

Dulaney L. O'Roark III
Vice President & General Counsel, Southeast Region
Legal Department



5055 North Point Parkway
Alpharetta, Georgia 30022

Phone 678-259-1449
Fax 678-259-1589
de.oroark@verizon.com

October 3, 2008 – **VIA OVERNIGHT DELIVERY**

Ann Cole, Commission Clerk
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

Re: Undocketed 08-0000
CLEC Intrastate Access Charges

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COMMISSION
CLERK

Dear Ms. Cole:

On October 1, 2008, Verizon filed a CD containing the non-confidential portions of the transcript of last week's hearing at the Massachusetts Department of Telecommunications and Cable to consider a cap on the switched access rates of competitive local exchange carriers (CLECs). (D.T.C. 07-9 – Petition for Investigation under Chapter 159, Section 14, of the Intrastate Access Rates of Competitive Local Exchange Carriers.) At the request of your office, we are enclosing a hard copy of the transcript.

Sincerely,

Dulaney L. O'Roark III

tas

Enclosure

DOCUMENT NUMBER-DATE

09415 OCT-6 8

FPSC-COMMISSION CLERK

VOLUME 1, PAGES 1-174 (Sealed: 117-140)

COMMONWEALTH OF MASSACHUSETTS

DEPARTMENT OF TELECOMMUNICATIONS AND CABLE

DTC 07-9

PUBLIC EVIDENTIARY HEARING, held at the Department of Telecommunications and Energy, One South Station, Boston, Massachusetts, on Tuesday, September 23, 2008, commencing at 10:05 a.m., concerning:

VERIZON NEW ENGLAND, INC.

CONTAINS CONFIDENTIAL PORTIONS

SITTING: Sharon Gillette, Commissioner (beginning)
Lindsay DeRoche, Hearing Officer
Michael Isenberg, Director, Competition Division
Benjamin Dobbs, Assistant Director, Competition Division
Kajal Chattopadhyay, Deputy General Counsel
Michael Mael, Analyst
Dinesh Gopalakrishnan, Analyst

-----Reporter: Alan H. Brock, RDR, CRR-----

Farmer Arsenault Brock LLC

50 Congress Street, Boston, MA 02109

617.728.4404

DOCUMENT NUMBER-DATE

09415 OCT-6 8

2

1 Richard C. Fipphen, Esq.
Alexander W. Moore, Esq.
2 Verizon
140 West Street, 27th Floor
3 New York, New York 10007-2109
212.321.8115 fax: 212.962.1667
4 richard.fipphen@verizon.com
for Verizon New England, Inc.

5 Office of the Attorney General
6 Jesse S. Reyes, Esq.
Assistant Attorney General
7 One Ashburton Place
Boston, Massachusetts 02108
8 617.727.2200 fax: 617.727.1047
jesse.reyes@state.ma.us

9 Rich May, PC
10 Eric J. Krathwohl, Esq.
176 Federal Street
11 Boston, Massachusetts 02110-2223
617.556.3800 fax 617.556.3890
12 ekrathwohl@richmaylaw.com
for One Communications and XO Communications

13 Paula Foley, Esq.
14 One Communications
220 Bear Hill Road
15 Waltham, Massachusetts 02451
781.466.1220 fax: 781.622.2180
16 pfoley@onecommunications.com

17 Jay E. Gruber, Esq.
18 AT&T Communications of New England, Inc.
99 Bedford Street, Fourth Floor
19 Boston, Massachusetts 02111
617.574.3149 fax 617.574.3274
je gruber@lga.att.com

20 John V. Messenger, Esq.
21 PAETEC
One PAETEC Plaza
22 600 Willow Brook Office Park
Fairport, New York 14450
23 585.340.2772 fax: 585.340.2563
john.messenger@paetec.com

24

4

1 Karen M. Potkul, Esq.
XO Communications
2 1601 Trapelo Road, Suite 397
Waltham, Massachusetts 02451
3 781.693.3919 fax: 949.417.7270
karen.potkul@xo.com

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5
6
7
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9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

3

1 The Adams Legal Firm, LLC
John B. Adams, Esq.
2 626C Admiral Drive, No. 312
Annapolis, Maryland 21401
3 202.448.9033 fax: 202.448.9040
jbadams@adamslegalfirm.com
4 for Richmond Telephone

5 Douglas Denny-Brown, Esq.
6 Special Counsel
RNK Communications
27 Purvis Street
7 Watertown, Massachusetts 02472
781.760.1097
8 dougdb@rcn.com

9 Michael S. Tenore, Esq.
10 Assistant General Counsel
RNK Communications
333 Elm Street, Suite 310
11 781.613.6119 fax: 781.297.9836
mtenore@rnkcom.com

12 WolfBlock
13 Deanne M. O'Dell, Esq.
213 Market Street, Ninth Floor
14 P.O. Box 865
Harrisburg, Pennsylvania 17108-0865
15 717.255.3744 fax: 717.237.7314
dodell@wolfblock.com
for Comcast Communications

17 Benjamin J. Aron, Esq.
18 Sprint Nextel
Mail Stop: VARESP0201
2001 Edmund Halley Drive
19 Reston, Virginia 20191
703.592.7618 fax: 703.592.7407
benjamin.aron@sprint.com

