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COMMONWEALTH OF PENNSYLVANIA
PUBLIC UTILITY COMMISSION

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Investigation Regarding Intrastate Access :
Charges and IntraLATA Toll Rates of : Docket No.
Rural Carriers and The Pennsylvania : I-00040105
Universal Service Fund : :
: :
AT&T Communications of Pennsylvania, LLC : Docket Nos.
v. Armstrong Telephone Company - : C-2009-2098380,
Pennsylvania, et al. : et al.
: :
(Initial and Further Hearings) :
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Hearing Room 2
Commonwealth Keystone Building
Harrisburg, Pennsylvania

Wednesday, April 14, 2010

Met, pursuant to notice, at 10:05 a.m.

BEFORE:

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FORM 2

1 CenturyLink, formerly doing business as Embarq PA; Allison
2 Kaster, Esquire, and Adelou Bakare, Esquire, on behalf of the
3 Office of Trial Staff; Joel Cheskis, Esquire, and Darryl
4 Lawrence, Esquire, on behalf of the Office of Consumer Advocate;
5 Susan Paiva, Esquire, on behalf of Verizon; Michelle Painter,
6 Esquire, on behalf of AT&T; Demetrios Metropoulos, Esquire, on
7 behalf of AT&T; Shelby A. Linton-Keddie, Esquire, on behalf of
8 the Broadband Cable Association of Pennsylvania; Philip S.
9 Shapiro, Esquire, on behalf of AT&T; and Norman Kennard, Esquire,
10 and Regina Matz, Esquire, on behalf of the Pennsylvania Telephone
11 Association.

12 Good morning.

13 (Chorus of good mornings, Your
14 Honor.)

15 JUDGE MELILLO: I have some announcements. We
16 are scheduled for three consecutive days in this hearing room.
17 Given the schedule that I was given of witnesses and the
18 anticipated cross-examination time, we will begin at 9:00 a.m.
19 tomorrow and Friday. My plan is to have a mid-morning, a
20 mid-afternoon break, and an hour break for lunch unless the
21 parties propose less time. I plan to continue with hearings
22 until as late as 8:00 p.m. each day if necessary to conclude the
23 witness list for that day.

24 The Capitol Police have been notified and will
25 likely be checking in on us from time to time after hours. We'll

1 break around five o'clock instead of 5:30 to give parties an
2 opportunity to move their cars from the Seventh Street Garage to
3 street parking around this building and to return to the building
4 before that building is locked at 6:00 p.m. After 6:00 p.m. you
5 cannot reenter the building.

6 I've offered an additional hearing day if needed
7 next week. We have tentatively looked into having a hearing room
8 reserved for Monday, April 19th. Do the parties think that they
9 will need that additional day?

10 (No response.)

11 JUDGE MELILLO: All right. Hearing nothing, we
12 are not scheduling it at this time.

13 I've been provided a proposed schedule of
14 witnesses as I requested, and the order of witnesses is
15 acceptable to me. The parties will present their witnesses and
16 all cross-examination will occur at that time.

17 The parties are reminded there are parts of
18 testimony and exhibits that have been designated as proprietary.
19 The parties must request at the appropriate time that we go on
20 the proprietary record and must also indicate when we may be off
21 the proprietary record so as to avoid overburdening that record.
22 The parties should organize their cross-examination so that
23 proprietary questions are asked together rather than scattered
24 throughout the cross-examination.

25 Many of you remember Judge Schnierle. I will

1 take his lead and designate when we are on the proprietary record
2 with an appropriate sign.

3 MS. BENEDEK: Your Honor?

4 JUDGE MELILLO: Yes.

5 MS. BENEDEK: May we have a quick polling of
6 anyone in the room who has not signed the proprietary agreement?

7 JUDGE MELILLO: I was going to get to that. If
8 parties or witnesses or entities that have not signed Appendix A
9 of the Protective Order, they will be asked to leave the hearing
10 room during the proprietary section of the hearing.

11 Do you want to go off the record at this point?

12 MS. BENEDEK: No. I'd just like to know if
13 anyone hasn't signed it.

14 JUDGE MELILLO: All right.

15 Is there anyone present who was required to sign
16 Appendix A of the Protective Order and did not sign?

17 (Person indicating.)

18 JUDGE MELILLO: Does anyone have a copy for that
19 person to sign?

20 MS. BENEDEK: I don't.

21 MS. PAINTER: I can give it to her, Your Honor.
22 Your Honor, I can get it to you in time. I don't know that we
23 have to hold things up. I can give it to her and she can sign it
24 in time.

25 JUDGE MELILLO: All right. Very well. I'll

1 continue.

2 I have a few opening remarks. At this time I
3 believe it's appropriate to say a few words about a lawyer who is
4 no longer with us. That is Phil McClelland. I know Phil has
5 received many accolades in the past and here is another one.
6 Phil was a recognized expert in telecommunications matters. He
7 was a fixture in these proceedings before the Commission for many
8 years, and he definitely would have been here today. In fact, he
9 entered his appearance in this very proceeding in an earlier
10 phase before the Commission suspended the case for a few years.

11 Those who remember Phil know he treated other
12 litigants with courtesy and consideration. He was a model of
13 civility. Whether you agreed with him or not, he always was
14 respectful. I'm sure other ALJs would want more Phil McClellands
15 in their hearing rooms. Phil is the reason I got involved in
16 telecommunications many years ago.

17 When I was an attorney with the Office of Trial
18 Staff, we had a conversation; and he encouraged me to get
19 involved in a case that was before the Commission at that time.
20 It was the Application of MFS Intelenet. Phil said that it was
21 an important case, it was precedent setting; and it was one of
22 the first of its kind in the area of local competition. I recall
23 that I said, I think it's too late for me to get involved. That
24 case is already started. But Phil said, no, it's not too late,
25 it's just beginning. And so it is. He will be missed.

1 Were there any other --

2 Yes, Mr. Cheskis.

3 MR. CHESKIS: On behalf of the Office of Consumer
4 Advocate and Phil's family thank you very much for your comments.

5 JUDGE MELILLO: You're welcome. I didn't want to
6 let this moment go past without recognizing him.

7 Will there be any preliminary remarks?

8 MR. POVILAITIS: Your Honor?

9 JUDGE MELILLO: Yes, Mr. Povilaitis.

10 MR. POVILAITIS: Your Honor, I know there's a lot
11 of concern about how long cross will take in this case. I don't
12 know if other counsel have given you updates; but, just counsel
13 to counsel yesterday, Quest received word that PTA and
14 CenturyLink will not be cross-examining Quest's witness, Mr.
15 Easton. And, by the same token, Quest does not anticipate,
16 barring something unexpected happening, cross-examining other
17 parties' witnesses. So that can be deleted from the schedule at
18 this point.

19 JUDGE MELILLO: All right. Thank you very much.

20 MR. POVILAITIS: There is a stipulation with
21 CenturyLink in lieu of cross-examination that we'll deal with
22 when it's time for our witness.

23 MS. BENEDEK: And, Your Honor, we have no
24 intention, no anticipation of doing cross of OCA or OTS which we
25 had originally indicated. Actually, it's not on the OTS. It is

1 only OCA's witness. We'll have very limited cross of other
2 witnesses for the most part. From my standpoint, the schedule is
3 very doable.

4 JUDGE MELILLO: All right. Everyone has to speak
5 up because it's difficult for me to hear up here. I don't have
6 --

7 MR. CHESKIS: Your Honor, I apologize, but I
8 didn't hear a single thing Ms. Benedek just said.

9 MS. BENEDEK: I'm sorry. No cross for OCA. As
10 originally anticipated, we will not have cross for OTS. We have
11 limited cross for Mr. Price, Mr. Easton, and Mr. Pelcovits. We
12 have some cross of Mr. Appleby and the AT&T panel and very
13 limited cross for Mr. Wilson. So, from my standpoint, the
14 schedule looks to be very doable.

15 JUDGE MELILLO: All right. So CenturyLink has no
16 cross-examination for OTS, and you were not listed on the
17 schedule that I was given as having cross-examination anyway.
18 You do not have cross-examination for the OCA; and, I'm sorry, is
19 there any other person you do not have cross-examination for
20 other than those two?

21 MS. BENEDEK: No, not as designated.

22 JUDGE MELILLO: All right. I want to make sure I
23 have this correct. So, with respect to Mr. Easton, Quest's
24 witness, will there be no cross-examination of Mr. Easton and
25 will his testimony then be admitted by stipulation; is that the

1 plan?

2 MR. POVILAITIS: Mr. Easton will be here, and he
3 has two minor corrections to his testimony. We didn't know if
4 Your Honor had any questions so he's certainly here and
5 available.

6 JUDGE MELILLO: Well --

7 MR. POVILAITIS: Mr. Easton is going to be here
8 through the day. There's no need to take time to --

9 JUDGE MELILLO: I had one question on page 6.

10 MR. POVILAITIS: That's fine, Your Honor.

11 JUDGE MELILLO: That's a clarifying question.

12 That won't take long.

13 MR. POVILAITIS: Thank you, Your Honor.

14 JUDGE MELILLO: Very well. We'll address that
15 later.

16 Any other preliminary matters from counsel?

17 (No response.)

18 JUDGE MELILLO: I had earlier spoke of the parent
19 dropping out of one of the Respondents in the AT&T consolidated
20 complaint cases and that was the Respondent, Citizens Telephone
21 Company of New York.

22 Can AT&T shed some light on that? Is AT&T no
23 longer pursuing a formal complaint against Citizens Telephone
24 Company of New York? They were listed in the original list as
25 having a complaint filed against them by the three AT&T entities,

1 and then they dropped out later on. So it appears there's only
2 31 Respondents. There were 32, therefore, 96 AT&T complaints --

3 MS. PAINTER: Your Honor?

4 JUDGE MELILLO: -- because there was a complaint
5 filed by AT&T against each entity.

6 MS. PAINTER: Right. If I could go look at that
7 but I'm not certain exactly when they dropped out. But, if I
8 could look at that, I will let you know at a later time.

9 JUDGE MELILLO: All right. You're not aware of
10 any petition to withdraw having been filed by AT&T with respect
11 to Citizens Telephone Company of New York?

12 MS. PAINTER: No.

13 JUDGE MELILLO: All right. Well, that's just a
14 housekeeping matter that we should take care of. If the
15 complaint is no longer being pursued, that should be withdrawn
16 and there's actually three --

17 MS. PAINTER: I understand.

18 JUDGE MELILLO: -- one filed by each of the AT&T
19 entities.

20 Also as a point of clarification, I believe that
21 I must allow parties to address and I must consider access reform
22 in conjunction with the Pennsylvania Universal Service Fund in
23 order to comply with the Commission's August 5th, 2009 Order
24 concerning linkages between the two. Inclusion of this matter
25 within the gamut of the proceeding was confirmed by my Order

1 regarding the scope of proceedings and the Commission affirmance
2 thereof as to that issue.

3 At the conclusion of our hearings, I'll be
4 providing some briefing instructions, and there will be a further
5 briefing order. In a case of this magnitude, I will request that
6 the parties derive a common briefing order and other matters as
7 will be discussed.

8 All right. If there's nothing further of a
9 preliminary nature, we'll start with the first party and the
10 first witness that we have on our matrix, and that would be the
11 Office of Small Business Advocate, OSBA.

12 MR. GRAY: Your Honor, good morning.

13 JUDGE MELILLO: Good morning.

14 MR. GRAY: The OSBA calls to the stand Dr. John
15 Wilson.

16 JUDGE MELILLO: Dr. Wilson, please raise your
17 right hand.

18 Whereupon,

19 JOHN W. WILSON,
20 having been duly sworn, testified as follows:

21 JUDGE MELILLO: Please be seated.

22 Proceed, counsel.

23 MR. GRAY: Thank you, Your Honor. Your Honor,
24 the OSBA has previously distributed three documents to the
25 parties. The first document is the Direct Testimony of John W.

1 Wilson. We ask that be marked OSBA Statement Number 1.

2 JUDGE MELILLO: That may be so marked.

3 (Whereupon, the document was marked

4 as OSBA Statement Number 1 for

5 identification.)

6 MR. GRAY: Thank you. The second document was
7 the Rebuttal Testimony of John W. Wilson. We ask that be marked
8 as Statement Number 2.

9 JUDGE MELILLO: That may be marked as OSBA
10 Statement Number 2.

11 (Whereupon, the document was marked

12 as OSBA Statement Number 2 for

13 identification.)

14 MR. GRAY: And the third document was the
15 Surrebuttal Testimony of John W. Wilson. We ask that be marked
16 as OSBA Statement Number 3.

17 JUDGE MELILLO: That will be so marked as OSBA
18 Statement Number 3.

19 (Whereupon, the document was marked

20 as OSBA Statement Number 3 for

21 identification.)

22 MR. GRAY: And, Your Honor, we have provided two
23 copies of each to the court reporter.

24 JUDGE MELILLO: There's no proprietary
25 information is either?

1 MR. GRAY: There is none.

2 DIRECT EXAMINATION

3 BY MR. GRAY:

4 Q. Dr. Wilson, do you have a copy of OSBA Statements Number
5 1, 2, and 3 in front of you?

6 A. I do, yes.

7 Q. Dr. Wilson, were Statements Number 1, 2, and 3 prepared by
8 you or under your supervision?

9 A. Yes, they were.

10 Q. Dr. Wilson, are there any changes or corrections to
11 Statements 1, 2, or 3?

12 A. No.

13 Q. Dr. Wilson, if I asked you each question set forth in OSBA
14 Statements Number 1, 2, and 3, would your answer be the same as
15 set forth in those Statements?

16 A. Yes, it would.

17 Q. Dr. Wilson, are the answers in Statements 1, 2, and 3 true
18 and correct to your best ability and belief?

19 A. Yes, they are.

20 MR. GRAY: Your Honor, the OSBA asks that
21 Statements Number 1, 2, and 3 be moved into the record subject to
22 timely motions and cross-examination.

23 JUDGE MELILLO: Any objection?

24 (No response.)

25 JUDGE MELILLO: Hearing none, those documents so

1 identified are admitted.

2 (Whereupon, the documents marked as
3 OSBA Statements Numbers 1, 2, and 3
4 were received in evidence.)

5 MR. GRAY: Thank you, Your Honor. Dr. Wilson is
6 available for cross-examination.

7 JUDGE MELILLO: I have the Pennsylvania Telephone
8 Association as first on the list for cross-examination.

9 MR. KENNARD: As we advised Mr. Gray yesterday,
10 we have no questions of this witness.

11 JUDGE MELILLO: Very well.
12 CenturyLink.

13 MS. BENEDEK: Limited questions, Your Honor.

14 CROSS-EXAMINATION

15 BY MS. BENEDEK:

16 Q. Good morning, Dr. Wilson.

17 A. Good morning.

18 Q. My name is Zsu Benedek. I'm an attorney for CenturyLink.
19 A few clarifying questions. Relative to your Direct Testimony on
20 pages 14 and 15, the bottom of 14 and it spills over to page 15,
21 you start that Q and A with the statement that if access
22 reductions are further reduced by this Commission, and there's a
23 process that you set forth there; is that correct?

24 A. Yes.

25 Q. In your view, would that process that you set forth

1 involve issues of fact?

2 A. Yes, I think so.

3 Q. And are you familiar with Section 3017 of the Pennsylvania
4 Public Utility Code, Subsection A?

5 A. Not by number. I may be familiar with it, but I wouldn't
6 know it simply by reference to the number, no.

7 Q. May I read it to you and let me know if you are familiar
8 with this? The Commission may not require a local exchange
9 telecommunications company to reduce access rates except on a
10 revenue neutral basis. Are you aware of that?

11 A. I'm aware of that, yes.

12 Q. Now, let's assume the Commission does determine to reduce
13 access rates. Let's also assume that the Commission does set a
14 benchmark local rate for residential customers and determines to
15 do the same for business customers. Now, let's assume finally
16 that the local rate increases aren't sufficient to redress the
17 access rate reductions that are ordered. What happens under your
18 process and particularly relative to 3017A?

19 A. Well, as I understand the question, I think that would
20 throw the residual revenue requirement into PA USF funding.

21 Q. And, at that point after the review process you outline
22 there, then the revenue neutrality provision in 3017 would kick
23 in; is that how I understand your testimony?

24 A. I'm sorry. Ask that question again.

25 Q. Assuming we've got the reductions, assuming we've got

1 local benchmarks, and assuming it's insufficient to -- the
2 benchmarks are insufficient to redress the access reductions,
3 under your process, does the revenue neutrality provision in the
4 statute apply during that proceeding that you've outlined at
5 pages 14 and 15 of your testimony?

6 A. Not really because the recommendation that I'm making on
7 page 15 is that it is 25 percent of the revenue requirement for
8 local loops be recovered through carrier access charges, and I
9 think that the question that you're posing presumes a rejection
10 of that proposal but instead presumes the Commission orders a
11 further reduction in carrier access charges if I'm understanding
12 you correctly. So that would not be consistent with the proposal
13 that I'm making here.

14 Q. But, under your proposal, it does anticipate a State USF
15 in that scenario?

16 A. I'm sorry. I'm not hearing all the words that you're
17 saying.

18 Q. Under your proposal, you do recognize the existence of a
19 State fund to redress the insufficiency between the access
20 reductions that may be ordered and the local benchmarks that may
21 be ordered?

22 A. Well, to the extent that that's necessary. I mean, this
23 is not -- this paragraph is not the sum and substance of my
24 proposal. Basically, my proposal does not endorse the
25 continuation of caps as they have been instituted. So I think

1 you are suggesting a potential outcome that is really
2 inconsistent with what I've proposed.

3 Q. Right. But, just to be clear, if indeed that occurs and
4 we've got plain orders that set forth, there would be in your
5 view a State USF pickup of the differential between what has been
6 ordered and what can be done?

7 A. There is a Pennsylvania USF that is in existence that, as
8 I understand it, would pick up the difference in order to resolve
9 the revenue neutral solution to the issue. I'm just having
10 trouble framing your question within the context of my proposal
11 because I don't think it would fit.

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

13 JUDGE MELILLO: AT&T, do you have any questions?

14 MR. METROPOULOS: Yes, Your Honor.

15 JUDGE MELILLO: Please proceed.

16 MR. METROPOULOS: Thank you.

17 BY MR. METROPOULOS:

18 Q. Good morning, Dr. Wilson.

19 A. Good morning.

20 Q. My name is Jim Metropoulos. I'm representing AT&T in this
21 case, and I would like you to turn to page 6 of your Direct
22 Testimony, Statement Number 1.

23 A. Yes.

24 Q. And do you see on the very last line there where it says
25 and then it picks up on the next page, toll carriers should

1 contribute their fair share towards the cost of local exchange
2 loops and switches?

3 A. Yes.

4 Q. For my next couple of questions, I would like to take
5 CenturyLink as an example of a local exchange carrier. As part
6 of your Direct Testimony, is it fair to say that you do not
7 present any calculation of the cost of CenturyLink's local
8 exchange loops and switches?

9 A. That's true.

10 Q. Is it also fair to say to that you did not present any
11 calculation of the cost of CenturyLink's loops and switches in
12 your Rebuttal or Surrebuttal Testimony?

13 A. I did not present any cost evidence on any of the copies,
14 that's correct.

15 Q. Thank you. Based on your experience in the industry,
16 would you agree that CenturyLink would have some idea of the cost
17 of its own loops and switches?

18 A. Well, I would think that they would. I think that there's
19 a process going on. I know CenturyLink with its consolidation
20 with Embarq probably is resulting in a reevaluation of some of
21 those things. But, yes, I think that they would have more
22 knowledge about that than anybody else.

23 Q. And, at any time during the course of this case, have you
24 seen CenturyLink present any calculation of the cost of its loops
25 and switches?

1 A. I don't believe so, no.

2 Q. And, at any time during the course of this case, did you
3 ask CenturyLink to give you a calculation of the cost of its
4 loops and switches?

5 A. I did not, no.

6 Q. Okay. Is it fair to say that you have not presented any
7 analysis of what percentage of CenturyLink's cost you would think
8 would be a fair share for toll carriers to pay?

9 A. I have suggested that 25 percent of intrastate NTS costs
10 be allocated to intrastate carrier charges.

11 Q. Now, I'd like to go a little bit broadly just beyond
12 CenturyLink and just to confirm what I think I heard you say
13 earlier. Is it fair to say that you did not ask any of the other
14 local exchange carriers in this case to give you a calculation of
15 the cost of their loops and switches?

16 A. I did not.

17 Q. Okay. I would now like to turn to page 5 of your Direct
18 and the paragraph that begins on line.

19 A. Yes.

20 Q. And do you see where it says that local exchange carriers
21 have developed access systems for delivering all forms of
22 telephone traffic including toll, cellular, Voice over Internet,
23 and DSL?

24 A. Yes.

25 Q. Would you agree with me that cellular carriers do not

1 today pay access charges for calls inside a Metropolitan Trading
2 Area?

3 A. I believe that is correct.

4 Q. So, if a cellular call is within what they call an MTA,
5 the cellular carrier pays a rate that is generally lower than the
6 access rate that a toll carrier would pay. Would you agree with
7 that?

8 A. That's my understanding.

9 Q. Okay. And would you also agree that the MTAs or the
10 Metropolitan Trading Areas for wireless calls in Pennsylvania are
11 larger than the local calling areas for wireline calls?

12 A. I don't believe that.

13 Q. Okay. You don't have an opinion one way or the other?

14 A. No.

15 Q. Okay. Would it be fair to say that wireless toll carriers
16 pay more towards the local network today than cellular carriers
17 do?

18 A. I believe they do.

19 Q. Your testimony does not say that wireline toll carriers
20 should pay more access charges than cellular carriers; isn't that
21 right?

22 A. That's right.

23 Q. And your testimony does not say that wireline toll
24 carriers should pay more access charges than Voice over Internet
25 Protocol; would that be correct?

1 A. I have not testified in that regard; but, if the issue is,
2 should the toll carriers' rates be reduced to the cellular or
3 Voice over Internet or should the cellular or Voice over Internet
4 be required to contribute more, I think that my preference would
5 be for the latter.

6 Q. Okay. But you would prefer, though, that the outcome be
7 that somewhere the cost should be equal; would that be correct?

8 A. No, I don't think that that's a primary conclusion of mine
9 that the costs should be equal. I believe that cellular carriers
10 and Voice over Internet carriers should contribute. As things
11 stand now, they are not making contributions equivalent to their
12 usage of these facilities; but I would not try to solve that
13 problem by cutting other users' charges to the levels that apply
14 for cellular or Voice over Internet. I don't think that that
15 ought to be the dominant factor to resolving this issue.

16 Q. Okay. Putting aside our discussion of what the solutions
17 to the situation might be, you would agree with me that the
18 present situation is that wireline toll carriers pay more than
19 towards the local network than, say, cellular carriers or Voice
20 over Internet or DSL; is that right?

21 A. I believe that that's the case, yes.

22 Q. Okay. And would you agree that that situation is unfair?

23 A. It's a situation that exists. It's not a situation that I
24 would try to resolve by cutting toll carrier contributions. I
25 don't think that that's a solution to the problem; but, as I saw

1 the requirements in this case, the issue of cellular carrier
2 contribution I thought was to a large extent eliminated and I did
3 not fully address that. I think I said that in our Rebuttal
4 Testimony.

5 Q. Okay. So would you characterize the present situation as
6 fair or unfair?

7 A. Well, if I were to address the issue of cellular carrier
8 contribution to NTS costs, I would have put in an additional
9 section to this testimony. I did not address that in my
10 testimony because I thought that from the Commission's directions
11 we were precluded from doing that.

12 Q. So you are not expressing -- as things presently stand,
13 you are not expressing an opinion one way or another?

14 A. I think that I would favor increased contributions from
15 cellular carriers and from Voice over Internet carriers.

16 Q. Thank you. I would now like to turn to page 7 of your
17 Direct Testimony and let me direct you to lines 1 through 3. And
18 do you see where it says any additional reduction in rural ILEC
19 access charges would essentially push all or virtually all of the
20 cost of these facilities onto local exchange ratepayers?

21 A. Yes.

22 Q. Okay. So today local rate exchange ratepayers are already
23 paying something towards the cost of these facilities, correct?

24 A. A very substantial amount, yes.

25 Q. Okay. And am I correct that you have not provided any

1 calculation of what that cost is for any local exchange carrier
2 today?

3 A. I have not presented the dollar cost evidence, no.

4 Q. Okay. And am I also correct that you have not provided
5 the calculation of what percentage of that cost is being borne
6 today by the local exchange ratepayers?

7 A. I have not made the calculation. I believe it's in excess
8 of 50 percent.

9 Q. And have you asked any of the local exchange carriers in
10 this case for their calculation of how much of the cost of their
11 local facilities is being borne today by local exchange
12 ratepayers?

13 A. I have not, no.

14 Q. So, for all we know, local exchange ratepayers may already
15 be paying all or virtually all of the cost of the local exchange
16 facilities?

17 A. I don't believe they're paying all of the cost of the
18 local exchange facilities. There are toll carrier access fees.

19 Q. But we have not yet established -- you have not calculated
20 what the cost is, correct?

21 A. We don't have the dollar amounts, that's correct.

22 Q. And, in fact, am I correct that you believe that business
23 customers are already paying more for the cost of the local
24 exchange carrier's facilities?

25 A. More than their proportionate share, yes.

1 Q. If the local exchange ratepayers are already covering the
2 cost of the local exchange carrier's facility, isn't it true that
3 any access charges that come from the toll carrier would end up
4 going someplace else, like profit?

5 A. Well, no, I don't think you can conclude that. If the
6 local exchange providers are collecting more than a hundred
7 percent of the cost of providing local exchange service, I don't
8 think you can take the toll carrier portion of the revenues and
9 say that's going to profit. You might just as well take the
10 local exchange portion or the business portion of the local
11 exchange and say that's going to profit. It goes into one pile.
12 It's not something that can be traced from revenues directly to
13 profit if that were the case.

14 Q. Okay. But you haven't done that calculation as part of
15 any of your testimonies?

16 A. I'm saying that that's not a calculation that really could
17 be done. All you could say is that the revenues that are being
18 collected -- as I understand your question, the revenues that are
19 being collected for local exchange facilities exceed the cost;
20 but you can't say that, you know, one particular contributor is
21 the margin at this point in time.

22 Q. Currently the local exchange rates are subject to caps?

23 A. Yes.

24 Q. And, if I understand you correctly from just a couple
25 minutes ago, your OSBA's position is that those caps should be

1 removed entirely?

2 A. Yes. OSBA does not oppose the concept of a Lifeline rate
3 in the case of need for residential customers where there truly
4 is such a need; but, basically, the removal of caps would be the
5 appropriate solution.

6 Q. Okay. So, excluding the Lifeline as a general matter,
7 you're in favor of the elimination of caps?

8 A. Yes.

9 Q. And, if those caps are removed, it is certainly possible
10 that local exchange rates will go up for at least one local
11 exchange carrier, correct?

12 A. It's possible.

13 Q. And, in fact, there would be no limit on the increase for
14 any local exchange carrier excluding that Lifeline example that
15 you gave earlier?

16 A. Well, there's a limit. Setting rates need to be just and
17 reasonable and it's not just a mathematical calculation. It's
18 something that would be subject to Commission review and the cost
19 of service would be a limitation.

20 Q. If local rates do go up, the amount that local exchange
21 ratepayers pay towards the cost of the local exchange carrier's
22 facilities would go up, correct?

23 A. If local exchange rates go up, the revenues derived from
24 those rates would go up. That is correct. But, if that's
25 accompanied with a resolution to maintain appropriate charges for

1 carrier access to local exchange facilities, I suspect that the
2 likelihood of local exchange rates going up is a lot less than
3 reducing toll carrier contributions with costs that would go up.

4 Q. Okay. If local exchange rates -- if we remove the caps on
5 local exchange rates and local exchange rates go up, the amount
6 that local exchange ratepayers pay would go up and that's
7 regardless of what the Commission does on access charges; isn't
8 that correct?

9 A. Well, mathematically I think that what you're saying is if
10 rates go up, revenues go up.

11 Q. Thank you.

12 A. If rates go up, the dollars that are paid by ratepayers go
13 up.

14 Q. And that would be true no matter what the Commission did
15 about access charges, correct?

16 A. Well, the Commission would have a determination to make
17 about whether and to what extent local exchange rates should go
18 up. All I'm saying I think is that the cost of service standard
19 would apply, presumably would apply; and the Commission would
20 restrain rate increases that exceeded cost justification. They
21 would restrain rates increases that were not just and reasonable.

22 MR. METROPOULOS: Thank you, Your Honor. I have
23 no further questions.

24 JUDGE MELILLO: Verizon.

25 MS. PAIVA: We have some questions.

1 BY MS. PAIVA:

2 Q. Good morning, Mr. Wilson. Susan Paiva for Verizon.

3 A. Good morning.

4 Q. I just have a few questions for you. I just want to make
5 sure I understand OSBA's position in this case. Am I correct
6 that your first preference is to basically leave the access rates
7 as they are and maintain the status quo, correct?

8 A. OSBA does not -- would oppose further reductions in access
9 rates. I wouldn't say that that's the primary recommendation. I
10 think that the -- perhaps the primary recommendation is that caps
11 should be eliminated and that the positive subsidy not become the
12 general way in which to fund local access. But, as a step in
13 that direction, certainly there should not be further reductions
14 in toll carrier charges for local access.

15 Q. I guess that leads to my second question. If the
16 Commission were to disagree with that premise and were to decide
17 that, yes, it does want to reduce the carrier access charges --

18 A. I'm really having trouble hearing you.

19 Q. Maybe the microphone is not helping. I'll try it this
20 way. If the Commission were to disagree -- can you hear me
21 better now?

