund was not expected to exist for the nine, ten years
7 that it has. So yes, in that window of time while the
8 Fund existed, if there was a rate increased above \$16
9 beyond the other three companies that had it, which
10 was unlikely for anybody to qualify. They just got
11 one and it's not likely to qualify for another one in
12 the two years. But as a practical matter, this wasn't
13 exercised and, in fact, hasn't been exercised in the
14 period of time between the date certain for the
15 termination of plan and when it went in.

16 DR. OYEFUSI:

17 [UNINTELLIGIBLE]

18 ATTORNEY KENNARD:

19 Let me ask you this. Do you have a
20 background to address this?

21 DR. OYEFUSI:

22 Well, I was involved with discussing ---.

23 ATTORNEY KENNARD:

24 I'm going to object to it because it's
25 hearsay. He talked to people at the time. Mr. Nurse

1 is the one that can testify to the Global. So I
2 object on the grounds the witness has no basis to
3 present testimony.

4 ATTORNEY PAINTER:

5 Well, there are lots of people in
6 developing a company's position that go into the
7 actual litigation position, so the fact that Dr.
8 Oyefusi was not actually a witness or that he was
9 involved in the background does not make it hearsay
10 and does not make him unqualified.

11 ATTORNEY KENNARD:

12 He said we talked to people that were
13 involved.

14 JUDGE COLWELL:

15 Mr. Nurse is doing fine.

16 ATTORNEY KENNARD:

17 Your Honor, may I ask a procedural
18 question? The fact that we have two witnesses on the
19 stand at the same time, does that mean that both
20 witnesses get to answer the same question or should it
21 not be the case that whichever witness chooses to
22 answer a particular question answers it by himself?

23 I confess I'm not familiar with how
24 Pennsylvania does this when they allow two witnesses
25 to be on at the same time. But it strikes me as

1 unfair to have both witnesses answer the same
2 question.

3 JUDGE COLWELL:

4 This has been standard operating
5 procedure for AT&T for a number of years now. They're
6 the only ones I know of that do it. But what they do,
7 as you can see, is have one set of testimony and then
8 they have the witness who can answer, answer the
9 question. Sometimes there's overlap. But where
10 there's hearsay that's clearly not permissible. And
11 that's sustained. Go ahead, Mr. Kennard.

12 ATTORNEY KENNARD:

13 Thank you, Your Honor.

14 BY ATTORNEY KENNARD:

15 Q. Mr. Nurse, could you please look at page 28 of the
16 1648 petition?

17 A. Yes.

18 Q. Paragraph 59 is a condition of receipt of the
19 monies that the receiving ILEC make a commitment to
20 modernize its network. Is that true?

21 A. I'm sorry. Paragraph 59?

22 Q. I'm sorry, 59.

23 A. Are you paraphrasing it?

24 Q. I think I am. I am.

25 A. This is --- I just have to clarify modernization.

1 This modernization is not the Chapter 30 network
2 modernization of a broadband build out that the
3 legislature passed in 1993 in Act 183. This was in
4 response to the Senators' desire to get CLASS
5 services, caller ID to some customers that were in GTE
6 service territory. And so this modernization is not
7 the Chapter 30 network modernization, but required
8 them to put in caller ID services within a year.

9 Q. Are you aware that some of the companies made
10 commitments to use CLASS internet modernization plans
11 already approved by the Commission prior to 1999?

12 A. No, I can't agree with that phrasing because it's
13 using CLASS modernization which is a different issue
14 from the Chapter 30 modernization. So I draw the
15 distinction.

16 Q. Were there companies that committed to provide
17 CLASS services as part of the network modernization
18 commitment in your network modernization plans that
19 were approved prior to 1999?

20 A. That's a different question. But yeah, the CLASS
21 services required installation of the SS-7 network
22 which is carrying your telephone number, caller ID and
23 the other services that are related to that. And that
24 would be --- that would be part of network
25 modernization. But it's not synonymous with network

1 modernization because that required digital switches
2 and fiber optic interoffice facility and broadband
3 service at a specified speed.

4 Q. CLASS services are available because of the
5 availability of network signal; correct?

6 A. SS-7 yes.

7 Q. And it's your testimony that network signaling is
8 not a network modernization component of the original
9 Chapter 30?

10 A. That's a different question from what you had
11 asked earlier. And that was my point, it is a
12 component. It's not synonymous with network
13 modernization. When you're talking about Pennsylvania
14 network modernization plan, if somebody said I just
15 did CLASS services, I didn't do broadband, that
16 wouldn't be a qualifying plan.

17 Q. Well, you dream up --- you can rejigger my
18 questions whenever you want to, but I'm trying to be
19 specific.

20 A. I'm trying to be specific as well.

21 Q. Was implementation of the underlying network
22 necessary to provide CLASS services part of the
23 original Chapter 30?

24 A. Yes.

25 Q. And did the companies have until the year, under

1 that original statute, 2015 in which to provide CLASS
2 services?

3 A. Yes, they did.

4 Q. So what is being proposed in the 1648 petition is
5 an acceleration of that commitment?

6 A. Of that component of the commitment.

7 Q. Yes? Is that a yes?

8 A. Yes. As a condition of drawing the funds. If you
9 didn't draw the funds, you didn't have to do that.

10 Q. Correct.

11 ATTORNEY KENNARD:

12 That's all the questions I have. Thank
13 you, Mr. Nurse. Thank you, Dr. Oyefusi.

14 JUDGE COLWELL:

15 All right. Ms. Painter, I guess we're
16 going back to you.

17 ATTORNEY PAINTER:

18 I think I have a question first of Mr.
19 Kennard. Are you --- what are you going to do with
20 this document?

21 ATTORNEY KENNARD:

22 We're going to ask that it be ---.

23 ATTORNEY PAINTER:

24 To be admitted?

25 ATTORNEY KENNARD:

1 Yes.

2 ATTORNEY PAINTER:

3 Well, I have a concern if it's limited
4 excerpts that are being admitted. There are places
5 --- this is obviously a global settlement and there
6 were multiple issues involves. So I request that ---
7 I would object to the settlement going into the
8 record. I would request that it be the full
9 settlement.

10 ATTORNEY KENNARD:

11 Well, it's a very extensive document.
12 Unlike what we did with Dr. Levin's testimony and Mr.
13 Buckalew's testimony, he has seen that before. Mr.
14 Nurse has seen this before, was heavily involved, as
15 he said. I don't have a problem if AT&T wants to go
16 back and supplement this. But to ask to copy the
17 whole document when you all have it --- it was your
18 document ---.

19 ATTORNEY PAINTER:

20 How about this? Would you agree that in
21 terms of the brief that the entire document can be
22 essentially incorporated into the record so that the
23 parties can cite from the entire document?

24 ATTORNEY KENNARD:

25 If that's okay with Your Honor, we'll

1 stipulate both 1648 and 1649 petitions, with all the
2 documents filed with the Commission they were, in
3 fact, pleadings. If that's acceptable to Your Honor,
4 as the procedure, that's acceptable to PTA.

5 ATTORNEY PAINTER:

6 That's fine. The concern is obviously if
7 these are the only portions of the settlement
8 petitions that we can cite to you, that's very
9 limiting.

10 JUDGE COLWELL:

11 I don't know why that would be, since
12 they are documents filed with the Commission.

13 ATTORNEY PAINTER:

14 Okay.

15 ATTORNEY KENNARD:

16 And with that, Your Honor, we would ask
17 for the admission of what's been marked as PTA Cross
18 Examination Exhibit Two.

19 (PTA Cross Examination Exhibit Two marked
20 for identification.)

21 JUDGE COLWELL:

22 Are there any other objections?

23 ATTORNEY GRAY:

24 Not an objection, Your Honor, but if
25 we're short on copies of this particular exhibit. Can

1 I have a representation from Counsel that he'll share
2 the copy he has when the hearing concludes so that I
3 can copy it?

4 ATTORNEY KENNARD:

5 Yes. As I indicated we'll make sure you
6 get a copy.

7 JUDGE COLWELL:

8 Okay. It is admitted.

9 ATTORNEY KENNARD:

10 Thank you. That concludes our Cross
11 Examination of these witnesses.

12 JUDGE COLWELL:

13 Okay. Ms. Painter?

14 ATTORNEY PAINTER:

15 Thank you, Your Honor.

16 REDIRECT EXAMINATION

17 ATTORNEY PAINTER:

18 Do you recall that questions were asked
19 by Mr. Cheskis with regard to AT&T's position on the
20 Federal Universal Service Fund?

21 MR. NURSE:

22 Yes.

23 ATTORNEY PAINTER:

24 Is the Federal Universal Service Fund
25 structured in the same manner as the Pennsylvania

1 Universal Service Fund?

2 DR. OYEFUSI:

3 No, they're not.

4 ATTORNEY PAINTER:

5 Can you explain the differences?

6 DR. OYEFUSI:

7 The Pennsylvania USF was designed as
8 access rebalancing fund. Carriers at that time were
9 required to use the access to offset the local rates
10 increase, so it was a rebalancing fund. And that's
11 all it was supposed to do. The Federal USF has about
12 three or four different fund systems. And it was
13 supposed to provide support for carriers that have the
14 highest cost in the point system, and we have carriers
15 we have to send documentation to the FCC USF
16 administrator, comparing their costs with the
17 benchmark. The administrator will determine how much
18 funds the carrier would receive and how much support
19 the carrier needs, if at all, if they need support at
20 all.

21 ATTORNEY PAINTER:

22 Okay. So it is possible --- in fact,
23 it's the case for ILECs in Pennsylvania if their costs
24 are not high enough, they will not receive certain
25 portions of the Federal Universal Service Fund?

1 DR. OYEFUSI:

2 It is possible.

3 MR. NURSE:

4 And you have to qualify.

5 ATTORNEY PAINTER:

6 And do you recall a series of questions
7 by Mr. Cheskis about the Lifeline?

8 DR. OYEFUSI:

9 Yes.

10 ATTORNEY PAINTER:

11 How does that --- can you explain how
12 that Lifeline discussion applies to the issue of
13 whether the Universal Service Fund should be expanded
14 as advocated by the OCA in this case?

15 DR. OYEFUSI:

16 Yeah. Yeah. The testimony is one small
17 class of customers that would be harmed if the \$18
18 rate cap is eliminated. And one, we have not seen any
19 testimony or any evidence that those customers exist
20 or how many there are. What we're testifying to is
21 that we do not object to helping those class of
22 customers, that one way to do that is to see whether
23 those customers can apply for Lifeline. And if the
24 structure is not sufficient, the Commission can look
25 into whether or not it can release money so that they

1 can take advantage of different tiers of Lifeline,
2 which would be FCC. We talked about different tiers
3 and in Pennsylvania with the economy ---.