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21
22
23
24

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1 September 23, 2008
 2 P R O C E E D I N G S
 3 CMSR. GILLETT: Good morning, everybody,
 4 and welcome to the Department of Telecommunications
 5 and Cable's evidentiary hearing in Docket No. DTC
 6 07-9, petition of Verizon - New England, Inc. et al.
 7 for investigation into the intrastate access rates
 8 of competitive local-exchange carriers. It is 10:05
 9 a.m., Tuesday, September 23rd, 2008, and we are
 10 located at the Department's offices at Two South
 11 Station, in Boston, Massachusetts.
 12 My name is Sharon Gillett, Commissioner
 13 of the Department, and I'd like to thank you on all
 14 for your participation in this important matter. I
 15 see we have quite the turnout today. It's the
 16 hearing of the month, clearly, so welcome everybody.
 17 With me on the Bench are Lindsay
 18 DeRoche, the hearing officer I've assigned to this
 19 case; also from the Department's Legal Division is
 20 Kajal Chattopadhyay, deputy general counsel of the
 21 Department, and Christine Beckett, the Department's
 22 legal intern. Also joining us today are Michael
 23 Isenberg, director of the Competition Division, and
 24 his assistant director, Ben Dobbs, and Michael Mael

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1 and Dinesh Gopalakrishnan, both analysts from the
 2 Competition Division.
 3 With the introductions complete, I'll
 4 now turn the Bench over to my capable team. I look
 5 forward to reviewing the results of your thousands
 6 of pages of testimony.
 7 MR. DeROCHE: Good morning, and thank
 8 you, Commissioner, for your opening remarks.
 9 Before we begin, I'd like to go over
 10 some ground rules for this hearing. Hearings will
 11 begin at 10:00 a.m. every morning, and they will go
 12 until 5:00 o'clock. There will be a one-hour break
 13 for lunch, and at least two 15-minute breaks
 14 throughout the day as needed. Parties will not be
 15 allowed to present direct testimony unless it is to
 16 correct a factual error or to refresh the record due
 17 to changed circumstances. Each party to the case
 18 will be afforded an opportunity to cross-examine the
 19 witnesses, after which the sponsoring party will be
 20 given an opportunity to redirect.
 21 The Department will enter all prefiled
 22 testimony, information requests, and responses to
 23 information requests into the evidentiary record at
 24 the end of these hearings. Information requests

8

1 will maintain the request number as the evidentiary
 2 exhibit number.
 3 Confidential material: I will make a
 4 ruling on all motions for confidential treatment at
 5 the end of these hearings. During testimony, if we
 6 are about to discuss confidential material, I ask
 7 that counsel alert the Bench. We will then go onto
 8 a sealed record, and all parties who have not signed
 9 a confidentiality agreement will be asked to leave
 10 the room before we proceed. Once the confidential
 11 portion of a party's testimony is complete, we will
 12 go back to the public record before proceeding.
 13 Testimony: As witnesses are called to
 14 testify, they will be sworn in and asked to state
 15 for the record their name, current position, and
 16 party on whose behalf they are offering testimony.
 17 As we have a court reporter present for this
 18 hearing, I ask that witnesses speak in a loud and
 19 clear manner. I also ask that parties speak one at
 20 a time and refrain from talking over one another, so
 21 that we can keep an orderly record for this
 22 proceeding.
 23 Parties will be called to testify in the
 24 following order: Paul Vasington, on behalf of

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1 Verizon; Ola Oyefusi and E. Christopher Nurse, on
 2 behalf of AT&T; Michael Pelcovits, on behalf of
 3 Comcast; John Dullaghan, on behalf of Richmond
 4 Telephone; and August Ankum, on behalf of the CLECs
 5 collectively.
 6 I will now call on parties. If their
 7 counsel could identify themselves for the record.
 8 The Attorney General?
 9 MR. REYES: Jesse Reyes, for the
 10 Massachusetts Attorney General.
 11 MR. DeROCHE: AT&T?
 12 MR. GRUBER: For AT&T, Jay Gruber.
 13 MR. DeROCHE: Comcast Communications?
 14 MS. O'DELL: For Comcast, Deanne O'Dell.
 15 MR. DeROCHE: Level 3 Communications?
 16 One Communications?
 17 MR. KRATHWOHL: Eric Krathwohl, of the
 18 law firm Rich May.
 19 MS. FOLEY: Paula Foley, for One
 20 Communications.
 21 MR. DeROCHE: PAETEC?
 22 MR. MESSENGER: For PAETEC, John V.
 23 Messenger.
 24 MR. DeROCHE: Qwest?