22 A. Yes.

23 Q. If the Commission were to disagree with the primary
24 recommendations and the Commission was to say they do want to
25 reduce carrier access charges, then am I correct that OSBA's

1 preference in that instance would be that the local rates should
2 be increased to offset that reduction in the carrier charge
3 access charges?

4 A. Yes, on a just and reasonable basis, not on a
5 discriminatory basis. If caps are going to be maintained for
6 residential customers, it's essential that caps be maintained for
7 business customers as well.

8 Q. Or alternatively caps could be eliminated for both?

9 A. Oh, yes, that would be better.

10 Q. That would be better?

11 A. Yes.

12 Q. And Ms. Benedek for CenturyLink was asking you about a
13 situation where, if the Commission decides to reduce access rates
14 but it also keeps the caps and ends up with a pot of money, that
15 it doesn't have a spot to allocate it to basically; do you recall
16 that?

17 A. A revenue deficit that has to be made up in order to make
18 a revenue neutrality.

19 Q. Right. And she was asking you about the State Universal
20 Service Fund being an option to provide revenue neutrality to
21 cover that revenue deficit; and my question is, am I correct that
22 the OSBA would oppose the expansion of the State Universal
23 Service Fund in that situation and would prefer the Commission to
24 devise a solution that does not involve expanding the State
25 Universal Service Fund?

1 A. The OSBA would prefer a solution that does not require the
2 expansion of the Universal Service Fund; however, to the extent
3 that there is a revenue deficit that results from the application
4 of caps in view of increased revenue requirements, the Universal
5 Service Fund may be the only -- may be the only practical
6 solution. But the expansion of the Universal Service Fund as a
7 means of financing local networks is certainly not a policy
8 prescription by OSBA.

9 Q. And the reason that it's not a policy prescription by the
10 OSBA is because you agree that there would be harm to consumers
11 and competition by requiring carriers to contribute to the State
12 Universal Service Fund, correct?

13 A. Well, it divorces rates from costs. It removes cost
14 responsibility from ratemaking which essentially undermines
15 rational -- ratemaking rational pricing. So, as a fundamental
16 position, rates pricing should reflect costs in order to conform
17 with the way in which pricing is done generally in our economy as
18 opposed to giant subsidy programs.

19 Moreover, going in that direction can result in
20 severe discriminatory problems, particularly if caps are
21 maintained for residential customers but not for other customers
22 and consequently revenue requirements are funneled in from the
23 few folks who don't have the cap protecting them. So there's a
24 whole confluence of problems to the extent that you move in the
25 direction of compensating for service costs in a way that's not

1 related to cost responsibility of the service users.

2 Q. I just have one more question for you and it's based on
3 your testimony. If you can take a look at your Direct Testimony
4 at page 5.

5 A. I have it.

6 Q. Okay. And, on line 5 starting at the end -- towards the
7 end of that line, you say access rates are the charges made by
8 ILECs to toll carriers for the use of the local exchange
9 company's network. Toll carriers consider these access charges
10 as a cost in determining the toll rates that they charge to
11 consumers for toll services.

12 A. Yes.

13 Q. And my question is about that second sentence. Are you
14 saying that, in considering the prices that the toll carriers
15 would charge consumers, they must consider their underlying
16 costs --

17 A. Yes.

18 Q. -- for switched access?

19 A. Yes, all businesses do.

20 Q. So, if the underlying cost for the switched access is
21 higher, then the rates charged for toll service would be higher,
22 correct?

23 A. Well, we don't know that with certainty. I mean, there is
24 a question of the extent to which toll carriers actually fully
25 pass through reduction of access charges to customers; but

1 certainly it is a cost of providing service and would be
2 considered by toll carriers within the context of their pricing.

3 MS. PAIVA: That's all I have for you. Thank
4 you.

5 JUDGE MELILLO: Thank you.
6 Sprint.

7 MR. GRUIN: Sprint has no questions for Mr.
8 Wilson.

9 JUDGE MELILLO: All right.

10 MR. GRUIN: I would note, however, that the
11 matrix, future witnesses the top of the matrix indicates the
12 order of cross. Sprint would be second even though the body of
13 the matrix has Sprint third. The parties agreed Sprint would be
14 second.

15 MS. PAIVA: Yes, Your Honor. Verizon agrees for
16 Sprint to be second.

17 JUDGE MELILLO: And where are you referring in
18 the matrix? I'm sorry. I didn't hear what you said.

19 MR. GRUIN: The version of the matrix I have on
20 the top there's a line that says order of cross --

21 JUDGE MELILLO: Right.

22 MR. GRUIN: -- above the grid, and you'll see
23 Sprint comes after AT&T and before Verizon.

24 JUDGE MELILLO: Right.

25 MS. PAIVA: Your Honor, it really starts tomorrow

1 with Lindsey and Harper. It has AT&T, Verizon, and Sprint.

2 JUDGE MELILLO: So you want to transpose Sprint
3 and Verizon since Sprint goes before Verizon?

4 MS. PAIVA: Yes.

5 JUDGE MELILLO: All right.

6 MS. PAIVA: And for the rest of the witnesses
7 that day would be the same.

8 MS. BENEDEK: Your Honor, to the extent allowable
9 that if there was cross-examination on an area and we need to go
10 back pursuant to any provision that you make, we can do that if
11 necessary. While the order is there, if something comes up
12 during cross, we weren't precluded by the order.

13 MR. KENNARD: Generally it works, Your Honor.
14 Generally, of course, usually the party aligned with the party
15 whose witness is on the stand goes first to get the friendly
16 cross out of the way. So we can do that or we can do as Ms.
17 Benedek suggests. We have the right to cross-examine after
18 friendly parties or other parties have cross-examined as well.

19 MR. GRUIN: I didn't mean to open up this can of
20 worms. I just wanted to note that Sprint and Verizon should be
21 flip-flopped on the order.

22 JUDGE MELILLO: Well, I'll say this. I didn't
23 develop the order of cross-examination. If the parties want to
24 change that for going forward tomorrow, that's fine.

25 MR. KENNARD: There was no stipulation of the

1 parties as to order of cross-examination.

2 JUDGE MELILLO: Let me clarify something. Mr.
3 Povilaitis, did you indicate earlier that you had no
4 cross-examination for any witness?

5 MR. POVILAITIS: That's right.

6 JUDGE MELILLO: Then I can also delete Quest as a
7 cross-examiner on this docket list.

8 MR. POVILAITIS: That's right.

9 JUDGE MELILLO: Does the Office of Trial Staff
10 have any cross-examination?

11 MS. KASTER: No, Your Honor, OTS does not. Thank
12 you.

13 JUDGE MELILLO: Is there any party here who has
14 any cross-examination that's on the list, a follow-up?

15 MS. BENEDEK: I have follow-up based on cross by
16 Verizon.

17 MR. KENNARD: As does the PTA, Your Honor.

18 JUDGE MELILLO: All right. And the parties have
19 agreed that that's acceptable to ask some additional questions
20 during the cross-examination time?

21 MS. BENEDEK: Yes.

22 JUDGE MELILLO: All right. Please continue, Ms.
23 Benedek.

24 FURTHER CROSS-EXAMINATION

25 BY MS. BENEDEK:

1 Q. Dr. Wilson, during cross-examination by counsel for
2 Verizon, you were asked a question regarding expansion of the
3 fund and your opposition to the, quote, expansion of the current
4 State USF. I'd like to get into what you mean by expansion, and
5 particularly do you mean expansion in terms of the overall amount
6 to support the fund?

7 A. Yes.

8 Q. Okay. And so, when I heard your testimony earlier in
9 response to cross by counsel for AT&T, you indicated that you
10 would not be opposed to contributors, additional contributors to
11 the State USF fund?

12 A. That's correct.

13 MS. BENEDEK: Good. I just wanted to clarify
14 that. Thank you.

15 JUDGE MELILLO: All right.

16 Mr. Kennard.

17 MR. KENNARD: Thank you, Your Honor.

18 BY MR. KENNARD:

19 Q. Mr. Wilson, you had an exchange with counsel for AT&T
20 regarding wireless intercarrier compensation; do you recall that?

21 A. Yes.

22 Q. And do you recall the point in time where the FCC declared
23 that CMRS wireless intercarrier compensation would be different
24 than the wireline industry?

25 A. Well, there may have been more than one time, but I think

1 as recently as 2008 the FCC ruled on that.

2 Q. The policy was shaped earlier than that, though, wasn't
3 it, sometime in 2003?

4 A. Yes.

5 Q. Now, what the FCC did was say wireless carriers can't
6 collect access charges for access to their system and then said
7 on an interMTA basis you will pay access to the wireline carriers
8 but not on an intraMTA basis; is that correct?

9 A. I think that's right.

10 Q. And the compensation an intercarrier can use for wireless
11 carriers' intraMTA is reciprocal compensation; is that correct?

12 A. I'm not certain what the standard for that is at the
13 present time.

14 Q. Now, do you know -- would you agree that the FCC having
15 created this different compensation system for wireless carriers
16 undertook to remedy any perceived unfairness by reducing the
17 interstate access charges within its own jurisdiction?

18 A. I'm not sure what the FCC's motivation was.

19 Q. No, that's not my question. The question is that, did the
20 FCC as part of, or at any time, its determination of what
21 appropriate intercarrier compensation was for wireless traffic
22 reduce interstate access charges to perceive any -- to address
23 any perceived difference in the compensation schemes as between
24 wireless and wireline?

25 A. I don't know.

1 MR. KENNARD: Fair enough. That's all we have.
2 Thank you, Mr. Wilson.

3 JUDGE MELILLO: Very well.
4 Any other party have any cross-examination for
5 Dr. Wilson?

6 (No response.)

7 JUDGE MELILLO: All right. Hearing nothing,
8 would there be any redirect?

9 MR. GRAY: May I talk with my witness, Your
10 Honor?

11 JUDGE MELILLO: Do you want to take a break?

12 MR. GRAY: Just give me one minute.

13 JUDGE MELILLO: All right. We'll be off the
14 record for two minutes.

15 (Whereupon, a brief recess was
16 taken.)

17 JUDGE MELILLO: Will we be having some redirect?

18 MR. GRAY: No, Your Honor, there will not. Thank
19 you.

20 JUDGE MELILLO: All right. We will not be having
21 redirect.

22 Therefore, as there is nothing further, Dr.
23 Wilson, you are excused. Thank you very much.

24 (Witness excused.)

25 MR. GRAY: Thank you, Your Honor.

1 JUDGE MELILLO: Next witness would be a panel of
2 Mr. Nurse and Mr. Oyefusi.

3 Ms. Painter, while you're doing that, do you want
4 me to place the witnesses under oath?

5 MS. PAINTER: That would be great. Thank you,
6 Your Honor.

7 JUDGE MELILLO: Please raise your right hands,
8 gentlemen.
9 Whereupon,

10 E. CHRISTOPHER NURSE

11 OLA OYEFUSI,

12 having been duly sworn, testified as follows:

13 JUDGE MELILLO: Very well. You may be seated.

14 Please proceed, AT&T counsel.

15 DIRECT EXAMINATION

16 BY MS. PAINTER:

17 Q. Mr. Nurse and Dr. Oyefusi, please state your name and
18 address for the record.

19 A. (Witness Nurse) My name is E. Christopher Nurse, the
20 Regional Vice President for Regulatory and External Affairs for
21 AT&T. My business address is 1120 20th Street in Washington, DC.

22 A. (Witness Oyefusi) Ola Oyefusi, Lead Carrier Relations
23 Manager. My business address is 7125 Columbia Gateway Drive,
24 Columbia, Maryland 21046.

25 Q. And did you prefile five rounds of testimony on this case,

1 namely, AT&T Statement 1.0 which is Panel Direct Testimony dated
2 July 2nd, 2009 --

3 MS. PAINTER: And, Your Honor, I would note that
4 there is a proprietary and public version of that testimony.

5 JUDGE MELILLO: You have provided both
6 proprietary and public versions then to the court reporter of
7 these documents?

8 MS. PAINTER: Yes, I have, Your Honor.

9 JUDGE MELILLO: All right. Very well.

10 BY MS. PAINTER:

11 Q. -- AT&T Statement 1.1 which is the Supplemental Direct
12 Testimony dated November 30th, 2009 -- there is no proprietary
13 version of that testimony -- AT&T Statement 1.2 which is Rebuttal
14 Testimony dated March 10th, 2010 -- and there is both proprietary
15 and public versions of that testimony -- AT&T Statement 1.3,
16 Surrebuttal Testimony dated April 1st, 2010 -- there's no
17 proprietary version of that testimony -- and AT&T Statement 1.4,
18 Rejoinder Testimony dated April 8, 2010 -- both proprietary and
19 public versions.

20 Did you prefile those five rounds of testimony?

21 A. (Witness Oyefusi) Yes.

22 A. (Witness Nurse) Yes.

23 JUDGE MELILLO: And, by the way, those documents
24 that you've so identified can be so marked.

25 (Whereupon, the documents were marked

1 as AT&T Statements Numbers 1.0, 1.1,
2 1.2, 1.3, and 1.4 for identification.)

3 MS. PAINTER: Thank you, Your Honor.

4 BY MS. PAINTER:

5 Q. Those five rounds of testimony, they only consist of
6 written testimony along with attachments?

7 A. (Witness Nurse) Yes.

8 A. (Witness Oyefusi) Yes.

9 Q. Was that testimony prepared by you or under your direct
10 supervision?

11 A. (Witness Oyefusi) Yes, they were.

12 Q. Do you have any corrections to the testimony?

13 A. (Witness Nurse) Yes, just a few. Starting with Direct on
14 page 12 in footnote 7 as part of the discovery, among the
15 discovery issues we agreed to delete the words AT&T Mobility.

16 JUDGE MELILLO: Would that be footnote 7?

17 WITNESS NURSE: Yes, Your Honor.

18 MS. BENEDEK: Of -- okay.

19 JUDGE MELILLO: So AT&T Mobility will be stricken
20 from footnote 7 on page 12.

21 MS. PAINTER: Correct, Your Honor.

22 WITNESS NURSE: There are no changes to the
23 Supplemental Direct. On the Rebuttal in Attachment 6, we had
24 attached to CenturyLink AT&T data responses and we circulated the
25 updated iterations of those data responses; and they are 3-2 and

1 3-19. So we won't be sharing the March 5th versions of both of
2 those data responses, 3-2 and 3-19, Attachments number 6.

3 JUDGE MELILLO: All right. And would they have
4 been completely superseded what had been previously distributed
5 in this matter?

6 WITNESS NURSE: Yes, they supersede the earlier
7 versions of 3-2 and 3/19.

8 JUDGE MELILLO: And the copies that you provided
9 to the court reporter, Ms. Painter, they have the new versions
10 in?

11 MS. PAINTER: Yes, they do, Your Honor.

12 JUDGE MELILLO: Thank you.

13 WITNESS NURSE: And lastly on the Rejoinder
14 Testimony on page 28, line 23, should insert between the words
15 some and rural, portion of some. So it's some portion of some
16 rural.

17 MR. KENNARD: What line are you on, please.

18 WITNESS NURSE: Line 23, page 28.

19 MR. KENNARD: What's the change?

20 WITNESS NURSE: Insert between some and rural,
21 portion of some. So it's some portion of some rule.

22 MR. KENNARD: Some portion of.

23 WITNESS NURSE: Some portion of some rural.

24 MR. KENNARD: Of some.

25 BY MS. PAINTER:

1 Q. Are those all of your corrections?

2 A. (Witness Nurse) Yes, ma'am.

3 Q. And would those corrections be information contained in
4 the testimony and attachments true and correct to the best of
5 your --

6 A. (Witness Nurse) I'm sorry. Just a graphical issue on page
7 13 on the line at the top of the page there, just sort of a
8 housekeeping matter. There are two lines on the chart, the one
9 that has very much downward and then the one that's very much
10 horizontal. I just want to make sure that that line at the top
11 there is visible on all the copies. I think it was originally
12 yellow, and it may not have reproduced depending on Xerox
13 machines and that sort of thing. So I think that we've had
14 copies prepared just to make sure that the reproduction there
15 picked up all those lines.

16 Q. Okay. There's no substantive change in that chart,
17 correct?

18 A. (Witness Nurse) No, ma'am.

19 Q. And, with those corrections, is the information contained
20 in the testimony and attachments true the correct to the best of
21 your information and belief?

22 A. (Witness Oyefusi) Yes.

23 A. (Witness Nurse) Yes.

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

1 A. (Witness Nurse) Yes.

2 A. (Witness Oyefusi) Yes.

3 MS. PAINTER: With that, Your Honor, I move for
4 the admission of AT&T Statement 1.0, 1.1, 1.2, 1.3 and 1.4 into
5 the record subject to cross-examination.

6 JUDGE MELILLO: Any objection?

7 MS. BENEDEK: Yes, Your Honor.

8 JUDGE MELILLO: Please speak up into the
9 microphone.

10 MS. BENEDEK: Relative to the Rejoinder Testimony
11 which I believe has been identified as AT&T Statement 1.4 --

12 JUDGE MELILLO: Correct.

13 MS. BENEDEK: -- at pages 16 through what appears
14 to be page 23, I think -ish -- we can talk about that -- and
15 associated attachments, the AT&T panel witnesses have presented a
16 series of regression analyses six days after -- well, back up.
17 During the course of the schedule, we've had several
18 opportunities to file testimony. In fact, we've had several
19 rounds from the AT&T panel witnesses.

20 The information relied upon by AT&T to perform
21 this regression analysis was provided to AT&T back in January of
22 2009. They've had opportunity from their --

23 JUDGE MELILLO: I don't think it would have been
24 January, 2009. You mean January, 2010?

25 MS. BENEDEK: No, January, 2009.

1 JUDGE MELILLO: The case wasn't --

2 MS. BENEDEK: It was the UFS case, Judge
3 Colwell's USF case.

4 JUDGE MELILLO: All right. Excuse me. I didn't
5 see how it was possible but you're explaining.

6 MS. BENEDEK: We have consistently and I believe
7 PTA has consistently said that the forced local rate increases
8 that AT&T is suggesting in this case and other parties would
9 cause -- would have ramifications, and they have had ample
10 opportunity from our direct testimony on to provide the analyses
11 and studies.

12 We asked -- that's 2 and 3 and 4 -- each time
13 they propounded their testimony, there was prefiled testimony, we
14 propounded discovery asking give us your elasticity studies, give
15 us your analyses, what supports your testimony. We've asked
16 detailed questions in that regard. None were forthcoming, come
17 see this page of our testimony, go see that attachment.

18 Bottom line is, this is a surprise. It's
19 prejudicial. We have no opportunity six days after receipt of
20 that new analysis -- correction, analyses plural -- to do
21 adequate response. They, AT&T, agreed to the procedural
22 schedule. The data they had that underlies the regression
23 analysis they employed could have been put in as early as their
24 direct testimony in July.

25 As far as their supplemental testimony in

1 November, it certainly could have been done in their rebuttal to
2 our direct done in March. It could have been provided in the
3 NTRs that we consistently asked them over and over again. Again
4 it is prejudicial to ask a party to a case to respond to detailed
5 regression analyses and a host of attachments six days upon
6 receipt at the last stage of any possible written prefiled
7 written testimony in this case. Highly prejudicial and sad I
8 think.

9 So we respectfully request that the associated
10 testimony and I believe it starts at page 16, line 17, through
11 page 20, line 11; and there are several attachments that
12 accompany that testimony. I have questions about which ones
13 which I'm sure we can work through to the extent the motion is
14 granted, but we request that the associated testimony and the
15 attachments be stricken from the record.

16 JUDGE MELILLO: So you're making a motion to
17 strike with respect to testimony, and I know that you had very
18 little time to do that; but I had requested specifically that all
19 motions to strike with respect to prepared testimony be provided
20 before the hearing.

21 MS. BENEDEK: And, Your Honor, honestly, six
22 calendar days from receipt of it when preparing for hearings, you
23 know, I didn't anticipate rejoinder testimony of the magnitude
24 and level and substance that --

25 JUDGE MELILLO: You need to speak into the

1 microphone.

2 MS. BENEDEK: Quite frankly, the Rejoinder
3 Testimony, the level of it is not rejoinder; and it was
4 unexpected and certainly is contrary to the procedural schedule.
5 I apologize that we couldn't do this in a written document, but
6 we've had six calendar days from receipt of it to not just
7 respond to it but to prepare for hearings. It demonstrates the
8 prejudicial nature of what is attempted to be done here by AT&T.

9 JUDGE MELILLO: You mentioned something about
10 some discovery that you had done. Can you have copies of that
11 discovery?

12 MS. BENEDEK: It's a PTA -- it's a PTA discovery
13 response, and it was provided to AT&T in the Judge Colwell
14 proceeding. It was thereafter requested again, and PTA provided
15 it in this proceeding, and it came in in January I believe,
16 January of 2009.

17 JUDGE MELILLO: But did anyone ask any discovery
18 of AT&T in this proceeding with regard to elasticity studies?

19 MS. BENEDEK: Yes.

20 JUDGE MELILLO: That's what I'm interested in.

21 MS. BENEDEK: Yes.

22 JUDGE MELILLO: This has to do with elasticity
23 studies that PTA would have conducted --

24 MS. BENEDEK: I have several copies.

25 JUDGE MELILLO: -- because discovery is

1 continuing. So, if there is subsequently a study prepared,
2 that's supposed to be provided under the continuing rule of
3 discovery.

4 MS. BENEDEK: 3-6, 3-7, 4-2, 4-3, 4-5 and I have
5 a series of --

6 JUDGE MELILLO: Okay. If this is the relevant
7 questions, we have to deal with what was asked to AT&T.

8 MS. BENEDEK: And I believe PTA also asked at the
9 tail-end of the case after the rebuttal came in. I think they
10 did some as well.

11 JUDGE MELILLO: Do you have a date on CTL-ATT
12 3-6? When was that asked?

13 MS. BENEDEK: I have 3-6 was requested in early
14 March -- I'm sorry. It would have my set -- let me look here
15 quick. It was responded to March 22nd by Jim, counsel for AT --
16 March 22nd was the response. We would have asked that 15, 10
17 days in advance of that, so early March. Set four I have a March
18 29 answer date on that. Those are some. We've asked others, but
19 I know PTA has asked some, too.

20 MR. KENNARD: I'm looking at Embarq discovery of
21 AT&T answered in July. 1-21, provide all elasticity studies,
22 calculations, and documents undertaken by or on behalf of AT&T in
23 support of any claim in the past AT&T alleges in this proceeding.
24 The answer is, see AT&T response to 1.1.

25 Just to summarize, the parties started asking

1 discovery on elasticity studies. Obviously, demand suppression,
2 demand stimulation are issues in this case. Consistently asked
3 PTA and Embarq please provide us your documentation.
4 Consistently the response has been, we don't have it one; and
5 that was not changed until as Ms. Benedek indicates until six
6 days before today.

7 MS. BENEDEK: It was asked early on in the case.
8 After each set of testimony that they developed, we asked the
9 question. I mean, it's unthinkable that at the last opportunity
10 that they have they now all of a sudden have regression analyses.

11 MR. KENNARD: The other thing I would suggest,
12 Your Honor, is the so-called PTA elasticity study consists of no
13 more than eight data points for one telephone company for a
14 eight-year period of time; and that's all it is. It's not
15 comprehensive. It hardly has any usefulness in this proceeding,
16 and it certainly doesn't constitute anything approaching any kind
17 of scientific endeavor. It's just eight data points on behalf of
18 one company.

19 MS. PAINTER: Your Honor, that's exactly the
20 point. When AT&T asked PTA for any type of elasticity analysis
21 be done, that was what was provided in this case. So the fact
22 that, when we asked whether they can provide that -- Mr. Kennard
23 provide that data response in this case to show whether there
24 were reactions of customers to price in terms of some type of an
25 elasticity analysis, what AT&T did is took that innocent response

1 to the -- the parties have gone back and forth on this issue with
2 respect to whether customers respond to price.

3 In the surrebuttal testimony, there was extensive
4 discussion of the PTA and Century's testimony about the fact that
5 customers would leave in droves if any type of price increases
6 are made. What AT&T did is, they looked at the data in response
7 to their surrebuttal testimony which said customers will leave.
8 In fact, CenturyLink has hypothetical data on consumer surveys
9 that supposedly show how many customers would leave.

10 So AT&T, in response to that surrebuttal
11 testimony, looked at the data and said wait a minute are we
12 seeing actual facts that these customers will leave in response
13 to this surrebuttal testimony based on what discovery that PTA
14 had provided.

15 MR. KENNARD: Your Honor, here's the
16 interrogatory and response. The interrogatory is propounded by
17 AT&T on the PTA and answered by the PTA in early March this year.
18 The request is for elasticity studies. The PTA says we don't
19 have it. We still don't have any. We didn't have any in front
20 of Judge Colwell. We still don't have any. We asked the
21 question in front of Judge Colwell. Here's our response that we
22 gave during that proceeding back in 2009.

23 MS. PAINTER: What was the date of that response?

24 MR. KENNARD: That's no new evidence. There's no
25 new documentation. It's just simply a reiteration of the same

1 position and the same information that AT&T has had since 2009.

2 MS. PAINTER: Can you tell me the date of that
3 response again, Norm?

4 MR. KENNARD: March 2nd, 2010.

5 MS. BENEDEK: And, Your Honor, I would just like
6 to add that we haven't been going back and forth about this
7 issue. We have consistently in direct said, you know, we
8 presented our survey, qualified as you wish in direct. Their
9 absolute earliest opportunity to do something with this could
10 have been in their direct. They chose not to do it two times,
11 direct, supplemental. We submitted our direct, same issue. It's
12 not gone back and forth. We have consistently held the same
13 positions.

14 In their rebuttal testimony to our direct, you
15 would have seen this. Even if they want to argue that it's not
16 part of their case in chief, it's part of ours; and you would
17 have seen it in their direct that came in in March. I beg to
18 differ with them but we've gone back and forth, that's an
19 improper characterization.

20 JUDGE MELILLO: Ms. Painter, are you saying that
21 there was some additional study that was provided in surrebuttal;
22 and, therefore, you felt compelled to respond in rejoinder?

23 MS. PAINTER: There was not a study.

24 JUDGE MELILLO: What are you responding to in
25 rejoinder that was in surrebuttal?

1 MS. PAINTER: We were responding to surrebuttal,
2 yes, to the previous round of testimony.

3 JUDGE MELILLO: Show me what you were responding
4 to in surrebuttal.

5 MS. PAINTER: I've been trying to find the exact
6 reference to that. For instance, CenturyLink --

7 MS. BENEDEK: It's not referenced anywhere. You
8 don't have a cite reference for it.

9 JUDGE MELILLO: Please, as the court reporter
10 said, you're talking over each and the transcript is not going to
11 be clear. I asked Ms. Painter what testimony AT&T was responding
12 to.

13 MS. PAINTER: Your Honor, if you look at page 37
14 of the Panel Surrebuttal Testimony of Jeffrey Lindsey and Mark
15 Harper --

16 JUDGE MELILLO: All right. Just a moment.
17 Unfortunately, because those witnesses were not scheduled for
18 today, I don't have the testimony.

19 MS. PAINTER: I can read the testimony to you.

20 JUDGE MELILLO: Well, I'd like to see it, please.
21 This is why it is certainly preferable to have a motion prepared
22 prior to hearing. Thank you for the testimony. Now, Ms.
23 Painter, what were you responding to in your rejoinder?

24 MS. PAINTER: The question beginning on line 7
25 states, was the survey process hypothetical and flawed because it

1 did not provide adequate state rate increases or rate increases
2 under states. Answer, no the previous Pennsylvania experience
3 simply would not be informative to measure the potential impact
4 and limitation of the proposals of AT&T. That is directly what
5 we are responding to show that, in fact, when you do look at past
6 Pennsylvania experiences, it is informative.

7 And, as Mr. Kennard said, these are price points.
8 We were analyzing the price points but not some type of a new,
9 random study. It was an analysis of the price points. They can
10 certainly testify or ask cross-examination questions about what
11 the analysis of those price points. It is a review of those
12 price points and AT&T's analysis of those price points in
13 response to the claim that the actual Pennsylvania experience is
14 not informative in this case.

15 MS. BENEDEK: The problem -- if I may respond?

16 JUDGE MELILLO: I see that I'm going to have to
17 do some review in order to make a reasonable ruling. I'm going
18 to have to take the testimony and read it in context and then
19 also look at the discovery that was propounded to see whether, in
20 fact, if this analysis existed, AT&T had the data, should they
21 have provided it at that point regardless of whether they put it
22 in testimony. If, in fact, AT&T is presenting a study which they
23 had and should have provided in discovery then there could be
24 sanctions; and they could be precluded from providing that.

25 MS. PAINTER: I can assure you, Your Honor, that

1 that study, that analysis of this was not conducted until the
2 surrebuttal testimony came in; and it was conducted as a direct
3 result of statements that were made in surrebuttal. When we look
4 at the surrebuttal, the witnesses determined that, because
5 statements were made that Pennsylvania experience, actual
6 experience is not instructive, that's when they look at the data
7 points to see whether it was indeed instructive.

8 So this was not available and I can ask the
9 witnesses under oath, but I can tell you for sure this was not
10 available until all the surrebuttal testimony came in.

11 MS. BENEDEK: Can I respond, Your Honor?

12 JUDGE MELILLO: Yes.

13 MS. BENEDEK: I would like to respond. Two
14 points. The fact that it wasn't done is irrelevant. It could
15 have been done and should have been done. The fact that they
16 chose to do it at the last minute is not relevant. The second
17 point is, the issue here about price points, we put that in our
18 direct testimony. They address the hypothetical nature of --
19 what they call hypothetical nature of our study in their
20 rebuttal, but they hold back this regression analysis that they
21 complete at the eleventh hour.

22 JUDGE MELILLO: Was this in relation to Dr.
23 Staihr, S-T-A-I-H-R, who is no longer a witness because he's got
24 another position now?