4 ATTORNEY KENNARD:

5 I'm sorry. What was the end of that,
6 that last sentence? Your last comment, I didn't
7 understand what he said.

8 ATTORNEY PAINTER

9 He said tier two and then ---.

10 DR. OYEFUSI:

11 I said that Pennsylvania had probably ---
12 I've coined it maxing of the permutation, and that
13 kind of limits how much --- that it is likely that
14 Pennsylvania is not getting the full amount that it's
15 eligible for under that program at this point and
16 there's a need to find how many customers there is at
17 risk at this point. The Commissioner can look at
18 where there is the need to react and go restructure
19 the PA Lifeline situation.

20 MR. NURSE:

21 Yeah. Pennsylvania's leaving some money
22 on the table by not participating in that additional
23 tier of support that they can benefit those
24 Pennsylvania customers, in my mind, are the ones who
25 are most deserving of this support. So that would be

1 a good thing. We're excited about the existing rate
2 and we would support efforts to keep the Lifeline rate
3 at a level that the Commission wants to be at, rather
4 than a retail rate minus an offset, which is the
5 current structure. The overall thing here is the
6 target and focus and benefit on the small group of
7 poor customers who are going to be most impacted by
8 the affordability, and we heard testimony that
9 affordability is \$32. We're now talking about rates
10 at \$18, so there's a lot of head room. But poor
11 people are going to run out of money before rich
12 people and so we think it makes sense to give support
13 to a small group of poor people that might run into a
14 problem sooner and that's much more efficient than
15 trying to keep that \$18 rate down for millionaires who
16 don't need the support. But to target the support to
17 the low income people who need it because they're way
18 below the \$32 affordability level that we've heard
19 about.

20 ATTORNEY PAINTER:

21 Do you recall questioning by Mr. Kennard
22 regarding AT&T --- the amount of AT&T --- AT&T
23 payments to the Pennsylvania Universal Service Fund
24 and then also having the AT&T, Inc.'s total revenues?

25 MR. NURSE:

1 Yes.

2 ATTORNEY PAINTER:

3 Can you comment on whether that would be
4 an appropriate comparison?

5 MR. NURSE:

6 Well, it's irrelevant. The Commission
7 set the contribution at a percentage of your
8 intrastate revenues when --- well, for example, when
9 Embarq merged with Century you're not going to go to
10 Embarq and say, well, Century made its revenue in
11 Louisiana so you have to pay more to the Pennsylvania
12 Universal Service Fund. Those out-of-state revenues
13 are irrelevant to the Pennsylvania Fund. Pennsylvania
14 Fund is about \$583 million over the \$3 billion roughly
15 intrastate Pennsylvania revenue.

16 The interstate revenue, international
17 revenue is totally irrelevant to the Fund, but the
18 contribution rate to the Fund is the same for --- you
19 know, for all the CLECs. And so it's a proportion
20 that the Commission determines, so if you have more
21 intrastate revenue, you obtain more. If you have zero
22 intrastate revenues or a hundred million dollars in
23 interstate revenues it doesn't change your
24 Pennsylvania contribution because it's not relevant to
25 your Pennsylvania contribution.

1 And obviously a lot of that revenue we
2 earn in other states where we pay into other state
3 funds. We pay into, I believe, 13 other state funds,
4 so a lot of that revenue is being picked up into those
5 state funds.

6 ATTORNEY PAINTER:

7 And is it an appropriate assumption for
8 this Commission to make that AT&T, Inc.'s total
9 revenues compared to the amount paid into the
10 Pennsylvania Universal Service Fund, that that should
11 impact whether AT&T should pay more into the
12 Pennsylvania Fund?

13 MR. NURSE:

14 No. You can't pass that, AT&T's revenues
15 that we earn in England, to finance the Pennsylvania
16 Universal Service Fund. Pennsylvania's intrastate
17 revenues are the relevant revenues and that's the
18 revenue base against which the Pennsylvania USF
19 assessment rate is applied, and that's proper. And
20 those other revenues, you know, are either in
21 regulated markets or they're in competitive markets.
22 Those that are in competitive markets can't cross-
23 subsidize a competitive market to a regulated market,
24 and those revenues from other regulated markets.
25 Those other regulators set those rates there.

1 ATTORNEY PAINTER:

2 Do you recall Mr. Kennard's question to
3 you --- and then I believe you cited several sections
4 from Act 183 --- regarding the legislative intent on
5 whether access rates could be raised? Do you recall
6 that line of questioning?

7 MR. NURSE:

8 Yes.

9 ATTORNEY PAINTER:

10 Why did the sections that you cited for
11 your conclusion that the legislature did not intend to
12 raise access rates as part of inflation?

13 MR. NURSE:

14 Because the Act established multiple
15 goals and it's my understanding the Commission is
16 required to interpret those goals as being all three
17 equal in directions the legislature has told them to
18 achieve, not do two, and not one, but to do all three.
19 So if you're trying to achieve all three, trying to
20 reduce subsidies, trying to promote competition and
21 trying to not jeopardize universal service, those are
22 your three criteria you have to satisfy. And the
23 formula in Act 183 is to take the productivity factor
24 out, and if you take the productivity factor out, that
25 you would have objective revenues that increase by

1 inflation. And so then it would be this additional
2 amount of revenue that would have to be collected for
3 some rates. There are only --- two rates available in
4 the protected class essentially are access rates and
5 local rates. Given that the Commission and
6 legislature and the industry knew at the time that
7 local service generally was thought of as priced under
8 cost and access this price several times over cost.
9 You can't reconcile promoting competition with taking
10 the inflation increases from Act 183 and Chapter 30
11 and increasing the rates that are already several
12 multiples of cost, and not increasing the rates at the
13 below cost because under competition, you move prices
14 towards costs. That means access would come down,
15 local would go up.

16 Why would we not do that? We wouldn't do
17 that to the extent that it jeopardized universal
18 service, like we said, but that's what the universal
19 service fund is for. The Universal Service Fund was
20 to protect those customers so that it rebalanced the
21 rate and flow through the inflation increase if the
22 local rate got to be unaffordable and jeopardized
23 local services. That's what Pennsylvania Universal
24 Service Fund is for.

25 That's the only way I think you can

1 interpret the multiple criteria in Chapter 30 to
2 achieve both the competition and to remove the cross-
3 subsidy of competitive services and stimulate the
4 competition, and preserve universal service. And it
5 was the idea that some of the other witnesses have
6 taken the position that well, we can't get there. We
7 can't meet all the criteria. So we'll have to give up
8 the competition thing, and we'll have cross-subsidy to
9 meet the prices low and that's how we get it for
10 everybody. And that's how to preserve universal
11 service, and I don't think that interpretation is
12 consistent with my interpretation of Chapter 30.

13 ATTORNEY PAINTER:

14 I have nothing further, Your Honor.

15 ATTORNEY DODGE:

16 May I ask a question based on Redirect?

17 JUDGE COLWELL:

18 You may.

19 ATTORNEY DODGE:

20 Thank you.

21 RE CROSS EXAMINATION

22 BY ATTORNEY DODGE:

23 Q. What percentage of AT&T Pennsylvania's intrastate
24 revenues is AT&T's contribution to the Pennsylvania
25 USF?

1 A. It's the same as every other carrier's percentage
2 of their contribution under the state regs.

3 Q. Which is?

4 A. It's .01, which is about \$2 million for us.

5 Q. Is that .01 percent over .01 meaning about one
6 percent?

7 A. That is \$33 million over about \$3 billion, so
8 that's a tenth of a percent, yes.

9 Q. I'm sorry?

10 A. I believe it's a tenth of a percent.

11 Q. Tenth of a percent?

12 A. Yes.

13 Q. Okay. And you testified on Redirect why it's
14 inappropriate to look at the total revenues of AT&T,
15 Inc. in connection with the burden that the
16 Pennsylvania intrastate USF fund costs; is that right?

17 A. Yes, because if it was relevant, the Commission
18 would levy the fee times AT&T, Inc.'s global revenues
19 and they don't because they can't, so that's why it's
20 inappropriate.

21 Q. So ---?

22 A. And probably unlawful.

23 Q. Would you then disagree with the Verizon testimony
24 that suggests it's appropriate for the Pennsylvania
25 Commission to look at the fact that certain companies

1 such as Embarq are part of holding companies that do
2 business throughout the country?

3 A. Well, again, that is kind of a paradox. They have
4 a little bit of inconsistency whether the size of the
5 parent company matters or not. And I take your point.
6 They did look at a lot of those companies and it's ---
7 for, you know --- I don't think it's dispositive, but
8 I think of it as informative. It's something you take
9 a look at it. It's not --- you know, I don't think
10 it's the controlling issue. Issues like density,
11 costs, income, those are really more pertinent
12 factors.

13 Q. So does that mean your answer is, yes, you
14 disagree with the Verizon approach or suggestion that
15 the Commission ---?

16 A. Well, I took the Verizon testimony on that point
17 to be that we're not for Mom & Pop companies without
18 access to capital, without access to expertise, that
19 they had benefits to draw on, you know, to help their
20 companies with this, but a lot of them are not little
21 Mom & Pops, but they've sold out to holding companies
22 and merged. I think the Commission is looking at that
23 in the merger cases. So I think for that sense, to
24 accept the Commission's looking at your merger, and
25 see what might be there, it's sort of relevant there.

1 But if a company has high costs in Pennsylvania
2 whether they're affiliated or unaffiliated, the costs
3 are high. You have to deal with those Pennsylvania
4 costs in Pennsylvania.

5 Q. And that would be inappropriate and unfair to
6 expect high costs in Pennsylvania to be compensated
7 with revenues from other states that are lower in
8 costs; right?

9 A. Yes. I think Verizon's point was that because
10 you're under price-cap regulation when you go through
11 a merger you would envision achieving merger synergies
12 under price-cap regulation, those merger synergies
13 don't come from a lower price in a regulated market.
14 So that a company's cost would have gone down,
15 therefore their need for subsidy could have gone down,
16 but because it's not a regulatory environment the
17 company's costs are not reviewed on a state basis
18 after the merger. I took that as kind of the point
19 they were getting at.

20 ATTORNEY DODGE:

21 No further questions.

22 JUDGE COLWELL:

23 Mr. Cheskis?

24 ATTORNEY CHESKIS:

25 Thank you, Your Honor.

1 RE CROSS EXAMINATION

2 BY ATTORNEY CHESKIS:

3 Q. I do have a few questions on I guess what's called
4 Recross at this point. First with regards to the
5 Redirect on the differences between the Pennsylvania
6 and the Federal Universal Service Fund Dr. Oyefusi,
7 you indicated, I believe, that the Pennsylvania Fund
8 is designed to rebalance access rates and that's all;
9 is that correct? Is that what you said on Redirect?