10

1 Richmond Telephone?
2 MR. ADAMS: John Adams.
3 MR. DeROCHE: RNK?
4 MR. TENORE: Michael Tenore.
5 MR. DENNY-BROWN: And Doug Denny-Brown.
6 MR. DeROCHE: Sprint?
7 Verizon?
8 MR. FIPPEN: Richard Fipphen and
9 Alexander Moore.
10 MR. DeROCHE: XO Communications?
11 MR. KRATHWOHL: Eric Krathwohl and Karen
12 Potkul.
13 MR. DeROCHE: Have I missed anybody?
14 Are there any procedural matters we need
15 to address before we get going?
16 MR. TENORE: RNK. It appears there was
17 an administrative error in the exhibit list, in that
18 some of RNK's exhibits were left off. It just looks
19 like it's an error in a cut-and-paste job.
20 Unfortunately, we were having some issues printing
21 out the documents, which we are sending to a copying
22 service right now. I have the exhibit numbers.
23 They're interrogatory responses, essentially.
24 There's no new information. It's all in the record

11

1 right now.
2 MR. DeROCHE: So everything on there is
3 in the record?
4 MR. TENORE: Yes.
5 MR. DeROCHE: I will have the Department
6 print up copies of that exhibit list as soon as it's
7 available. Does anyone have any objections to
8 accepting the revised exhibit list from RNK? Seeing
9 none, I'll accept that into the record.
10 MR. FIPPEN: Mr. Hearing Officer, does
11 the Department plan to have oral argument on the
12 Verizon motion to compel with respect to RNK's
13 discovery responses?
14 MR. DeROCHE: We do not intend to have
15 oral argument on the motion to compel during this
16 hearing period. We do, however, expect to ask for a
17 comment on the motion to compel as to whether or not
18 the parties would be prejudiced by accepting it into
19 the record after the hearing, in the event we rule
20 in favor of the motion. I will make that
21 solicitation to the parties at the conclusion of the
22 hearings.
23 MR. KRATHWOHL: I have one other matter,
24 Mr. Hearing Officer. Yesterday we filed the

12

1 prefiled testimony of Dr. Ankum. As you know from
2 our prior filings, he is the joint CLECs' witness,
3 replacing Michael Starkey, whose testimony we had
4 filed some weeks ago, in accordance with the
5 procedural schedule. To the extent that anybody
6 feels that they need to see exactly what the changes
7 were, I have brought probably ten copies or so of a
8 redline of the testimony. But as I had represented
9 in filings, it's basically changing the names, the
10 background, anything that has to do with one -- with
11 Dr. Ankum, as opposed to Mr. Starkey.
12 MR. DeROCHE: Thank you very much. I'd
13 ask if you could bring a couple copies up to the
14 Bench. And if anybody would like a copy, please
15 pass them around.
16 Do we have any objections to allowing
17 this revised testimony in?
18 Seeing none, I'm going to accept the
19 switch.
20 MR. KRATHWOHL: And I wasn't proposing
21 to have the redline as an exhibit or anything.
22 MR. DeROCHE: Right. We have the formal
23 testimony, which will be marked into the record as
24 an exhibit.

13

1 I notice that a couple of parties just
2 entered. Are they representing any parties in this
3 case?
4 MR. ARON: Ben Aron, with Sprint Nextel.
5 We won't be presenting testimony or cross- examining
6 today.
7 MS. CONSALVO: Michelle Consalvo, with
8 AT&T.
9 MR. DeROCHE: Are there any other
10 procedural matters before we begin? Seeing none,
11 Verizon, would you like to call your witness?
12 MR. FIPPEN: Yes. Verizon calls
13 Mr. Paul Vasington to the stand.
14 PAUL VASINGTON, Sworn
15 MR. DeROCHE: Could you please state
16 your name, your position, and on whose behalf you're
17 presenting testimony this morning.
18 THE WITNESS: My name is Paul Vasington.
19 My title is director, state public policy at
20 Verizon, and I'm representing Verizon.
21 MR. DeROCHE: The Attorney General's
22 office, would you like to begin?
23 MR. REYES: I'd like to defer to Mr.
24 Krathwohl or the CLECs and follow up.

14

1 MR. FIPPHEN: Mr. Hearing Officer, I
 2 have some direct examination so we could correct
 3 some mistakes.
 4 MR. DeROCHE: Okay. Would you hold on
 5 one moment, please. Verizon, would you like to
 6 begin?
 7 DIRECT EXAMINATION
 8 BY MR. FIPPHEN:
 9 Q. Mr. Vasington, was prefiled testimony
 10 bearing your name filed in this proceeding on behalf
 11 of Verizon?
 12 A. Yes, it was.
 13 Q. And was this testimony prepared by you
 14 or under your supervision?
 15 A. Yes.
 16 Q. And do you have any additions or
 17 corrections to make to this testimony?
 18 A. I have two items of correction to make,
 19 but they're on confidential material.
 20 Q. Can you identify what portion of your
 21 testimony that -- what pages in the testimony you're
 22 referring to?
 23 A. Certainly. It's Page 14, on Line 10,
 24 and Page 16, on Line 14.