25 MS. BENEDEK: Yes, Staihr as well as the panel.

1 We discuss the price point, \$18 price point and the inability to
2 do a price beyond that. They put on a slew of rebuttal testimony
3 on why the survey was, quote, hypothetical, end quote, why it's
4 flawed. This regression analysis and their view that the price
5 points are contrary to -- that the price points are contrary to
6 this regression analysis should have come in then. They didn't
7 do it in their rebuttal.

8 That's assuming -- you know, that's assuming it
9 should not have come in in discovery. It actually should have
10 come in in discovery and their rebuttal. It should have come in
11 in their rebuttal, not rejoinder when we have no opportunity to
12 respond.

13 MR. KENNARD: Can I just have one quick point?
14 The issue of whether or not higher local rights are actually
15 sustainable by customers or recoverable by the companies is the
16 subject matter that we're talking about this analysis allegedly
17 addresses. That issue has been in this case from the get-go. I
18 can't speak to CenturyLink's testimony, but the PTA Direct
19 Testimony raised it as filed January 20th, 2010.

20 JUDGE MELILLO: I know there's an issue about
21 revenue neutrality and whether there must be an effective
22 opportunity to recover --

23 MR. KENNARD: Exactly.

24 JUDGE MELILLO: -- lost revenue as a result of
25 access reductions and whether that can be recovered from

1 ratepayers and whether ratepayers would leave. Dr. Staihr did a
2 survey and there was criticism of the survey. So your position
3 is that, at the time that there was criticism of the survey,
4 that's the time that the analysis should have come in?

5 MR. KENNARD: No. My position is, it's always
6 been an issue in this case whether or not higher local rates are
7 recoverable. PTA first addressed that independent of the study
8 that CenturyLink did saying those higher rates are not
9 recoverable in a quasi-competitive marketplace.

10 JUDGE MELILLO: Well, in direct response, though,
11 to a survey, the targeted response can -- continue.

12 MR. KENNARD: The point of the matter is, the
13 issue was in this case from the beginning, at least placed into
14 issue by the PTA in its direct testimony.

15 JUDGE MELILLO: Well, CenturyLink filed their
16 survey in January, too.

17 MS. BENEDEK: It's in the case. We concur. It's
18 been in the case. It hasn't been back and forth. I believe and
19 again I'll reiterate, it should have come in discovery. It's
20 arguable whether it should have been in their direct, but it
21 certainly should have been in the rebuttal.

22 MS. PAINTER: Well, first of all, the discovery
23 response did not come in until March 2nd, so to claim it should
24 have been in our direct I think is a little -- is ridiculous. In
25 fact, it was PTA who pointed us to information that they provided

1 back in January of 2009. So, for CenturyLink to claim that we
2 should have remembered or known that in the Universal Service
3 Fund case that PTA provided this data I think is a little
4 ridiculous and should have done an analysis of it by 2009. The
5 data was not provided until March of 2010 in this case. It is
6 what PTA provided.

7 And really, Your Honor, I think that we're making
8 a little bit much of what the analysis is. It's data that we're
9 simply -- it's not some type of a study. It's just taking the
10 data points and putting them on a chart. It's nothing that
11 cannot be cross-examined. It's nothing that cannot be -- it's
12 something that can be rebutted through cross-examination. If
13 they think there's something wrong with the data or the plots,
14 they certainly can look at the data and determine whether we
15 plotted it correctly. That's all these charts do. It's an
16 analysis of data.

17 JUDGE MELILLO: Anything further on this point?

18 MS. PAINTER: There's actually -- I believe you
19 said also page 19 into 20 which is the discussion about the
20 decline in penetration rates. That's a different issue.

21 MS. BENEDEK: Well, 19 and 20 appear to have the
22 same PA elasticity data as framed by AT&T. It certainly
23 discussed which sections. That appears to be -- look at the
24 chart on top of lines 3 through 4 on page 19, it says AT&T
25 reviewed the PTA elasticity data.

1 MS. PAINTER: Okay. But are you talking about
2 the question that begins regarding the penetration?

3 MS. BENEDEK: I read that as to mean a conclusion
4 because it --

5 MS. PAINTER: No, that's a completely separate
6 issue. That deals with the penetration rates.

7 MR. KENNARD: That's a completely different
8 study.

9 MS. PAINTER: It's not a study. It's an
10 analysis.

11 MS. BENEDEK: So Attachment 2 that's referenced
12 on page 20, line 2 does not go with the PTA data?

13 MS. PAINTER: No. That's just publicly available
14 penetration rates at the FCC.

15 MS. BENEDEK: Okay. So the regression analysis,
16 the second analysis or additional analysis is actually another
17 new study?

18 MS. PAINTER: It's an analysis of penetration
19 rates. It states it's done access reform, yes.

20 MS. BENEDEK: And relative to the FCC data, what
21 does that have to do with the FCC data?

22 MS. PAINTER: Those are questions that you can
23 ask the witnesses.

24 MS. BENEDEK: Well, it doesn't indicate details.

25 MS. PAINTER: Those are questions you can ask the

1 witnesses.

2 MS. BENEDEK: No, because it's part of the motion
3 to strike and I reiterate because it's in your cite and comes in
4 at the last possible response to testimony.

5 JUDGE MELILLO: Ms. Painter, specifically when
6 were these studies performed that are in the motion to strike,
7 that are encompassed within the motion to strike that we just
8 heard about?

9 MS. PAINTER: I'm going to have to ask Dr.
10 Olefusi because he's the one who performed the analysis.

11 WITNESS OLEFUSI: The studies were performed
12 about two days before the testimony, so I think it was probably
13 the Tuesday of that week that we filed the testimony.

14 JUDGE MELILLO: So that would have been around
15 April 6th?

16 WITNESS OLEFUSI: Yes.

17 JUDGE MELILLO: All right.

18 Does anyone have anything more to argue about
19 this point because what we're doing is, it's 11:30. We're going
20 to take a 15-minute mid-morning break. I'll review this during
21 the break. Anything further?

22 (No response.)

23 JUDGE MELILLO: All right. We're off the record
24 for 15 minutes.

25 (Whereupon, a recess was taken.)

1 JUDGE MELILLO: I've performed an analysis of the
2 parties' positions to the best of my ability in the limited time
3 available. I did have a clarifying question.

4 The discovery AT&T-4 which was directed to PTA,
5 AT&T, when did you propound that discovery?

6 MS. PAINTER: Is that 4, Your Honor?

7 JUDGE MELILLO: It says Set 1, Number 4 I think.
8 I was given some discovery responses. I believe that's from Set
9 1.

10 MR. KENNARD: We don't have those discovery files
11 with us. Again, that was in the Judge Colwell proceeding in
12 January, 2009.

13 MS. PAINTER: No, Your Honor. There was a
14 request and I have to find where it was, and this was attached.
15 This was -- there was a request in this case for data, and PTA
16 provided the data response from the Universal Service Fund case
17 in response to a request in this case.

18 JUDGE MELILLO: I understand. The response was
19 actually given in Judge Colwell's case, but it was requested in
20 effect as part of discovery in the instant case; and then it was
21 again referenced. It was provided again I take it.

22 MS. PAINTER: It was provided -- we did not
23 actually request that specific response. We asked what
24 information you have regarding customers' reaction to prices --
25 it's actually reactions to price increases, and this was the

1 response that was provided.

2 JUDGE MELILLO: But it was provided also earlier
3 in the Judge Colwell proceeding, correct?

4 MR. KENNARD: That's correct. In this case, the
5 question -- the interrogatory that Ms. Painter just referenced
6 was served upon us on February 19th and answered on March 2nd of
7 this year.

8 JUDGE MELILLO: So that was prior to the date for
9 rebuttal which was March 10th; is that correct?

10 MR. KENNARD: Yes, Your Honor.

11 JUDGE MELILLO: All right. The motion to strike
12 is going to be granted. The reasons for this, first of all, it
13 does set forth a regression analysis. It is, in my opinion,
14 unfair to expect a party to respond to that type of analysis in
15 the short period of time available to hearings. The Commission
16 has a regulation which may not directly be on point. It deals
17 with rebuttal but the spirit of it is still applicable, and that
18 would be 52 Pennsylvania Code Section 5.243(e).

19 It essentially says that a party will not be
20 permitted to introduce evidence during the rebuttal phase which
21 is repetitive, should have been included in the party's case in
22 chief, and substantially varies from the party's case in chief.
23 In this case, the material should have been set forth on March
24 10th, 2010, if not earlier.

25 MS. PAINTER: So --

1 JUDGE MELILLO: So, therefore, we're striking
2 from the record --

3 MR. KENNARD: Start on page 16.

4 JUDGE MELILLO: -- beginning on page 16 of the
5 Panel Rejoinder Testimony of AT&T, beginning on line 17 I
6 believe, that question?

7 MS. BENEDEK: Yes.

8 JUDGE MELILLO: And continuing on to page 20,
9 line 11. Now, what attachments would also be impacted?

10 MS. PAINTER: Your Honor, page 20, line 11, I
11 think I explained that, starting on page 19, line 6 is a
12 different discussion. It's not the AT&T -- what starts on page
13 19, line 6 has nothing to do with the PTA data.

14 JUDGE MELILLO: Is that part of your motion? I
15 thought that was included. I had it marked as included in your
16 motion.

17 MS. BENEDEK: It is included and I'll tell you
18 why. There are several analyses that have been done here. The
19 part where the DR comes in looks like D-1 and associated
20 attachments. The second piece he does is based on FCC data, same
21 point, same subject matter. That is Attachment 2, page 20, line
22 2. Then they have a conclusion paragraph that says what do these
23 regression analyses mean. And then this argument is one of the
24 ones that are critical to this case getting back to the point
25 that, even if you assume not discovery, it should have come in in

1 rebuttal.

2 I'm unclear as to which attachments because the
3 attachments that -- I said this earlier, I'm unclear which
4 attachments because they are not labeled. So I would be happy to
5 do that offline.

6 JUDGE MELILLO: That's fine. We have two more
7 days, but before we go off the record on Friday we'll need that
8 information.

9 In looking at this, Ms. Painter, it appears that,
10 yes, there was another regression analysis done; but it's just
11 too late to be putting in regression analysis at this point. If
12 you want to put in regression analysis to rebut what was set
13 forth in the CenturyLink Direct Testimony that was filed in
14 January, you had an opportunity on March 10th, 2010. You didn't
15 file this until April 8th. That's only a few days before
16 hearing. It's prejudicial and I'm not allowing that.

17 All right. Let's continue on with any other
18 objections to the AT&T testimony that's been identified.

19 (No response.)

20 JUDGE MELILLO: All right. Hearing nothing, the
21 AT&T testimony that has been identified for the record is
22 admitted with the deletion as I previously indicated.

23 (Whereupon, the documents marked as
24 AT&T Statements Numbers 1.0, 1.1,
25 1.2, 1.3, and 1.4 were received in

1 evidence.)

2 JUDGE MELILLO: The witnesses are available for
3 cross-examination I guess?

4 MS. PAINTER: Yes, Your Honor.

5 JUDGE MELILLO: All right. The first
6 cross-examiner I have here is PTA.

7 Does the PTA have any questions?

8 MR. KENNARD: Yes, Your Honor, we do.

9 JUDGE MELILLO: All right. Please proceed, Mr.
10 Kennard.

11 CROSS-EXAMINATION

12 BY MR. KENNARD:

13 Q. Good morning, gentlemen.

14 A. (Witness Nurse) Good morning.

15 A. (Witness Oyefusi) Good morning.

16 Q. Would you refer to your Panel Direct Testimony on page 28,
17 please, line 4.

18 A. (Witness Nurse) Yes.

19 Q. For example, according to BCAP, approximately 78 percent
20 of household passed in Pennsylvania have VOIP service. Where
21 does that information come from?

22 A. (Witness Nurse) I thought BCAP provided that in the USF
23 case.

24 Q. And did BCAP also not state that they only have 75 percent
25 of the homes in Pennsylvania?

1 A. (Witness Nurse) The record is what it is. I don't recall
2 what they stated.

3 Q. I don't understand your answer. You presented part of the
4 information that was before ALJ Colwell. I'm asking you what is
5 the rest of the information. Did BCAP also not state its cable
6 companies only pass 75 percent of the homes in Pennsylvania?

7 A. (Witness Nurse) I generally don't recall.

8 Q. Do you accept that subject to check?

9 A. (Witness Nurse) I indicated the record is what the record
10 is.

11 Q. Will you accept that subject to check for the purposes of
12 this proceeding?

13 A. (Witness Nurse) Yes.

14 Q. Would you also accept subject to check that that means
15 that cable VOIP availability in Pennsylvania is 58.5 -- 78
16 percent -- 75 percent?

17 A. (Witness Nurse) Cable VOIP, which is not the same as VOIP,
18 but, yes.

19 Q. Well, I don't want to quibble over the description. Voice
20 service provided by cable companies is available in 58.5 percent
21 in Pennsylvania. Is that Pennsylvania households?

22 A. (Witness Nurse) Yes. But the point is that VOIP service
23 is available over the top of any broadband connection, and all
24 your members except Point Stream and CenturyLink have a hundred
25 percent broadband. So you can get VOIP service over a ILEC

1 broadband for almost all of your members that do.

2 Q. But not cable?

3 A. (Witness Nurse) But not necessarily cable. But, for many
4 of your members, they can get Skype.

5 Q. Let's go to your Direct Testimony at pages 39 and 40. Do
6 you state on page 40, line 8 that VOIP-originated calls are not
7 subject to originating access charges and, in many instances, are
8 terminated by simple compensation rates?

9 A. (Witness Oyefusi) That's what it says.

10 A. (Witness Nurse) Yeah.

11 Q. Now, over on page 28, you cite specifically to Vonage. Do
12 you know Vonage arranges for the payment of terminating access
13 charges on the traffic that it sends to the public switched
14 network?

15 A. (Witness Nurse) I think it's controversial whether Vonage
16 and other voice providers properly -- the FCC has not stated
17 explicitly whether access applies or doesn't as a matter of
18 considerable controversy whether Vonage and the other carriers
19 pay access on all calls that would be access on tolls calls if
20 they were traditional POTS lines. So It's not clear that they
21 do.

22 Q. Did you undertake any investigation to determine whether
23 or not Vonage, in fact, does arrange for the payment of
24 terminating access charges on traffic it sends to the public
25 switched telephone network?

1 A. (Witness Nurse) Vonage isn't a party to the case, so we
2 weren't able to propound discovery on them.

3 Q. Let me show you their 10K is which is a publicly available
4 document. You don't need to propound discovery. Would you read
5 into the record what's bolded in yellow?

6 A. (Witness Nurse) This is a snippet from the 10K. Under the
7 category operating expenses, access charges that we pay to the
8 telephone companies to terminate domestic and international calls
9 on the public switched network. I figure if that's the sentence
10 it doesn't make sense. This is under the category toll direct
11 cost, toll direct costs --

12 Q. Let's stop for a second. Would you please just read it
13 into the record without commenting on it. I've only asked you to
14 read it at this point, not whether or not you think it makes
15 sense or not.

16 A. (Witness Nurse) Well, with the caveat that, to the extent
17 it doesn't make sense in isolation, it says access charges that
18 we paid other telephone companies to terminate domestic and
19 international calls to the public switched telephone network,
20 these costs represent approximately 44 and 42 percent of our
21 total direct costs for services for 2009 and 2008, respectively,
22 with a portion of these payments ultimately being made to the
23 telephone companies. When a line subscriber calls another line
24 subscriber, we do not pay an access charge.

25 Q. Thank you. And that section you just read --

1 A. (Witness Oyefusi) Before you go further, something about
2 that text. It does not say what type of access they pay. It
3 does say they pay access charges. It doesn't say whether they
4 are paying switched access charges which is the subject of this
5 case. It doesn't say whether that access charge is compensation
6 for any access charge that is different from what the IXCs pay.

7 A. (Witness Nurse) And I think regarding the previous
8 questions, this says they pay some money. That's a different
9 issue from do they always pay access charges when ILECs think
10 they ought to pay. You know, they might pay access charges half
11 the time they're supposed to but that can't constitute 44
12 percent. So this doesn't prove that they always pay access
13 charges when they should. It's unsettled at the FCC whether or
14 not access charges apply to VOIP-originated calls or not, and the
15 FCC has been pretty thorough after many opportunities about not
16 clarifying that.

17 Q. And the excerpt you just read is from Vonage Holding
18 Corp's Form 10K submitted to the Securities and Exchange
19 Commission for the period ending December 31st, 2009; is that
20 correct?

21 A. (Witness Nurse) That's what the cover letter and the
22 snippet indicates. It says they pay some access charges. That's
23 a different issue from your question do they always pay all the
24 access charges that they ought to.

25 Q. And are you aware of whether or not the SEC Form 10K is a

1 sworn and subscribed to document by corporate officers of the
2 company?

3 A. (Witness Nurse) I believe it is, but swearing to this
4 statement doesn't prove your earlier issue as to whether they pay
5 all the access charges they ought to.

6 Q. Now, are you aware of a recent decision by this Commission
7 involving a dispute between Palmerton Telephone Company and
8 Global Maps?

9 A. (Witness Nurse) Yes, generally.

10 Q. And are you aware that AT&T has argued within its ILEC
11 arguments that VOIP-initiated interexchange calls should pay
12 terminating access charges?

13 A. (Witness Nurse) Yes, we have. That goes exactly to the
14 issue that's unsettled whether VOIP-originating and terminating
15 calls pay access charges. And there's a big controversy as to
16 whether VOIP carriers misrepresent calls that would be access.
17 We have found in our company's experience that sometimes a call
18 from one number to another carriers actually charge us access in
19 one direction but don't pay us in the other. And so that
20 confounds us how a call can be not applicable to access in one
21 direction but applicable to access in the other.

22 Q. Well, that's certainly something that PTA stands with AT&T
23 on. AT&T most recently filed comments in the Global Maps
24 petition proceeding before the FCC?

25 A. (Witness Nurse) Are you referring to the one where they

1 wanted to have the FCC to preempt three states?

2 Q. Yes.

3 A. (Witness Nurse) Yes, we did. And I think the gist of
4 those comments were that, whatever the FCC does up or down, they
5 should resolve the issue and say access charges apply or access
6 charges don't apply; and then people can get on with business
7 rather than having skirmishes all over the country.

8 MR. KENNARD: Does AT&T have any objection to us
9 taking administrative notice of those comments in this
10 proceeding?

11 MS. PAINTER: No.

12 JUDGE MELILLO: All right. There's been a
13 request for administrative notice of the comments. Are those
14 comments publicly available, easily available?

15 MR. KENNARD: Yes. They're on the FCC's website.
16 I can give you the case citation. I don't have it with me.

17 JUDGE MELILLO: All right. We'll take notice of
18 that. Go ahead.

19 MS. PAINTER: I do want to ask a follow-up.
20 Did PTA or any of the PTA companies file comments
21 in that?

22 MR. KENNARD: Yes, a whole host of people did.
23 There was probably 20 or 30 commenters --

24 MS. PAINTER: So you would have any --

25 MR. KENNARD: PA PUC did. PA OCA did.

1 MS. PAINTER: You wouldn't have any objection to
2 including them?

3 MR. KENNARD: Not at all.

4 MS. PAINTER: Okay.

5 JUDGE MELILLO: Are we taking notice of any other
6 comments, publicly filed comments of any other party?

7 MR. KENNARD: I think the stipulation of counsel
8 is, any comments filed at the Global Maps preemption docket
9 before the FCC are properly the subject of administrative notice.

10 JUDGE MELILLO: All right. We'll take
11 administrative notice then. I'll expect that website
12 information.

13 BY MR. KENNARD:

14 Q. One of the benefits testified to on reduced access charges
15 is that reduced toll rates will also occur?

16 A. (Witness Oyefusi) Yes.

17 Q. And we asked you an interrogatory about that, and I hand
18 it to you now.

19 MR. KENNARD: Your Honor, I'd ask it be marked as
20 PTA Cross-examination Exhibit Number 2.

21 MS. PAINTER: That's number 1, Norm.

22 MR. KENNARD: That's this (indicating).

23 MS. PAINTER: Okay.

24 MR. KENNARD: Your Honor, we marked our exhibits
25 in chronological order.

1 JUDGE MELILLO: This is your Number 1 that you
2 gave to me in regard to that prior motion to strike.

3 MR. KENNARD: Very good.

4 JUDGE MELILLO: All right. So how do we want to
5 mark the exhibit? You want to mark it as PTA Cross-examination
6 Exhibit --

7 MR. KENNARD: It's your pleasure, Judge. I've
8 been in hearings where the Judge wanted them marked, and you're
9 instructed to put them in order. If there's gaps, that's okay
10 but they want them marked. So I wasn't sure what your preference
11 was. The last Judge I was before wanted them that way. So it's
12 completely your pleasure. We'd be glad to mark it as Number 1.

13 JUDGE MELILLO: All right. Why don't we do that
14 then? That probably makes more sense if that's possible. Just
15 mark that document as PTA Cross-examination Exhibit Number 1.

16 (Whereupon, the document was marked
17 as PTA Cross-examination Exhibit
18 Number 1 for identification.)

19 BY MR. KENNARD:

20 Q. Now, gentlemen, what is the elementary, indisputable
21 proposition of a downward sloping demand curve?

22 A. (Witness Oyefusi) It is always undisputed that, when the
23 price of something falls, people generally want some more of the
24 same thing. That is actually the basic, fundamental of economics
25 theory. So you don't really need to do an elaborate study of the

1 economics of this. That is the first thing of this study.

2 Q. All right. So it's basically what you call a demand curve
3 is when price decreases, demand for the product increases, all
4 other things being equal?

5 A. (Witness Oyefusi) That is correct.

6 A. (Witness Nurse) Yes. And the lower price component comes
7 in because you're going to intersect the supply curve at a lower
8 point because, when you lower the cost of production, you're
9 going to shift the supply curve to the right; and the
10 intersection of supply and demand is going to be at a lower price
11 and at a higher quantity because the demand curve is downward
12 sloping.

13 Q. All right. Now, let's take a look at page 50 of your
14 Direct Testimony. There's a chart there. It's marked
15 proprietary. I don't intend to go into specifics on it, but you
16 can see there's been a consistent downward direction in AT&T's
17 minutes over the period measured.

18 A. (Witness Nurse) Yes. That's not a demand curve, but it
19 happens to be a curve that's downward sloping. But that's not a
20 demand curve.

21 Q. But that's a measure of the toll minutes sold by AT&T?

22 A. (Witness Nurse) That's the correlation of the minutes sold
23 in the time period.

24 Q. Now, if we go to Exhibit H --

25 A. (Witness Nurse) I'm sorry, H or 8?

1 Q. H, as in Harry -- of that same Direct Testimony --

2 A. (Witness Nurse) Yes.

3 Q. -- and that shows the -- on the green line AT&T's average
4 instate long distance rates, correct?

5 A. (Witness Oyefusi) Yes.

6 A. (Witness Nurse) No. I'm sorry. It's AT&T's average
7 statewide long distance rates.

8 Q. Toll rates?

9 A. (Witness Nurse) Yes, statewide.

10 JUDGE MELILLO: This is a proprietary document,
11 so do you want to go on the proprietary record?

12 MR. KENNARD: I don't think so, Your Honor.

13 JUDGE MELILLO: All right.

14 MR. KENNARD: I mean, I look to AT&T to tell us
15 if we're going on. I'm not putting any numbers in. I'm not
16 going to do anything other than try to establish relationships.
17 And, if AT&T does believe it's a very high-level discussion, then
18 let's go on the proprietary record.

19 MS. PAINTER: Well, we'll see what you say; but
20 we can discuss it with that high-level relationships and not be
21 on the proprietary record.

22 MR. KENNARD: Okay. Let's see how it goes.

23 JUDGE MELILLO: All right.

24 BY MR. KENNARD:

25 Q. During the same timeframe, 2004 to 2008, we saw the

1 diminishing toll minutes but we also see the change in price
2 represented by the green line in this Exhibit H, correct?

3 A. (Witness Oyefusi) Yes.

4 Q. And prices have both gone down and gone up during that
5 timeframe; is that correct?

6 A. (Witness Oyefusi) Yeah.

7 A. (Witness Nurse) I --

8 A. (Witness Oyefusi) Which line are you talking about? There
9 are two lines on there.

10 Q. The green line, the toll prices.

11 A. (Witness Oyefusi) The green line it looks like the begin
12 and end point, the end point is generally lower than the begin
13 point. So generally over time the price of toll, long distance
14 toll that AT&T charges its customers over that period of time is
15 lower than the blue line.

16 A. (Witness Nurse) It's not much lower. My take away at a
17 high level would be that the access rates are about flat and the
18 toll rates are about flat. The access rate increases slightly.
19 The toll rate decreases slightly. And the main issue is that
20 their relationship is inverted, that the price of toll is less
21 than access. The wholesale cost is greater than the retail
22 price. That's I think part in the heading.

23 Q. Well, let's be a little more specific. During this
24 four-year timeframe, there were two years of toll rate decreases
25 and two years of toll rate increases which came -- brought access

1 rates basically to the starting point in 2000 and 2004 -- or toll
2 rates, excuse me, back to the approximately the same starting
3 point?

4 A. (Witness Nurse) There are -- I mean, the rates are -- I
5 mean, the numbers are there and you can do the calculation; but
6 the price changes are relatively small. So you have to figure
7 what is the noise level, the price, five cents, ten percent, ten
8 and a half percent so that the prices are not moving around that
9 much. And all of the prices are below the cost. It's a matter
10 of how far below the cost the price is.

11 Q. Are the RLECs against whom AT&T has filed its complaint
12 the only entities that AT&T pays access charges to in
13 Pennsylvania?

14 A. (Witness Nurse) No. AT&T pays access to lots of carriers,
15 obviously to Verizon and to the CLECs.

16 Q. Okay. And Verizon's access rates are lower than the
17 RLECs' access rates?

18 A. (Witness Nurse) Substantially. Verizon's access rates are
19 less than two cents, and the RLECs' are about five cents so
20 there's a substantial difference. If you look at the chart, you
21 ask the question, well if price is below cost, how can you do
22 that; and it's because this is a statewide average long distance
23 price and RLECs' specific access cost.

24 And this would say that, you know, the price is
25 below the cost for the RLEC territory. And, since it's two cents

1 from .7 cents for Verizon access, the price is above access in
2 the Verizon territory and that's a classic geographic, implicit
3 cross-subsidization which is unsustainable. Obviously, AT&T
4 would be better withdrawing from the RLEC territory and let
5 somebody else lose the money there. That's the sort of
6 distortion that we get from that.

7 Q. Well, go to page 41, would you please, in your Direct
8 Testimony.

9 A. (Witness Nurse) Yes.

10 Q. Now, as you indicated in your most recent answer, this is
11 comparing the RLEC average access rates with AT&T's average toll
12 rate; is that correct?

13 A. (Witness Nurse) Yes, but the average of AT&T's statewide
14 toll prices. AT&T charges the same price in the RLEC territory
15 as in the Verizon territory as to CLEC customers so we have one
16 price. This is the average of the statewide prices, and the
17 access rates are obviously specific to each carrier. So this is
18 the average of the RLECs' access rates.

19 Q. What's the average access paid by AT&T in Pennsylvania?

20 A. (Witness Nurse) I'm not -- I don't believe we have the
21 Verizon -- I'm not sure we calculated it. You have to take the
22 weighted average of the CLECs, and I don't think the CLEC volumes
23 are necessarily in the case.

24 Q. So you're saying you don't know?

25 A. (Witness Nurse) There's a lot of numbers in the case. I

1 don't know if AT&T calculated a statewide average. Obviously,
2 it's going to be lower than their other rate.

3 MR. KENNARD: Your Honor, I'm handing out AT&T's
4 Response to OCA 1. I would ask that it be marked as PTA
5 Cross-examination Exhibit Number 2.

6 JUDGE MELILLO: All right. That document may be
7 so marked PTA Cross-examination Exhibit 2. I notice it says PA.
8 We'll change that to PTA.

9 (Whereupon, the document was marked
10 as PTA Cross-examination Exhibit
11 Number 2 for identification.)

12 MS. PAINTER: Your Honor, I would also note that
13 it does contain proprietary information.

14 MR. KENNARD: Yes, it is.

15 JUDGE MELILLO: Thank you.

16 MR. KENNARD: The exhibit is proprietary, but
17 we'll try to keep the cross nonproprietary.

18 MS. PAINTER: That's fine.

19 JUDGE MELILLO: When we have exhibits like that,
20 it's a good idea to mark it proprietary on top of the exhibit. I
21 see that there are some bolded designations, but --

22 MR. KENNARD: Yes, by AT&T.

23 JUDGE MELILLO: -- it makes it easier for the
24 persons responsible for it compiling the record to know that it's
25 proprietary.

1 MR. KENNARD: Very good.

2 BY MR. KENNARD:

3 Q. And, if we go to the second page of this exhibit --

4 A. (Witness Nurse) Yes.

5 Q. -- line -- the fourth line is average intrastate revenue
6 per access minute.

7 A. (Witness Nurse) Yes.

8 Q. And it has the average toll rate charted by AT&T over
9 these years, correct?

10 A. (Witness Nurse) Yes. These are the numbers from the --
11 that make up the green line on the chart.

12 Q. We were just reviewing the chart on 41. This line
13 replicates that color copy that you state was green. It's the
14 one that states AT&T average instate LD price.

15 A. (Witness Nurse) Yes.

16 Q. Does the next line on that show AT&T's average intrastate
17 access expense also on a permanent basis?

18 A. (Witness Nurse) Yes, it does.

19 Q. So, if you go to the 2008 column, do you see the
20 difference between the toll revenue on an average basis --

21 A. (Witness Nurse) Yes.

22 Q. -- the access expense on an average statewide basis?

23 A. (Witness Nurse) Yes.

24 Q. And there is a margin?

25 A. (Witness Nurse) Yes, actually is coming from somewhere

1 other than the RLECs. So the price is upside-down in your RLEC
2 territory, and that's averaged out by other carriers typically in
3 other territories and that's exactly the problem.