10 DR. OYEFUSI:

11 That was what I said, but I ---.

12 BY ATTORNEY CHESKIS:

13 Q. Well, I'm not asking you to elaborate on that.
14 I'm just asking you if that's what you said.

15 DR. OYEFUSI:

16 That's what I said.

17 BY ATTORNEY CHESKIS:

18 Q. Because I understand that you are aware that there
19 is an appeal currently pending before the Commonwealth
20 Court if you decide to give testimony and that that
21 issue is actually one of those that's being addressed
22 in that appeal. Are you aware of that?

23 DR. OYEFUSI:

24 No.

25 BY ATTORNEY CHESKIS:

1 Q. With regards to the questions on Redirect
2 regarding Lifeline --- I'm sorry. I don't know which
3 witness it was that said this, but one of you said
4 that it was --- you referenced a small class of
5 customers who may potentially be harmed here. Do you
6 recall ---?

7 DR. OYEFUSI:

8 I made that statement based on the
9 testimony we heard, and also in response to questions
10 on our testimony that it appears the concern was not
11 about customers that have access to abundance, but it
12 was concern about customers that were --- who do not
13 afford to pay what we say. But there's other
14 customers that have access to abundance, and we say if
15 we add those class of customers --- we actually asked
16 how many customers are in danger of losing service,
17 that would be driven to lose service.

18 BY ATTORNEY CHESKIS:

19 Q. And do you know how many people that would be?

20 DR. OYEFUSI:

21 We didn't get a response that anybody
22 knew.

23 A. We asked the carriers and they were unable to tell
24 us.

25 BY ATTORNEY CHESKIS:

1 Q. And are you aware what the eligibility and
2 criteria are for the Lifeline program?

3 DR. OYEFUSI:

4 No.

5 BY ATTORNEY CHESKIS:

6 Q. So are you aware that people may not be eligible
7 for the Lifeline credit, the Lifeline discount?

8 A. It's under a different set of criteria. The
9 program would be that if you're not eligible --- I
10 mean, where do you draw the cutoff? It's wherever you
11 draw it. You're going to draw a line somewhere.
12 There's going to be somebody on this side and somebody
13 on the other.

14 Q. Okay. One moment.

15 MR. NURSE:

16 Can I just correct my answer to Embarq?
17 We were checking on that and it was one percent rather
18 than a tenth of one percent.

19 ATTORNEY DODGE:

20 Thank you.

21 BY ATTORNEY CHESKIS:

22 Q. And is it true --- well, you were talking also
23 about not subsidizing rich people ---

24 A. Yes.

25 Q. --- in rural areas. So we're talking about people

1 that aren't necessarily poor?

2 A. Right. I mean, that's the blunt instrument of the
3 rate caps. It keeps the rate cap low for the
4 impoverished and for the millionaire, and that's an
5 inefficient way to get support to the poor person
6 who'd otherwise get pushed off the network. So our
7 proposal is to put more benefit to the guy who needs
8 it and don't send the benefits --- don't waste the
9 benefit on the guy who doesn't need it.

10 Q. So if there's a millionaire, as you say, that
11 lives in a rural area and it costs a hundred dollars
12 to provide them telephone service each month is that
13 what they should be charged?

14 A. I think a millionaire could afford more of a rate
15 than, you know, a retiree living on a fixed income.

16 Q. So the answer is yes?

17 A. Directionally, yes. I think a millionaire doesn't
18 need the subsidy that a retiree on a fixed income
19 needs, and because the pie is so big the more slices
20 you cut the smaller the poor guy gets. By subsidizing
21 millionaires' service, there's less money available so
22 if society decided we want to take one percent, we
23 want to take \$30 million and provide that benefit, by
24 providing that benefit to a million customers we're
25 sort of giving a \$30 benefit to a million people. It

1 might make a lot more sense to take that \$30 billion
2 and focus that on 100,000 people and then you would
3 get a 30 times benefit. So we think you could get a
4 lot more benefit to the people who really need it and
5 do it for a lot less cost. And that just seems like a
6 win/win.

7 ATTORNEY CHESKIS:

8 Okay. Thank you. My last point is, we
9 still have some fundamental disagreements on what in
10 fact tier three Lifeline service is and instead of
11 trying to beat that issue even further here, we'll
12 just reserve that for the brief, because we have some
13 fundamental disagreements with their interpretation
14 and what that program actually entails.

15 We have no further Recross.

16 JUDGE COLWELL:

17 Mr. Kennard?

18 ATTORNEY KENNARD:

19 Yes, Your Honor.

20 RECROSS EXAMINATION

21 BY ATTORNEY KENNARD:

22 Q. Are there income statements available for AT&T
23 Communication Pennsylvania, LLC and TCG Pittsburgh,
24 Inc. and TCG New Jersey?

25 A. I would guess --- actually, I think they are

1 Commission filings.

2 Q. Would you please provide income statements for
3 those three corporations in as much detail as on the
4 form 10-K for the most recent 12-month period for
5 which information is available?

6 A. No. I don't know that they exist in the level of
7 detail that's on the form 10-K.

8 ATTORNEY PAINTER:

9 You read into the record --- this entire
10 10-K document not going in, and you only put a number
11 in there as to revenues, so I assume that's the number
12 that you want.

13 ATTORNEY KENNARD:

14 No, I'd like to see the same information
15 that's in the 10-K.

16 MR. NURSE:

17 I don't know that it exists in this form.

18 ATTORNEY KENNARD:

19 Would you please provide it?

20 ATTORNEY PAINTER:

21 We'll provide the report that we're
22 required to provide to the Commission with
23 Pennsylvania-specific data.

24 ATTORNEY KENNARD:

25 I want the information for these three

1 corporations.

2 MR. NURSE:

3 We filed that in the utility assessment
4 fee, that is --- half of the calculation they use is
5 the intrastate revenue, the \$3.1 million I believe
6 they collect from the carriers for revenue that they
7 use as the denominator and then they take the fund
8 size and use that as the numerator, so I believe we
9 already supplied that to the Commission.

10 BY ATTORNEY KENNARD:

11 Q. The Universal Service Fund, based on the universal
12 service funding requirements established is end-user
13 revenue, but what I'm asking --- and furthermore is to
14 regulated. What I'm interested in is the total
15 company report of income --- revenue and expenses, the
16 income statement, the whole copy.

17 A. Intrastate revenues?

18 Q. Yes, all of them.

19 OFF RECORD DISCUSSION

20 BY ATTORNEY KENNARD:

21 Q. I'm including these corporations that have income
22 statements that they report up to the parent, and
23 that's what I'm asking for, those income statements,
24 for the most recent period for which that information
25 is available.

1 A. We don't have that state level income statements
2 that meet the federal filing requirements.

3 Q. I said at least as much detail.

4 A. We don't have that state level income statements
5 in as much detail as we do for the publicly-traded
6 company that files with the SEC, that are subject to
7 their standards. That doesn't exist on the state
8 level. We have already filed our intrastate revenue
9 with the Commission, which they use for the
10 calculation for the USF, as do all the other carriers.
11 So the Commission has the totality of every company's
12 intrastate revenues that are subject to the USF.

13 ATTORNEY KENNARD:

14 That's not my question, Judge. I've
15 asked today a request either can be provided or can't
16 be provided. I suspect every company has to have an
17 income statement, balance sheet. What is passed out
18 to the parties is the income side of it is operating
19 revenues, operating expenses, operating income,
20 interest expense, equity income, other income, income
21 taxes and income from continuing operations. It's six
22 lines. Who doesn't have a six-line income statement?

23 ATTORNEY PAINTER:

24 None of that was provided into the
25 record. The only number that Mr. Kennard wanted in

1 the record was the revenue number. And I'm having a
2 hard time understanding why they need that type of
3 detail Pennsylvania-specific when the only number that
4 he saw fit to put in his records is the total income
5 number.

6 ATTORNEY KENNARD:

7 Well, for the same reason that we
8 reviewed the Verizon Pennsylvania document and they
9 provided it to the parties so we could review it. We
10 have one for Verizon PA. We don't have one for the
11 three entities that are now being criticized for not
12 providing it, so to overcome that objection, I'm
13 asking for it.

14 ATTORNEY PAINTER:

15 We have agreed to provide the revenue
16 number and it does not have this level of detail and
17 again, there's an objection on whether that level of
18 detail is even required. We have no problem providing
19 the revenues for Pennsylvania.

20 ATTORNEY KENNARD:

21 It may not be available but any
22 corporation has an income statement. So do every one
23 of these three. It's probably quite extensive. I'm
24 just asking for a summary. I'm asking him to look to
25 see if they have it, and if they don't, let them

1 report back and let us know. Just like we got Verizon
2 PA's on line, we put a filing for these three
3 companies on line, and that would go to the issue that
4 we shouldn't be using parent-level information.

5 JUDGE COLWELL:

6 Ms. Painter, do you agree to that or do
7 you object?

8 ATTORNEY PAINTER:

9 I object to providing the type of details
10 that he is requesting. I do agree to providing the
11 revenue information to counsel, what is in the record.

12 MR. NURSE:

13 Intrastate.

14 ATTORNEY PAINTER:

15 Intrastate revenue information. That's
16 what Mr. Nurse is referring to and that that is the
17 number that would be looked at, and so if he wants
18 this number to respond to Mr. Nurse's criticism, Mr.
19 Nurse's criticism specifically addressed the
20 intrastate revenue number.

21 ATTORNEY KENNARD:

22 We've had access to the income statements
23 of Verizon Pennsylvania, Verizon Corporate, AT&T
24 Corporate and now we're asking specifically for the
25 same --- if the information available --- and this is

1 Discovery. We're asking Discovery. I don't know why
2 we're supposed to look at one number and all the rest
3 is unavailable for us to look at or can't look at it.
4 The soonest we can make that decision is the time we
5 receive the information, if it's relevant.

6 JUDGE COLWELL:

7 Well, here's the problem, Mr. Kennard,
8 this isn't a rate case, and therefore you're not
9 entitled to that type of request.

10 ATTORNEY KENNARD:

11 I didn't know that. Let the record
12 reflect that we tried to get the information. I
13 suppose that's all we get

14 JUDGE COLWELL:

15 Any further questions?

16 ATTORNEY KENNARD:

17 No, Your Honor.

18 JUDGE COLWELL:

19 Okay. Ms. Painter, do you have any
20 further questions?

21 ATTORNEY PAINTER:

22 No, I do not.

23 JUDGE COLWELL:

24 All right then. I think we're all done
25 with you, gentlemen. Thank you very much. Why don't

1 we take 15 minutes here and then we'll come back. Off
2 the record.