15

1 MR. FIPPHEN: Mr. Hearing Officer, so we
 2 don't slow down the hearing, I suggest that counsel
 3 who have signed the confidentiality agreement see
 4 Sonja Lartey at the break and they can get a copy of
 5 the corrections, if that's acceptable.
 6 MR. DeROCHE: That's fine.
 7 Q. Mr. Vasington, if the questions in the
 8 prefiled testimony were put to you today, would you
 9 adopt under oath the same answers as modified as
 10 your direct testimony in this proceeding?
 11 A. Yes.
 12 Q. Mr. Vasington, did you sponsor a number
 13 of discovery responses in this proceeding on behalf
 14 of Verizon?
 15 A. Yes, I did.
 16 Q. Do you have any corrections you'd like
 17 to make to those responses?
 18 A. Yes, I have one. It is Verizon's
 19 response to Information Request DTC-VZ-1-5. In this
 20 response, the very first line, I said, "Please see
 21 the response to XO-VZ 1-14(a) and (b)." And that
 22 should be changed to XO-VZ-1-5(a) and E.
 23 Q. Mr. Vasington, as modified, are your
 24 discovery responses true to the best of your

16

1 knowledge, information, and belief?
 2 A. Yes.
 3 MR. FIPPHEN: Mr. Hearing Officer, the
 4 witness is available for cross-examination.
 5 MR. DeROCHE: Thank you very much. I
 6 think we're in agreement: Mr. Krathwohl, do you
 7 want to begin with the cross-examination?
 8 MR. KRATHWOHL: Mr. Hearing Officer, I
 9 am prepared to begin. It was our thought that,
 10 perhaps as the Department recognized and established
 11 in the order of witnesses, there's an identity or
 12 significant similarity of interests among Verizon,
 13 AT&T, and Comcast; and just as those witnesses have
 14 been grouped at the beginning, it would be our
 15 suggestion that it would be most appropriate for the
 16 cross, if any, to proceed in that same order.
 17 MR. DeROCHE: Does anyone have any other
 18 thoughts on the order of cross-examination? Is AT&T
 19 prepared to cross?
 20 MR. GRUBER: Yes, Your Honor. I could
 21 begin with cross.
 22 MR. DeROCHE: Why don't you begin.
 23 CROSS-EXAMINATION
 24 BY MR. GRUBER:

17

1 Q. Mr. Vasington, nice to see you today.
 2 A. You, too.
 3 Q. Mr. Vasington, did you hold any
 4 positions at this Department or its predecessor?
 5 A. Yes.
 6 Q. Could you explain to me what those were?
 7 A. I was a staff analyst from 1990 through
 8 1993. I was assistant director and then director of
 9 the Telecommunications Division from 1993 to 1996.
 10 Then I was appointed as a Commissioner in February
 11 of 1998 and then served as a Commissioner until May
 12 2002, when I was appointed as the Chairman. And I
 13 was Chairman up until I left the Commission, in
 14 August 2003.
 15 Q. Thank you, Mr. Vasington. Now if you
 16 could turn to your testimony on Page 5. There you
 17 describe the Department's regulation of rates for
 18 services provided by nondominant carriers; is that
 19 correct?
 20 A. I start on that page, yes.
 21 Q. Can you explain to the Bench and to us
 22 what the logic and theory is behind the Department
 23 regulating rates of nondominant carriers?
 24 A. Certainly. It's actually fairly simple.

18

1 It's essentially the Department judged that for
2 certain services offered by nondominant carriers,
3 they should be treated as dominant carriers for the
4 simple fact that the customers did not have a
5 meaningful choice in the service provider.
6 Q. I notice that in your discussion, both
7 leading up to that and later in your testimony, you
8 refer to DPU 1731, 1985. Before we go on, perhaps
9 you could tell us the significance of that and why
10 you cited such an old case in your testimony.
11 A. Well, it's an old case, but it's an
12 important case, and it's in many respects still
13 operative, in my opinion. It was a case that was
14 brought to the then-Department of Public Utilities
15 after divestiture, when the Attorney General's
16 office petitioned for a determination of whether the
17 policy of the State should be to allow for intraLATA
18 competition. The interLATA competition --
19 interstate interLATA competition was authorized by
20 the Federal Government. The question was what
21 should happen within the borders of the state.
22 And the DPU at the time decided that its
23 policy goals for the industry were best served by
24 promoting and relying on competitive markets, and it

19

1 established a framework of regulation based on the
2 FCC's framework of regulation, where some carriers
3 could be considered dominant carriers, other
4 carriers could be considered nondominant carriers,
5 and then particular services of either of those
6 carriers could be considered either competitive or
7 noncompetitive.
8 Q. And in your time at the Department, was
9 this case something that you considered a guiding
10 light or providing the Department some sort of
11 guidance?
12 A. Yes, certainly, because that framework
13 was and is still in effect for regulation, the
14 framework of having dominant carriers and
15 nondominant carriers, the ability to declare
16 services to be sufficiently competitive.
17 Q. And did the Department offer a
18 justification in its decision -- well, first of all,
19 what was the result of that case? What did the
20 Department find or hold?
21 A. The Department found that its policy
22 goals -- and it enumerated its policy goals in that
23 order -- were best served by relying on competitive
24 markets instead of regulation, where markets were

20

1 feasible. "Feasible" is probably not the word they
2 used, but that's my paraphrase.
3 Q. And after that time did matters arise at
4 the Department that required the Department to
5 actually implement that policy and determine where
6 competition was feasible and where it wasn't and
7 regulation was required?
8 A. Yes. Many cases implemented that
9 framework.
10 Q. Could you give the Bench a couple of
11 examples of how the Department implemented its
12 policy?
13 A. Well, one example is what you just
14 mentioned, the operator services and inmate calling,
15 where carriers that were entering the market as
16 nondominant carriers, the Department found them to
17 be dominant in the provision of certain services
18 because of the nature of the service -- as I
19 mentioned, where customers cannot make a choice in
20 service provider.
21 There were also cases involving services
22 that were considered to be sufficiently competitive
23 of otherwise dominant carriers; I'm thinking of
24 Centrex, for example, as one of the earliest ones.