4 A. (Witness Oyefusi) That's what we explained in the front of
5 the -- on the first page where we're saying that the only reason
6 that we continue is because we're required to average our toll
7 price. If we're able to calculate what the toll price should be
8 for every caller in the RLEC territory, it would be higher than
9 that blue line. So, because of geographic averaging, we cannot
10 charge a specific toll for every caller that is applied an access
11 rate.

12 A. (Witness Nurse) Right. If you charge a price that looks
13 like toll where access is 11 cents per Pymatuning, we would
14 charge a toll rate that would be 12 or 13 or 14 cents for
15 Pymatuning and for, you know, CenturyLink we would charge six or
16 seven cents as long as their access was five cents. And, for
17 some of the Frontier companies like Breezewood where their access
18 is only a penny, we might charge two or three cents.

19 But, you know, we're advised that we have to have
20 a statewide average toll price. That's prejudicial for us
21 because we have a lot of legacy in the RLEC territories, and it
22 would obviously be more rational if you were starting a toll
23 company today you would not sell toll to Pymatuning whose high
24 access rates would keep you from --

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

1 tried to give these witnesses latitude. All I did was ask them
2 if there's a difference between the two numbers, and now they're
3 stating opinion. They really didn't answer the question.

4 JUDGE MELILLO: I agree. They're going beyond
5 the scope. They can save that for potential redirect. Go ahead,
6 counsel.

7 BY MR. KENNARD:

8 Q. Now, when you say AT&T has a statewide average toll rate,
9 actually AT&T has a series of different toll rates they charge
10 customers in Pennsylvania. There's not one rate that everybody
11 pays. There's a different rate for different customer segments,
12 different volumes. So AT&T does not charge the same toll rate to
13 all customers.

14 A. (Witness Nurse) No. I was quite clear. It's the average
15 of our statewide prices.

16 We have multiple toll products. Each toll
17 product is sold at the same price statewide. So similarly
18 situated customers buy an AT&T toll product. In Pymatuning
19 Telephone where the access is 11 cents, they can buy a service
20 that has a price of five cents and we would lose six cents. An
21 AT&T customer similarly situated in Verizon territory could buy
22 that same five-cent service, and the access would be two cents.
23 So we would have a margin and would be competitive in Verizon's
24 territory.

25 MR. KENNARD: Your Honor, he's doing it again. I

1 understand Pymatuning. Obviously they've got an 11-cent rate. I
2 understand, Judge, that he picked the one with the highest rate.
3 This is all argument. All I asked him was about AT&T's toll
4 rates, not the availability of it or whether their rates are
5 higher because of it. Again, he's restating the case.

6 JUDGE MELILLO: Mr. Nurse and Dr. Oyefusi, please
7 restrict your responses to the question. You'll have an
8 opportunity I suspect at a later time to explain your answers.

9 Go ahead, counsel.

10 BY MR. KENNARD:

11 Q. How many different toll rates does AT&T offer in
12 Pennsylvania?

13 A. (Witness Oyefusi) I don't know the exact number, but I
14 know they have more than one.

15 A. (Witness Nurse) They're in our tariff, each plan, several
16 plans. Many of the plans have multiple rates, day rates, night
17 rates, those sort of things; and each of the plans are in our
18 tariff. There are many.

19 Q. Okay. Now, we looked at the average access rates in
20 Pennsylvania. If AT&T is successful in this case, what is its
21 expectation relative to the dollar value to AT&T of the RLECs --

22 (Mr. Kennard distributing document.)

23 BY MR. KENNARD:

24 Q. -- going to intrastate rates, going to parity with those
25 intrastate rates?

1 JUDGE MELILLO: Do you want this document, Mr.
2 Kennard, marked as PTA --

3 MR. KENNARD: I think so.

4 JUDGE MELILLO: -- Cross-examination Exhibit 3 --

5 MR. KENNARD: Yeah.

6 JUDGE MELILLO: -- because I think we're at
7 Number 3. Very well. We'll mark that document that's just been
8 distributed as PTA Cross-examination Exhibit Number 3.

9 (Whereupon, the document was marked
10 as PTA Cross-examination Exhibit
11 Number 3 for identification.)

12 MS. PAINTER: And, again, I would note, Your
13 Honor, that it contains proprietary information.

14 JUDGE MELILLO: Yes. And, in particular, this
15 document should be marked as proprietary across the face of the
16 document. First page of the document, top part in the title
17 should be stamped or marked proprietary.

18 BY MR. KENNARD:

19 Q. Is AT&T willing to openly state in public what it's
20 expected expense reduction is if successful in this case?

21 A. (Witness Nurse) Our expense reduction would be
22 proportionate to our access traffic paid.

23 Q. Have you calculated that number?

24 A. (Witness Nurse) I'm sure that that number is in the case.
25 It would be proportionate to our access volume.

1 Q. And is it stated in the exhibit marked as PTA
2 Cross-examination Exhibit Number 3?

3 A. (Witness Nurse) It's a little hard to read because this
4 was reduced.

5 Q. Not by me.

6 A. (Witness Nurse) Yes, that looks to be an estimate.

7 Q. All right. And will AT&T publicly state what that
8 estimated number is?

9 A. (Witness Nurse) The number is proprietary, but the number
10 would be proportionate to our market share as with the other
11 carriers.

12 Q. On this chart that's shown on page 2 of what's been marked
13 as PTA Cross-examination Number 3, is that number displayed at
14 the intersection of the last line in the last column?

15 A. (Witness Nurse) Yes, that's the estimate.

16 Q. And is it AT&T's position --

17 MR. KENNARD: I guess I'm asking counsel that the
18 amount of the expense savings that AT&T expects to receive in
19 this case if its position is successful is proprietary?

20 MS. PAINTER: Well, the data, yes, is
21 proprietary.

22 WITNESS NURSE: It's not the rate per minute.
23 It's the volume times the rate.

24 JUDGE MELILLO: Just as a point of clarification,
25 these are annual savings I guess?

1 WITNESS NURSE: Yes.

2 MR. KENNARD: Thank you, Judge. That's all we
3 have. We'd move for the admission of PTA Cross-examination
4 Exhibits 1 through 3 into the record.

5 JUDGE MELILLO: Any objection?

6 MS. PAINTER: No, Your Honor.

7 JUDGE MELILLO: All right. Hearing no objection,
8 they're admitted.

9 (Whereupon, the documents marked as
10 PTA Cross-examination Exhibits
11 Numbers 1, 2, and 3 were received in
12 evidence.)

13 JUDGE MELILLO: At this point it's 12:30. Let's
14 go off the record for a moment.

15 (Whereupon, a brief discussion was
16 held off the record.)

17 JUDGE MELILLO: We'll be back from the lunch
18 break at 1:35 p.m.

19 (Whereupon, the hearing was recessed,
20 to be reconvened at 1:35 p.m.)

21 JUDGE MELILLO: It's now time for
22 cross-examination by CenturyLink.

23 MS. BENEDEK: Yes. Thank you, Your Honor.

24 BY MS. BENEDEK:

25 Q. Mr. Nurse and Dr. Oyefusi, good afternoon. Let's first

1 turn our attention to what your counsel has sent out or
2 distributed earlier. It's page 13 to the Rejoinder Testimony,
3 and it's just the page that had the yellow line graph with yellow
4 line and blue line penetration rates.

5 A. (Witness Nurse) Yes.

6 Q. It's page 13 of your Rejoinder. And my understanding is
7 that page 12 of your Rejoinder, that second point there,
8 accompanies the graph; is that a correct assumption?

9 A. (Witness Oyefusi) What did you say?

10 Q. Is the language on page 12 of the Rejoinder, it starts out
11 with second there is no actual evidence, does that paragraph
12 there accompany the graph?

13 A. (Witness Oyefusi) Yes.

14 A. (Witness Nurse) As well as the -- I think the question
15 starts back on the previous page, page 11, line 13.

16 Q. And what you've done in this graph on page 13, line --
17 page 13, the top of page 13 is, you attempted to demonstrate that
18 the FCC's penetration rates have pretty much remained the same
19 for the time period reflected on that, correct?

20 A. (Witness Nurse) But the -- without the --

21 Q. Yes or no?

22 A. (Witness Nurse) Well, they're not the FCC penetration
23 rates. But the telephone penetration rate that's calculated by
24 the FCC has been stable over this 20-year period while the access
25 rate has declined substantially.

1 Q. Did you analyze whether the states that are in that
2 analysis have explicit funds such as state USF as part of your
3 chart or your analysis?

4 A. (Witness Nurse) This includes all states, but this is what
5 it is. It doesn't look to state USF funds or federal USF funds
6 or that. It simply looks at what's the penetration, telephone
7 penetration rate been over a sustained period of time and what
8 happened to interstate access rates which went down, you know,
9 eight, nine full; and it suggests that there's not a relationship
10 between these access rates and penetration rates.

11 Q. All right. So the answer to the question is no, it does
12 not --

13 A. (Witness Oyefusi) Well, the state counterpart of that
14 study is the second study that you talked about this morning
15 because what we were doing when we saw this FCC penetration --

16 A. (Witness Nurse) Hold on.

17 JUDGE MELILLO: The question was, does the chart
18 on page 13 reflect Universal Service support? Does the graph
19 reflect it?

20 WITNESS OYEFUSI: Yes. Yes, because the FCC
21 access reform included the rebalancing of the interstate access
22 reduction which would have included increases to switched. It
23 would have included all the use -- all the high cost fund that
24 the FCC developed to actually rebalance whatever was taken out of
25 interstate access. What we saw there was that, despite all of

1 that there was no reaction. Nothing happened to these.

2 BY MS. BENEDEK:

3 Q. My question, Dr. Oyefusi, wasn't whether it accounted for
4 -- this chart accounted for federal USF. My question was whether
5 this chart and its analysis included state USF explicit funds.

6 A. (Witness Oyefusi) No, it did not. And there was no reason
7 why it would have. This was looking at the national penetration.
8 The state penetration study would have done that.

9 A. (Witness Nurse) Right. And this is interstate access, so
10 it wouldn't make sense for me to look at state USF funds when
11 looking at interstate access.

12 Q. Right. Thank you. Can we turn to your Rejoinder
13 Testimony at page 28, specifically lines 12 through 14? He
14 cross-examination will largely follow along that page there. Do
15 you have that reference?

16 A. (Witness Nurse) Page 28?

17 A. (Witness Oyefusi) Are we still on rejoinder?

18 Q. Page 28 of the Rejoinder, please.

19 A. (Witness Oyefusi) Okay.

20 Q. Now, what do you mean by social networking? It's in the
21 parenthetical on line 12.

22 A. (Witness Oyefusi) Okay. Facebook.

23 Q. Texting?

24 A. (Witness Oyefusi) Texting, mostly Facebook, Twitter.

25 Q. Okay. Are affiliates of AT&T providing social networking?

1 A. (Witness Nurse) Yes, and affiliates of AT&T provide all
2 these other various services.

3 Q. The wireless affiliate?

4 A. (Witness Nurse) All of the services listed there.

5 Q. Does AT&T or an affiliate of AT&T have a CLEC that
6 operates everywhere in Pennsylvania?

7 A. (Witness Nurse) No. I don't believe the AT&T CLECs are
8 certificated in all the service territories.

9 Q. Does it have any plans to?

10 A. (Witness Nurse) I don't believe so.

11 Q. Do you know offhand relative to the texting revenues how
12 much texting revenues are attributable or are there in
13 Pennsylvania by AT&T? We had asked a DR, and I can point to the
14 DR; but it's not that clear on the DR response.

15 A. (Witness Nurse) Can you show me the DR.

16 Q. I can. I will show your counsel first and the Judge.

17 MS. BENEDEK: Your Honor, may I approach the
18 witness?

19 JUDGE MELILLO: Yes, you may.

20 BY MS. BENEDEK:

21 Q. This is my only copy. I'm handing you a copy. Please
22 take a moment. I can repeat my question if need be.

23 A. (Witness Nurse) I'm sorry. Go ahead.

24 Q. My question is, how much revenue does AT&T or any
25 affiliate thereof garner from texting services, social networking

1 websites relative to PA?

2 A. (Witness Nurse) I'm sorry. The question is how much
3 revenue did AT&T or its affiliates garner from social websites?

4 Q. Or texting. What do you offer relative --

5 A. (Witness Nurse) Okay. AT&T Communications and the TCG
6 entities don't offer texting.

7 Q. Right. I said any affiliate of these parties, an
8 affiliate such as AT&T Mobility.

9 A. (Witness Nurse) The answer is clear here that it says AT&T
10 Mobility didn't tell us or doesn't keep their records that way.

11 Q. Right. I know you struck the footnote where you have the
12 reference to AT&T Mobility. I guess I'm asking you to continue
13 to show in your testimony, and I'd like to know how much money
14 AT&T Mobility -- I'm presuming that's the entity offering the
15 texting and wireless services in PA -- how much money they're
16 garnering from texting and social networking services?

17 A. (Witness Nurse) I think the answer -- I know the answer to
18 your question here is that AT&T Mobility is not a party to the
19 proceeding. They don't file Commission reports with the
20 Commission, and they have informed AT&T who is a party in this
21 case they don't organize or obtain its financial records in
22 accordance with the rules of the Commission.

23 Q. What about national? Do you report national revenues from
24 texting services?

25 A. (Witness Nurse) We provided the financial available -- the

1 publicly available information on Mobility on the next page.

2 Q. And the Mobility information provided doesn't isolate how
3 much revenue is garnered on a national basis by AT&T Mobility
4 relative to texting services?

5 A. (Witness Nurse) I don't see it there.

6 Q. I'd like to make that an on-the-record data request.

7 MS. PAINTER: Your Honor, I would object to that.
8 They already requested the information and we provided a response
9 and --

10 JUDGE MELILLO: I'm sorry. I'm having trouble
11 hearing you.

12 MS. PAINTER: I'm sorry. Their data request
13 specifically requested that, and the response was AT&T Mobility
14 does not keep its records in that way. In addition, Your Honor
15 required the three entities that are parties to this case to go
16 to AT&T Mobility and obtain the data. We went to AT&T Mobility,
17 and they said they don't have the data in that way. There is a
18 response to this data request. There is no need for an
19 on-the-record data request.

20 If she'd like to enter it into the record, that's
21 fine; but she didn't move to compel. They asked for texting
22 revenues in the data request.

23 MS. BENEDEK: In the data request relative to the
24 testimony that was previously filed. We now have rejoinder
25 testimony where we again assert -- AT&T continues to assert that

1 the traditional long distance carriers compete with these other
2 providers. We have an admission that they were an affiliate
3 thereof providing these things, and we have an allegation that
4 the competitive -- that there is an anticompetitive aspect of the
5 pricing of access services in PA.

6 At some point if they're earning a buch amount
7 of revenues associated with their affiliate's provisions of this,
8 either texting or social networking or VOIP or wireless
9 alternative, I think that's fair game for completion of the
10 record and an understanding of what their claim anticompetitive
11 means. It is again rejoinder, so we did ask DRs, thought it was
12 done. It's coming up again and I'm asking as this is our
13 opportunity at this time.

14 If they don't have data specific to PA, I'll take
15 national data. They have to have some understanding of what
16 money they have coming in associated with texting services.

17 JUDGE MELILLO: Is the problem that if the
18 revenue with respect to the texting isn't segregated from some
19 other entertainment category or what's the problem?

20 MS. PAINTER: Well, the problem is, first of all,
21 you're asking somebody who doesn't represent AT&T Mobility. I
22 don't represent them.

23 JUDGE MELILLO: I understand that and you went
24 through that already.

25 MS. PAINTER: Exactly. A data request was asked.

1 A response to was provided, and there was never any type of a
2 motion to compel that in any way the response was inadequate. We
3 provided what information we had that was available regarding
4 texting; and it appears that Ms. Benedek is now saying, well,
5 there's more information -- we've referenced the fact that there
6 are texting providers and, therefore, somehow that renews this
7 data request and that now the data request is inadequate.

8 She's relying on similar language that she relied
9 on to ask the question in the first place. It's not any
10 different.

11 JUDGE MELILLO: It's very difficult to make a
12 ruling on this one. I've not seen the discovery. I don't know
13 whether there was a question about whether there was a continuing
14 responsibility to provide an answer to discovery if there's
15 additional information provided. I don't know specifically
16 whether the rejoinder testimony now somehow resurrects the issue.
17 It would seem that, if the discovery was asked at one point,
18 there is a continuing obligation to respond if you have
19 additional information. That would be the question.

20 MS. BENEDEK: Well, their answer is, they're not
21 us. They're outside of this world we've described as our
22 parties, and they get to decide who a party is so that's not us.
23 It's just frustrating when you get a piece of rejoinder testimony
24 where they're raising costs and they're saying, look, we are
25 disadvantaged. We meaning -- they define traditional long

1 distance carriers which now we have a tradition that it's not --
2 you know, it's all affiliates of those entities and they are
3 largely immune from any cost study obligations.

4 If there are any revenues relative to one aspect
5 of what they complain is an unlevel playing field, I think we
6 have a right to get them. I'm not saying -- if the information
7 is available on a national basis, fine. I'll take it as I can
8 get it.

9 JUDGE MELILLO: How difficult would it be to
10 secure this information, Ms. Painter?

11 MS. PAINTER: Well, it would be very difficult
12 because AT&T Mobility has -- it's in the response. AT&T Mobility
13 does not maintain accounting and financial records at the state
14 level or in the categories set forth in this request, and AT&T
15 Mobility did not agree to go and somehow extract it and get the
16 data in the format requested. The entities went to AT&T
17 Mobility, informed them of this request; and this was the
18 response that was given back.

19 The response is not going to be different. It's
20 asking the same question and asking now for us to go back to AT&T
21 Mobility to get an additional response.

22 JUDGE MELILLO: So you're saying basically as I
23 said before that the information is not maintained in the format
24 that's requested. It's not separated out.

25 MS. PAINTER: Yes.

1 JUDGE MELILLO: And it's apparently not available
2 on a state-by-state basis.

3 MS. PAINTER: Correct.

4 JUDGE MELILLO: Do you have anything national? I
5 had required discovery with respect to a lot of revenue sources
6 because there's been so much in testimony about the potential
7 cross-subsidization and competitiveness, and so all that was fair
8 game. Anything that we possibly could allow we allowed, right?
9 Do you agree?

10 MR. KENNARD: Right.

11 MS. BENEDEK: We agree.

12 JUDGE MELILLO: All right. So that has to be
13 supplied in some way. Now, on-the-record data requests, I think
14 there's a ten-day rule. Today is the 14th. Ten days is the 24th
15 and that's a Saturday.

16 MS. PAINTER: Your Honor?

17 JUDGE MELILLO: We're getting really tight here.
18 We have main briefs due May 13th.

19 MS. PAINTER: I'm trying to figure out what
20 additional Ms. Benedek thinks that she's going to get. We went
21 back to AT&T -- maybe you need to see the response. She's asking
22 the same question. The question has been answered. There was
23 never a motion to compel that it was in any way inadequate.

24 JUDGE MELILLO: Well, there were many motions to
25 compel. I think there were about nine of them, and I made four

1 separate rulings.

2 MS. PAINTER: I understand and this was in
3 response to one of them. We already went to AT&T Mobility and
4 asked for the data, and we provided -- and texting, which
5 included texting which is what Ms. Benedek is requesting here.

6 MS. BENEDEK: May I ask a question?

7 JUDGE MELILLO: Go ahead.

8 MS. BENEDEK: So is it your position that AT&T
9 does not maintain or identify texting revenues -- AT&T Mobility
10 does not maintain or identify texting revenues it receives?

11 MS. PAINTER: It is my position that the AT&T
12 entities went to AT&T Mobility as Your Honor requested and asked
13 for the data and showed them the data response, and they said we
14 do not maintain our records in that way. We do not have that
15 data.

16 MS. BENEDEK: I am not asking about the data
17 response. I am now asking whether AT&T --

18 MS. PAINTER: I do not represent AT&T Mobility.
19 I do not know the answer to that.

20 MS. BENEDEK: Can we ask them? I renew the
21 on-the-record data request. Does AT&T maintain or identify how
22 much revenues it receives from texting services it provides?
23 National is fine.

24 JUDGE MELILLO: I think the answer is that they
25 don't maintain it.

1 MS. BENEDEK: We don't know. They went to them
2 and asked them an interrogatory question.

3 MS. PAINTER: That's what was asked on the
4 data --

5 MS. BENEDEK: I can ask an on-the-record data
6 request. If the answer is still the same that they don't isolate
7 or identify texting revenues, fine.

8 MS. PAINTER: I want to be clear that she's not
9 asking an on-the-record data request to any of the parties in
10 this case. She's asking it of a party that is not in this case.

11 MS. BENEDEK: By design, self-inflicted.

12 MS. PAINTER: Well, you could have moved --

13 If she thought that they should be in, Your
14 Honor, AT&T Mobility should be in, she certainly could have moved
15 early on to introduce them.

16 JUDGE MELILLO: All right. Go ahead and ask your
17 on-the-record data request. Ask the question, see what the
18 response is, and go from there. Let's get it on the record.

19 BY MS. BENEDEK:

20 Q. Mr. Nurse or Dr. Oyefusi, does AT&T maintain or identify
21 their texting revenues that they receive on a national basis or a
22 separate state basis, yes or no?

23 A. (Witness Nurse) I don't know and I have no reason to
24 believe that the answer would be any different from the response
25 we provided in February.

1 MS. BENEDEK: I would like to make that
2 on-the-record data request. If answer is still the same, I
3 prefer going that way. They do not maintain or identify what
4 revenues they get from texting services.

5 JUDGE MELILLO: Well, now I'm confused. I don't
6 see how that's going to help. If you have a response on the
7 record, you can rely on that. That's an under-oath response.

8 MS. BENEDEK: Okay.

9 JUDGE MELILLO: Please move on.

10 MS. BENEDEK: We'll move on. I'd like to have
11 marked for identification purposes Century Tel, CTL -- we're
12 using the designation CTL -- Cross Exhibit 1.

13 JUDGE MELILLO: That will be so marked CTL
14 Cross-examination Exhibit Number 1.

15 (Whereupon, the document was marked
16 as CTL Cross-examination Exhibit
17 Number 1 for identification.)

18 MS. BENEDEK: It's a nonconfidential exhibit.

19 BY MS. BENEDEK:

20 Q. Mr. Nurse and Dr. Oyefusi, have you seen this document?

21 A. (Witness Nurse) Do I see it? Yes, I see it.

22 Q. Have you seen it before?

23 A. (Witness Nurse) In 2005 I don't know if I saw this one at
24 the time. I probably have seen this one or similar ones since.

25 A. (Witness Oyefusi) I'm not sure I did.

1 MS. BENEDEK: I'd like the record to reflect that
2 this is the Application filed February 28th, 2005, by AT&T Corp.
3 in the Joint Merger Application with SBC Communications, Inc. It
4 does not have the attachments so it is only the Application
5 itself.

6 BY MS. BENEDEK:

7 Q. Please turn to paragraph 26. It's page 11 of that
8 document. Take a moment to read those two sentences listed in
9 paragraph 26.

10 A. (Witness Nurse) Okay.

11 Q. May I proceed with the question?

12 A. (Witness Oyefusi) What was the question?

13 Q. Are you ready?

14 A. (Witness Nurse) Yeah.

15 Q. Why doesn't AT&T pursue mass market or the consumer market
16 for either local or long distance wireline telephony?

17 A. (Witness Nurse) They stand alone, mass market or consumer
18 market basis for a number of reasons. This wasn't economically
19 viable competitively going forward.

20 Q. Where in the Commonwealth of Pennsylvania is AT&T today a
21 carrier of last resort?

22 A. (Witness Nurse) I don't know that anybody is a carrier of
23 last resort in Pennsylvania today. AT&T is a carrier of last
24 resort to the same extent.

25 Q. We'll come back to that in a minute. Does AT&T have plans

1 to compete everywhere in Pennsylvania for all residential, all
2 business, all types of customers everywhere in PA?

3 A. (Witness Nurse) AT&T holds itself out as offering long
4 distance to carriers at every household in Pennsylvania today.
5 Any customer who calls us for service we'll take their order.

6 Q. For long distance?

7 A. (Witness Nurse) Yes.

8 Q. In terms of mass market or local customers, that answer
9 changes, correct?

10 A. (Witness Nurse) No, long distance is a mass market
11 service.

12 A. (Witness Oyefusi) And AT&T is an ILEC in Pennsylvania.

13 Q. AT&T is an ILEC?

14 A. (Witness Oyefusi) Correct.

15 Q. Now, you said that you don't think any other carrier has
16 caller -- provider of last resort obligations in PA. Who do you
17 mean?

18 A. (Witness Nurse) We asked you and the PTA if you could cite
19 any Pennsylvania statute, rule, or order that established a
20 carrier of last resort obligation; and you said you didn't find
21 any.

22 MS. BENEDEK: I'd like to have marked as CTL
23 Cross-examination Exhibit 2.

24 JUDGE MELILLO: That document may be so marked.

25 (Whereupon, the document was marked

1 as CTL Cross-examination Exhibit
2 Number 2 for identification.)

3 BY MS. BENEDEK:

4 Q. Can you turn to page 4 of this document? Do you have the
5 reference?

6 A. (Witness Nurse) Page 4, yes.

7 Q. Okay. Is it your position -- let me ask you again. Do
8 you think any carrier, ILEC in Pennsylvania has the duty to serve
9 as defined at page 4, item number 1?

10 A. (Witness Nurse) We asked you and you told us there was no
11 authority that required you or any other carrier to do so.

12 Q. I'm asking you whether you still maintain that no carrier
13 in Pennsylvania has carrier of last resort obligations based on
14 the particular -- based on the definition of number 1?

15 A. (Witness Oyefusi) This document really is not any
16 authority that requires any company in Pennsylvania to provide
17 anything. This is just a paper. So are you asking me to base an
18 answer on somebody's opinion about COLR?

19 Q. I am. That's exactly what I'm asking you. Your counsel
20 can argue the merits of whether there is a legality to it or what
21 it is in PA. You're on the stand. This is my opportunity. I am
22 most certainly asking you to give a definition of item number 1
23 there whether you still believe that no carrier in Pennsylvania
24 has this obligation.

25 A. (Witness Nurse) What is this obligation? If this

1 obligation means is there a statutory COLR obligation in
2 Pennsylvania, we didn't find one. We asked you and PTA, and you
3 said you didn't know of one.

4 Q. No.

5 A. (Witness Nurse) If you mean is there a obligation by
6 operation of rule, we asked you and PTA. We couldn't find one.
7 You couldn't find one. If it was by Commission Order, we asked
8 you and we asked the PTA is there an order that requires you to
9 be the carrier of last resort; and you said you couldn't find
10 one. We didn't find one. So, if that's that you mean by carrier
11 of last resort --

12 Q. No.

13 A. (Witness Nurse) -- you couldn't find it. We couldn't find
14 it either. Now, if there's another -- if there's a duty, where
15 does the duty come from?

16 Q. I am not --

17 MS. BENEDEK: Your Honor, I'm asking a simple
18 question from him. I am not asking for a dissertation of
19 Pennsylvania law. I presume that he is not an attorney. Maybe I
20 should ask him otherwise. I am asking whether this number 1, as
21 defined here, does he believe or does Dr. Oyefusi believe that
22 there is no carrier that has the words -- the duties that are
23 expressed in the words on this page under the law.

24 JUDGE MELILLO: Under B.1?

25 MS. BENEDEK: Right. They still maintain that,

1 given this definition, that duty is not ascribed to any entity,
2 any carrier in PA. I'd like to know that.

3 JUDGE MELILLO: Yes, Ms. Painter.

4 MS. PAINTER: And she got the answer, Your Honor.
5 They said that, in order for this to be a requirement in
6 Pennsylvania, there has to be a rule, an order, or some type of
7 Commission mandate; and they have not seen it. So I guess she
8 could go run through it, and it would be the same answer no. But
9 they have responded to the question because she's asking, does
10 this exist in Pennsylvania as a COLR obligation; and they have
11 responded.

12 MS. BENEDEK: Your Honor, that's not what I'm
13 asking. Do they believe that it's not whether there is a COLR
14 obligation as defined by statute or not or defined or derived
15 from statute or arising from a rule or a regulation or a statute
16 or an order. My question is whether they believe that, given the
17 words on the page at number 1, there is any carrier here that has
18 the duty to serve as defined in point number 1 on page 4.

19 JUDGE MELILLO: Essentially you're talking about
20 perhaps an unwritten understanding, a regulatory compact so to
21 speak, between perhaps the Commission and local exchange
22 carriers, legacy carriers and that's fine. Go ahead and ask it.
23 I think I understand where you're coming from; and I understand
24 their response, too, that they couldn't find any statute, any
25 regulation, or any order.

1 BY MS. BENEDEK:

2 Q. I can make it real simple. Do you think my client,
3 CenturyLink, has the duty to serve as defined by point number 1
4 on page 4?

5 A. (Witness Nurse) I think that all carriers including your
6 client have the duty to provide their tariffed services; and, if
7 you want to stop providing your tariffed services, you have to
8 file with the Commission and Commission has migration and service
9 withdrawal regulations. So, if you have a tariff now that says
10 you'll offer POTS service under these terms and conditions, those
11 apply to you today. If you want to pull them back, you have to
12 get approval from the Commission as I have to get approval to
13 pull back long distance service from -- and do a service
14 withdrawal and go through the same process with the Commission.

15 So your obligations are what your tariff
16 obligations are I think. If Embarq went and said we're going to
17 abandon service in these three towns and pulled them out of their
18 tariff, I don't think the Commission would receive that petition
19 warmly.