3 SHORT BREAK TAKEN

4 JUDGE COLWELL:

5 At this point, Mr. Kennard, you're up on
6 deck.

7 ATTORNEY KENNARD:

8 PTA calls Joseph J. Laffey.

9 JUDGE COLWELL:

10 Would you raise your right hand, please?

11 -----

12 JOSEPH LAFFEY, HAVING FIRST BEEN DULY SWORN, TESTIFIED
13 AS FOLLOWS:

14 -----

15 JUDGE COLWELL:

16 Would you please be seated? Mr. Kennard?

17 DIRECT EXAMINATION

18 BY ATTORNEY KENNARD:

19 Q. Please state your full name for the record.

20 A. My name is Joseph J. Laffey.

21 Q. And by whom are you employed, Mr. Laffey?

22 A. I'm currently employed by ICORE, Incorporated.

23 Q. And on whose behalf are you presenting testimony
24 today?

25 A. Pennsylvania Telephone Association.

1 Q. And I'll show you a document marked as PTA
2 Statement Number One, consisting of 23 pages, and PTA
3 Exhibit Numbers JJL-1 through JJL-7. Were those
4 prepared by you or under your supervision?

5 A. Yes, they were.

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

8 A. Yes, I do. I have two changes. The first change
9 is page eight, and it's in footnote ten. The change
10 would be after the word "see," we'd like to insert PTA
11 Exhibit JJL-6, PA PUC Comments.

12 JUDGE COLWELL:

13 Would you give me that again, please?

14 A. Yes. After the word "see," which is the very
15 first word in the footnote in its current form, we'd
16 like to insert "PTA Exhibit JJL-6, PA PUC Comments,"
17 and everything else would read as it currently is.

18 The next change is on page 14. Again, it's to a
19 footnote. Footnote 18, the second line, you'll see
20 there's a number 51 there. Right after the word "at"
21 we'd like to insert "46 comma" 51.

22 BY ATTORNEY KENNARD:

23 Q. And I'll show you a document marked as PTA
24 Statement Number 1-R, entitled Prepared Rebuttal
25 Testimony. Mr. Laffey, was this prepared by you or

1 under your supervision?

2 A. Yes, it was.

3 Q. It consists of 61 pages, and PTA Exhibits JJJ
4 numbers 8 through 11. Do you have any corrections to
5 make to your testimony in this exhibit?

6 A. Yes, I have one change to the Rebuttal testimony.
7 It's on page 23. This change is based on Discovery
8 that we just recently received on the fee cap in
9 regard to PTA Interrogatory 7-1. Based on this input,
10 I would like to make some changes to that testimony on
11 page 23. Those changes would be, on line 20 of page
12 23, right after the word "service," I'd like to insert
13 this sentence that would read, "But with the rate cap
14 as stated, that voice service is available in 78
15 percent of homes past." That's a new sentence I would
16 like to insert at that point.

17 ATTORNEY DODGE:

18 Mr. Laffey, could you repeat the
19 sentence, please?

20 A. Yes. "Rate cap as stated, that voice service is
21 available in 78 percent of homes past." And then in
22 the next sentence, which starts "So by inference," at
23 the very end of that sentence, those last three words
24 that currently read "below that figure," we'd like to
25 strike those three words and insert "at 58.5 percent."

1 BY ATTORNEY KENNARD:

2 Q. Any more changes to your Rebuttal testimony?

3 A. No.

4 Q. I show you a document that's been marked up in the
5 upper right-hand corner as PTA Statement Number 1-SR,
6 titled Prepared Surrebuttal Testimony of Joseph J.
7 Laffey. Was this prepared by you or under your
8 supervision?

9 A. Yes.

10 Q. It consists of 18 pages and PTA Exhibits JJJL
11 numbers 12 through 14. Do you have any changes to
12 make to either the testimony or the exhibits?

13 A. No, I don't.

14 Q. As corrected, are these three pieces of testimony
15 and appended exhibits that we just reviewed true and
16 correct to the best of your knowledge, information and
17 belief?

18 A. Yes, it is.

19 ATTORNEY KENNARD:

20 I would ask that these three statements
21 and appended exhibits be accepted into the record at
22 this time.

23 JUDGE COLWELL:

24 Subject to motions and Cross.

25 ATTORNEY KENNARD:

1 That concludes our Direct Examination and
2 the witness is available for Cross Examination.

3 JUDGE COLWELL:

4 Mr. Cheskis.

5 ATTORNEY CHESKIS:

6 We have no questions for this witness,
7 Your Honor.

8 JUDGE COLWELL:

9 Mr. Stewart?

10 ATTORNEY STEWART:

11 Thank you. No questions, Your Honor.

12 JUDGE COLWELL:

13 All right. Is there an order here?

14 ATTORNEY DODGE:

15 No questions.

16 JUDGE COLWELL:

17 Ms. Linton-Keddie?

18 ATTORNEY LINTON-KEDDIE:

19 We don't have any questions.

20 JUDGE COLWELL:

21 All right. Ms. Paiva?

22 ATTORNEY PAIVA:

23 Yes.

24 JUDGE COLWELL:

25 All right.

1 CROSS EXAMINATION

2 BY ATTORNEY PAIVA:

3 Q. Good afternoon, Mr. Laffey.

4 A. Afternoon.

5 Q. In your testimony, you referenced the PUC orders,
6 the Global Order and the July 2003 Order, but you are
7 not here to testify to legal opinions, are you?

8 A. No, I'm not.

9 Q. And you're not a lawyer, are you?

10 A. No, I'm not.

11 Q. And would you agree that the Commission will
12 ultimately interpret its own orders and conclude what
13 they require and rule out?

14 A. Yes, I would agree with that.

15 Q. Now, you're not an employee of any PTA companies
16 on whose behalf you're testifying?

17 A. No, I'm not.

18 Q. Were you ever?

19 A. Yes.

20 Q. In preparing your testimony in this case, did you
21 study the revenues or the costs of any of the
22 individual PTA companies on whose behalf you're
23 testifying?

24 A. No, I did not. I did not look at anyone's
25 financial statements or cost studies or anything of

1 that nature.

2 Q. So in preparing your testimony in this case, you
3 did not form a conclusion as to whether any of the
4 RLECs costs of providing regulated service in
5 Pennsylvania exceeded their revenue?

6 ATTORNEY KENNARD:

7 Can you ask that again? I can't hear you
8 very well.

9 ATTORNEY PAIVA:

10 Can you hear me?

11 JUDGE COLWELL:

12 I can, but I have a speaker in front of
13 me.

14 ATTORNEY PAIVA:

15 That's an advantage. I'll ask it again.

16 BY ATTORNEY PAIVA:

17 Q. In preparing your testimony in this case, then,
18 you did not form any conclusion as to whether --- for
19 any of the particular companies that you're testifying
20 for as to whether that company's overall costs exceed
21 their overall revenues for Pennsylvania regulated
22 services?

23 A. No, I did not.

24 Q. And similarly, you did not conduct any studies or
25 formulate conclusions as to whether the specific

1 exchanges served by these companies, costs exceeded
2 revenues, did you?

3 A. Costs versus revenues, no, I did not.

4 Q. Now, one of the necessary premises of your
5 arguments about the Universal Service Fund here is
6 that there must be an \$18 rate cap, or some rate cap,
7 in order to trigger contributions from the Universal
8 Service Fund; correct?

9 A. Well, yes. The current thought that calls for an
10 \$18 rate cap has been in place starting at \$16, in
11 fact, in the Global. It was increased to the current
12 level, which is \$18 level in July of 2003. And I
13 think what we're here for today in part, is should
14 that rate change, if it should, how should it change.
15 And I've said I think, you know, that that rate must
16 be comparable, first, and then of course must be
17 affordable as well.

18 Q. I'm actually asking more about the uses of funds
19 for the Chapter 30 revenue. In order to be able to
20 use the Fund for that purpose there has to be a rate
21 level to trigger those contributions from the Fund;
22 correct?

23 A. That's correct.

24 Q. And if there is no rate cap on residential rate
25 then there would be no need to have a Universal

1 Service Fund to fund even more revenues?

2 A. Yes. If there was no rate cap at all?

3 Q. Right.

4 A. Would there be a fund? Would there still have to
5 be a fund? Yes, I think we would ---. The fund that
6 we had coming out of Global did a couple things. It
7 first addressed the historic balance and that occurred
8 in that case, rather unusual, but it also created a
9 rate cap, which was meant to address local rate
10 affordability. So even if we came away from today
11 with no cap, then I think we would still need a fund,
12 because that fund is here today to ensure that those
13 access charge changes that occurred back in 1999 are
14 affordable.

15 Q. So you're saying we would still need the existing
16 fund that pays \$30 million a year?

17 ATTORNEY KENNARD:

18 I'm sorry. You know, I keep moving
19 closer to this and that's not even helping.

20 BY ATTORNEY PAIVA:

21 Q. So what you would say is that in the event that
22 there was no rate cap, you would still need the
23 existing fund, that one that currently pays
24 approximately \$30 million a year?

25 A. Yes, but I've got to say that if we --- if we get

1 to a point where there's no rate cap, I think that's
2 going to be totally inconsistent with our Chapter 30
3 plans that clearly call for a cap in place that would
4 address rate increases that exceed that cap, and those
5 plans stipulate that if that happens, if any increase
6 which is just and reasonable for that plan, that would
7 exceed that cap, it has to come from a fund. So if we
8 don't have a cap at all coming away from here today, I
9 don't --- I think it would be in conflict with the
10 Chapter 30 plans. And you know, I think again, and
11 I'm not an attorney, but if we have statutes, Act 183
12 as well as 296 that say that they have to be
13 comparable rates, if we don't have a cap, I don't know
14 how you do that. It's got to be less, what is
15 actually paid by the customer.

16 Q. If you turn to your direct, Exhibit J JL-3 ---.

17 A. Yes.

18 Q. This is a table with data that you relied upon in
19 your argument in favor of comparable rates; is it not?

20 A. Yes. This is one source, you know, that we looked
21 at as far as, you know, trying to determine what has
22 happened.

23 Q. And this is average residential rates for local
24 service over a number of years?

25 A. Yes.

1 Q. Now, the last column depicted on the chart here is
2 2006. But there is now data available for 2007, isn't
3 there?

4 A. I would imagine so. I'm not sure if there is. I
5 haven't looked at it.

6 Q. Well, Mr. Price actually quoted it in his
7 Rebuttal, page 35, and supported by his exhibit.
8 Rebuttal Exhibit Three to that testimony. It says
9 that that rate was \$15.62.

10 A. Well, since I haven't checked it, I can't accept
11 it.

12 Q. That's fine, then. Let me ask you this. The
13 Global Order set a \$16 rate cap. That order was in
14 1999; correct?

15 A. That's right.

16 Q. And what was the average urban rate in 1999?

17 A. \$13.77.

18 Q. And in 2003, that was the year that the Commission
19 issued the order raising that cap to \$18; correct?

20 A. That's correct.

21 Q. And what was the average --- or the area rate in
22 2003?

23 A. It's \$14.54.

24 Q. We can move away from the chart and if you could
25 look at your Surrebuttal, at page three. Are you at

1 page three?

2 A. Yes, I am.

3 Q. And at the bottom, lines 22 and 23, you state that
4 after reviewing Dr. Loube's testimony you agree that
5 it would be appropriate for the Commission to
6 periodically review and adjust the benchmark rate;
7 correct?