21

1 There was a petition by AT&T to be declared
2 nondominant in the 1990 time frame. And there's
3 been follow-on petitions on AT&T's status,
4 ultimately resolved in declaring AT&T to be a
5 nondominant carrier, whereas it had originally been
6 named a dominant carrier. And then there's also
7 been other cases involving petitions from Verizon
8 and its predecessor companies -- Bell Atlantic,
9 NYNEX, NET -- to declare services to be sufficiently
10 competitive.
11 Q. So is it fair to say that the Department
12 has, in determining whether rates should be
13 regulated or not, has considered the competitiveness
14 of the particular service?
15 A. Yes, primarily based on the nature of
16 the service itself.
17 Q. And "the nature of the service" meaning
18 whether the consumer of the service has a choice?
19 A. Yes, whether the service is structured
20 in such a way that the consumer, the one that's
21 paying the bill, has a choice in service provider.
22 Q. And why is that important?
23 A. Because if you don't have a choice in
24 consumer -- in service provider, then you're at the

22

1 mercy of that provider and have to pay whatever
 2 rates they are charging, as I mentioned in my
 3 testimony for switched access, but it was a similar
 4 circumstance for operator services and for inmate
 5 calling.

6 MR. GRUBER: Thank you. I don't have
 7 any further questions at this time. Comcast?

8 MS. O'DELL: We have no questions, Your
 9 Honor.

10 MR. DeROCHE: Richmond Telephone?

11 MR. ADAMS: Your Honor, before I begin
 12 my questioning, which I really only have one
 13 question, I would like to note that Richmond has
 14 approached several of the parties about a possible
 15 stipulation as to the one issue that Richmond has
 16 raised, and that is a rural exemption. I don't know
 17 whether we'll be able to get something in writing,
 18 but we are certainly working on that. I just wanted
 19 to alert you to that.

20 MR. DeROCHE: Thank you very much.

21 CROSS-EXAMINATION

22 BY MR. ADAMS:

23 Q. Mr. Vasington, are you familiar with the
 24 testimony that was filed on behalf of Richmond in

23

1 this case?

2 A. Yes.

3 Q. And do you recall testimony regarding a
 4 rural exemption for rural CLECs?

5 A. Yes, I do.

6 Q. Is Verizon opposed, at least on a
 7 conceptual level, to the Department adopting a rural
 8 exemption along the lines of the Federal rule?

9 A. No, Verizon would not be opposed to the
 10 Department including a rural CLEC exemption along
 11 the lines of that already in the FCC Rule 61.26.

12 MR. ADAMS: No further questions.

13 MR. DeROCHE: The Attorney General's
 14 office, I presume you still want to defer?

15 MR. REYES: Yes.

16 MR. DeROCHE: Mr. Krathwohl, would you
 17 like to begin?

18 MR. KRATHWOHL: Yes. Thank you, Mr.
 19 Hearing Officer.

20 CROSS-EXAMINATION

21 BY MR. KRATHWOHL:

22 Q. Good morning, Mr. Vasington.

23 A. Good morning.

24 Q. I take it today you are testifying as a

24

1 policy witness and one that is familiar with the
 2 Department precedent and practice?

3 MR. DeROCHE: Excuse me, if I could just
 4 interrupt for one second. I understand you're going
 5 to be representing multiple parties here today.
 6 Could you just state for the record which parties
 7 you are cross-examining on behalf of?

8 MR. KRATHWOHL: Certainly. I am cross-
 9 examining on behalf of One Communications and on
 10 behalf of XO Communications.

11 MR. DeROCHE: Thank you very much.

12 A. I'm not sure what you mean by "policy
 13 witness."

14 Q. The purpose of your testimony today is
 15 to address suggested policy to be adopted by the
 16 Department?

17 A. Yes.

18 Q. And the crux of your testimony is that
 19 the Department should adopt a rule capping CLEC
 20 switched-access charges at the level of Verizon's;
 21 is that correct?

22 A. Yes, as it has done in the past when it
 23 declares a nondominant carrier's service to be
 24 dominant, the Department should establish a

25

1 benchmark cap at the dominant carrier's rate for
 2 switched access, and CLECs would structure their
 3 rates such that they would be at or below the cap,
 4 unless they wanted to make a cost demonstration
 5 justifying something else.

6 Q. So essentially, that rule, or your
 7 request, would have the Department set the access
 8 rate for each CLEC; is that correct?

9 A. No.

10 Q. If those access rates now are above the
 11 rate that you would suggest as the benchmark rate
 12 and you're setting a ceiling on it, on the rates
 13 those CLECs could charge, your suggestion is that
 14 they could charge no more than that.