20 Q. Mr. Nurse, isn't that item 3, not number 1? Number 1
21 states extend retail voice service to any potential company
22 within its franchised area on request.

23 A. (Witness Oyefusi) Well, that holds for any other carrier
24 as well, any carrier that has a certificate with the Commission
25 to offer services in Pennsylvania. So, if somebody calls that

1 carrier to request service, that carrier has to provide service
2 to the customer.

3 A. (Witness Nurse) I mean, AT&T Long Distance I would say
4 under your contract has this duty. If any customer in
5 Pennsylvania calls and says I want to use AT&T for my long
6 distance, I have to provide that. Any customer who dials a long
7 distance number in Pennsylvania to another number in
8 Pennsylvania, I have to complete that call.

9 Q. AT&T has a franchise area in PA?

10 A. (Witness Nurse) Yeah, I would say that we're franchised
11 for long distance statewide.

12 Q. And then you made a reference earlier, Mr. Nurse, to
13 getting approval at exit and certification. The document or
14 portion of the document that I handed out that's been marked as
15 CTL Cross-examination --

16 A. (Witness Nurse) I'm sorry. Can you repeat that? You're
17 leaning too far back. I can't hear you.

18 Q. Sure. When you said you have to get approval to exit the
19 market, do you mean you have to get a certificate of public
20 convenience to get approval of a merger and to modify business
21 plans?

22 A. (Witness Nurse) No, I wasn't referring to that. I was
23 referring to our SBC long distance affiliate, and we withdraw
24 that service and customers. So part of that process was we had
25 to do a very detailed filing with the Commission. We had to do

1 an exit plan for how the customers would be notified, how the
2 customer deposits would be returned if any, how the customer
3 would be migrated, what would happen to numbering resources, you
4 know, how annual reports would still be filed and assessments
5 would still be paid after the operation had went out.

6 We had to file status reports as we went along.
7 It was a very involved process with very expensive legal fees for
8 the relatively small amount of what was saved.

9 Q. Does AT&T Long Distance or entities that provide long
10 distance, do they have to provide Lifeline?

11 A. (Witness Oyefusi) Lifeline applies to local exchange
12 services. So the AT&T entities you're referring to provide long
13 distance service. So, to the extent that every Lifeline customer
14 already has a local provider, that Lifeline customer if they want
15 to will be allowed to, under their Lifeline plan, will be allowed
16 to subscribe to a long distance provider. If they select AT&T,
17 AT&T has to extend that service as a long distance provider.

18 Q. Does AT&T Long Distance undertake any line extensions in
19 Pennsylvania for specific customers?

20 A. (Witness Oyefusi) That type of requirement also applies to
21 the local exchange carrier. So, if there's an AT&T local
22 exchange carrier being competitive in Pennsylvania, then that
23 AT&T tech would have to provide local service to any customer
24 according to the certificate granted to it by the Commission.

25 A. (Witness Nurse) And that would apply to local carriers

1 whether they're ILECs or CLECs.

2 Q. Do you have a citation for that?

3 A. (Witness Nurse) No. It's a -- it's who has the line who
4 does the line extension. It's the local line provider. So TCG
5 may do a line extension to reach an Enterprise customer in
6 Philadelphia or Pittsburgh or do a line extension to a new
7 location to serve customers from there. So CLECs and ILECs in my
8 experience do line extensions, yes.

9 Q. Yes, they do. And when was the last time TCG did a line
10 extension for a residential customer?

11 A. (Witness Nurse) TCG doesn't serve residential customers.

12 Q. One follow-up question and I think I'm done actually. Can
13 you turn to your response at AT&T 4-23? If you don't have that
14 available, I can. It's a confidential answer. I'd like to avoid
15 getting into confidential.

16 A. (Witness Nurse) I'm sorry. I couldn't hear you.

17 Q. 4 -- AT&T's Response to 4-23. I can provide that.

18 MS. BENEDEK: May I approach the witness, Your
19 Honor?

20 JUDGE MELILLO: Yes, you may.

21 BY MS. BENEDEK:

22 Q. I'll give you a copy. It's a confidential document. I
23 don't want to get into the confidential information.

24 A. (Witness Nurse) Yes.

25 Q. Now, when you say all consumer lines -- again, it's a

1 confidential number -- do you mean -- well, back up. Typically,
2 let's say a business or a home that has two lines. Have you
3 counted each line or did you count -- did you do the consumer
4 line total there based on both lines going into the premise?

5 A. (Witness Nurse) The response says lines, so I assume that
6 this is lines. If there is one line, it's one line. If there's
7 two lines, it counts both lines.

8 Q. It counts both lines. So it can be going to the same
9 premise? It can be ten lines going to the same premise?

10 A. (Witness Nurse) It's hard to fathom that a consumer
11 premises would have ten lines. That would be a business, and
12 second lines are substantially down because of broadband
13 connections and satellite. So pretty much the consumer market is
14 one line per consumer.

15 A. (Witness Oyefusi) These two blue lines there would allow
16 AT&T to be the long distance carrier on that line.

17 Q. Right. And so the customer -- if you have a customer that
18 has three lines and they picked AT&T and they're being charged
19 the instate connection fee, they're being charged that fee for
20 all three lines, right? Am I right on that point?

21 A. (Witness Oyefusi) Yeah. The line -- I mean, the way the
22 record is maintained, the lines picked to AT&T, the record shows
23 the line picked to AT&T; but I wouldn't know where that
24 hypothetical really exists where the household that would have
25 three lines for AT&T. But, if that exists, that is correct.

1 Q. Okay. And do you know -- and I don't want to reveal your
2 number -- but do you know where in Pennsylvania the number of
3 lines are located? Are they in my client's territory? Are they
4 in Verizon's territory? Do you know?

5 *** BEGIN PROPRIETARY RECORD ***

6 (Whereupon, the following pages,
7 181 through 182, were sealed and
8 bound separately.)

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1 BY MS. BENEDEK:

2 Q. And so do you know where those customers are situated in
3 Pennsylvania?

4 A. (Witness Nurse) They're statewide.

5 Q. They're statewide. Do you know whether a majority are in
6 my client's territory or Verizon? Do you have any idea?

7 A. (Witness Nurse) I did not study it, you know, over the
8 30-some-odd companies where these are spread. I suspect Verizon.
9 You may have more in Verizon because Verizon has more lines.

10 MS. BENEDEK: I have no further questions, Your
11 Honor.

12 JUDGE MELILLO: Very well.

13 MS. BENEDEK: And I would like to move for the
14 admission of CTL Cross Exhibits 1 and 2.

15 JUDGE MELILLO: Any objection?

16 MS. PAINTER: No objection, Your Honor.

17 JUDGE MELILLO: Hearing none, they're admitted.

18 (Whereupon, the documents marked as
19 CTL Cross-examination Exhibits
20 Numbers 1 and 2 were received in
21 evidence.)

22 JUDGE MELILLO: The last party I have on the list
23 for cross-examination is the Office of the Consumer Advocate.

24 MR. CHESKIS: Yes, Your Honor.

25 JUDGE MELILLO: Please proceed.

1 MR. CHESKIS: Thank you.

2 BY MR. CHESKIS:

3 Q. Good afternoon. My name is Joel Cheskis with the Office
4 of Consumer Advocate. My first question for you I don't have a
5 specific reference to your testimony, but it was -- I would
6 appreciate if you could clarify for me that, when you originally
7 filed your testimony back in July, I think part of the -- correct
8 me if I'm wrong -- part of the proposal was that, if the AT&T
9 complaint is granted that the company would then reduce what's
10 called the instate connection fee in Pennsylvania; is that
11 correct?

12 A. (Witness Oyefusi) Yes. We stated that, if the intrastate
13 rates of all the carriers are reduced to the interstate level, we
14 will reduce the instate connection fee.

15 Q. And, in light of the proposal presented in your Panel
16 Rebuttal Testimony, is that offer to reduce or eliminate the
17 instate connection fee in Pennsylvania still part of that?

18 A. (Witness Nurse) Yes, it is.

19 MR. CHESKIS: Your Honor, I'd like to have marked
20 as OCA Cross-examination Exhibit Number 1 AT&T's Answer to Embarq
21 Discovery 1.23, and I'll note it also contains information that
22 is proprietary; but I have no intention of getting into the
23 specific number. May I approach the witness?

24 JUDGE MELILLO: Yes, you may and that exhibit may
25 be marked OCA Cross-examination Exhibit Number 1.

1 (Whereupon, the document was marked
2 as OCA Cross-examination Exhibit
3 Number 1 for identification.)

4 BY MR. CHESKIS:

5 Q. I have just provided a copy of AT&T's response to Embarq
6 discovery 1.23; is that correct?

7 A. (Witness Nurse) Yes.

8 Q. And does your answer to that discovery question accurately
9 reflect the revenue received by AT&T over the past six years from
10 the instate connection fee?

11 A. (Witness Nurse) Yes, In think that's right.

12 Q. In Pennsylvania?

13 A. (Witness Nurse) In Pennsylvania, yes.

14 Q. I'd next like to turn to your Rejoinder Testimony dated
15 April 8th, 2010, and specifically page 4.

16 A. (Witness Nurse) Yes.

17 Q. At lines 8 to 9, it states in 19 states where access rates
18 have been reduced, AT&T's average toll rates have come down by
19 more than its access reductions, do you see that?

20 A. (Witness Nurse) Yes, and the reference to footnote 6
21 Attachment H and Attachment 8.

22 Q. And is AT&T willing to make the same commitment in this
23 proceeding that its average toll rates will come down by more
24 than the access reductions that the Commission here may direct as
25 a result of this proceeding?

1 A. (Witness Nurse) I expect that the market reaction will be
2 to force us to lower the rates at least as much as the access
3 rates have come down, and our experience across 19 states and
4 across five years as well as the recent experience in New Jersey
5 is that that's the way the market operates.

6 Q. Are you aware if any of the incumbent telephone companies
7 in those 19 states have network modernization obligations such as
8 RLEC's in Pennsylvania do?

9 A. (Witness Nurse) There are various broadband initiatives of
10 greater or lesser degree across the states. Pennsylvania tends
11 to be at the forefront of that although I believe most of the PTA
12 companies except Windstream and CenturyLink have achieved their
13 broadband rollout.

14 Q. Thank you. If you could turn next to page 9 of your
15 Rejoinder Testimony and specifically footnote 10.

16 A. (Witness Nurse) Yes.

17 Q. There you claim that the OCA's claim that, under the OCA
18 proposal, the size of the Pennsylvania Universal Service would
19 decrease, speculates about whether Verizon would increase its
20 retail rates. Do you see that?

21 A. (Witness Nurse) Yes.

22 Q. Are you aware that, since Act 183 was implemented and the
23 productivity inflation offset was reduced, that Verizon has
24 implemented virtually all if not certainly a significant portion
25 of its allowed revenue increase pursuant to its annual Chapter 30

1 filings?

2 A. (Witness Nurse) I recall that, under Chapter 30 which was
3 modified by Act 183, that there's no productivity offsets, so
4 inflation drives up their ability to increase their rate for
5 protected services whether it be access or local and that they
6 increase their local rates by the rate of inflation roughly. If
7 Verizon is increasing their price by the rate of inflation,
8 that's evidence that local exchange carriers are able to increase
9 their prices at least by the rate of inflation.

10 Q. Thank you very much.

11 MR. CHESKIS: Your Honor, I'd like to have next
12 marked as OCA Cross-examination Exhibit Number 2.

13 JUDGE MELILLO: Yes. That document that you're
14 distributing may be so marked as OCA Cross-examination Exhibit
15 Number 2.

16 (Whereupon, the document was marked
17 as OCA Cross-examination Exhibit
18 Number 2 for identification.)

19 MR. CHESKIS: And I'll note again that there is
20 some proprietary material contained in discovery these responses;
21 but again I'll not be talking about specific numbers, and I see
22 no need at this point to go into the proprietary record.

23 JUDGE MELILLO: All right.

24 MR. CHESKIS: I also will note that Mr. Kennard
25 beat me to the punch on one of these because he's included as one

1 of the PTA Cross-examination Exhibits one of the answers that
2 I've included in this Cross-examination Exhibit. So I apologize
3 for the additional couple of pages.

4 BY MR. CHESKIS:

5 Q. Have you had a chance to look at what now has been
6 identified as OCA Cross-examination Exhibit Number 2?

7 A. (Witness Nurse) Okay.

8 JUDGE MELILLO: That's a poplar response I guess,
9 Joel.

10 WITNESS NURSE: I guess we're looking at OCA item
11 3 here.

12 BY MR. CHESKIS:

13 Q. And the last one is the AT&T response to Embargo Number 1.
14 There's three separate interrogatories included.

15 A. (Witness Nurse) Yes.

16 Q. Is it correct, for example, looking at the question to OCA
17 number 1 that the question asked for data broken into several
18 categories such as residential and business; but then the answers
19 are provided on a company-wide basis?

20 A. (Witness Nurse) Generally, for example, our access bill
21 from the LECs doesn't separate out -- you know, some portion of
22 your access bill is for residential, some is for small business,
23 some is for large business. That's the way these expenses get
24 billed.

25 Q. And would you agree with me that the question in number 3

1 also asks for the answer to be provided in various categories but
2 that the answer is provided on an aggregated basis?

3 A. (Witness Oyefusi) The first concept is that the record is
4 not kept in a segregated fashion between resident and business,
5 so there's no separate -- there's no way to separate between
6 business and residents. The record is kept as total revenues for
7 the company, so there's no way to go back and look at trying to
8 separate residential and business.

9 A. (Witness Nurse) And the access expense is not billed to us
10 in the -- they don't bill access by residence and access by
11 business. They bill us according to aggregate of access.

12 MR. CHESKIS: Thank you very much, Your Honor. I
13 have no further questions for these witnesses. I'd like to move
14 for the admission of OCA Cross-examination Exhibits Number 1 and
15 2.

16 JUDGE MELILLO: Any objection?

17 MS. PAINTER: No objection, Your Honor.

18 JUDGE MELILLO: All right. Those documents are
19 admitted.

20 (Whereupon, the documents marked as
21 OCA Cross-Examination Exhibits
22 Numbers 1 and 2 were received in
23 evidence.)

24 MR. KENNARD: Your Honor, I do have one follow-up
25 question.

FORM 2

1 JUDGE MELILLO: Yes. I have a couple questions
2 myself. Go ahead.

3 FURTHER CROSS-EXAMINATION

4 BY MR. KENNARD:

5 Q. Mr. Nurse, previously you've testified that PTA cannot
6 identify the source of their claimed carrier of last resort
7 obligation in Pennsylvania.

8 A. (Witness Nurse) Yes.

9 Q. Were you -- was that in the reference to their
10 interrogatory?

11 MS. PAINTER: Your Honor, if I may, may I see it?

12 MR. KENNARD: Sure.

13 (Whereupon, Ms. Painter reviewed
14 document at the witness stand and
15 returned to counsel table.)

16 WITNESS NURSE: No, I believe it was another
17 interrogatory.

18 BY MR. KENNARD:

19 Q. Wasn't that interrogatory --

20 A. (Witness Nurse) I'm sorry. It's copied on two sides.
21 Yes, AT&T PTA 511 we asked PTA to provide references to the
22 specific order, rule, or statute which imposed each such burden
23 uniquely on an incumbent carrier; and you didn't cite one.

24 MR. KENNARD: Your Honor, we ask that this be --
25 and I will provide it to Your Honor and the parties -- as PTA

FORM 2

1 Cross-examination Exhibit Number 4 and specifically the Response
2 of PTA to AT&T Set 5, Number 11 [sic].

3 JUDGE MELILLO: All right. That document may be
4 marked as PTA Cross-examination Number 4.

5 (Whereupon, the document was marked
6 as PTA Cross-examination Exhibit
7 Number 4 for identification.)

8 MR. KENNARD: And admitted into the record.

9 JUDGE MELILLO: Any objection?

10 MS. PAINTER: No, Your Honor.

11 JUDGE MELILLO: It's admitted.

12 (Whereupon, the document marked as
13 PTA Cross-examination Exhibit
14 Number 4 was received in evidence.)

15 JUDGE MELILLO: And you will supply copies?

16 MR. KENNARD: We will, Your Honor.

17 JUDGE MELILLO: Do you have any additional
18 questions?

19 MR. KENNARD: No, I don't. I'm sorry. That was
20 just it.

21 JUDGE MELILLO: I have a couple of clarifying
22 questions Mr. Nurse and Dr. Oyefusi. I just want to make sure
23 that I understand. AT&T had presented a proposal originally back
24 in July, 2009. Then, in January of 2010, I had a new proposal
25 where they proposed for the first time to some extent expand the

1 Universal Service Fund in Pennsylvania, correct?

2 WITNESS NURSE: To use Universal Service funds to
3 transitionally finance the access reform, yes.

4 JUDGE MELILLO: All right. And the AT&T proposal
5 in this case with respect to intrastate access charges is to have
6 the RLECs' intrastate access mirror their interstate access
7 charges; is that correct?

8 WITNESS NURSE: Yes, in both rate level and rate
9 structure.

10 JUDGE MELILLO: There is one RLEC whose
11 intrastate access charges is less than their interstate access
12 charges. Is the proposal of AT&T to allow that particular RLEC
13 to raise its intrastate access charge to the interstate level?

14 WITNESS NURSE: Yes, to achieve that consistency
15 that all carriers have their intrastate rate mirror their inter.
16 That's good or bad, up or down, whatever they may be.

17 JUDGE MELILLO: And that amount of additional
18 revenue then is reflected in your proposal?

19 WITNESS NURSE: Yes.

20 JUDGE MELILLO: Also, would I be correct that
21 there's in effect an inverse relationship between the level of
22 the so-called benchmark and the Pennsylvania Universal Service
23 Fund impact? In other words, as you increase the level of the
24 benchmark, then the additional impact on the Pennsylvania
25 Universal Service Fund would go down?

1 WITNESS NURSE: Yes, but it's not linear. That's
2 -- the way to think about that is in Attachment 5 is, you have
3 some carriers and when you go to each step -- those charts do
4 each step. When you go from the first step \$4 local rate
5 increase or rate increase up to \$4 as necessary, if a carrier
6 had, like, 3.50 that they need to rebalance, they wouldn't go up
7 the whole four if they don't need to go up the whole four.
8 They'd go up 3.50 and they'd stop. There'd be no step two,
9 three, four for them.

10 Some other carriers, they have to do their first
11 step; and then maybe they need the second step and then they're
12 rebalanced, and then they stop. And so one of the columns on the
13 second to the last column on the right there talks about the
14 terminal rates, the rates at the end of how high will they go;
15 and you see a lot of those rates are substantially less than 25
16 because, if a carrier only needs to go up two or three or \$4,
17 they don't go all the way up to 25.

18 JUDGE MELILLO: They just need to go up as far as
19 what you're required to mirror to interstate access charge?

20 WITNESS NURSE: The local rate would go up to
21 counterbalance the revenue lost so it would be revenue neutral.

22 JUDGE MELILLO: Are there any questions as a
23 result of my questions?

24 MS. BENEDEK: Just one clarifying.

25 JUDGE MELILLO: Certainly.

1 BY MS. BENEDEK:

2 Q. When you say Attachment 5, do you mean the Attachment 5 to
3 the Panel Rebuttal Testimony of March 10th?

4 A. (Witness Oyefusi) Yes.

5 Q. Okay. And that's the attachment with the various
6 companies per the rate proposal AT&T suggested, correct?

7 A. (Witness Nurse) Yes.

8 Q. Okay. And, just to be clear, when you were answering the
9 Judge based on the ability to increase rates, the charts here
10 were based on certain demand info relative to what kind of rate?

11 A. (Witness Oyefusi) Also, we can file the testimony that the
12 time line that you will have to use will have to be very close in
13 time to the last issue. And we said that we were calculating
14 using I believe 2009 data. So, if the order comes out at any
15 point in time, you have to go back to December of that year to
16 assume that the data would not be available. So it's always
17 better to use updated data when you're calculating information
18 like this.

19 A. (Witness Nurse) Let me say, too, the revenue neutrality
20 from that access rate change, that means the company should be
21 same in the situation that it would otherwise be. So, if the
22 company is losing six percent of its lines each year and losing
23 six percent of its revenue each year and Commission does nothing
24 to its access rates, that's the status prior.

25 So, if they have a million dollars of revenue

1 this year and next year they have six percent less, it's the
2 \$940,000 that is the revenue neutral target for next year because
3 that's where they would be if there were no access change at all.
4 You don't have to -- if you drop access \$1 and you're otherwise
5 going to lose, you know, \$60,000, you don't have to now give them
6 \$60,000 back to lower access \$1. If you've lowered access \$1,
7 you've got to give them \$1 back.

8 Or they've lost -- or gained \$60,000 because of
9 population growth or population shrinkage or competition in
10 cable, that whatever the industry trends are those losses or
11 gains are the result of industry losses or gains. The losses
12 that are attributable to the access reduction, that's what the
13 revenue neutrality requirement is.

14 MS. BENEDEK: I have another follow-up.

15 JUDGE MELILLO: All right. That's fine.

16 BY MS. BENEDEK:

17 Q. So there was talk earlier about retroactive ratemaking and
18 whether 1309 applied. Under your placeholder concept -- and
19 again I don't know where AT&T stands on the 1309 retroactive
20 application --

21 JUDGE MELILLO: They did address that in their
22 testimony, and I appreciate that they did.

23 MS. BENEDEK: Okay. So then it does --

24 JUDGE MELILLO: Going forward they're willing to
25 accept it.

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MS. BENEDEK: Then I have no questions.

JUDGE MELILLO: It's Sprint that's still I think advocating for retroactivity.

MS. BENEDEK: I withdraw my question then.

JUDGE MELILLO: Am I correct on that? I think I am --

MS. PAINTER: Yes, you are.

JUDGE MELILLO: -- that the testimony does reflect that. So, in other words, the AT&T proposal would not allow for a rebalancing effect for loss of lines due to competition.

WITNESS OYEFUSI: Yes, Your Honor. If you look at some of these Commission records that are on the record right now --

JUDGE MELILLO: Can you just answer my question first?

WITNESS OYEFUSI: Yes. Somehow we used 2008. What we're trying to avoid is, when you make a decision in 2010, you're going to use the company's information as close as possible to your decision.

JUDGE MELILLO: I understand but what I thought you said was that your proposal would not so-called take into account or provide revenue neutrality for losses associated with competitive losses; am I correct on that?

WITNESS NURSE: Yes. That will make the carriers

FORM 2

1 better off.

2 MS. BENEDEK: When, today or '04 when the Act was
3 passed? Be better off when?

4 WITNESS NURSE: I said that your carriers are
5 losing lines each year, and the Commission is not changing access
6 so that effect is a preexisting effect. It has nothing to do
7 with changes in access rates.

8 JUDGE MELILLO: The parties had really
9 highlighted that in their testimony.

10 MR. KENNARD: I do have one question.

11 JUDGE MELILLO: That's fine. Go ahead.

12 BY MR. KENNARD:

13 Q. If as a result of local service rate increases line losses
14 are accelerated, that is not a preexisting condition; but are
15 RLECs entitled to recover that money from some other source?

16 A. (Witness Nurse) At the time you make the change, you make
17 the change in the access rate and the local rate, whatever
18 happens after that is competitive. And it's not known in advance
19 because, when you lower your access rates, the capping rule
20 requires CLECs to lower their access rates. And so, you may
21 raise your local rates. CLECs may raise their local rates.
22 What's the interplay between the two of those or how does that
23 relate to wireless services? So you can't really predict in
24 advance what all those reactions are going to be.

25 Q. Under AT&T's plan, whatever that effect is based upon

1 those various factors is the RLEC's to absorb, correct, yes or
2 no?

3 A. (Witness Nurse) Well, absorb is a negative, but whatever
4 those effects are, they're yours to reap or absorb.

5 A. (Witness Oyefusi) And they're still not any different from
6 your past plan.

7 MR. KENNARD: Thank you very much. I don't have
8 any further questions.

9 JUDGE MELILLO: All right.

10 Is there anything further for the AT&T panel?

11 MS. PAINTER: I do have some limited redirect,
12 Your Honor.

13 JUDGE MELILLO: All right. Very well. Do you
14 need a break?

15 MS. PAINTER: No.

16 JUDGE MELILLO: All right. Go ahead.

17 REDIRECT EXAMINATION

18 BY MS. PAINTER:

19 Q. Do you recall Mr. Kennard asking you some questions in
20 relation to what has been admitted as PTA Cross Exhibit 3 which
21 is proprietary?

22 A. (Witness Nurse) Which is the response to OCA 1?

23 Q. No, OTS 4, PTA Cross Exhibit 3. It involved the expense
24 reduction?

25 A. (Witness Nurse) Oh, yes.

1 Q. Okay. And Mr. Kennard asked you some questions about the
2 fact that this reflected the amount of the total expense
3 reduction AT&T if intrastate access rates were reduced to
4 interstate levels?

5 A. (Witness Nurse) For the RLECs?

6 Q. For the RLECs, correct. Can you please comment on that
7 amount.

8 A. (Witness Nurse) Yeah. Just to be clear, I think the
9 question, where does that money go and that money flows through
10 to consumers because it's a competitive market. The legislature
11 defined it to be a competitive market in the 80's; and, in
12 competitive markets, reductions in costs flow through through
13 reductions in prices. And we filed concrete evidence that's
14 irrefuted over 19 states over five years that reductions in costs
15 flow through through reductions in price.

16 Q. If AT&T is just going to flow through every -- all savings
17 that it receives, why bother with the case?

18 A. (Witness Nurse) Because it's critical to our ability to
19 compete. We obviously are unfairly burdened by high access rates
20 that cause us to, among other things, have to geographically
21 average high access rates in the RLEC territory and low access
22 rates in Verizon's territory and that's just an uneconomic,
23 undesirable outcome.

24 So it's a rung on the scale that hamstring us,
25 and competitors that only compete in Verizon's territory are

1 artificially advantaged because they've cherry-picked to just
2 compete in the Verizon territory and not incur the five-cent and
3 the ten-cent access rates in the PTA territory. And so that
4 makes us look uncompetitive when we're not.

5 MS. PAINTER: I have nothing further, Your Honor.

6 JUDGE MELILLO: Is there any recross examination?

7 MS. BENEDEK: No.

8 MR. KENNARD: No.

9 JUDGE MELILLO: Very well. Hearing nothing
10 further then, the witnesses are excused. Thank you.

11 (Witnesses excused.)

12 JUDGE MELILLO: Let's go off the record for a
13 moment.

14 (Whereupon, a brief recess was
15 taken.)

16 JUDGE MELILLO: It's the time scheduled for the
17 Sprint presentation.

18 Mr. Gruin, will you be presenting a witness?

19 MR. GRUIN: Thank you, Your Honor. Sprint calls
20 James A. Appleby.

21 JUDGE MELILLO: Mr. Appleby, please raise your
22 right hand.

23 Whereupon,

24 JAMES A. APPLEBY,
25 having been duly sworn, testified as follows:

1 JUDGE MELILLO: All right. Very well. Please be
2 seated.

3 Continue, counsel.

4 MR. GRUIN: Thank you, Your Honor. I'd like the
5 record to reflect that I previously submitted two copies to the
6 court reporter of the following testimonies of James Appleby:
7 Corrected Main Testimony of James Appleby which has been marked
8 as Sprint Statement 1.0; Supplemental Direct Testimony of James
9 Appleby which has been marked as Sprint Statement 1.1 in both a
10 public and proprietary version of that statement; Rebuttal
11 Testimony of James Appleby marked Sprint Statement 1.2, again
12 both public and proprietary versions; and the Rejoinder Testimony
13 of James Appleby marked Sprint Statement 1.3, both public and
14 proprietary.

15 JUDGE MELILLO: All right. Those documents so
16 identified may be so marked.

17 (Whereupon, the documents were marked
18 as Sprint Statements Numbers 1.0, 1.1,
19 1.2, and 1.3 for identification.)

20 DIRECT EXAMINATION

21 BY MR. GRUIN:

22 Q. Mr. Appleby, please state your name and address for the
23 record.

24 A. Yes. James Appleby, 6450 Sprint Parkway, Overland Park,
25 Kansas 66251.

1 Q. Are you the same James Appleby that submitted Main
2 Testimony on July 2nd, 2009, in this case, Supplemental Direct
3 Testimony on November 30th, 2009, in this case, Rebuttal
4 Testimony on March 10th, 2010, in this case, and Rejoinder
5 Testimony on April 8th, 2010, in this case?

6 A. Yes, to each.

7 Q. Was all of this testimony prepared by you or under your
8 direct supervision?

9 A. Yes.

10 Q. Do you have any changes or corrections to make to your
11 testimony?

12 A. Yes, I do, just a few.

13 Q. What are those changes?

14 A. The first change I'd like to reference is the letter that
15 we filed related to our Supplemental Testimony in which we had
16 testified to some issues that have been stricken from the scope
17 of this proceeding.

18 JUDGE MELILLO: All right. The testimony that
19 was provided to the court reporter for the record, that
20 particular testimony has already been taken out?

21 MR. GRUIN: That's correct. It was redacted from
22 that testimony.

23 JUDGE MELILLO: All right.

24 MR. GRUIN: The letter Mr. Appleby's referring to
25 is a letter of January 7th, 2010, from me to Your Honor

1 identifying the portions of the Supplemental Testimony that
2 Sprint has withdrawn.

3 JUDGE MELILLO: Yes. I've X'd that out on my
4 copy.

5 THE WITNESS: Okay. I also have several changes
6 related to the Rebuttal Testimony that was filed. On page 7,
7 line 21, the letters DLS should be DSL, 7, line 21. The next
8 change is on page 15, line 19. The word Sprint should really be
9 AT&T. On page 20, line 13, the TSLRIC should be TELRIC. 47 is
10 the next change. On line 10, the first the that you find in that
11 line should be omitted. Onto page 50 on line 7, the TELRIC
12 should be TSLRIC. 63 is the next change. In line 9, the number
13 at the end should be 29.95 not 29.99.