8 A. Yes.

9 Q. So even though in this proceeding, you're
10 advocating an \$18 rate cap, you're not testifying that
11 that rate cap could never be changed in the future,
12 are you?

13 A. No. As a matter of fact, you know, I've said that
14 I think it would be reasonable for that rate to be
15 looked at periodically. It could go up or down. But
16 I think it's very reasonable for it to be looked at
17 periodically.

18 Q. And what factors do you think should be considered
19 in evaluating that rate cap?

20 A. Well, I think the ultimate goal is to have a rate
21 that is comparable to the urban rates. So if that's
22 the ultimate outcome, you'd have to look at what are
23 the current rates on the urban rates, which we've done
24 here. That would be one piece of input. And then of
25 course, you know, you'd have to decide what are the

1 factors that you're going to use to create a
2 comparable. It's kind of a subjective term.
3 Comparable to me may not be comparable to you.
4 There's been a lot of ideas in this case as to, you
5 know, what you're going to utilize as far as
6 comparable. Some people will say 30 percent, others
7 would say 50 percent. So I think, as far as what you
8 have to look at, is number one, you'd have to agree on
9 what are the rates in urban markets, and what's your
10 comparability factor.

11 Q. And are you saying your conclusion is that
12 comparability is a factor in Section 254(b)(3) of the
13 Telecommunications Act?

14 A. Right.

15 Q. That Act says reasonably comparable, does it not?

16 A. Right.

17 Q. And in addition to looking at those FCC
18 statistics, you've also looked at Verizon's urban
19 rates?

20 A. Yes.

21 Q. And actually, if you turn over to page four of the
22 Surrebuttal, the next page after what you were looking
23 at, you've actually proposed a potential factor of 115
24 percent or, in other words, the rates would be no
25 higher than 115 percent of Verizon's urban rates.

1 Would that be considered reasonably comparable?

2 A. That's what I think.

3 Q. On what did you base the 115 percent?

4 A. Well, I just actually looked at the High Cost Fund
5 criteria that is utilized by the FCC, and what they do
6 essentially is, they look at unseparated costs and you
7 know, if a company's total company unseparated costs
8 exceed the nationwide average by more than 115
9 percent, they get High Cost Fund money for anything
10 above that. So what they've said essentially is that
11 up to 15 percent they don't deem at the extremely high
12 cost, but once you get above 115 percent, they feel
13 that is high cost and at that point you would qualify
14 for the FCC's High Cost Fund. I've taken that, you
15 know, that same logic and I said if that's good enough
16 for the FCC, I'd simply taken that, the same logic,
17 and I've said we could build a buffer in between an
18 average urban rate in Cell 1 and Cell 2, and say that
19 that would be reasonable and comparable. Any rate
20 that is within that range would be reasonable and
21 comparable. If it's over, it's not reasonable and
22 comparable, and therefore they would qualify for the
23 USF for the difference.

24 Q. Thank you. Now, in what you were just discussing,
25 the FCC is looking at differences in costs; correct?

1 A. Correct.

2 Q. Here you're talking about differences in rates;
3 right?

4 A. Yes. It's two different --- on the FCC side, it's
5 costs and what I'm doing here it's not costs, but is
6 retail rates. But I think the same logic holds.
7 Reasonable and comparable, I'm just applying that same
8 logic that's being used by the FCC and which is 15
9 percent. That's their benchmark.

10 Q. Although, of course, knowing Verizon's retail
11 rates, and knowing the RLECs' retail rates, that
12 doesn't tell you anything about the costs, does it?

13 A. No. But I don't think it needs to address costs.
14 I think if you're trying to get to a local benchmark,
15 it's one way. And that's a retail rate. So I think
16 to apply that onto a retail rate makes a lot of sense.
17 The benchmark rate can't be a cost rate. It's got to
18 be what's actually paid by the customer.

19 Q. So you're trying to come up with a rationale for a
20 percentage to define reasonably comparable?

21 A. Yes.

22 Q. And Dr. Loube in his testimony he uses 120
23 percent; right?

24 A. Yes, Dr. Loube used 120 percent. He used 120
25 percent and he used statewide averages.

1 Q. Right.

2 A. We're using certain urban rates and we think
3 that's more consistent with the Act.

4 Q. And here on page four to --- for your urban rate
5 you took a simple average of Verizon's Cell 1 and Cell
6 2; correct?

7 A. That's correct.

8 Q. Added the two together and divided by two?

9 A. Yes.

10 Q. You use the current rate and not the rates that
11 are going into effect on March 1st of 2009; correct?

12 A. Right. I used the current rates because I wasn't
13 sure of the status of those future rates. I didn't
14 know if they were actually approved rates or not, so I
15 used current.

16 Q. And using the current rate, you actually came out
17 very close to \$18, \$18.08; correct?

18 A. Correct.

19 Q. Now, knowing that Verizon's rates are going to
20 increase, if you did the same calculation to those
21 rates, considering that they are actually going to
22 take effect on March 1st the result would be higher
23 than \$18; would it not?

24 A. Yes, it would.

25 Q. And you assume if the rate of inflation continues

1 approximately as it is, Verizon will be able to raise
2 rates every year under its inflation-based formula;
3 would it not?

4 A. Well, I can't speak to that.

5 Q. But it would have the right to?

6 A. You would know that better than I would, yes.

7 Q. But assuming inflation stays relatively the same,
8 we would have the opportunity to raise those rates?

9 A. Yes.

10 ATTORNEY KENNARD:

11 I object. He doesn't know. He said he
12 doesn't know. It's up to Verizon

13 ATTORNEY PAIVA:

14 Well, I think he fairly said he doesn't
15 know if Verizon will do so, but he can state for the
16 record that he does know that Verizon would have the
17 opportunity to do so.

18 ATTORNEY KENNARD:

19 I withdraw the objection.

20 BY ATTORNEY PAIVA:

21 Q. And I believe you answered yes; correct?

22 A. Yes, I mean if your price cap plan works the same
23 as other RLECs, then each year, you could make a
24 filing so I guess there's an opportunity there to
25 raise the rates. If that's what you're asking me,

1 yes, that's my understanding.

2 Q. And assuming that happens, within a year from now,
3 your 115 percent would be coming out a higher number;
4 correct?

5 A. That's correct.

6 Q. How long do you think it should be before the
7 Commission re-looks at an \$18 model?

8 A. Honestly I haven't thought about it. If we're
9 going to have --- if there's going to be a process,
10 you know, where the rate is going to be looked at
11 periodically, that's going to have to be thought
12 through. It could be biannual. I don't know how to
13 answer that. I haven't thought about, you know, how
14 often I think it should be done.

15 Q. Fair enough. Were you here yesterday when Dr.
16 Loube was testifying about the potential increase in
17 benchmark, and what would happen to companies that
18 were getting USF payments if the benchmark then were
19 raised? Were you here for his testimony on that?

20 A. Yes, I was.

21 Q. Yes. I'm not sure you were in the room when he
22 was talking about that. I think the question --- to
23 paraphrase the question I asked him, the rate cap's at
24 \$18, a company's rate is at the point where it can
25 make a claim against the USF, so year one, it gets \$2

1 million from the USF based on the \$18 cap. A couple
2 of years down the road the benchmark is raised to \$20,
3 would that company continue to get its \$2 million
4 every year?

5 A. Yeah, I did hear this yesterday and I did give it
6 some thought. But I haven't thought it all the way
7 through. I mean, I think I cannot answer the question
8 and I think it's a question that has to be resolved
9 and it has to be worked out. I think there's a lot of
10 moving parts in that answer. There's no short answer,
11 yes or no. I think we've got --- I think what we need
12 to do is get the right people in a room and step
13 through that so that we can get input. I don't think
14 I want to say absolutely yes. Dr. Loube said no. And
15 I'm not sure I'm there either. So it's not that I
16 don't want to answer you. I think it's a good
17 question and I think it's a question that warrants
18 more conversation and not just one-sided, yes or no.

19 Q. All right. If you could turn over to page 32 of
20 the Rebuttal.

21 A. Rebuttal. Okay. I'm there.

22 Q. At the very top of that page you say you were the
23 RLECs' witness in the Global proceeding and a prime
24 sponsor of the Small Company USF Plan.

25 A. That's correct.

1 Q. So you're aware, then, that under the current USF,
2 the Verizon ILECs contribute to the USF but they do
3 not receive any USF support; correct?

4 A. Yes. Verizon contributes but does not receive any
5 money from the plan. That's part of what the 1649
6 plan did. Both of our companies sponsored that plan,
7 by the way, and --- not both of our companies. I was
8 working for someone else at the time, but that plan
9 was put together by, was it Bell Atlantic at the time,
10 or was it Verizon?

11 Q. It was Bell Atlantic back then.

12 A. Bell Atlantic, you know, with all the RLECs. It
13 did not include Bell Atlantic because Bell Atlantic
14 didn't want to be part of the plan, and that's a
15 little bit of history. But that's why they're not in
16 the plan because they didn't want to be in the plan.
17 But, yes, I was there. I was part of 1649.

18 Q. Do you have any opinion as to whether they should
19 be part of the plan going forward or not?

20 A. I don't off the top of --- that's not --- you
21 know, that's not the kind of question I want to just
22 give a quick answer to, so I'm just going to pass on
23 that question. Certainly, you know, I don't --- I
24 can't come up with any, you know, fast reason as to
25 why not, but I'd still like to take a closer look at

1 that, because it's a pretty broad question.

2 Q. I guess it would be fair to say you're not ruling
3 it out, although you're not prepared to say yes.

4 A. That's fair.

5 Q. Looking at page 50 of Rebuttal starting at line 11
6 you say, Verizon Pennsylvania's urban customer
7 subsidize its rural customers. Why is that relevant
8 to the issues before the Commission?

9 A. Well, there has been a lot of discussion in this
10 case about subsidies, you know, to the RLECs, you
11 know, from other companies' customers. And we're
12 simply trying to point out that because value of
13 certain pricing, with the rate structure those kinds
14 of subsidies flow, you know, from the urban markets
15 into your smaller exchanges, but we don't have that
16 kind of urban base that we can draw upon. You've got
17 a base of customers that, because of value service
18 pricing, where you have higher rates in those markets,
19 millions of lines, with thousands of lines per block,
20 that you can have an opportunity to charge more and
21 create a subsidy flow into your smaller exchanges. We
22 don't have that opportunity, because all of our
23 exchanges are Cell 4 exchanges.

24 Q. But within the RLEC exchanges, there are some of
25 higher density and some of lower density; correct?

1 A. Yeah. That's absolutely true, but it's not the
2 same kind of comparison. They're all extremely,
3 extremely comparable to Philly, comparable to
4 Pittsburgh, so there's no comparison, as well as the
5 fact that I think if you look at your product market,
6 you're not going to get the same level of business
7 customers there that you would in these urban markets.
8 And that's another source of subsidy that's built into
9 your rates. Those kinds of things are built into your
10 rates, and create a lot of subsidies flowing
11 internally. We don't have those same kinds of inner
12 brackets.