15 A. Right. There would be a ceiling. They
 16 could charge no more than that; right.

17 Q. So the only difference between actually
 18 setting the rate and setting the ceiling is if a
 19 CLEC were to willingly decide it was going to charge
 20 less.

21 A. Right, but it's also important to
 22 remember that under this proposed rule the
 23 Department would not be setting the rate structure,
 24 either. Similar to what the FCC has done: The

26

1 CLECs can structure their rates such as they want as
2 long as they meet the ceiling obligation.

3 Q. Now, before the Department were to do
4 that, is it your expert opinion that the Department
5 would have to determine that the CLECs were dominant
6 in this particular market?

7 A. Certainly that's what the Department's
8 done in the past. Whether they would have to make a
9 subsidiary finding before doing that, that's more of
10 a legal question. But certainly that's the way --
11 to follow precedent, that's what the Department did
12 in the operator-services and inmate-calling
13 examples, that I think are analogous to this
14 situation.

15 Q. And when I ask you those sorts of
16 questions, I'm not asking you for a legal
17 conclusion. I'm asking in the context of Department
18 precedent, with which I believe you're familiar.

19 A. Yes.

20 Q. Now, you've referenced the OSP and the
21 inmate calling. In those cases the customers that
22 were lacking choice were retail customers; is that
23 correct?

24 A. Yes.

27

1 Q. And your allegations here go to
2 wholesale customers; is that correct?

3 A. Carrier customers, yes.

4 Q. And has the Department ever adopted a
5 rule setting the rates or a benchmark in the context
6 of carrier customers?

7 A. Yes, I referenced in my testimony on
8 Page 7 the example of reciprocal compensation rates
9 based on Verizon - Massachusetts's costs.

10 Q. Now, going back to the OSP and the
11 inmate calling: The benchmark that was set, was
12 that a cost-based benchmark?

13 A. When that benchmark was originally set,
14 in 1988, both AT&T and NET, or New England Telephone
15 at the time, were regulated according to traditional
16 cost-of-service standards. So in that sense, their
17 rates were cost-based. But I guess I would have to
18 ask what costs do you mean? You mean were they
19 incremental-cost-based? Were they cost-based as
20 part of an overall cost-of-service determination?

21 Q. The latter.

22 A. Yes, they were set in accordance with
23 traditional cost-of-service revenue-requirement-
24 based ratemaking. However, that doesn't mean that

28

1 any individual rate for any individual service was
2 based on cost-causation principles, which the
3 Department identified in DPU 1731, which we talked
4 about here. And that was one of the issues that the
5 Department in 1985 when it issued that order
6 recognized, that the introduction of competition
7 would create a conflict with this cost-causation
8 disconnect. So even though rates were set in
9 accordance with cost-of-service and revenue-
10 requirement principles, they were not necessarily
11 cost-causation-based for any particular service.

12 Q. And for the services in questions, the
13 services provided, the operator services, do you
14 know whether those were set in relation to cost
15 causation for that specific service?

16 A. Well, they were reduced for Verizon, or
17 New England Telephone, as part of the
18 rate-rebalancing effort that came out of that whole
19 policy shift. And I don't believe that any rate
20 changes that came out of that rate-rebalancing
21 process, I think without exception, were moving
22 toward the target rates, and the target rates were
23 based on a marginal-cost study. So the fact that
24 those rates changed toward the target suggests to me

29

1 that they were not cost-causation-based when the cap
2 was originally set.

3 Q. And one of the points in your testimony
4 is that you suggest that the Department should
5 follow the FCC and various states in adopting this
6 capping principle?

7 MR. FIPPEN: Is there a question?

8 MR. KRATHWOHL: That is a question.

9 A. We certainly modeled our proposal on the
10 FCC rule, and I pointed out that there are certain
11 states that have a similar rule and other states
12 that have alternative means. So I pointed to a
13 number of states that have recognized the problem of
14 unregulated CLEC access rates and have adopted some
15 solution. Not every state adopted the solution that
16 we are proposing here, to identify both; but
17 certainly it's modeled after the FCC's CLEC cap.

18 Q. And didn't the FCC establish that cap as
19 essentially a transitional matter, a transitional
20 approach?

21 A. It's been in place since 2001. I don't
22 recall a specific reference. I know Dr. Ankum said
23 that in his testimony.

24 Q. Are you suggesting that the Department

30

1 is bound in any way to follow the FCC or any other
 2 state?
 3 A. No.
 4 Q. And would you agree that the Department
 5 must decide on the facts shown in these hearings as
 6 applicable to these carriers in Massachusetts, the
 7 circumstances prevalent in Massachusetts?
 8 A. The Department has to act on the record
 9 that it creates in any investigation. The record
 10 that it creates is what it's producing here as part
 11 of the testimony, hearings, discovery.
 12 Q. Are you familiar with the intercarrier
 13 compensation proceedings before the FCC currently
 14 outstanding?
 15 A. Very generally.
 16 Q. And are you aware that there's been
 17 statements made that, among other things, access
 18 reform will be addressed by the FCC within the next
 19 several months?
 20 A. Yes and no. I know that the FCC has
 21 said in court filings that it will address the
 22 remand of ISP-, Internet-service-provider-, bound
 23 traffic by November 5th, and that at least one
 24 commissioner has said that he hoped they could