14 68, line 6 the word coming should be replaced
15 with trying. Line 72, I'm sorry -- excuse me, it should be page
16 72, line 17 the word to before the word amount should be
17 stricken. And then the last change is to Exhibit JAA 2-RJ.

18 BY MR. GRUIN:

19 Q. That's to your Rejoinder Testimony?

20 A. To my Rejoinder Testimony and we simply have a formatting
21 issue on the presentation. The fifth column over which is the
22 market cap should have been dollar signs. It should reflect the
23 fact that it is dollars.

24 Q. Any more changes?

25 A. That's the extent of my changes.

1 Q. So, with respect to the questions and answers in these
2 four pieces of testimony, if I were to ask you the same questions
3 today, would your answers be the same?

4 A. Yes, they would.

5 Q. And are the answers contained herein true and correct to
6 the best of your knowledge, information, and belief?

7 A. Yes.

8 MR. GRUIN: Your Honor, I'd like to move for the
9 admission of Sprint Statements 1.0, 1.1, 1.2, and 1.3 at this
10 time.

11 JUDGE MELILLO: Any objection?

12 MR. KENNARD: No, Your Honor.

13 MS. BENEDEK: No.

14 JUDGE MELILLO: Hearing no objections, those
15 documents so identified are admitted.

16 (Whereupon, the documents marked as
17 Sprint Statements 1.0, 1.1, 1.2, and
18 1.3 were received in evidence.)

19 JUDGE MELILLO: By the way, I note the parties
20 have not been identifying attached exhibits. Anyone's attached
21 exhibits are included with statements in this case. Sometimes
22 you hear parties separately move them into the record.

23 MR. GRUIN: Thank you, Your Honor. Mr. Appleby
24 is available for cross.

25 JUDGE MELILLO: All right. Very well. The first

1 party that I have planning cross-examination for Mr. Appleby is
2 the PTA.

3 Mr. Kennard.

4 MR. KENNARD: Yes, Your Honor. Thank you.

5 CROSS-EXAMINATION

6 BY MR. KENNARD:

7 Q. Good afternoon, Mr. Appleby.

8 A. Good afternoon, sir.

9 Q. Can you look at your Rejoinder Testimony, please, page 11.

10 A. I'm with you.

11 Q. The amounts charged by the RLECs are pursuant to an active
12 tariff for stand-alone DSLs; is that correct for wholesale DSL?

13 A. Yes, that's my understanding.

14 Q. And is it also your understanding that, because this is a
15 public utility tariff, any entity may purchase wholesale DSL from
16 that tariff?

17 A. It is a general offering, yes.

18 Q. Are there any restrictions you're aware of on the
19 availability of that service?

20 A. No. I'm not aware of any specific restrictions, no.

21 Q. So it's available to independent entities as well as
22 affiliates?

23 A. Excuse me, yes, it is.

24 Q. Now, for the RLEC reporting DSL wholesale services in
25 their annual reports to the PA PUC, that identifies the full

1 amount of revenue that the RLEC has received for the provisioning
2 of wholesale DSL service, correct?

3 A. If I understand the testimony of Mr. Zingaretti, he has
4 explained that the annual reports are total company, regulated
5 revenues. So the wholesale DSL service revenues would, in fact,
6 be reflected in the total company amount.

7 Q. All right. And that would include any margins received by
8 the RLEC for the provision of the wholesale DSL service?

9 A. On the wholesale service, not the retail but the
10 wholesale.

11 Q. Now, you say that, down at footnote 11 on page 11 of your
12 Rejoinder, PTA refused to provide data relevant and you attach
13 relevant to broadband service requested by Sprint. So Sprint was
14 apparently asking for revenues associated with broadband service
15 in the interrogatory?

16 A. Yes. We were looking for the total value of the broadband
17 services to the RLEC company.

18 Q. All right. Let's go look at what you attached as an
19 exhibit. It's 4-RJ. And what we asked for was this all
20 competitive and noncompetitive services, services for which
21 revenue is included in the annual report; is that correct?

22 A. That's what it says.

23 Q. Included in the annual report to the Commission?

24 A. Correct.

25 Q. And the answer is, the PUC annual reports are limited to

1 noncompetitive services. How is that not responsive? What's in
2 the annual report when we say here is the annual report?

3 A. This wasn't the only time we asked for the revenues
4 associated with broadband services. This one does have the
5 clarification that you point out. I'm willing to admit that, but
6 this is not the only time we asked for that.

7 Q. This is the only one included your testimony as being
8 supportive of that proposition, correct?

9 A. At this particular place, yes, but we did ask in other
10 data requests for toll revenue associated with broadband services
11 that you provide to customers.

12 Q. Now, let's stay on page 11 of your Rejoinder. The next Q
13 and A talks about the per line CCL. Now, you're taking issue
14 with Mr. Zingaretti's testimony, specifically his Surrebuttal on
15 pages 24 and 25 if I understand your Rejoinder Testimony.

16 A. I'll take that. I'll accept that.

17 Q. Well, is that true or no?

18 A. That's what the footnote says, yes.

19 Q. And 24 and 25 of Mr. Zingaretti's Surrebuttal Testimony
20 addresses the situation where there is a customer with no
21 minutes, correct?

22 A. Yes.

23 Q. It's a scenario that you created or hypothecated in your
24 Rebuttal Testimony, correct?

25 A. He was responding to my Rebuttal Testimony.

1 Q. All right. And didn't your hypothetical in your Rebuttal
2 Testimony have a customer with no minutes?

3 A. Sure.

4 Q. Okay. So he was wasn't misrepresenting your testimony?

5 A. He was misunderstanding my point of my testimony.

6 Q. Right. The point of your testimony was that, if a
7 customer has zero minutes, then the CCL whatever it is -- let's
8 call it \$7 -- is still charged to the interexchange carriers,
9 correct?

10 A. There's \$7 worth of recovery on that line collected over
11 the minutes that are actually exchanged between the RLEC and the
12 interexchange carriers.

13 Q. All right. Now, what CCL applies to a toll customer of
14 Sprint who uses two times the normal minutes in a month for toll
15 calling purposes? What's the CCL for that customer?

16 A. I'm sorry. I don't understand your question. Which
17 customer and who's providing service?

18 Q. It doesn't really matter. What's the CCL charge for a
19 toll customer that uses two times the normal minutes in a month?

20 A. Okay. If we are selling toll service and instead of using
21 a hundred minutes in a given month a customer has 200 minutes, if
22 they're on a minute-of-use plan, I would imagine that their --
23 and there's no discounts for more usage or whatever -- then I
24 would say imagine that their toll charges would go up.

25 Q. But that wasn't the question.

1 JUDGE MELILLO: He asked what the CCL was. What
2 was the CCL charge?

3 THE WITNESS: The CCL charge on the 200 minutes
4 versus 100 minutes?

5 BY MR. KENNARD:

6 Q. Two hundred minutes versus zero minutes? It's the same
7 CCL, right? It's the same \$7?

8 A. No, it's not. No. See, the thing is, it's recovered --
9 you're setting a per-minute charge based on how many lines I need
10 to collect money for, okay? That's the whole point. If there's
11 no minutes associated with that line and theoretically the
12 customers, the IXCs, didn't use that line, so why are they paying
13 for it? That's the point I'm making.

14 Q. I understand your point. It's \$7. In our hypothetical
15 it's \$7 CCL associated with an access line.

16 A. Okay.

17 Q. All right. And it's initially calculated on a per-line
18 basis, not a per-minute basis, correct?

19 A. That is correct.

20 Q. All right. So your hypothetical was, if I have a customer
21 with zero minutes, I still pay \$7. My hypothetical is --

22 A. No, I wasn't saying I pay \$7. I said everyone pays \$7.

23 Q. All right. Understood.

24 A. Okay.

25 Q. Now, my question is, let's go -- you picked one extreme,

1 no calls. Let's start moving up the ladder. What if the
2 customer uses two times the normal amount of minutes in a month,
3 occupies the loop in the line that much more than the average,
4 what is the per-minute CCL for that line?

5 A. Okay. To determine --

6 Q. I'm sorry, the per-line CCL. I confused you.

7 A. It's \$7 no matter if it's zero usage or a thousand minutes
8 of usage. Is that what your asking?

9 Q. Yes.

10 A. I agree.

11 Q. Because it's an average?

12 A. It's an average, true. But you also have a general trend
13 where the lines, the landlines are being used less and less and
14 less by the customers. There's lots of data on the record to
15 support that.

16 Q. Now, also in your Rejoinder you go on to talk about the
17 dividend payout ratios, the dividend yields specifically of the
18 various RLECs. I believe it's on page 8.

19 A. Yes.

20 Q. Now, what did you look at beyond what's provided on page
21 8? Did you investigate the average yield?

22 A. The full detail of what I looked at is in Exhibit JAA 2-RJ
23 where I simply went to a website, a particular website that had
24 financial information for all these companies.

25 Q. What website did you use?

1 A. I believe it was Yahoo Financials --

2 Q. Okay.

3 A. -- where they simply show how many outstanding shares,
4 what's the total market capitalization based on the price that's
5 in the market right now, annual dividend payout, that kind of
6 information. I think the second place I went to was a place
7 called Dividend.com if I remember correctly. Basically what they
8 told me there is that Frontier is the highest paying dividend
9 company of the S&P 500.

10 Q. Now, did you look at the payout ratio?

11 A. It calculates it on the website for me.

12 Q. Right. What is the payout ratio?

13 A. It's on the exhibit, and I think it's also on page 8.

14 Q. Where is it on the exhibit?

15 A. Are you asking for total dollars of dividends paid; is
16 that what you're asking me?

17 Q. No. Do you know what -- are you familiar with the term
18 dividend payout, payout ratio as it applies to dividend payment?

19 A. Ratio, okay. So you're basically talking about how much
20 dividends are paid divided by the price?

21 Q. No, that would be yield.

22 A. Okay.

23 Q. You don't know?

24 A. What's a dividend payout in your terms?

25 Q. I'm asking you your terms. I asked you first,

1 fortunately.

2 (Laughter.)

3 BY MR. KENNARD:

4 Q. Do you know what payout is?

5 A. I thought I did, but perhaps I don't understand what
6 you're asking me.

7 Q. Isn't one measure of dividend security or financial
8 success of a firm how many times can it cover the dividend that
9 it's paying?

10 A. That may be one measure. That wasn't the measure I was
11 trying to present here. My measure was, what is the return for
12 my investment in a dividend basis. How much dividends am I
13 yielded based on the price that I invested in this particular
14 stock?

15 Q. And from that you derive the statement that these
16 companies have financial strength because their yields are so
17 high?

18 A. Correct.

19 Q. And you did not investigate the underlying source of those
20 dividends, did you?

21 A. These are the characteristics that I put in my
22 presentation. If I own a stock that earned me an eight-percent
23 or a nine-percent or a 13-percent return annually without any
24 characteristics or market depreciation, that would be a pretty
25 good return.

1 Q. Right. And would you be concerned as an investor if the
2 company was paying out more in dividends than it earned as an
3 investor?

4 A. It depends on how long I wanted to hold the stock.

5 Q. Well, if you're holding it for yield, you're a long-term
6 investor, aren't you?

7 A. Perhaps.

8 Q. So I'm going to show you something. It didn't come from
9 Yahoo or Dividend.com. It comes from Schwab which I think is
10 pretty reputable. At least they have my money.

11 JUDGE MELILLO: You want this document marked as
12 PTA Cross-examination Exhibit Number 5?

13 MR. KENNARD: I think we're at 5, yes.

14 JUDGE MELILLO: Okay. That document may be so
15 marked.

16 (Whereupon, the document was marked
17 as PTA Cross-examination Exhibit
18 Number 5 for identification.)

19 BY MR. KENNARD:

20 Q. Now, would you agree, subject to going back and reviewing
21 it, the dividend payout ratio is the ratio of the company's
22 earnings to dividends that it is paying out?

23 A. I'm not familiar with that term.

24 Q. Would you accept it subject to check? You can go to
25 Wikipedia if you want to.

1 A. Subject to check. I want to point out that the dividend
2 yields that you have on here are consistent with what I
3 generated.

4 Q. Absolutely. It's simple. I just did a screen with a
5 dividend yield greater than six percent, a dividend payout
6 greater than six percent; and they were all in the S&P 500. I
7 got nine results, six or seven of which are telephone companies
8 which shows that, number one, Frontier as you represented had the
9 highest dividend yield in the S&P 500. But it also shows that
10 that dividend yield is maintained by paying out 2.6 times what
11 their earnings are.

12 MR. GRUIN: Is there a question, Your Honor?

13 BY MR. KENNARD:

14 Q. Is that correct? Is that what this exhibit shows?

15 A. You told me what this particular term means, and I said
16 subject to check that I would accept it.

17 Q. Do you know whether paying out a dividend yield or a
18 dividend ratio of 6.23 percent indicates financial strength?

19 A. Well, it indicates perhaps that the company has chosen to
20 reflect a significant payout in the form of dividends to attract
21 investors.

22 MR. KENNARD: Thank you. That's all the
23 questions I have.

24 THE WITNESS: It can also mean other things. It
25 can also mean that they believe that they've already built the

1 plant that's necessary to being long term in the market. If
2 that's the case, then there's no reason why earnings should not
3 in the future reflect the dividend payouts that they have.

4 BY MR. KENNARD:

5 Q. But you don't know?

6 A. I don't know that.

7 MR. KENNARD: That's all the questions we have,
8 Judge.

9 JUDGE MELILLO: All right. Very well. Did you
10 want to move the Cross-examination Exhibit?

11 MR. KENNARD: Yes, we move the admission of
12 Cross-examination Exhibit Number 5.

13 JUDGE MELILLO: Any objection?

14 MR. GRUIN: No objection.

15 JUDGE MELILLO: That's admitted.

16 (Whereupon, the document marked as
17 PTA Cross-examination Exhibit
18 Number 5 was received in evidence.)

19 MR. KENNARD: That's all we have. Thank you, Mr.
20 Appleby.

21 JUDGE MELILLO: All right. Thank you.
22 CenturyLink, do you have any questions?

23 MS. BENEDEK: Yes, we do.

24 BY MS. BENEDEK:

25 Q. Good afternoon, Mr. Appleby.

1 A. Good afternoon.

2 JUDGE MELILLO: I'm sorry. Can we go off the
3 record for a second?

4 (Whereupon, a brief recess was
5 taken.)

6 BY MS. BENEDEK:

7 Q. Can you please turn to page 5 of your Rejoinder Testimony?

8 JUDGE MELILLO: Where are we? Which piece of
9 testimony?

10 MS. BENEDEK: Rejoinder.

11 JUDGE MELILLO: Rejoinder, all right.

12 THE WITNESS: I'm there.

13 BY MS. BENEDEK:

14 Q. Line 15.

15 A. Okay.

16 Q. You mention competitive services. Despite the -- you
17 suggest otherwise -- a plain reading of the statute says
18 competitive services should not be placed below cost, and you're
19 making that reference in the context of a discussion that you put
20 in here about pure broadband service which is a Century product.

21 A. Yes.

22 Q. Do you mean to say or is it your position that broadband
23 services have been declared competitive by the Commission?

24 A. Broadband services are considered interstate services, and
25 the FCC has deemed them to be information services and

1 competitive, yes.

2 Q. And so, for purposes of the statute, you reference -- is
3 that a PA statute you're referencing, plain reading of the
4 statute?

5 A. Yes.

6 Q. So you are saying that the --

7 A. There is a prohibition against noncompetitive services
8 subsidizing competitive services within the state.

9 Q. And when did the PA Commission deem broadband services
10 competitive?

11 A. Again, I assume that they did not. That does not mean
12 that broadband services are not competitive services.

13 Q. In your view were broadband services determined to be
14 competitive prior to the 7/31/2003?

15 A. No. The FCC's determination that DSL services were, in
16 fact, information services was, subject to check, I think around
17 2004 or 2005.

18 Q. So it's your position that the Commission -- that this
19 Commission, PA Commission can't declare broadband services
20 competitive; is that your position?

21 A. I apologize. Did you say can or cannot?

22 Q. Cannot, N-O-T?

23 A. The broadband services are considered interstate
24 information services at this time, so I don't know why the
25 Commission would rule one way or the other.

1 Q. Staying with your Rejoinder Testimony at pages 4 and 5,
2 you talk about the ability to make up declining rates in network
3 access charges by selling bundles of new services, etc. If the
4 ability to sell bundles and new services proves to be
5 insufficient, does the reverse hold true meaning, can my client,
6 CenturyLink, increase switched access rates?

7 A. I don't think that's in this case. I don't think
8 anybody's requested that. Is this just under the federal?

9 Q. I'm asking you. Does the reverse of your position hold
10 true? You're saying sell more bundles, sell more new services
11 and, by the way, just configure costs into your statements,
12 correct?

13 A. Right. I wasn't permitted to have any of the cost
14 information so, yeah, that's not part of the discussion. I put
15 the information in the record that I did have, yes.

16 Q. Okay. So it's a revenue only review. What you're saying
17 is that my client should sell more bundles, sell more new
18 services to provide the ability to make up the revenues in order
19 to fund the access reductions you seek, correct?

20 A. I'm sorry. I just have to be clear because I didn't say
21 -- I basically in this area I'm saying what your company's
22 management is saying that, when access go away, when Universal
23 Service subsidies go away, we will do the things that you said,
24 sell more bundles, sell more services.

25 Q. Okay. Is it your position that's what we should do? Is

1 it your recommendation that, in order to redress the differential
2 between, say, any access reductions that are awarded and current
3 revenue streams, that we should go and sell more bundles and sell
4 more services; is that your position?

5 A. That's part of what my testimony is. I also have other
6 pieces that provide for the RLECs to increase basic local
7 services up to an affordability cap.

8 Q. Okay. And then part of that proposal is that we have the
9 ability, we exercise the ability. Does the reverse hold true if
10 there is insufficient funds, if there is no way, can we do the
11 reverse of what you're suggesting, just increase access rates?

12 A. No. We're heading towards a competitive market which
13 transitions to a fully competitive market. One of the changes
14 that has to occur is, we have to get symmetrical compensation at
15 reasonably priced rates. We can't have a situation where certain
16 carriers collect five, eight, ten cents for termination of
17 traffic while other carriers collect one cent or wireless
18 carriers zero. You just can't have that and have a full and
19 complete retail competition across all the providers in the
20 market.

21 So that's where we're headed. So, no, it would
22 make absolutely no sense to allow switched access rates to
23 increase simply because at this time your company is not
24 competing effectively.

25 Q. Do you have any studies or analyses that we are not

1 efficient or competing effectively?

2 A. In all the dealings with people I had, they did not
3 provide any studies, no.

4 Q. So what if there's a deficiency? What if we can't sell or
5 that the market will not allow us the additional revenues that
6 you assume exist?

7 A. I just don't believe that hypothetical is even possible,
8 not with all the financial information we do know about the RLECs
9 that operate in Pennsylvania. As I've shown multiple different
10 ways, the financials of the companies are truly sound.

11 Q. You've done those studies of the market. You haven't
12 looked at the market my client serves to determine whether rate
13 increases or otherwise increases to bundled pricing are
14 sustainable or not?

15 A. I have done no studies on that, no.

16 Q. Have you done any studies or any analysis to determine
17 what costs we would have to cut in order to meet the revenue
18 neutral requirement of the statute?

19 A. It's hard to have knowledgeable information about that
20 when every time we ask for cost information or revenue
21 information it was hard to know what exactly the possibilities
22 are. However, there's several public statements by your
23 corporation that says we believe we can move forward in a certain
24 manner. That's what their testimony says.

25 Q. Didn't we give you our NMP, our confidential network

1 modernization plan under Act 183? Did we not give that to
2 Sprint?

3 A. You did give that.

4 Q. Which of those obligations did we not do if we have a
5 deficiency?

6 A. Which of those obligations?

7 Q. Which one did we not do if there is an insufficiency in
8 the record? The market will not sustain it?

9 A. I don't know what obligations you're talking about. I'm
10 sorry.

11 Q. You have our network modernization plan. Do you have a
12 position?

13 A. Did you put something in front of me?

14 Q. No, I have not. You said we provided it to you. We gave
15 you our NMP. Pursuant to a motion to compel, we gave you the
16 confidential. Do you take a position here that any one of those
17 costs or network modernization deployment plans we have in there
18 should not be undertaken in any way whatsoever?

19 A. No. I think you've committed to the network modernization
20 plan that you've got; and I fully believe that, if you implement
21 that network modernization plan, you will have a network that
22 will permit you to sell more services to more customers.

23 Q. And your belief is based on no independent study or
24 analysis that you've done of the market, correct, yes or no?

25 A. My understanding is based on what I've seen in the market,

1 in the industry where I see average revenue per user accelerated
2 for every carrier that is out there selling more and more
3 services and more and more bundles. The information is just,
4 it's everywhere.

5 Q. Average revenue, these are financials you have not --
6 again, you have not done a study or analysis of the market to
7 determine whether there is a viability versus stayability to your
8 proposal, correct?

9 A. I guess I'd have to agree, yes.

10 Q. The Rebuttal Testimony, page 3, lines 10 and 11.

11 A. Rebuttal, page 10?

12 Q. I'm sorry, no. Rebuttal page 3, lines 10 to 11. It
13 begins with RLECs' ubiquitous network.

14 A. Okay.

15 Q. You conclude there that there are advantages to having a
16 ubiquitous RLEC network. And, for the record, I would like it to
17 reflect we asked you in an NTR --

18 MS. BENEDEK: I'm not going to move it into the
19 record, Your Honor, but I would like to have it referenced.

20 (Document handed to Judge Melillo.)

21 JUDGE MELILLO: Thank you.

22 BY MS. BENEDEK:

23 Q. We asked you in the question at CTL-Sprint 5-1, we
24 reference page 3, lines 10 and 11, we asked you to identify each
25 and every network obligation. We asked you to identify each and

1 every specific advantage you claim and essentially to identify
2 fully each and every opportunity you claim to provide documents;
3 and your answer therein refers to your testimony at certain
4 pages, 54 to 60, correct?

5 A. Yes. I believe that, when we answered that question, that
6 my testimony was sufficient to describe the advantages that I was
7 referring to.

8 Q. Okay. And, in the next interrogatory question 5-2, we
9 asked to provide documents or studies or analyses, calculations,
10 anything you have in support of the statement that these
11 obligations are not burdensome; and you referred us to prior
12 response, 5-1. You said, see my testimony at pages 54 to 60,
13 correct?

14 A. Correct.

15 Q. Okay. Is it your contention in this case that the
16 obligations that Sprint has are the same as the obligations that
17 I have -- that my client has?

18 A. Same obligations.

19 Q. Obligations.

20 A. Define what you mean by obligation?

21 Q. Well, if you go back to the NRRI study, do you have --

22 A. I think we've heard already that there are no specific
23 rules, laws that talk about this. I didn't do any research on
24 that, but I was sitting in the courtroom when you had that
25 discussion earlier.

1 Q. Are you familiar with Section 1501 of the Public Utility
2 Code? If not, that's okay.

3 A. I'm sorry.

4 Q. Do you have a copy of the NRRI document which has been
5 marked as CTL Cross Exhibit 2?

6 A. No, I don't.

7 MR. GRUIN: I can give him one.

8 MS. BENEDEK: Thank you.

9 BY MS. BENEDEK:

10 Q. Page 4 of that document which is what we had discussed
11 previously, duty to serve.

12 A. Duty to serve.

13 Q. Yes. Does Sprint have an obligation to extend retail
14 voice service to any potential customer?

15 A. In a competitive market, we have the desire to serve as
16 many possible customers as possible in every situation where we
17 have resources or we have facilities.

18 Q. It's not a requirement?

19 A. It is to my shareholders to expand and provide as much as
20 I possibly can. Now, do we have a law, a rule, a statute? No.

21 Q. So, back to the question. Is it your position that your
22 duty to serve is equivalent or similar to my duty to serve -- my
23 client's duty to serve?

24 A. It's similar in a competitive market, sure. That's what

25 --

1 Q. You think so?

2 A. Yes. In a competitive market, customers want to serve as
3 many customers as possible.

4 MS. BENEDEK: May I approach the witness, Your
5 Honor?

6 JUDGE MELILLO: Yes, you may.

7 MS. BENEDEK: This is CTL Cross Exhibit 3.

8 JUDGE MELILLO: All right. The document you're
9 distributing may be marked as CTL Cross-examination Exhibit 3.

10 (Whereupon, the document was marked
11 as CTL Cross-examination Exhibit
12 Number 3 for identification.)

13 BY MS. BENEDEK:

14 Q. Mr. Appleby, have you seen this letter before?

15 A. No.

16 Q. You've never seen this document before?

17 A. I don't believe so, no.

18 Q. Do you recollect us in Topeka, Kansas, talking about the
19 letter that the Sprint sent in 2007? It wasn't admitted in that
20 proceeding.

21 A. I apologize, no. I don't remember any discussion about
22 that in Topeka. I'm not saying that you're not incorrect. I
23 just don't recall.

24 Q. Okay. That's fair. Can Sprint send letters telling
25 customers it no longer wants to serve them? Can it do that,

1 wireless?

2 A. I'm not an attorney. I really don't know the answer to
3 that.

4 Q. Well, do you know if Sprint, if it were to send a letter
5 like this, do you know if you would have to file it with the
6 Commission or let the Commission know?

7 A. I'm not familiar with what those requirements are.

8 Q. What about the FCC? Are you familiar with that?

9 A. As far as discontinuation of service, no, I'm not familiar
10 with those rules at all.

11 Q. Do you know if my client can send a letter like this to a
12 local exchange customer that it currently serves today without
13 getting the approval of the Commission?

14 A. I do know that your services are tariffed and would
15 require you to go through those rules or obligations associated
16 with detariffing those services, yes.

17 Q. And could you -- in this letter could you read the first
18 paragraph since you're not familiar with the document?

19 A. Our records indicate that, over the last year, we have
20 received frequent calls from you regarding your billing and your
21 general account information. While we have worked to resolve
22 your issues and questions to the best of our ability, a number of
23 inquiries you have made to us during this time has led us to
24 determine that we are unable to meet your current wireless needs.

25 Q. So this sounds like it's a termination letter. You're

1 just sending the letter to those customers; is that a correct
2 supposition?

3 MR. GRUIN: Your Honor, I'm going to object to, I
4 guess, any discussion about this letter. It's not been
5 authenticated. We don't know what state it was sent to, whether
6 it was Pennsylvania or not Pennsylvania. I don't see any
7 relevance to the issue of RLEC access charges. Mr. Appleby
8 already said that he's not familiar with this letter. We don't
9 know the circumstances underlying the letter. There's no way
10 that we're able to cross-examine about the statements in this
11 letter.

12 I think it should be excluded and any further
13 discussion of it should be prohibited as well.

14 JUDGE MELILLO: Do you have a response?

15 MS. BENEDEK: It's publicly available off a
16 website called Cagitel (ph.). It was a letter that Sprint sent
17 nationally in or around the date that's noted there. They got a
18 lot of flak from the press about it. I can certainly provide to
19 all an article or two picked up in the press about it. They got
20 a lot of flak for it, and the witness has opened the door. He
21 has said, you know, we've got a duty and my duty is kind of
22 similar to your duty; and I think he's opened the door to
23 cross-examination on what that means.

24 My client he said couldn't have sent this letter
25 he thinks but he's not certain. He's not an attorney. But,

1 still, it's probative. It's probative based on the door he's
2 opened.

3 MR. GRUIN: I don't think he's ever said in his
4 testimony anywhere that our duty is similar to your duty. His
5 testimony that was the jumping off point for this line of
6 discussion was that there are certain advantages to having a
7 ubiquitous network. That's it. How we get from there to this
8 form letter from 2007, I don't know.

9 MS. BENEDEK: Well, he --

10 JUDGE MELILLO: How he got there was through some
11 questioning that had to do with CTL Cross-examination Exhibit 2
12 and referencing some NRRI information about what constitutes a
13 carrier of last resort and whether Sprint has those obligations,
14 and it seems that the witness did try to answer in a way such
15 that Sprint and CTL would have similar interests perhaps not
16 obligations. She's trying to make the point that there is a
17 regulatory responsibility on CTL that isn't there for Sprint.

18 MS. BENEDEK: And, Your Honor, if I can just
19 respond quickly, he does reference in his testimony a certain
20 percentage -- this is confidential -- of what he claims rural
21 delivery and Sprint Wireless serves all Pennsylvanians. Then he
22 also discusses in the Rebuttal Testimony the same on page 59,
23 talks about providers having to be very vigilant and being able
24 to meet consumer demand and then competitive pressure driving
25 them to expand into a ubiquitous network.

1 So, if he had us draw on a parallel
2 notwithstanding his counsel's representation that what Sprint's
3 wireless network is in PA is comparable to that which the RLECs
4 provide relative to their network and their network obligations,
5 so I disagree strongly that there is no nexus. I happen to use a
6 statement that sort of pulls some of the concepts here together,
7 but it's replete throughout his testimony regarding the parallel
8 he attempts to draw, which is flawed and erroneous in our view,
9 but that he attempts to draw between the two networks.

10 MR. GRUIN: Your Honor, I don't mind as much the
11 questions about this letter; but, as far as the entry of the
12 letter into the record, if there's no authentication, there's no
13 foundation for it, there's, you know, certain lines redacted out,
14 we don't know the circumstances of the situation --

15 MS. BENEDEK: I'm not going to include it. I
16 mean, first of all, I pulled it off the internet. It's publicly
17 available document. Secondly, the account information and the
18 customer name is typically not something you would provide in
19 proceedings. No other alteration has been made by me.