13 Q. All of this is just kind of speaking
14 hypothetically. You have no actual costs or actual
15 revenue figures for what you said; correct?

16 A. Correct.

17 Q. But at least in theory would you agree that RLEC
18 customers from their higher density exchanges should
19 subsidize the rural density exchanges?

20 A. Well, I think we do. Some companies do have
21 rates, you know, that are based on that same kind of
22 value service pricing. And so that, you know, does
23 occur but not all companies have different rate
24 groups. There are some companies that only have the
25 one rate. But there are examples where, you know,

1 within RLECs they have different rates for larger
2 exchanges where customers pay a higher rate. But the
3 cost there could actually be lower. So you know, the
4 same kind of value service does occur.

5 Q. So are you saying then that even though it's
6 occurring on some level, it's not enough, that they're
7 still not able to support their high-cost areas?

8 A. Potentially that can happen, and that's all we're
9 trying to do here I think is to ensure that if, you
10 know, RLEC rates have to increase to the point of
11 being higher than the benchmark rate that that safety
12 net is there. I think --- not a legal opinion, again,
13 but I think it has to be there, or else I don't know
14 how we can say that it's a progressive statute. If we
15 don't have a rate cap --- unless we think that the
16 competition that exists today is going to afford
17 everybody a choice. And I don't think it will.

18 Q. In that answer you said potentially. Potentially
19 that could happen. In other words, potentially a
20 company went out and made enough money to cover its
21 high-cost areas, but in the case, you haven't
22 presented any evidence to show that that actually
23 happens.

24 A. No. What I was trying to say is that if you have
25 a fund with a rate cap, well, the fund doesn't come

1 into play until rates exceed the cap. So I'm saying
2 that potentially if rates rise, if, if they rise to
3 the point that they exceed the cap, the fund should at
4 that point compensate the company for that excess
5 above the cap. But that's what all of our Chapter 30
6 plans already say, is that's what will happen in the
7 event that the cap is exceeded.

8 Q. Aren't we really talking about two different
9 things though? I mean, potentially a company could
10 get to the benchmark and that company should get USF
11 subsidies. That's one potential. But I understood
12 your answer to be about the subsidization flowing from
13 the higher density exchanges to the lower density
14 exchanges, and I thought I understood you to say that
15 potentially that flow of revenue might not be enough
16 to cover all of the company's costs.

17 A. Potentially that's true.

18 Q. And my question to you was, yes, potentially that
19 could be the case that you have not provided any
20 evidence to show that that actually is the case for
21 any of your companies.

22 A. No. At this point only three companies are
23 actually drawing from the Fund for rates that are
24 higher than the rate cap. They're the same three from
25 the Global, so at this point no one has had to say I

1 have to increase the rate and I should draw out from
2 the Fund because of the fact that my rates are
3 insufficient to meet our current debt. That hasn't
4 happened yet. Understand that it could happen
5 potentially. It could happen and if there's no rate
6 cap there, if there's no fund there, then what are we
7 going to do? I think it's contrary to our Chapter 30
8 plans for us to ever get to that day.

9 Q. Now, I understand you saying that potentially a
10 company could make a claim, but are you saying that
11 the company would first have to demonstrate that it's
12 not actually able to meet those costs?

13 A. I am definitely not saying that. No, companies
14 that are under price cap regulation each year, just
15 like Verizon, these RLECs' rate and price cap filings
16 it's based on GDPI. That's going to create a revenue
17 need. That's what falls out of the price cap formula.

18 Q. Is it a need or is it an opportunity?

19 A. Well, we don't like to use the word opportunity.

20 Q. Why's that?

21 A. I don't know what the reason is. I mean, if you'd
22 rather, I could call it a revenue opportunity,
23 but ---.

24 Q. Well, I ---.

25 A. We don't normally call it that. But what comes

1 out of there in a price cap filing would be a revenue
2 need. And at that point they didn't have the right
3 under the plans to increase rates, protected service
4 rates. And those rates have to be just and reasonable
5 under their plan, and if they don't --- it's --- their
6 rates exceed the cap, they get USF. That what the
7 Chapter 30 plans say.

8 Q. Now, in the context of the rates being just and
9 reasonable, isn't just and reasonable set by the end-
10 user rate? In other words if a rate is not just and
11 reasonable, because it's too high, then it's not
12 reasonable for that customer to pay the rate. If it's
13 just and reasonable, the customer should be paying the
14 rate. Are you using it in some different sense than
15 that?

16 A. No. I'm saying that if the outcome of a Chapter
17 30 calculation, price cap calculation were to create a
18 rate that's \$19 per line, that rate is just and
19 reasonable.

20 Q. And if that rate is not just and reasonable?

21 A. Well, not based on that year's calculation. It's
22 \$19. If you get there, with the revenue opportunity,
23 you know, and increase rates to a level which, as in
24 my example, would be \$19. It's just a reasonable
25 rate, but then that rate is higher than the \$18

1 benchmark. That's where the fund has to compensate,
2 you know, for the dollar difference above the cap.
3 That's where the Chapter 30 comes in.

4 Q. I guess that's where I'm confused because I
5 thought if it was determined that the affordable and
6 comparable rate was \$18 then anything over that rate
7 would be considered not just and reasonable. Is that
8 not the way you consider it?

9 A. By just and reasonable, I mean that from the
10 ratemaking perspective. You know, that rate under my
11 example would be deemed to be just and reasonable from
12 a ratemaking perspective as defined by Chapter 30. By
13 the plans, that rate of \$19 would be just and
14 reasonable, but because there's a rate cap, and we
15 have a USF, you can't charge that rate. We couldn't
16 charge \$19, because it would fly in the face of our
17 current benchmark, which has to be both comparable and
18 affordable. So that's where the Fund kicks in. The
19 Fund has to compensate for the difference.

20 Q. Sorry if I seem to belabor the point, but to you,
21 just and reasonable is the concept of what the company
22 is entitled under the plan to charge; correct?

23 A. Yes.

24 Q. Now, you've been talking about the \$18 benchmark.
25 That applies to residential rates. Does there also

1 have to be a benchmark for business exchange rates?

2 A. Yes.

3 Q. And if there were not a benchmark for business
4 exchange rate then the company would be expected to
5 allocate to the business rates; correct?

6 A. A business benchmark rate is --- that's a
7 byproduct of the Global benchmark. That's where it
8 was created, and was reinforced in the July 2003
9 access docket. As far as going to benchmark for
10 business customers, you know, works essentially the
11 same way. If you increase rates above the benchmark
12 rate, that would also trigger the USF.

13 Q. Well, what happens if the Commission decides, yes,
14 we want the \$18 benchmark for residential rates, but
15 we don't see any need of a benchmark for business
16 rates? Then what happens when companies implement
17 their price change formula?

18 A. Well, I think if we would do away with the
19 benchmark rate for business customers --- I'm troubled
20 by that concept. And I want to say I think it's
21 inconsistent with the Global Order. And would be
22 inconsistent again, with the companies' Chapter 30
23 plans which stipulate that there is a benchmark and it
24 applies to both res and to bus. But you know, if
25 there was no business benchmark rate, then there would

1 be no affordability protection for customers, like
2 there is today.

3 Q. So in other words the company could raise rate
4 business rate in its price change opportunity?

5 A. Which, you know, we're take here anyway, but
6 currently if there's a price change opportunity it's
7 spread over --- it can be spread over both res and
8 bus, up to the existing caps. If you then take away
9 the business cap there's no ceiling involved there for
10 the Fund to compensate.

11 Q. Turn back to your Surrebuttal, page 14, looking at
12 line ten --- and I think you said this a couple of
13 places, but this is a good example. You say that the
14 existing PAUSF is not really at issue at all in this
15 proceeding. In other words, you believe that the
16 Commission does not address the question of whether
17 the current USF should be increased?

18 A. That is my understanding. That's why these words
19 are here and they are utilized other places in my
20 testimony. That's my understanding, that the current
21 Fund is not at issue in that both have been discussed
22 as to the cap and what should happen to the cap. You
23 know, I think that question has been asked and
24 answered several times, but that's just my opinion.

25 Q. Well, the question I have for you is, are you

1 familiar with the October 9, 2008 Order from the
2 Commission in this case on a motion for
3 reconsideration filed by AT&T and Sprint?

4 A. No.

5 Q. I'll show you a copy of that Order.

6 ATTORNEY KENNARD:

7 I'm not sure that's appropriate at this
8 time. What purpose is there in asking questions about
9 it?

10 OFF RECORD DISCUSSION

11 ATTORNEY PAIVA:

12 If you could take a look at the last two
13 paragraphs on page five, and it carries over onto the
14 last page. Page five of the Order which was entered
15 October 9th, 2008. In this document --- it actually
16 stays the investigation --- the Commission states in
17 this Order, "AT&T seeks clarification that parties may
18 introduce evidence on both decreasing and increasing
19 the size of the PAUSF. When we stated that the
20 investigation was opened for the purpose of addressing
21 whether funding for PAUSF should be increased, we did
22 not intend for there to be a preclusion of evidence
23 that funding for the PAUSF should decrease. That
24 could be part of a needs-based test conclusion.
25 Therefore we find in favor of AT&T on this issue and

1 will make that clarification."

2 BY ATTORNEY PAIVA:

3 Q. Now, having seen that order, is it still your
4 opinion that the potential decrease of the current USF
5 is not at issue for this stage of the proceeding?

6 ATTORNEY KENNARD:

7 Your Honor, I would move an objection.
8 He's being asked now to provide a legal
9 interpretation. The question is asking is this
10 consistent with what the Commission did before and
11 what it means. As a lawyer, I'm very confused about
12 that. As it assists the record not at all to have Mr.
13 Laffey render an opinion about its meaning. Now, he
14 has Direct testimony elsewhere what happens if the
15 current fund goes away, so this raised those issues,
16 and he discussed them, but we're out of scope with
17 this question.

18 ATTORNEY PAIVA:

19 Your Honor, he's testified that the
20 potential decrease of the fund is not at issue for
21 this proceeding, so either he should strike those
22 portions of his testimony or we should give him the
23 opportunity to tell us whether he still holds that
24 opinion after having read this order.

25 JUDGE COLWELL:

1 All right. I don't think that his
2 opinion on what the proceeding is about actually
3 defines what the proceeding is about. So you've made
4 your point and he's made his point, so let's move on.

5 ATTORNEY PAIVA:

6 That was actually my last question.

7 JUDGE COLWELL:

8 Okay. Ms. Painter?

9 ATTORNEY PAINTER:

10 Thank you.

11 CROSS EXAMINATION

12 BY ATTORNEY PAINTER:

13 Q. Good afternoon. If you could please turn to your
14 Surrebuttal testimony, page 13.

15 A. Yes.

16 Q. You talk on this page and going into page 14 about
17 the Federal Universal Service Fund and the various
18 aspects of it; is that correct?