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1 address the issue of intercarrier compensation more
 2 comprehensively at that time.
 3 Q. Now, has Verizon filed any comments in
 4 that proceeding?
 5 A. Yes.
 6 Q. As relevant to access charges, could you
 7 give a brief summary of those comments?
 8 A. We've filed many comments over the past
 9 few years in that proceeding, both as formal filings
 10 and as ex partes. I can't tell you what we've said
 11 in every single one of those filings and ex partes.
 12 I know our most recent filing was a recommendation
 13 for the FCC to establish a unitary reciprocal -- a
 14 unitary intercarrier compensation rate of .0007 for
 15 terminating traffic.
 16 Q. And what would that apply to?
 17 A. Well, since it's unitary, I believe it
 18 applies to all terminating traffic, whether it is
 19 switched access, reciprocal compensation, IP-bound
 20 traffic. Those are the ones that jump to mind. But
 21 I might be missing something. Oh, commercial mobile
 22 radio services, wireless.
 23 Q. And would that suggestion that you made,
 24 or Verizon made, in those comments under Verizon's

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1 suggestion be applicable to intrastate access
 2 charges?
 3 A. Yes.
 4 MR. KRATHWOHL: Would we be able to make
 5 a record request for the comments that Verizon filed
 6 that have just been in summary described by Mr.
 7 Vasington?
 8 MR. DeROCHE: Any objection to that?
 9 MR. FIPPEN: Well, they're all public
 10 filings.
 11 MR. KRATHWOHL: They are public filings.
 12 We could get them. If we were to obtain them,
 13 circulate them, we would have to then ask for
 14 official notice to be taken. Which way it comes
 15 into the record, I don't really care. It seemed to
 16 me that a record request would be the simplest way.
 17 MR. DeROCHE: I agree. Could we make
 18 that Record Request No. 1.
 19 MR. FIPPEN: Could we get a
 20 clarification on the record request? Are we talking
 21 about the most recent one Mr. Vasington described,
 22 or all of the filings Verizon has made? Verizon has
 23 made a number of filings in that docket at the FCC.
 24 MR. DeROCHE: I believe we're talking

33

1 about the most recent one; is that correct?
 2 MR. KRATHWOHL: That was my intent, if
 3 the most recent one encompasses the position that
 4 Mr. Vasington has just described, that is what we're
 5 looking for.
 6 MR. DeROCHE: And if I could just
 7 quickly recaption that as XO/One Communications
 8 Record Request 1.
 9 (Record Request XO/One Communications
 10 1.)
 11 Q. Just going back to one of your previous
 12 statements, Mr. Vasington, relative to the
 13 statements out of the FCC as to what they might
 14 address in terms of the intercarrier compensation:
 15 Was the one commissioner that made the statement
 16 that you referenced, the plan to try to address the
 17 issues on a very broad brush, as opposed to the more
 18 isolated issue of ISP traffic -- was that single
 19 commissioner the chairman?
 20 A. I think it was Chairman Martin, but I'm
 21 not positive on that. I read it in a secondary
 22 source.
 23 Q. Thank you. Mr. Vasington, is there any
 24 current emergency involving imminent harm to

1 consumers if the Department were not to act on
2 Verizon's complaint immediately?

3 A. What do you mean by "emergency"?

4 Q. That there would be some immediate harm
5 to consumers.

6 A. There's ongoing harm to consumers. In
7 this event, we are the consumers, and you've got
8 three of us here in this room -- Verizon, AT&T, and
9 Comcast -- who are arguing that they are harmed by
10 charges that are not just and reasonable.

11 Q. And that alleged harm is not new, and I
12 suppose you could have made this argument shortly
13 after Verizon's access rates were reduced?

14 MR. FIPPEN: Objection. The counsel is
15 arguing, as opposed to asking a question.

16 MR. DeROCHE: Sustained. Could you
17 rephrase that, please?

18 Q. Is there any reason that Verizon's
19 complaint couldn't have been filed three years ago?

20 A. No, the harm exists to Verizon and the
21 other carriers and their customers in the
22 competitive process from the unreasonable charges at
23 some level at any given point in time of after the
24 rates were reduced; that it has been a large and

1 growing expense to Verizon. So the harm is large
2 and growing and has reached a point where it needs
3 to be rectified.

4 Q. Now, on Page 3 of your testimony --
5 starting at Page 3 -- you discuss the standard for
6 setting rates in Massachusetts, and that being the
7 just-and-reasonable standard; is that correct?

8 A. That's the statutory requirement, yes.
9 (Commissioner Gillette left the hearing
10 room.)

11 Q. And I take it that -- again, not asking
12 for a legal conclusion, but from the perspective of
13 a former regulator, from the perspective of an
14 industry participant -- that "just and reasonable"
15 does not mean that all entities' rates have to be
16 the same; is that right?

17 A. All else equal, that's correct.

18 Q. And going back to the operator services
19 and the inmate calling for just a minute: When the
20 Department took those actions, those capping of
21 rates, there was an immediate benefit felt by the
22 end-user customers of telecom services, wasn't
23 there -- of those particular telecom services?