20 JUDGE MELILLO: Well, let me try to get at it
21 this way. Is Sprint disagreeing or disputing that these types of
22 letters are sent to customers that, for whatever reason, they do
23 not wish to serve any longer?

24 MR. GRUIN: Well --

25 JUDGE MELILLO: Is there some dispute about that?

1 It appears to have been a document that was obtained on the
2 website. You can argue about whether it's been properly
3 authenticated, and that is a valid point actually. The point of
4 the question is whether, in fact, these are actions that Sprint
5 can take without any kind of I guess regulatory oversights, for
6 example, the Commission. I think if you can get at that point
7 then perhaps we don't need to admit the letter.

8 MS. BENEDEK: Well, Your Honor, I can make an
9 on-the-record data request for it. I mean, give us the letter or
10 something to check.

11 JUDGE MELILLO: Well, see what Sprint is willing
12 to do.

13 I don't know whether you're really disagreeing
14 about the point that CTL's counsel is trying to make, but you
15 probably don't want the letter in the record; is that correct?
16 Can you do something here? Can we stipulate that, yes, Sprint
17 does retain the prerogative to reject customers or to basically
18 tell existing customers that they no longer wish to be their
19 service provider?

20 MR. GRUIN: Your Honor, we will agree to let the
21 letter in.

22 JUDGE MELILLO: All right.

23 MR. GRUIN: Just to note that Mr. Appleby has
24 already said that he personally is not familiar with the letter

25 --

1 JUDGE MELILLO: I understand.

2 MR. GRUIN: -- or the background of this letter.

3 So I think the question, to get to that point, he's already
4 stated he does not know the answer.

5 JUDGE MELILLO: All right. I think that answers
6 the quandary here because they're agreeing that it can be part of
7 the record. So, if there's no objection, we'll just move it in
8 right at this point. CTL Cross-examination Exhibit 3 is
9 admitted.

10 (Whereupon, the document marked as
11 CTL Cross-examination Exhibit
12 Number 3 was received in evidence.)

13 JUDGE MELILLO: All right. Please continue.

14 BY MS. BENEDEK:

15 Q. Can you please turn to your Rejoinder Testimony pages 4 to
16 5 or actually page 5.

17 MR. GRUIN: What testimony?

18 MS. BENEDEK: Rejoinder.

19 THE WITNESS: Okay.

20 MS. BENEDEK: Can I have just a minute? I need a
21 moment with counsel.

22 JUDGE MELILLO: Do you want to go off the record
23 for a moment?

24 MS. BENEDEK: If you give me two minutes.

25 JUDGE MELILLO: All right. Let's go off the

1 record for two minutes.

2 (Whereupon, a brief recess was
3 taken.)

4 MS. BENEDEK: We are going to have to go on the
5 confidential record at some point with my cross. I would like
6 the witness to read into the confidential record certain
7 responses to discovery that had been marked as highly
8 confidential by Sprint. And, based on a side bar discussion
9 here, they are agreeable to having it go on confidential record;
10 but if you wouldn't mind canvassing the room to see if you have
11 anyone that should be out of the room.

12 JUDGE MELILLO: Certainly.

13 Is there anyone present in the room who would be
14 required to sign Appendix A to the Protective Order in this
15 matter who has not signed it? If so, you will have to leave the
16 room at this time, and somebody will have to get them then when
17 we go off the proprietary record.

18 (No response.)

19 MS. BENEDEK: May I approach the witness?

20 JUDGE MELILLO: Are we now on the proprietary
21 record?

22 MS. BENEDEK: Yes.

23 JUDGE MELILLO: All right. We are now on the
24 proprietary record.

25 *** BEGIN PROPRIETARY RECORD ***

FORM 2

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(Whereupon, the following pages,
234 through 237, were sealed and
bound separately.

1 BY MS. BENEDEK:

2 Q. Was texting around in 1999, September of 1999; do you
3 know?

4 A. That's a good question. I don't know the answer.

5 Q. Let's assume it wasn't. Your position is still that these
6 revenues shouldn't be considered or factored into any analysis in
7 this case; is that correct?

8 A. The reason we asked for all the revenue streams for the
9 companies that are charging access revenue is because of the
10 contentions by the Rural LECs that they need their access
11 revenues, and we simply asked for the revenues associated with
12 those services to explain that the businesses have changed
13 dramatically since then. I don't see how revenues that we
14 generate because we don't charge access revenues have anything to
15 do with the decisionmaking in this case.

16 Q. You mentioned earlier Chapter 30. What was Chapter 30?

17 A. Chapter 30 in my understanding was alternate regulatory
18 plan for the RLECs.

19 Q. It was the statute that allowed for alternative
20 regulation; is that correct?

21 A. That's fair.

22 Q. Okay. Did that statute have in it specific intrastate
23 switched access rate levels that needed to be reduced to; do you
24 know?

25 A. My understanding is there was language in there about the

1 control of intrastate access rates.

2 Q. Okay. And then Act 183, are you familiar with that?

3 A. I've heard a little about it, yes.

4 Q. Any similar language in Act 183 to your knowledge?

5 A. My understanding is that that characteristic was not part
6 of that, but that doesn't mean that it's not been public policy
7 to do this.

8 MS. BENEDEK: All right. Nothing further and
9 we'd like to move the admission of -- actually, it's already in.

10 JUDGE MELILLO: I'm sorry?

11 MS. BENEDEK: It was already in.

12 JUDGE MELILLO: Yes, it was by in essence an
13 agreement. CTL Cross-examination Exhibit 3 is already in the
14 record. All right. That concludes your cross-examination.

15 Then the next party that's indicated that they
16 had cross-examination is the Office of Consumer Advocate.

17 MR. CHESKIS: Thank you, Your Honor.

18 BY MR. CHESKIS:

19 Q. Good afternoon, Mr. Appleby. Welcome back to
20 Pennsylvania.

21 A. Thank you.

22 Q. I'd like to begin with your Rebuttal Testimony from March
23 10th, specifically page 10 -- I'm sorry, page 7.

24 A. I have page 7.

25 Q. At page 7 of your Rebuttal Testimony continuing to page

1 11, you discuss several examples related to cost issues; is that
2 correct?

3 A. Yes.

4 Q. If Sprint wanted to provide toll service to a customer
5 that had no local loop, how would they do that?

6 A. I don't believe they would unless that customer had a
7 wireless phone.

8 Q. Would you agree with me that Sprint cannot provide toll
9 service to an RLEC customer that does not have a local loop?

10 A. I would agree with that, but there is a mutual benefit to
11 the customers on both ends of a communication.

12 Q. Can you turn next to page 20 of your Rebuttal? And
13 specifically at line 9 you state that significant market changes
14 have greatly diminished the role of stand-alone long distance
15 service providers. Do you see that?

16 A. I do see that.

17 Q. Which stand-alone long distance providers are you
18 referring to there?

19 A. By stand-alone long distance providers, I'm talking about
20 the carriers that are offering non- -- they are offering
21 services, retail services that are nonlocal; but they are not
22 offering those services in conjunction with other services that
23 the customers have become accustomed to having in addition to
24 nonlocal calling, for example, local exchange service or
25 broadband services or anything else like that.

1 Q. Can you identify a specific company for me?

2 A. Sprint still offers stand-alone products. It's not
3 marketed, actively marketed; but we still have customers that buy
4 stand-alone long distances services. Those services have lost
5 favor in the market. Customers want to call anywhere for the
6 services that they choose.

7 Q. I'm sorry. Did you say they have lost favor or they have
8 not lost favor?

9 A. They have lost favor. Few people, fewer every day, use
10 stand-alone long distance services.

11 Q. Next at page 27 of your Rebuttal Testimony, line 20, you
12 state there that all consumers benefit by competitive choice. Do
13 you see that?

14 A. Yes.

15 Q. Would you agree with me that prices could increase in a
16 competitive environment?

17 A. I'm sure there are situations where that occurred. I
18 don't believe that would be the case in this instance. We've had
19 access reform in Pennsylvania.

20 Q. But it is possible in a competitive environment for prices
21 to be increased?

22 A. If everyone incurs -- if the cost increases, then I would
23 believe that the overall market level for the price of service
24 would, in fact, increase.

25 Q. And, at page 31 of your again Rebuttal Testimony, lines 2

1 and 3, you state that Sprint has been building its network since
2 the mid-1990's and has done so with no access of PA USF subsidy
3 whatsoever. Do you see that?

4 A. I see.

5 Q. When Sprint was building its network in the mid-1990's or
6 since the mid-1990's, did the company make determinations as to
7 where they would earn a greater return on its investment?

8 A. I would hope so. I haven't had any specific personal
9 knowledge of the building decisions related to our wireless
10 network; but, as a shareholder, I would hope that they're making
11 the right decisions.

12 Q. And, at some point in that process, do you think the
13 company made the determination not to build local loops to the
14 customers they were providing service to?

15 A. I need to be clear. When I was discussing that network, I
16 was talking about the wireless network; and so, therefore, we
17 didn't have the need to build local loops because it's not
18 necessary in the wireless network.

19 Q. If Sprint didn't want to pay access charges, couldn't they
20 just build their own local loop and access customers themselves?

21 A. That's highly inefficient to expect every carrier that's
22 interconnected within the public switched network to build its
23 own loop to each customer. It's not practical.

24 Q. But it is not --

25 A. Of course, it's theoretically possible but it's not

1 practical to do. It would be much more efficient for everyone in
2 the market to collect a reasonable return on the existing
3 facilities.

4 Q. In AT&T's testimony they talk about how their toll minutes
5 in Pennsylvania have been decreasing for the past several years.
6 Is the same true for Sprint in Pennsylvania?

7 A. I believe that trend is depicted in the data responses
8 that we provided, yes.

9 Q. And AT&T was also willing to state earlier today that they
10 would commit to -- that its average toll rates in Pennsylvania
11 would come down by more than any access reduction that the
12 Commission may direct as a result of this proceeding. Is Sprint
13 willing to make the same commitment?

14 A. My statement will be that the market should determine
15 where those savings are put into place. I fully believe that it
16 will. It's a competitive market. To target one particular
17 subset of the market, stand-alone long distance for example,
18 which makes no sense when there are providers that are wireless
19 providers, there are cable providers, there are other RLECs out
20 there. The market is -- it's not necessary. There are so many
21 service offerings available to the customers that it's just not
22 necessary.

23 Q. So you're not willing to make the same commitment that
24 AT&T made earlier today?

25 A. I don't know that AT&T made a commitment to dropping their

1 prices. I think AT&T said the market would require them to do
2 that.

3 MR. CHESKIS: I have no further questions of this
4 witness, Your Honor.

5 MR. KENNARD: I do have one follow-up, Judge.

6 JUDGE MELILLO: The Office of Trial Staff also
7 has some questions. They were listed on the list as having
8 questions. Do you want to save that until after the Office of
9 Trial Staff does their cross-examination?

10 MR. KENNARD: Yes, that would be fine.

11 BY MR. BAKARE:

12 Q. Good afternoon, Mr. Appleby.

13 A. Good afternoon.

14 Q. I have just a couple of very brief questions. May I
15 direct you to page 3 of your Direct Testimony?

16 A. I assume you meant my Main in this case. We call ours
17 main.

18 Q. Main.

19 A. I'm sorry, what page?

20 Q. Three.

21 A. Yes.

22 Q. You reference the Commission's duty to promote
23 competition. Does this duty in your opinion apply to services or
24 particular carriers?

25 A. I would say the duty to -- it's the duty to the customers,

1 the consumers of Pennsylvania. You're obligated to provide
2 competition so the customers can have as many choices as
3 possible, not one particular provider, not maybe even one
4 particular kind of service, that customers have as many choices
5 of providers and of services that they possibly can.

6 Q. Okay. And then moving on to page 18 of the same
7 testimony.

8 A. Yes.

9 Q. Here you discuss RLEC services that they provide in
10 addition to the basic local service.

11 A. Okay.

12 Q. These services you reference in here you mention
13 broadband, video service, in-territory long distance. Do these
14 consist of competitive services?

15 A. It's my understanding that some of those services are
16 deemed competitive, yes.

17 MR. BAKARE: Thank you.

18 Your Honor, I have no further questions.

19 JUDGE MELILLO: All right. Very well.

20 Mr. Kennard.

21 MR. KENNARD: Yes, Your Honor. Thank you.

22 FURTHER CROSS-EXAMINATION

23 BY MR. KENNARD:

24 Q. You confused me on your further examination. I thought we
25 established in -- your testimony says wholesale DSL service is in

1 the federal tariff. Didn't you say that?

2 A. Yes.

3 Q. So but then, on cross-examination by counsel for
4 CenturyLink, you asserted that it's not -- that it's a
5 competitive service. How is it tariffed and competitive at the
6 same time?

7 A. Okay. I'll explain that to you.

8 Q. Sure.

9 A. So the connected companies have, in fact, tariffed
10 wholesale service, okay --

11 Q. So it's not competitive?

12 A. -- which is in the tariff. It's an interstate service. I
13 frankly don't know if it's deemed competitive by the FCC or not.
14 All ILEC service, at least retail services are. Okay. So the
15 wholesale service is the transmission part of the DSL, okay; but
16 there is the information component of the DSL which is the
17 connection onto the internet. The combination of the two the FCC
18 said, in fact, is an information service in their Rule 405. I
19 can't remember exactly when, okay?

20 So the fact that you have a wholesale
21 transmission DSL service in your tariff I would imagine that it
22 still would be showing as a regulated service -- excuse me.
23 CenturyLink does not have, that I'm aware of, a wholesale DSL
24 offering in their interstate tariff. They don't hold it out as
25 you suggested to other providers, so the offerings that they

1 offer are simply deregulated services.

2 Q. All right. So your answer is -- accepting yours to be
3 true -- your assertion that the services are competitive and it
4 differs company to company and situation to situation?

5 A. No, not at all. The retail offerings where you have again
6 the transmission component of the DSL combined with the actual
7 connection to the internet that is sold directly to the end user,
8 that is certainly a deregulated service, a competitive service
9 for all ILECs.

10 Q. Except the broadband. The broadband is still regulated
11 under the wholesale tariff. It's the internet access in
12 combination to it, and those revenues for wholesale are still
13 reported -- paid for under the tariff and reported in the annual
14 reports to the Commission; is that correct?

15 A. My understanding is that the reports, in fact, do recover
16 or show a total company regulated amount of revenue. However --

17 Q. For broadband service?

18 A. For wholesale broadband service. My point was that the
19 total value of the DSL services that are offered over the local
20 loop by the LECs, LEC corporations is not reflected in the
21 financials of either CenturyLink or the PTA companies.

22 MS. BENEDEK: What financials?

23 BY MR. KENNARD:

24 Q. Nor are the expenses, the additional expenses associated
25 with that?

1 A. I don't disagree with that.

2 Q. All right. You haven't completed any of the studies or
3 information to determine what, if any, margin there is, have you?

4 A. I would hope there is a margin or else I wouldn't be up on
5 the stand.

6 Q. You haven't reviewed any information to determine what the
7 margin is, though?

8 A. I'm not privy to your financial information on that.

9 MR. KENNARD: That's all we have, Judge.

10 MS. BENEDEK: I have one follow-up.

11 JUDGE MELILLO: Go ahead, Ms. Benedek.

12 BY MS. BENEDEK:

13 Q. You were asked questions regarding page 31 by counsel for
14 Office of Consumer Advocate and it's in your Rebuttal Testimony
15 lines 2 through 3, Rebuttal, page 31, lines 2 to 3.

16 A. I'm with you. Thank you.

17 Q. It says here no -- you've been building this network since
18 the mid-1990's with no access of PA USF subsidy whatsoever. But
19 am I correct that Sprint Nextel Partners has received USF at the
20 federal level, meaning federal funding?

21 A. I agree and that's why it says Pennsylvania Universal
22 Service. There's no Pennsylvania Universal Service collections;
23 but, yes, I agree with you that we do collect some federal
24 Universal Service Funds.

25 Q. Subject to check, would you accept that in 2009 that total

1 amount was -- off the USAC website, that's U-S-A-C, all caps, was
2 1.2 million roughly? I'll give this to you.

3 A. Pennsylvania specific?

4 Q. For Pennsylvania specific, yes.

5 MS. BENEDEK: May I approach the witness, Your
6 Honor?

7 JUDGE MELILLO: Yes, you may.

8 BY MS. BENEDEK:

9 Q. It's in small print.

10 A. It sure is.

11 Q. It looks like 1.2 to me.

12 A. Yes.

13 Q. In 2008 what was it?

14 A. I agree that the amount in '08 was 1.4 and 1.2 for '09,
15 and it will transition away as the FCC has mandated it that
16 Sprint eliminates its Pennsylvania -- excuse me, its federal
17 Universal Service funding.

18 Q. And that's the federal broadband plan that we've heard
19 mentioned about?

20 A. No. In conjunction with --

21 Q. The merger.

22 A. Yeah. In conjunction with the merger, we were required to
23 eliminate our federal Universal Service collection and we were
24 provided a period; and I believe we have transitioned away 40
25 percent at this point if I remember correctly.

1 MS. BENEDEK: No further questions.

2 JUDGE MELILLO: Just a point of clarification on
3 the last question, Mr. Appleby. So, in other words, the numbers
4 you read, the 1.2 million for '09 and the 1.4 million I think for
5 '08, that's federal Universal Service funding that Sprint's now
6 receiving and they're transitioning that totally to zero I guess?

7 THE WITNESS: Correct. So we submit our lines
8 related to where we provide service within Pennsylvania and
9 receive the same level of support that the incumbents receive out
10 of the Fund, and the lines within Pennsylvania times the amount
11 that we should receive equivalent to what the ILECs receive in
12 those areas generated the 1.2 and the 1.4 million total recovery.

13 JUDGE MELILLO: So, based on what the
14 Pennsylvania ILECs are receiving?

15 THE WITNESS: Yes. So, for example, if we have a
16 line in a CenturyLink exchange and they receive \$3 a month for
17 federal Universal Service support, we receive \$3 for that same
18 exchange area for our particular line. That's the way the FCC
19 funds works.

20 JUDGE MELILLO: But you don't receive
21 Pennsylvania USF money?

22 THE WITNESS: No Pennsylvania Universal Service
23 money.

24 JUDGE MELILLO: All right. Now, I have one other
25 question to ask you and then allow redirect and additional

1 questions based on my question. We heard earlier today about
2 AT&T's testimony with respect to this retroactivity issue. You
3 might recall that. We clarified that the AT&T position is that
4 they were not going to advocate for retroactivity under 1309.
5 They would accept access reform on a going-forward basis.

6 Now, I understand Sprint's position is different
7 than that, and they're insisting at this point on retroactivity.
8 Would Sprint consider foregoing that if that becomes a sticking
9 point for the Commission in regard to access reform?

10 THE WITNESS: My testimony is what it is at this
11 point, but I will tell you that it's very important to move
12 forward with reform. And, given our choice, we would rather have
13 reform going forward.

14 JUDGE MELILLO: That answers the question. All
15 right.

16 MS. BENEDEK: Well, I have a follow-up to that.

17 JUDGE MELILLO: I said I would allow that. Does
18 anyone have any follow-up as a result of my questions?

19 MS. BENEDEK: I have one.

20 JUDGE MELILLO: All right. Go ahead, Ms.
21 Benedek.

22 BY MS. BENEDEK:

23 Q. So, if Sprint continues to press on its retroactive
24 argument, is it also your position that any revenue neutrality
25 provision in this case needs to be tried up to when the access

1 order, assuming it's a reduction, occurs; or does it go back to
2 the retroactive period for revenue neutrality purposes?

3 A. I've expressed no opinion up to this point on that, and I
4 frankly haven't given it any thought whatsoever.

5 JUDGE MELILLO: That might have some legal
6 implications, too. I don't know if you're a lawyer, quid pro
7 quo.

8 All right. Anything else for Mr. Appleby?

9 MR. GRUIN: Your Honor?

10 JUDGE MELILLO: Yes.

11 MR. GRUIN: I do have a handful of redirect
12 questions, but I'd like to ask for a moment to confer with Mr.
13 Aron.

14 JUDGE MELILLO: Certainly. We'll take a recess
15 of, what, five minutes?

16 MR. GRUIN: Two minutes.

17 JUDGE MELILLO: Two minutes is fine. We're off
18 the record.

19 (Whereupon, a brief recess was
20 taken.)

21 JUDGE MELILLO: We'll continue with the redirect
22 then of Witness Appleby.

23 MR. GRUIN: Thank you, Your Honor.

24 REDIRECT EXAMINATION

25 BY MR. GRUIN:

1 Q. Mr. Appleby, I want to start where Ms. Benedek left off
2 and that's page 31 of your Rebuttal Testimony.

3 A. Okay.

4 Q. Do you have it in front of you?

5 A. I do.

6 Q. She was referring to lines 2 and 3, and this is I guess
7 more of a correction. Line 3, it says has done so with no access
8 of PA USF. Did you mean to say or there?

9 A. Access to perhaps.

10 Q. Okay. And I believe --

11 A. I'm sorry. The point is, we had no funding.

12 Q. Okay. And Mr. Cheskis from the OCA also asked you about
13 this passage here, and it appeared there was some confusion about
14 which Sprint network you were referring to. Could you just
15 clarify for the record and the ALJ the various Sprint entities
16 and their services they provide?

17 A. Sure. Sprint is a long distance company. We are a
18 wireless company, and we provide wholesale services to cable
19 telephony providers who offer cable telephone services within the
20 state as well.

21 Q. And, following up on that, the last one you described, a
22 wholesale provider, is there a certain license associated with
23 that that Sprint maintains in Pennsylvania?

24 A. I know there was some certification requirements for
25 offering service, but I'm not familiar with the details.

1 Q. Okay. Thank you. Mr. Cheskis also asked you a question
2 about is Sprint able to provide toll service to a customer if
3 that customer did not have a local loop; do you recall that?

4 A. I do.

5 Q. Well, is the reverse true? Can a local customer or an
6 ILEC complete a call, an interstate call, without the presence of
7 an IXC or interstate carrier?

8 A. No. The IXC is necessary as well as the carrier on the
9 other end of the call which more and more is not another landline
10 provider. It's perhaps a wireless provider who collects nothing
11 for the use of their network to complete the calls to their end
12 users.

13 Q. Now, do you remember when Ms. Benedek asked you the
14 question about the letter and I did my objection --

15 A. Yes.

16 Q. -- and eventually got the letter into the record? Isn't
17 it true that ILECs can terminate customers as well as wireless
18 companies?

19 A. I know there are certain circumstances where they can
20 terminate, for example, customers that do not pay their toll
21 bill. The requirements to terminate somebody for basic local
22 service, however, I think are pretty onerous if, in fact,
23 possible. I'm not sure of the details of that.

24 Q. Are you aware of if an ILEC can terminate a user for
25 illegal usage of a local line?

1 A. I think there are some provisions in the tariff related to
2 how you can use the service, yes.

3 Q. How about nonpayment of a bill?

4 A. Yes, for example, like toll.

5 Q. Okay. Thank you. There was also some discussion, I
6 believe it was Mr. Cheskis who asked you some questions about
7 whether it's feasible or possible for interexchange carriers to
8 construct their own local loops; is that correct?

9 A. I remember that.

10 Q. Have you heard that argument made in the past by a CLEC or
11 other carriers?

12 A. All the time, yes. That's the CLEC argument offered
13 whenever you ask for reform of CLEC access rates, that they
14 expect you to bill to each one of the individual end users that
15 they serve.

16 Q. And are you aware of whether or not any other state
17 commission has accepted that argument and imposed that finding?

18 A. Every time CLEC access rates have been reviewed across the
19 country that I'm aware of, each state commission has told to
20 decrease the CLEC access rates in those cases, most of the time
21 to the same level as the incumbent that they're competing
22 against, like this state has or perhaps it was statutory.

23 Q. Okay. Thank you. Mr. Appleby. Do you also recall your
24 discussion with Ms. Benedek about whether or not Sprint has
25 carrier of last resort obligations?

1 A. I remember.

2 Q. When a wireless carrier such as Sprint gets a wireless
3 license, is that issued by the FCC?

4 A. I don't believe I know the answer to that.

5 Q. Mr. Appleby, do you recall when you read certain highly
6 confidential revenue information into the record at the request
7 of Ms. Benedek?

8 A. Yes.

9 Q. And, just to clarify, that was just revenue information
10 related to Sprint Nextel; is that correct, or the Sprint
11 entities?

12 A. It's a corporation document.

13 Q. Do you know how those revenue numbers compared to other
14 carriers?

15 A. No.

16 Q. For instance, could you compare those numbers to, say,
17 AT&T or T Mobile?

18 A. If you had the data perhaps, but I don't know of any
19 public source for those.

20 Q. Do you remember when Ms. Benedek asked you about what you
21 said were the advantages of the ubiquitous network?

22 A. Yes.

23 Q. And she asked you if you had done any studies or knew of
24 any studies along those lines; is that correct?

25 A. I remember that.

1 Q. Okay. Could you turn to your Rebuttal Testimony, Exhibit
2 JAA 11-R?

3 A. Yes.

4 MR. KENNARD: What's the number?

5 MR. GRUIN: It's JAA 11-R.

6 MS. BENEDEK: Would that be Rejoinder?

7 MR. GRUIN: No, it was Rebuttal.

8 BY MR. GRUIN:

9 Q. So, after looking at this question and answer, do you have
10 anything else to say about Ms. Benedek's question to you about do
11 you have any studies about the cost of providing -- of being a
12 carrier of last resort?

13 A. Yeah. We said over and over again in this docket that
14 there is no information about the obligations that the RLECs have
15 as if, in fact, they are COLR, that we've asked for them to
16 quantify and we've asked -- which is to simply to provide that
17 information.

18 Q. So it's not just a matter of you not having a study about
19 costs of being a carrier of last resort but that no carrier has
20 such a study; is that correct?

21 A. That is true. There is just no information on the record
22 whatsoever whether provided by us or any other party of record.

23 MR. GRUIN: Thank you, Mr. Appleby.

24 No further questions, Your Honor.

25 JUDGE MELILLO: Very well.

1 Does anyone have any recross examination?

2 (No response.)

3 JUDGE MELILLO: All right. Hearing nothing then,
4 the witness is excused. Thank you.

5 (Witness excused.)

6 MR. GRUIN: I would like to move his testimony
7 into the record.

8 JUDGE MELILLO: Yes. That was moved into the
9 record plus also attached exhibits.

10 MR. GRUIN: Yes. Thank you, Your Honor.

11 JUDGE MELILLO: But it's always good to check.

12 MR. GRUIN: Yes.

13 JUDGE MELILLO: All right. The next witness on
14 our list is Mr. Price, Verizon.

15 JUDGE MELILLO: Mr. Price, please raise your
16 right hand.

17 Whereupon,

18 DON PRICE,
19 having been duly sworn, testified as follows:

20 JUDGE MELILLO: All right. Thank you.

21 Please continue.

22 MS. PAIVA: Yes, Your Honor. Verizon calls Don
23 Price.

24 DIRECT EXAMINATION

25 BY MS. PAIVA:

1 Q. Mr. Price, do you have in front of you four separate
2 pieces of testimony; and I will describe them for the record, and
3 we have given two copies to the court reporter with public and
4 proprietary versions. So the first piece of testimony is Verizon
5 Statement 1.0 dated July 2nd, 2009, consisting of 23 pages and
6 three exhibits. Do you have that document?

7 A. Yes, I do.

8 Q. And it's a proprietary document?

9 A. The one that I have is proprietary. I understand there
10 were two versions.

11 Q. That's right. We provided a public version as well for
12 the record. And also do you have Verizon Statement 1.1 Price
13 Rebuttal dated March 10th, 2010, consisting of 51 pages and four
14 exhibits?

15 A. Yes, I do.

16 Q. And we have provided a proprietary and public version of
17 that one as well. Do you have Verizon Statement 1.2 Price
18 Surrebuttal dated April 1st, 2010, consisting of 21 pages and no
19 exhibits?

20 A. Yes, I do.

21 Q. And we have provided public and proprietary versions of
22 that one. And do you have Verizon Statement 1.3 Price Rejoinder
23 dated April 8th, 2010, consisting of 16 pages and no exhibits?

24 A. Yes.

25 Q. And that one is only a public version. Do you have any

1 corrections to any of those pieces of testimony?

2 A. Yes, one correction to Verizon Statement 1.1, the Rebuttal
3 Testimony at page 24.

4 Q. And what is your correction to page 24?

5 A. At line 10 of page 24, I would strike the last word on
6 that line, financial; and, instead of that word, I'd insert
7 revenue.

8 Q. Any other changes?

9 A. Not to my knowledge.

10 Q. So, with that correction, were these four pieces of
11 testimony prepared by you or under your direction and control?

12 A. Yes.

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

15 A. They would.

16 MS. PAIVA: Your Honor, I move for the admission
17 of the four Verizon Statements subject to cross-examination.

18 JUDGE MELILLO: Any objection?

19 (No response.)

20 JUDGE MELILLO: Hearing none, those documents
21 identified are admitted and including all attached exhibits.

22 (Whereupon, the documents were marked
23 as Verizon Statements Numbers 1.0,
24 1.1, 1.2, and 1.3 for identification
25 and received in evidence.)

1 JUDGE MELILLO: The witness is available for
2 cross-examination I take it?

3 MS. PAIVA: Yes.

4 JUDGE MELILLO: All right.

5 PTA, do you have any cross-examination?

6 MR. KENNARD: We do not, Your Honor.

7 JUDGE MELILLO: CenturyLink?

8 MS. BENEDEK: Yes, limited. May I approach the
9 witness, Your Honor?

10 JUDGE MELILLO: Yes.

11 MS. BENEDEK: I'm handing out Verizon responses
12 to a set of data questions propounded by CenturyLink. Some of
13 the information contained therein is confidential. I have given
14 two copies to the court reporter.