19 A. Yes.

20 Q. Okay. At about line 18, Exhibit J JL-13, do you
21 see that?

22 A. Yes, I do.

23 Q. And that exhibit is to show that there are only 11
24 PTA companies receiving funds from the High Cost Loop
25 Fund support, which is the HCLF.

1 A. Yes.

2 Q. Let's turn to that Exhibit, JJL-13. Can you
3 explain to me why you used 2003 data for this
4 information? I'm looking in particular at the top.
5 It says Fourth Quarter 2003 and in the bottom right
6 hand side it says August 1st, 2003.

7 A. I believe this is mislabeled. I believe it should
8 be Fourth Quarter 2008. I believe that's what ---.

9 Q. You think this document is actually 2008?

10 A. Yes.

11 ATTORNEY PAINTER:

12 Okay. Well, I actually ---.

13 A. I mean, the \$1.8 million that I referenced in the
14 text of my Surrebuttal is 2008.

15 ATTORNEY PAINTER:

16 Your Honor, I would like to have this
17 marked as AT&T Cross Exhibit Two.

18 BY ATTORNEY PAINTER:

19 Q. When you talk about this data, it's something
20 that's publicly available on the FCC web site; is that
21 correct?

22 A. Yes.

23 Q. So if you just go to the web site you can get this
24 information. Have you done that, looked at that web
25 site?

1 A. Yeah, I did not prepare this.

2 Q. But I was just wondering if you had.

3 A. It was prepared for me, but that is my
4 understanding, that this schedule represents the
5 Fourth Quarter, 2008 and in the text of my Surrebuttal
6 when I used the number \$1.8 million, that's also 2008.

7 Q. Well, let's look at this chart, which has been
8 AT&T Cross Examination Exhibit Two.

9 A. Okay.

10 Q. It says SACPL, do you see that?

11 A. Yes.

12 Q. That stands for Study Area Cost Per Loop; is that
13 correct?

14 A. I don't know.

15 Q. Okay. Are you not familiar with how this cost
16 support works?

17 A. Well, I'm not sure that this is the same schedule,
18 you know, that I utilized.

19 Q. Well, are you familiar with how the federal
20 funding works?

21 A. Yes, I am, but I'm sure there are various
22 presentations of the same information, and as I was
23 telling you, this particular form I am not familiar
24 with.

25 Q. Well, you did go to the Commission's web site and

1 look at the data; correct?

2 A. Yes.

3 Q. And this is a printout of that data, but in terms
4 of obtaining high cost loop support, you state --- if
5 you look at line 15 on page 13 in your testimony you
6 state HCLF, which is High Cost Loop Fund ---

7 A. Yes.

8 Q. Support is provided to RLECs to cover a portion of
9 their regulated total company cost per loop that
10 exceeds 115 percent of the national average; correct?

11 A. Correct.

12 Q. Okay. Would you agree that SACPL is the total
13 company cost per loop that you talk about?

14 ATTORNEY KENNARD:

15 I'm going to object here, Judge. We've
16 haven't really even established what this document is.
17 This is NECA, National Exchange Carrier Association
18 federal tariffs. The data that Mr. Laffey is using is
19 the Universal Service Administrative Company, USAC,
20 which administers the Fund. What we've found so far
21 is that we provided consistent data source, but this
22 is not consistent. The exhibit says 2003, and he
23 testified it should be 2008, but we'll have to update
24 it for this purpose. But we're not even sure what
25 this document is or where it came from. It wasn't

1 prepared by Mr. Laffey, and it indicates it's NECA.
2 The source is the National Exchange Carrier
3 Association, the tariff administrator, not the USAC,
4 the administrator of the Fund, which is the data upon
5 which Mr. Laffey was relying.

6 ATTORNEY PAINTER:

7 Well, Your Honor, what Mr. Kennard is
8 essentially doing is preventing AT&T from providing
9 any type of backup data to support the numbers that
10 are in Mr. Laffey's testimony since he did not provide
11 that information in his testimony. It's a publicly-
12 available --- obviously he provided information about
13 it. Obviously, he testified he went in and looked at
14 this FCC web site. You merely click on a link and it
15 shows up. He said he had gone and looked at that.
16 That is an underlying basis for the data that is in
17 his testimony and we have a right to explore it.

18 ATTORNEY KENNARD:

19 We'll agree to update the exhibit for the
20 USAC information to 2008.

21 ATTORNEY PAINTER:

22 Well, he talks about how the fund works,
23 and he talks --- but now he's not willing to testify
24 to any of the data underlying how that fund works?
25 And he talked about the --- well, he gives numbers,

1 \$1.8 billion and now he's unwilling to testify about
2 the data as to how that was arrived at. He's familiar
3 with how --- what the chart looks like. He's familiar
4 with how it is compiled and familiar with the fact
5 that it's publicly-available at the FCC.

6 ATTORNEY KENNARD:

7 Well, it's not FCC data, it's USAC data.
8 They're the ones that administer it.

9 ATTORNEY PAINTER:

10 Right.

11 ATTORNEY KENNARD:

12 It's USAC to go to, to get the
13 information ---

14 ATTORNEY PAINTER:

15 Absolutely.

16 ATTORNEY KENNARD:

17 --- not the NECA.

18 ATTORNEY PAINTER:

19 Well, it's available on FCC web site.

20 A. I based my testimony, Your Honor, on a report that
21 showed me the various companies in the State of
22 Pennsylvania. It showed various types of federal USF.
23 It showed High Cost Fund; it showed ICLS; it showed
24 interstate access support. It did not show cost per
25 loop; it did not show this kind of information. It

1 showed dollar amounts for each of those companies.

2 BY ATTORNEY PAINTER:

3 Q. You testified that in order to get there you had
4 to look at the cost per loop, and you looked at a
5 national average?

6 A. Correct.

7 Q. Is that correct? And I'm trying to show you the
8 cost per loop and the national average that you
9 testified about. If the cost per loop is 115 percent
10 of the national average, then a company qualifies for
11 subsidy. Did you not testify to that?

12 A. Yes, I did.

13 Q. You didn't look at any underlying data in regard
14 to that?

15 A. I didn't ---.

16 Q. Did you look at any underlying data with regard to
17 that?

18 A. No. My report which I utilized showed the dollar
19 amounts from the fund, not showing any kind of
20 underlying actual costs per line or as compared to the
21 nationwide average.

22 Q. And you're not involved in any way in submission
23 of that data to the FCC?

24 A. No, I'm not.

25 Q. You testified that you've gone to the FCC web site

1 and looked at the data; correct?

2 A. Yes.

3 Q. It's publicly-available. You can click on a link
4 and look at the data; correct?

5 ATTORNEY KENNARD:

6 But that doesn't mean he --- again, Your
7 Honor, it doesn't mean he's the appropriate witness to
8 be cross-examined on a document he's not used in
9 preparation of testimony.

10 ATTORNEY PAINTER:

11 Well, Your Honor, I'm not actually going
12 to ask him if the loop numbers are correct for the
13 companies. I'm asking him to verify whether the
14 numbers are actually a publicly-available document on
15 the Commission's web site. I'm not going to ask him
16 to verify the veracity of the information or where it
17 came from.

18 ATTORNEY KENNARD:

19 Well, and that's the problem.

20 JUDGE COLWELL:

21 That is the problem and here's the other
22 problem. Why are we looking at something in the
23 fourth quarter of 2003, and why don't we have the
24 report that he based his testimony on?

25 ATTORNEY KENNARD:

1 That was a compilation error. We should
2 --- and I would offer, as I offered earlier, and would
3 offer again now, we'll update this exhibit. It was
4 incorrect, and that's our fault.

5 JUDGE COLWELL:

6 The difficulty is then there isn't going
7 to be an opportunity for Cross Examination.

8 ATTORNEY PAINTER:

9 There's also testimony about scope, so
10 the terms of obtaining Discovery, especially since
11 it's a long exhibit, there's no way he can answer me
12 on any information on the underlying basis for that.
13 It's something that anybody can go click on it and
14 look at, and I certainly ---.

15 A. The report that I saw provided the 2008 Universal
16 Service Fund payments to the RLECs in dollar amounts.
17 I never saw this report. I'm sure, as I said earlier,
18 Your Honor, there are many various different ways that
19 USF is shown on the FCC's web site, different
20 portrayals of the same information. I did not see
21 this report that went into the nuts and bolts of the
22 actual unseparated costs per line. All I saw was the
23 outcome of that. And I think what they're showing me
24 here is the actual cost per line type information.

25 ATTORNEY PAINTER:

1 Well, it's obviously --- well ---.

2 ATTORNEY KENNARD:

3 Your Honor, my proposed solution is this.
4 The testimony is accurate even though the exhibit says
5 2003 and therefore not consistent with the testimony.
6 Why don't we take the exhibit out, strike it? We're
7 simply showing that to show you we've been doing our
8 work. We obviously made a mistake, but testimony
9 still stands with this exhibit gone, since it
10 correlates with the testimony, to support it as we had
11 suggested in the testimony that it did.

12 ATTORNEY PAINTER:

13 Well, then, Your Honor, I would suggest
14 that there needs to be a reference where \$1.8 million
15 came from. There needs to be a record of where that
16 came from. Presumably it came from exactly the data
17 that I provided to the witness.

18 ATTORNEY KENNARD:

19 The witness said it didn't, and I guess
20 we have to trust his testimony in that regard.

21 ATTORNEY PAINTER:

22 Well, he said he didn't see the
23 underlying data for the report.

24 ATTORNEY KENNARD:

25 His testimony is that in 2008 \$1.8

1 million was received. We have the wrong exhibit here.

2 JUDGE COLWELL:

3 Okay. So our choices are to strike the
4 testimony or we allow the substitution of the correct
5 exhibit. Which would you prefer?

6 ATTORNEY PAINTER:

7 There cannot be a reference in the
8 testimony to where the underlying data was found? Why
9 can't there be a reference? The point being to be
10 able --- I mean, if this witness is not willing to
11 testify about the underlying data, that's fine. But
12 to specifically exclude it so no company has the
13 opportunity to refer to it is not fair. Otherwise
14 this section should be thrown out, about the high cost
15 fund if he can't testify about how it works and is not
16 willing to testify about how he came up with this
17 information.