15 CROSS-EXAMINATION

16 BY MS. BENEDEK:

17 Q. Mr. Price, my name is Zsu Benedek.

18 JUDGE MELILLO: By the way, do you want this
19 marked as CTL Cross-examination Exhibit Number 4?

20 MS. BENEDEK: 4, correct.

21 JUDGE MELILLO: All right. That is so marked.

22 (Whereupon, the document was marked
23 as CTL Cross-examination Exhibit
24 Number 4 for identification.)

25 BY MS. BENEDEK:

1 Q. Good afternoon. A couple questions for you relative to
2 the first response there, Set 1 Number 7. There is confidential
3 information. I do not want to get into the data. My question to
4 you is that there is a corrected response and it provides
5 response for the former MCI entities and then what is marked as
6 Verizon LD companies. Can you please explain to me are the
7 Verizon LD companies the long distance arm relative to the
8 Verizon ILEC in the territory Verizon long distance companies?

9 A. No, I don't believe that's correct. Verizon LD is a
10 corporate entity that provides primarily interexchange services
11 to mass market customers.

12 Q. Throughout the state?

13 A. Throughout the nation.

14 Q. And then the MCI entity that's above that provides to the
15 Enterprise customer segment; is that right?

16 A. Generally that's true. I think the response shows that
17 there's still a small amount of residential customers that are
18 there. By and large your characterization is correct.

19 Q. And then, in terms of the Verizon LD companies, the bottom
20 part of that confidential exhibit, you have no way of telling
21 whether those customer accounts there are within the territory,
22 service territory of my client, do you?

23 A. That's correct. I do not.

24 Q. Mr. Price, to your knowledge, has this Commission ever
25 tied pricing of rural ILEC access rates to another carrier's

1 access rates?

2 A. No. Given the history of the way access charges were set
3 initially and then in the subsequent Global Order and subsequent
4 to that, in all cases access charges were set essentially in a
5 revenue replacement fashion. And so this represents an
6 opportunity for the Commission to move towards a benchmark
7 approach since pretty much everyone agrees that there is no
8 longer a cost basis, if you will, for interexchange carriers to
9 be assessed access charges.

10 Q. Would it be fair to say that it's an issue that's -- it's
11 an opportunity of first impression for this Commission?

12 A. Well, certainly with respect to the RLECs, the Commission
13 had said more than ten years ago it wanted to have an
14 investigation into what the appropriate access rates for the
15 RLECs were; and I think the record is pretty clear that there
16 have been some delays in that. So, yes, this is a matter of
17 first impression.

18 Q. In terms of the benchmarks and Verizon's proposal to use
19 its intrastate switched access rates as a benchmark for the
20 pricing of RLEC intrastate access rates including my client, did
21 you test other benchmarks? Did you consider other benchmarks?

22 A. I'm not sure what you mean by test.

23 Q. Did you consider any other benchmarks other than Verizon
24 rates that you propose?

25 A. The proposal that I'm making in this proceeding is

1 identical to the proposal that Verizon has made in a number of
2 states over the last several years where access rates are at
3 issue. Whether it is the independents or the RLECs as is the
4 case here or in other states where it's a question of CLEC access
5 rates, it's essentially the same recommendation that I'm making
6 here. So this is the Verizon recommendation, the Verizon
7 approach.

8 Q. So you did not test or you did not consider other
9 benchmarks, correct?

10 A. Well, I didn't just wake up one day and say, oh, this is
11 going to be Verizon's position. Obviously a lot of thought has
12 gone into the validity, the appropriateness, the reasonableness
13 of that position.

14 Q. Granted. I read your testimony. Again, yes or no, you
15 didn't consider other benchmarks, correct?

16 A. Well, I mean, it is, you know, just as I said with respect
17 to Verizon's position what we have seen in other cases, AT&T's
18 position. So we certainly considered that. We have disagreement
19 as to which approach is preferable. So, yes, other positions
20 have been considered; and this is the position that Verizon
21 thinks is the most reasonable and appropriate.

22 Q. Now, in this proceeding you've also stated that the RLECs
23 should rebalance their revenue to -- or relative to
24 noncompetitive services. Have you done any studies or any other
25 analyses to determine whether that proposal is viable in my

1 client's service territory?

2 A. No analysis of viability was done. Certainly there has
3 been plenty of opportunity for there to be a showing with respect
4 to whether the revenues were needed to preserve Universal
5 Service, whether the revenues were needed to protect financial
6 viability; and there's no evidence in this case that those
7 revenues are needed for the RLECs to preserve Universal Service
8 or protect their own financial viability.

9 Q. Did you review CenturyLink's alternative annual price cap
10 filings?

11 A. No.

12 Q. What studies have you done to -- or have you done any
13 studies to determine whether CenturyLink can both recover its
14 costs and continue to price cost competitively under Verizon's
15 proposal?

16 A. As I alluded to a moment ago, there have been numerous
17 opportunities with the various filings in this proceeding for
18 Century to make a showing as to potential threats to its
19 financial viability or other factors and that information simply
20 was not produced. So I have no knowledge. The record does not
21 contain anything that suggests that a reduction in CenturyLink's
22 access rates would cause the company to forgo any costs that
23 previously have been recovered through its access rates.

24 Q. But you haven't done any studies, any separate studies or
25 analyses to determine that, under Verizon's proposal, we can both

1 price competitively and cover our costs, correct? You have not
2 done that?

3 A. Had there been evidence in the record of financial impact,
4 I would have assessed that and I would have offered an opinion.
5 As I stated, there is no record evidence as to financial impact.

6 Q. You have not done an analysis or a study, correct?

7 A. I believe that's consistent with what I've said.

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

9 JUDGE MELILLO: All right.

10 The Office of Consumer Advocate, do you have any
11 questions?

12 MR. CHESKIS: Just a few, Your Honor.

13 JUDGE MELILLO: All right. Please proceed.

14 MR. CHESKIS: Thank you, Your Honor.

15 BY MR. CHESKIS:

16 Q. Good afternoon, Mr. Price.

17 A. Good afternoon.

18 Q. Are you aware that the Verizon contribution to the
19 Pennsylvania Universal Service Fund is paid through the 2003
20 price change opportunity reduction that the Commission allowed
21 the company to do that? Are you familiar with that? I didn't
22 say that very well, but are you familiar with that?

23 A. I am.

24 Q. And that's approximately \$17 million; is that correct?

25 A. I believe that's true.

1 Q. If the Pennsylvania Universal Service Fund is either
2 reduced or eliminated, would the company -- would Verizon return
3 that \$17 million to consumers in any other fashion? And I'm
4 sorry, just to clarify, that is \$17 million annually?

5 MS. BENEDEK: Since 2002?

6 MR. CHESKIS: 2003.

7 THE WITNESS: Well, I'm not aware of any proposal
8 in this case that would cause the fund to be reduced with the
9 exception of the recommendation that I made in my Surrebuttal
10 Testimony. So I don't see a nexus between the recommendations
11 that are before the Commission in this proceeding and your
12 question.

13 BY MR. CHESKIS:

14 Q. Okay. Let me clarify it then a little bit. To the extent
15 that in the future Verizon is no longer required to contribute
16 \$17 million on an annual basis to the Pennsylvania Universal
17 Service Fund, does the difference between that new contribution
18 now and \$17 million get returned to the customers in any manner?

19 A. I suspect that there's probably some legal conclusion
20 that's required there because I can't tell you with respect to
21 the Verizon plan whether or not that's called for, required,
22 prohibited, or anything else. I can't speak to that.

23 Q. And, when you say the Verizon plan, you mean Verizon's
24 plan that was presented in this case?

25 A. No, I'm sorry. I mean the Verizon price cap plan.

1 Q. If you could turn to page 7 of your Surrebuttal Testimony
2 dated April 1st, 2010.

3 A. All right.

4 Q. And specifically looking at lines 12 to 15 where you
5 discuss the record evidence regarding affordability submitted by
6 the OCA, do you see that?

7 A. Yes, I do.

8 Q. Were you a witness for Verizon in a proceeding where the
9 OCA presented that affordability study through Roger Colton?

10 A. Yes.

11 Q. Isn't it true that that affordability study that was
12 submitted by the OCA looked at the entire local telephone bill,
13 not just the basic local service rate?

14 A. There were components of the bill, yes. There is a table
15 I believe that we attached to one of Dr. Loube's -- I'm sorry,
16 Dr. Saihr's testimony.

17 Q. We'll find out on Friday.

18 A. I believe there's a schedule attached to one of his pieces
19 of testimony in this case that shows the various components; and
20 quite frankly, I think there's a difference in opinion as to
21 whether some of the components that he included in his
22 calculations are correct.

23 Q. And did you raise those differences in the proceeding
24 before Judge Colwell or in this proceeding before Judge Melillo?

25 A. Well, the differences I think expressed merely in the fact

1 that the number here that you pointed to in my testimony is a
2 different number than the number in Dr. Loube's testimony. I did
3 not set out to explain that difference here, no.

4 Q. Do you recall that the affordability study that Mr. Colton
5 submitted was based on the Pennsylvania rural household median
6 income?

7 A. You're really stretching my memory here. No, I don't,
8 quite frankly. I don't recall the details of that. It was about
9 a year ago when we had that hearing, maybe longer.

10 Q. I appreciate that, and I think one of the reasons why I'm
11 doing this line of cross is because the study that Mr. Colton
12 presented has been discussed a lot in his -- that he presented
13 before Judge Colwell in this proceeding; and I don't think it's
14 really been characterized correctly. I don't know what type of
15 overlap we have between the record in this proceeding and the
16 record in that proceeding. I've seen some things crossing over,
17 but --

18 JUDGE MELILLO: That's a good question.

19 BY MR. CHESKIS:

20 Q. -- the purpose of my questions here are really just to
21 clarify what Mr. Colton's affordability study was.

22 JUDGE MELILLO: I actually broached that question
23 with Judge Colwell this morning; and it was her thought that,
24 yes, the information that was on the record in that phase of the
25 proceeding is part of the record in this case. It's the same

1 docket number. We've been told by the Commission that we can't
2 relitigate matters that were decided by Judge Colwell absent
3 extraordinary circumstances.

4 I explained one of those matters this morning
5 about the potential linkage between access reductions and
6 Pennsylvania Universal Service and rate rebalancing. In order to
7 comply with that order, we have to look at certain things; but
8 it's my understanding that the record is the record.

9 MS. PAIVA: There's a sentence in one of the
10 Commission's Orders. I think it's the order on the scope. I'm
11 not a hundred percent sure which one but it's to the effect that
12 the record before Judge Colwell remains available to you.

13 JUDGE MELILLO: Please keep your voice up because
14 you're not speaking into the microphone. Go ahead.

15 MS. PAIVA: There's a sentence in one of the
16 Commission's Orders to the effect that the record before Judge
17 Colwell remains available to the parties in this case.

18 JUDGE MELILLO: That could be but that was her
19 thought when I discussed it this morning. Obviously, if the
20 Commission made a pronouncement on that, it's going to be our
21 ruling.

22 MR. CHESKIS: Well, I didn't mean to open up this
23 can of worms.

24 JUDGE MELILLO: Certainly.

25 MR. CHESKIS: Maybe I can just ask a few more

1 clarifying questions regarding Mr. Price's understanding of the
2 affordability study submitted by the OCA.

3 BY MR. CHESKIS:

4 Q. We were talking about the total bill and how the
5 affordability study Mr. Colton presented was based on the total
6 bill; do you recall that?

7 A. Yes, I do.

8 Q. And by total bill we define that as all the fees, taxes,
9 and surcharges that are required to get basic local exchange
10 service such as the subscriber line charge, 911, TRS surcharge;
11 is that correct?

12 A. Yes. And I believe that's what I was referring to with
13 reference to Dr. Loube's -- I believe it's in RL 6 to his Direct
14 Testimony which sets all of this out. The reason for the
15 difference between the \$23 rate that was referred to in my
16 Surrebuttal Testimony at page 7 that we talked about earlier was
17 that there were several columns in Dr. Loube's Exhibit RL 6 that
18 we just do not believe are appropriate.

19 For example, some of the carriers have a separate
20 Touch Tone charge. Many of the RLECs do not. So to include the
21 Touch Tone charge both as part of the local rate for those
22 carriers that include it as part of local and then add on a
23 separate charge to us seems like double-counting. So the
24 difference between my \$23 figure here at page 7 of my Surrebuttal
25 is related to exclusion of Touch Tone and I think one or two

1 other elements from Dr. Loube's exhibit.

2 Q. And you are aware that the benchmark that the OCA proposed
3 in this proceeding was based on the Verizon Pennsylvania's
4 weighted average residential basic local exchange rate; is that
5 correct?

6 A. I believe that's right. And basically we had some
7 disagreements about that issue as well with Mr. Colton because
8 the comparability is not supposed to be with the average, it's
9 supposed to be with the urban rate.

10 Q. I'm sorry. You mean Dr. Loube?

11 A. Yes, I did. I apologize.

12 Q. I had asked both the AT&T witnesses and the Sprint witness
13 whether the toll minutes have been decreasing in Pennsylvania in
14 the past several years, and both said that they were. Is that
15 the same for Verizon in Pennsylvania?

16 A. I'm trying to recall if we provided -- it's certainly true
17 industry-wide, nationwide; and I believe we provided discovery
18 responses that showed a decline as well in Pennsylvania.

19 Q. And the other question that I also asked both the AT&T
20 witnesses and the Sprint witness was whether or not they were
21 willing to make a commitment on the record in this proceeding
22 that its average toll rates in Pennsylvania would come down by
23 more than any access reductions the Commission may direct as a
24 result of this proceeding. Is Verizon willing to make such a
25 commitment?

1 A. That sounds like a yes or no question, but unfortunately
2 I'm going to have to qualify the answer. The short answer is no.

3 The qualification is because, in competitive
4 markets, no one really knows how those benefits will be flowed
5 through, whether they will be through price reductions, whether
6 they will be offset by other factors if the amount of the
7 reduction is less than what would otherwise have been expected,
8 whether it would be passed through in the form of additional
9 service enhancements that would provide any customer benefits.

10 And, for all the reasons that Dr. Pelcovits
11 explained in some of his testimony, it's certainly not a
12 straightforward matter to try to calculate a flow-through should
13 the Commission see fit to try to impose a flow-through
14 requirement.

15 MR. CHESKIS: Thank you, Your Honor. I have no
16 further questions for this witness.

17 JUDGE MELILLO: Thank you.

18 The Office of Trial Staff, do you have any
19 questions?

20 MS. KASTER: Your Honor, no questions from OTS.

21 JUDGE MELILLO: All right.

22 I just have one or two clarifying questions, Mr.
23 Price. I had a clarification about your Surrebuttal on page 12.
24 These numbers don't appear to be proprietary. Beginning on that
25 page around line 5, you talk about what the impact that you see

1 of the AT&T proposal would be on Verizon vis-a-vis Verizon's
2 contribution to the Pennsylvania Universal Service Fund. And I
3 just want to clarify whether these numbers are net of any access
4 reductions that will be provided under the AT&T proposal or not.

5 THE WITNESS: It's my understanding that the
6 figure in line 16 is a net figure. In other words, taking into
7 account the access reductions, the proprietary numbers that are
8 reflected beginning at the lower portion of page 11 and carrying
9 over to the top of page 12, those calculations are then melded
10 with the public figures that are provided at the beginning at
11 line 5 on page 12 in order to calculate that net effect.

12 JUDGE MELILLO: So, in other words, the number
13 that you show on line 12 which is 11.2 million on top of what
14 Verizon already pays, that's a net number after you've reflected
15 any access reductions that Verizon would experience as a result
16 of the AT&T proposal?

17 THE WITNESS: No, ma'am.

18 JUDGE MELILLO: It's not net?

19 THE WITNESS: The 11.2 million is not.

20 JUDGE MELILLO: That's what I thought. So that
21 hasn't reflected the access reductions; is that correct?

22 THE WITNESS: That is not the figure that's lower
23 on the page at line 16.

24 JUDGE MELILLO: That's the number, the 7 million
25 versus this?

1 THE WITNESS: Yes.

2 JUDGE MELILLO: All right. Thank you.

3 Are there any questions as a result of my
4 questions?

5 MS. BENEDEK: No.

6 JUDGE MELILLO: No, all right.

7 Any redirect?

8 MS. PAIVA: No redirect.

9 JUDGE MELILLO: Okay. There's no recross.

10 MS. BENEDEK: I move my exhibit, CTL Cross
11 Exhibit 4.

12 JUDGE MELILLO: CTL Cross-examination Exhibit 4,
13 any objections?

14 MS. PAIVA: No objection, Your Honor.

15 JUDGE MELILLO: Hearing none, that's admitted.

16 (Whereupon, the document marked as

17 CTL Cross-examination Exhibit

18 Number 4 was received in evidence.)

19 JUDGE MELILLO: You're excused. Thank you, Dr.
20 Price.

21 (Witness excused.)

22 JUDGE MELILLO: The next witness on the list is
23 Mr. Easton from Quest. It's my understanding that the parties
24 are stipulating in the testimony; however, does Quest have a
25 presentation with respect to the testimony?

1 MR. POVILAITIS: I'll have his testimony is
2 identified and moved in.

3 JUDGE MELILLO: All right. Very well.

4 MR. POVILAITIS: And I understand you have a
5 question, and there are two minor corrections.

6 JUDGE MELILLO: All right.

7 Mr. Easton, raise your right hand.

8 Whereupon,

9 WILLIAM R. EASTON,
10 having been duly sworn, testified as follows:

11 JUDGE MELILLO: Please be seated.

12 Continue, counsel.

13 MR. POVILAITIS: Good afternoon, Your Honor.

14 JUDGE MELILLO: Good afternoon

15 MR. POVILAITIS: Quest asks that an 11-page
16 statement labeled the Direct Testimony of William R. Easton be
17 marked as QCC Statement Number 1. And would you like me to
18 proceed?

19 JUDGE MELILLO: That can be so identified.

20 (Whereupon, the document was marked
21 as QCC Statement Number 1 for
22 identification.)

23 MR. POVILAITIS: And a 15-page statement labeled
24 Rebuttal Testimony of William L. Easton be marked as QCC
25 Statement Number 1-R.

1 JUDGE MELILLO: That may be so identified.
2 (Whereupon, the document was marked
3 as QCC Statement Number 1-R for
4 identification.)

5 MR. POVILAITIS: A six-page statement labeled
6 Surrebuttal Testimony of William R. Easton be marked as QCC
7 Statement Number 1-SR.

8 JUDGE MELILLO: That may be so identified.
9 (Whereupon, the document was marked
10 as QCC Statement Number 1-SR for
11 identification.)

12 MR. POVILAITIS: And a seven-page statement
13 labeled Rejoinder Testimony of William R. Easton be marked as QCC
14 Statement Number 1-RJ.

15 JUDGE MELILLO: That may be so identified.
16 (Whereupon, the document was marked
17 as QCC Statement Number 1-RJ for
18 identification.)

19 DIRECT EXAMINATION

20 BY MR. POVILAITIS:

21 Q. Would you please state your name for the record.

22 A. William Easton.

23 Q. Mr. Easton, were the Statements just marked by Judge
24 Melillo prepared by you?

25 A. They were.

1 Q. Is the information in these Statements true and correct to
2 the best of your knowledge, information, and belief?

3 A. It is.

4 Q. If I were to direct the questions contained in your
5 Statements to you today, would your answers be the same?

6 A. They would.

7 Q. Do you have any corrections to your Statements?

8 A. I do have two corrections, both on my Rebuttal Testimony.
9 The first is on page 10, line 8; and, on that line between the
10 words average and Pennsylvania, the acronym RLEC should be
11 inserted so it reads under 25 percent of the average RLEC
12 Pennsylvania rates. My second correction is in my Rebuttal
13 Testimony again, page 12, line 11; and the word CLEC should be
14 stricken and replaced with the word RLEC.

15 Q. Thank you, Mr. Easton.

16 MR. POVILAITIS: Your Honor, at this time I'd ask
17 that the Statements identified as QCC Statement Number 1,
18 Statement Number 1-R, Statement Number 1-SR, and Statement Number
19 1-RJ be entered into the evidentiary record.

20 JUDGE MELILLO: Any objection?

21 (No response.)

22 JUDGE MELILLO: Hearing none, they're admitted.

23 (Whereupon, the documents marked as
24 QCC Statements Numbers 1, 1-R, 1-SR,
25 and 1-RJ were received in evidence.)

1 MR. POVILAITIS: Thank you, Your Honor. It's my
2 understanding that counsel that have previously indicated
3 cross-examination for Mr. Easton have now indicated that they do
4 not have cross. However, the withdrawal of cross by CenturyLink
5 was pursuant to a stipulation we reached agreeing to have
6 admitted into the record two exhibits, one of which contains
7 confidential or highly confidential information; and I believe
8 counsel for CenturyLink will proceed.

9 MS. BENEDEK: Yes, Your Honor. We'd like to have
10 marked and admitted into the record, please, what has been marked
11 as CenturyLink Cross Exhibit 5 and CenturyLink Cross Exhibit 6.

12 JUDGE MELILLO: Those documents may be so marked.
13 (Whereupon, the documents were marked
14 as CTL Cross-examination Exhibits
15 Numbers 5 and 6 for identification.)

16 MS. BENEDEK: They are two separate documents.
17 CenturyLink Cross-exam Exhibit 5 is not -- they both consist of
18 responses to discovery. We packeted them so that the
19 nonconfidential was separate from the confidential and so that's
20 the reason for two.

21 JUDGE MELILLO: And CenturyLink Cross-examination
22 Exhibit 5 is nonconfidential, and CenturyLink Cross-examination
23 Exhibit 6 is confidential; is that correct?

24 MS. BENEDEK: Yes, it is correct. By agreement
25 by counsel, we're going to allow those documents to get admitted

1 into the record without objection.

2 JUDGE MELILLO: Very well, then. They're
3 admitted.

4 (Whereupon, the documents marked as
5 CTL Cross-examination Exhibits
6 Numbers 5 and 6 were received in
7 evidence.)

8 MR. POVILAITIS: Your Honor, I believe you
9 indicated earlier today you have a question for Mr. Easton.

10 JUDGE MELILLO: Just a clarifying question. I
11 understand you're not a lawyer I don't think, Mr. Easton. Good
12 for you. It appeared to me that, in your Direct and Rebuttal, I
13 thought you were saying you didn't think the FCC would preempt
14 the states with respect to access rates; and, in your
15 Surrebuttal, it seems that you say now that you think that will
16 happen. You state that the FCC proposes to transition all
17 intercarrier compensation terminating rates to a uniform rate per
18 carrier. So did you change your position?

19 THE WITNESS: No. The FCC came out with their
20 national broadband plan, and what I was referring to there the
21 transitioning rates had to do with a proposal in that specific
22 plan.

23 JUDGE MELILLO: So that's the basis for your
24 statement in your Surrebuttal --

25 THE WITNESS: Correct.

1 JUDGE MELILLO: -- is the broadband report?

2 THE WITNESS: Correct.

3 JUDGE MELILLO: All right. That's all I have.

4 Any questions as a result of my questions?

5 (No response.)

6 JUDGE MELILLO: Hearing nothing further then,

7 we're done.

8 Thank you, Mr. Easton.

9 (Witness excused.)

10 JUDGE MELILLO: And the last witness for today

11 then is Dr. Pelcovits from Comcast.

12 MR. POVILAITIS: Is it car moving time, Your

13 Honor?

14 JUDGE MELILLO: Excuse me?

15 MR. POVILAITIS: Is it car moving time?

16 JUDGE MELILLO: Let's go off the record.

17 (Whereupon, a brief discussion was held

18 off the record.)

19 JUDGE MELILLO: The last witness for today is Dr.

20 Pelcovits. I guess you called him, and I'll place him under

21 oath.

22 MR. DODGE: He showed up here.

23 JUDGE MELILLO: All right.

24 Please raise your right hand.

25 Whereupon,

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1 MICHAEL D. PELCOVITS,
2 having been duly sworn, testified as follows:

3 JUDGE MELILLO: Please be seated.

4 Proceed, counsel.

5 MR. DODGE: Thank you, Your Honor. We've
6 supplied the court reporter and all parties and Your Honor two
7 sets of testimony from Dr. Pelcovits. The first is premarked as
8 Comcast Statement 1.0. That's Dr. Pelcovits's Direct Testimony.

9 JUDGE MELILLO: That may be so marked.

10 (Whereupon, the document was marked
11 as Comcast Statement Number 1.0 for
12 identification.)

13 MR. DODGE: The second is Dr. Pelcovits's
14 Rebuttal Testimony which has been premarked as Statement 1.0
15 capital R.

16 JUDGE MELILLO: That may be so marked.

17 (Whereupon, the document was marked
18 as Comcast Statement Number 1.0R for
19 identification.)

20 MR. DODGE: And I believe both -- at least the
21 second one has proprietary information which is clearly marked
22 for the court reporter.

23 JUDGE MELILLO: Actually, the first document I
24 have is marked as containing confidential information as well.

25 MR. DODGE: Thank you for that clarification,

1 Your Honor.

2 JUDGE MELILLO: They both will be placed in the
3 proprietary record and she should be provided a public version.

4 DIRECT EXAMINATION

5 BY MR. DODGE:

6 Q. Dr. Pelcovits, good afternoon.

7 A. Good afternoon, Mr. Dodge.

8 Q. You have before you copies of the Statements that I've
9 just identified for the Judge?

10 A. Yes.

11 Q. Do you have any corrections or other changes to either of
12 those Statements?

13 A. I have one correction on the Direct Testimony Statement 1.

14 Q. And, sir, could you speak a little more directly into the
15 microphone?

16 A. Is that better?

17 Q. Much.

18 A. I have one correction in the Direct Testimony. If you
19 turn to page 8 and 9, there are two tables and there really
20 should only be one. They're identical except with respect to one
21 number. The correct table is the one on page 9, so I would
22 strike the table on page 8.

23 Q. Any other changes to either Statement?

24 A. No.

25 Q. Dr. Pelcovits, were these Statements prepared by you or

1 under your supervision and control?

2 A. Yes.

3 Q. If I were to ask you here today the questions contained in
4 those Statements, would your answers be the same?

5 A. Yes.

6 Q. Is all the information and answers contained in your
7 prefiled testimony true to the best of your knowledge,
8 information, and belief?

9 A. Yes.

10 Q. And do you adopt those prefiled testimonies under oath
11 mere today?

12 A. I do.

13 MR. DODGE: Your Honor, Comcast at this point
14 would move the admission of Comcast Statements 1.0 and 1.0
15 capital R subject to cross-examination and timely motions.

16 JUDGE MELILLO: Any objection?

17 MR. KENNARD: No, Your Honor.

18 JUDGE MELILLO: Hearing none, they're admitted.

19 (Whereupon, the documents marked as
20 Comcast Statements Numbers 1.0 and
21 1.0R were received in evidence.)

22 JUDGE MELILLO: I note that the exhibit
23 attachments appear to have attachment numbers as opposed to
24 exhibit numbers. That's the way they've been marked. All
25 attachments are admitted as well.

1 MR. DODGE: Thank you, Your Honor.

2 JUDGE MELILLO: All right. It's my understanding
3 there is no cross-examination for Dr. Pelcovits except that there
4 is some agreement as to the admission of various documents from
5 CenturyLink.

6 MR. DODGE: Your Honor, we're trying to beat the
7 Quest record.

8 MS. BENEDEK: Yes, Your Honor. We have by
9 agreement indicated and agreed upon the admission of what has
10 been marked as CenturyLink Cross-examination Exhibit 7. It's a
11 public document. And, with that, we request it be admitted into
12 the record.

13 MR. DODGE: No objection, Your Honor.

14 JUDGE MELILLO: All right. CTL Cross-examination
15 Exhibit Number 7 is admitted.

16 (Whereupon, the document was marked
17 as CTL Cross-examination Exhibit
18 Number 7 and received in evidence.)

19 JUDGE MELILLO: Is there anything else? Anything
20 further for this witness?

21 (No response.)

22 JUDGE MELILLO: We're done. Thank you very much,
23 Dr. Pelcovits.

24 (Witness excused.)

25 JUDGE MELILLO: That concludes the witness

1 schedule for today.

2 Yes, Mr. Cheskis?

3 MS. BENEDEK: Will we start at 9:00 or start at
4 10:00 tomorrow?

5 JUDGE MELILLO: No, we have the court reporter
6 scheduled to come at 9:00. I guess there is a slight adjustment
7 because Quest doesn't have any cross-examination, but I did have
8 11.4 hours based on tabulating all the expected
9 cross-examination.

10 MR. CHESKIS: Your Honor, as you're aware, Dr.
11 Loube is the only witness scheduled for Friday morning; and I'm
12 wondering if it may be appropriate to see if he can be here
13 tomorrow afternoon. And, if that is the case, it'd be our
14 preference that he can come and take the stand tomorrow afternoon
15 and not have to appear on Friday to the extent the situation
16 arises.

17 MS. BENEDEK: I say that's great.

18 JUDGE MELILLO: Can the parties clarify where
19 we're at in terms of the amount of cross-examination for
20 tomorrow? I take it that there's been some revision to the time
21 that is needed? We still are starting at nine o'clock. I guess
22 if the parties think that the 11.4 hours is an overstatement,
23 then we certainly could have Dr. Loube come tomorrow.

24 MS. BENEDEK: Can we go off the record, Your
25 Honor?

1 JUDGE MELILLO: Yes, we can go off the record.
2 That's fine.

3 We're off the record.
4 (Whereupon, a brief discussion was
5 held off the record.)

6 JUDGE MELILLO: We'll reconvene at 9:00 a.m.
7 tomorrow. We're concluded with the witnesses for today. We
8 stand adjourned until tomorrow.

9 (Whereupon, at 5:26 p.m., the hearing
10 was adjourned, to be reconvened at
11 9:00 a.m. on Thursday, April 15,
12 2010.)

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

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