18 ATTORNEY KENNARD:

19 You can ask the witness where it came
20 from. I agree it was ten days ago, but you didn't
21 call and ask the source of Mr. Laffey's information.
22 You could have given me the web site reference and we
23 could have proceeded today. Instead, we're telling
24 you where the data came from. We're in the scope of
25 the Rebuttal, Verizon's Rebuttal testimony. Now we're

1 getting down to a short period of time, but no amount
2 of that time was used, no matter how short to get to
3 the bottom of this. You can't confront the witness
4 with documents he's never seen, and we'll be glad to
5 give you the reference so we can conclude it, so you
6 can see what it is, and we'll strike the inconsistent
7 exhibit. He stated in his testimony it's 2008 and
8 this is the result of the 2008 information. And we'll
9 give you the data source.

10 ATTORNEY PAINTER:

11 Okay. You will give us the web site data
12 source for this?

13 ATTORNEY KENNARD:

14 Yes.

15 ATTORNEY PAINTER:

16 That's fine. That's fine.

17 JUDGE COLWELL:

18 Okay.

19 ATTORNEY KENNARD:

20 And strike the exhibit.

21 ATTORNEY PAINTER:

22 Yeah, strike the exhibit.

23 BY ATTORNEY PAINTER:

24 Q. You talked about the --- in this testimony you
25 talked about the fact that there are different levels

1 of support from the Federal Universal Service Fund; is
2 that correct?

3 A. Yes.

4 Q. And would you agree that even for the companies
5 who do not receive the HCLF, there are other forms of
6 Federal Universal Service Fund support for those
7 companies; correct?

8 A. Yes. Those supports, you know, they vary in
9 practice. Some goes to schools and libraries.

10 There's Lifeline and there's ICLS. ICLS really is the
11 largest component role in the RLECs here in
12 Pennsylvania. But I don't characterize that as high
13 cost. That's interstate jurisdictional costs. What
14 they don't get of that cost through line charges, they
15 get from the USF through ICLS. It's not high cost.
16 It's 25 percent allocator.

17 Q. Okay. But it does reduce the total cost of the
18 loop for all carriers; correct?

19 A. Yes, it does. That covers the interstate portion
20 of the local ---.

21 Q. Okay. And in order to receive --- well, you
22 testified there are only 11 PTA companies who receive
23 money from the High Cost Loop Fund; ---

24 A. Correct.

25 Q. --- correct? And I think we've established that

1 in order to receive money from that fund --- are you
2 familiar with the fact that the --- that there's a
3 standard, that in fact there's a standard, national
4 standard loop rate? Is that --- are you familiar with
5 that?

6 A. Correct.

7 Q. Are you familiar with the fact that's it's \$382.97
8 for 2008?

9 A. I'll accept that.

10 Q. Okay. So in order to receive funding from the
11 High Cost Loop Fund, carriers --- and just to be
12 clear, \$382.97 is annual. Is that your understanding?

13 A. Yes.

14 Q. Okay. In order to receive funding from the High
15 Cost Loop Fund, a carrier's costs that they submit
16 must be 115 percent greater than \$382.97; correct?

17 A. That's correct.

18 Q. So if a carrier does not receive funding as many
19 companies do not, it's because their costs are not
20 considered high enough under the High Cost Loop Fund;
21 correct?

22 A. Correct.

23 Q. And on page 56 of your Rebuttal testimony you talk
24 there about AT&T is the largest recipient of the High
25 Cost Fund payments; is that correct?

1 A. Yes.

2 Q. And again, the fact that AT&T receives this amount
3 of funding is based on AT&T's costs and the fact that
4 AT&T has a certain amount of high costs loops; is that
5 correct?

6 A. Well, this schedule here provides total Universal
7 Service Fund payments, not just High Cost Fund
8 payments. Now, there is an aspect of the Federal USF
9 called interstate access support, which much like
10 ICLS is not truly high cost. So I'm not sure that
11 these figures are just high cost. I don't believe
12 they are. It's aggregate Universal Service Fund.
13 Some of it may be high cost, but I'm not saying that
14 it is --- you know, sometimes people will talk about
15 the FCC fund, and call it high cost fund. It's kind
16 of a --- it's a label that gets slapped on the fund
17 when there are various forms of funding under that
18 umbrella, and they're not all truly high cost.
19 Schools and libraries are not part of the high cost.

20 Q. Okay. But you're not sure --- you don't actually
21 know what this number entails?

22 A. No, I don't. I don't believe that is just high
23 cost fund. I think it's a whole umbrella of USF.

24 Q. Turning to page 57 of your Rebuttal testimony
25 starting at line 4 you talk about the state Universal

1 Service Fund there; is that correct?

2 A. Yes.

3 Q. And starting at line seven you talk about the fact
4 that AT&T receives support from the high cost fund,
5 state high cost fund?

6 A. Yes.

7 Q. And you cite there California and we can see that
8 the fund is \$468 million; is that correct?

9 A. Yes.

10 Q. You have that 2006, as of 2006. You cite, it
11 looks like a table from this nrri.org; is that ---?

12 A. Yes.

13 Q. Did you review that document?

14 A. Pardon me?

15 Q. Did you review the document that's cited there in
16 your testimony at nrri.org?

17 A. Yes, I did.

18 Q. Okay. Is this the NRR --- it has the first page
19 and it's NRRI outline, is this the fund to which you
20 are referring or ---? I'm sorry. The report to which
21 you are referring?

22 A. Yes, this looks like it is.

23 Q. Okay. At least it's an excerpt from it?

24 A. Yes.

25 Q. Okay. And if you look to the second page of this

1 document, which --- it's entitled State Universal
2 Service Funding Mechanisms: Results of the NRRI's
3 2005-2006 Survey; is that correct?

4 A. Pardon me?

5 Q. I'm just telling you the title. It's entitled
6 State Universal Service Funding Mechanisms: Results of
7 the NRRI's 2005-2006 Survey.

8 A. Yes.

9 Q. And if you look to Table 21, this has a table
10 where it has "How Much Was Disbursed By Your
11 Intrastate High-Cost Fund During 2004" and it says for
12 California over \$468 million? Is that where you got
13 the number that's in your testimony?

14 A. I'd have to double check. It appears like this is
15 the table, since both numbers match.

16 Q. Okay. So would you accept then the date of the
17 fund is actually as of 2004, certainly for California?

18 A. That would appear to be correct, yes.

19 Q. Okay. Are you aware of the fact that the
20 California State Fund is decreasing?

21 A. No.

22 Q. So you haven't done any analysis to look at
23 current size of the California fund?

24 A. No, I have not. My point that I was trying to
25 make in all of this testimony is that, you know, there

1 has been a lot of testimony in this case that points
2 to mid-tier RLECs in our group, and it's being alleged
3 that if you're a big company you shouldn't be in the
4 fund at all, and it's simply that kind of talk.
5 There's no other rationale behind it other than "Big.
6 No Funding." And what we tried to do here is simply
7 point out that there are funds both at the federal
8 level and at the state level where large companies do
9 take part in the funds. So size should not preclude
10 any participation in the fund. It shouldn't be based
11 just on size.

12 Q. Okay.

13 A. That's an example.

14 Q. I understand. Thank you. I'm handing you a
15 document. If you'd take a look at it.

16 Have you had a chance?

17 A. Yeah, I just gave it a quick glance.

18 Q. Okay. And what you see --- and it's from the
19 California Public Utilities Commission, starting on
20 paragraph three, it says that the fund will decline by
21 approximately \$315.4 million by July 1, 2009?

22 A. Yes, I see that.

23 Q. Are you aware of the fact that as of 2009 AT&T
24 will be a net payor of every state's state fund in the
25 United States?

1 A. No, I was not aware of that.

2 Q. Just to be clear, what I mean by that AT&T pays
3 more into the state fund than it receives.

4 A. Yes. I understand. Every fund --- you know,
5 whether you look at federal fund or a state fund,
6 every fund is going to have net payor because the idea
7 of the fund is to ensure that local services
8 stay affordable, and if somebody is a net payee, as
9 it's structured today, it's to their customers'
10 benefit that everybody supports a low cost network.
11 That's the theory of universal service.

12 ATTORNEY PAINTER:

13 Thank you. I have nothing further, Your
14 Honor.

15 JUDGE COLWELL:

16 What is your intent for this document?

17 ATTORNEY PAINTER:

18 Oh, I don't need to admit it, Your Honor.
19 The information is sufficient.

20 JUDGE COLWELL:

21 Okay. Did we cover everybody on Cross?

22 I think we did. Mr. Kennard?

23 ATTORNEY KENNARD:

24 No Redirect, Your Honor.

25 JUDGE COLWELL:

1 Okay. All right. Nobody else has any
2 more questions, right? Thank you very much, sir. You
3 are excused.

4 Now, you have moved admission of your
5 statements. They are admitted. Which brings us to
6 everybody's favorite part of the case, the briefing
7 schedule. All right. We have a briefing schedule in
8 place already. The main briefs are due April 9, 2009
9 and the reply briefs are due on May the 4th. Now, I
10 have asked you for a common outline.

11 OFF RECORD DISCUSSION

12 JUDGE COLWELL:

13 Sixty (60) pages is the firm limit for a
14 non-rate case brief. Does anybody see a problem with
15 that? All right. Then I don't need to do anything
16 except set you free to go ahead and write the briefs.
17 Does anybody have any issue we need to talk about
18 before we break up for today?

19 ATTORNEY CHESKIS:

20 Just a logistical question, Your Honor.
21 For the data requests that will be answered, are those
22 automatically entered into the record or does somebody
23 have to move those upon receipt?

24 JUDGE COLWELL:

25 They are not automatically moved. I

1 don't even know if I'm going to get a copy.

2 ATTORNEY KENNARD:

3 I was going to provide the web site. I
4 was going to provide that to the parties.

5 ATTORNEY PAINTER:

6 Yeah. I mean, I accept it to be appended
7 to the testimony in the record so that the web site is
8 there with the testimony.

9 JUDGE COLWELL:

10 With the correct date of 2008?

11 ATTORNEY PAINTER:

12 Correct.

13 JUDGE COLWELL:

14 Okay. I do think that's important to
15 have in the record I'm not the only Commission staff
16 person who's going to be touching this case. Because
17 I'm certain somebody here is not going to be happy
18 with what I write, no matter what I do. So it's going
19 to go to LSA and the Commission assistants will all
20 get a chance to look at it, so it's important that the
21 record be clear. So it would be very important to
22 have the correct reference.

23 If we can have that before I write my RD,
24 that would be especially good. How long will it take
25 you to get that information?

1 ATTORNEY KENNARD:

2 Well, I can have it by early next week.

3 OFF RECORD DISCUSSION

4 JUDGE COLWELL:

5 Okay. There are other requests that are
6 outstanding, and the end of next week is suitable for
7 everybody? Anybody have anything else? Then I don't
8 have any other matters to discuss with you. I'm
9 certain you will be very thorough and you'll give me
10 full information and citations to every lengthy
11 Commission Order that's been out in the last ten
12 years.

13 All right. Thank you all very much for
14 your patience and your participation. And we are off
15 the record.

16 * * * * *

17 HEARING CONCLUDED AT 5:00 P.M.

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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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MAR 26 2009

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