24 A. To the extent that there were carriers

1 who were charging rates that the Department then
2 deemed to be not just and reasonable and there was
3 an immediate compliance requirement with that, those
4 customers -- the end-user customers in that
5 circumstance, yes, received lower rates. But the
6 only reason I'm hesitating is, I don't know exactly
7 how many carriers were above that cap prior to
8 International Telecharge entering the market, if
9 there were any, because the International Telecharge
10 case was an entry, a market-entry case. So I don't
11 know if the Commission was solving a problem that
12 existed prior or if they were putting into effect a
13 policy that they were anticipating occurring.

14 Q. Would the answer to the question --

15 A. Actually, could I stop? I need to
16 correct the record on that. I'm remembering that
17 there was testimony from the Department's Consumer
18 Division on that case, that it had received
19 complaints about the rate levels for operator
20 services.

21 Q. So, then, once the Department's order
22 became effective and was complied with, then
23 presumably those complaints about alleged high rates
24 would have been resolved and there would have been a

1 benefit to the end-use customers at that time?

2 A. Certainly there would have been a
3 benefit through lower rates. Whether that resolved
4 complaints I'm not sure about. Complaints can come
5 in for any number of reasons.

6 Q. Absolutely, but there would have been
7 lower rates to the end users realized at that point?

8 A. Yes. Again, you're talking about the
9 customers of the service. In that case, the
10 customers of the service who were paying the money
11 were the end-user customers. In the case we're
12 talking about here, the customers actually writing
13 the bill are the carrier customers, whose cost of
14 service then goes up for providing service to end
15 users. So the ultimate effect flows through to end
16 users either way, but the effect of the rule applies
17 to the customers who are paying the bill. That's
18 probably as clear as mud.

19 Q. Well, thank you for getting me to my
20 next question. You talk about a flow-through to the
21 end users, and that's what I'm curious about. Will
22 there be an immediate flow-through to the end users
23 should the Department grant the relief sought by
24 Verizon here?

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1 A. The cost of switched access is a cost of
2 service for interexchange calling, which has been
3 declared by the Department to be a competitive
4 service for every carrier operating in
5 Massachusetts.

6 MR. KRATHWOHL: Mr. Hearing Officer, I
7 would respectfully request -- I think that the
8 witness is entitled to some deference, but I think
9 this was a pretty clear yes-or-no question, and I
10 would appreciate that sort of answer. If he wants
11 to qualify it, he can do so, particularly on
12 redirect. But I would like to see if we can't get a
13 little bit more to the point.

14 MR. FIPPEN: I have no objection, but
15 the witness has additional information to provide to
16 explain his answer. I think it's appropriate that
17 he be allowed to do that.

18 MR. DeROCHE: Could you please answer in
19 a yes or no with a qualification to explain your
20 answer?

21 THE WITNESS: It was a thoughtful
22 question. I wanted to give it a thoughtful answer.
23 Now I don't remember what the question was.

24 MR. DeROCHE: Could you read the

39

1 question back, please.

2 (Question read.)

3 MR. FIPPEN: Can you define
4 "immediate"?

5 MR. KRATHWOHL: Sometime within the
6 next -- the three months following a Department
7 order.

8 A. John, the interexchange market in the
9 telecommunications industry is very dynamic, and I
10 don't know how quickly changes to cost inputs make
11 it through to end-user rates, either to lower
12 existing rates or to offset otherwise increasing
13 rates. There's a lot of moving pieces.

14 I believe that in a competitive market
15 any important and significant cost of service for a
16 competitive service does benefit end-user customers,
17 and the Department has declared this service,
18 interexchange retail calling, to be a competitive
19 service for every carrier. And therefore I believe
20 that the benefits of this policy will be felt by
21 end-user customers over time.

22 Q. At Page 7 of your testimony you assert
23 that CLECs have market power as to the switched
24 access because the other carriers who are paying

40

1 those access charges to the CLECs have to deliver
2 their own customers' calls to the CLECs' network?

3 A. Yes, we have to deliver our customer
4 calls, and we have no choice in the matter of what
5 provider to use and what rate to pay.

6 Q. Now, if the customers, the end-use
7 customers, at one end or the other of the call were
8 somehow to see what the -- or feel the impact of
9 what you've characterized as high terminating access
10 charges, would you have a different answer?

11 A. Not on the terminating side, because the
12 calling party pays, in this country, so there's no
13 way for the terminating customer to see the effect
14 of a different terminating charge. On the
15 originating side, in theory it could have an impact;
16 but as the FCC has noted, in practice they haven't
17 seen any manifestation of that.

18 Q. And is that because of prohibition on
19 deaveraging?

20 A. That could be one factor.

21 Q. If that rule were not in place, at least
22 in theory is it correct that the interexchange
23 carriers could charge more for calls to high-cost
24 CLECs?

41

1 A. The rule is only one barrier. I'm not
2 sure if there's any practical way. I'd love to try
3 to see a billing system that would bill differently
4 based on whether you were calling one CLEC or
5 another CLEC or whether you were calling one
6 independent carrier or another. So I think there
7 are practical considerations that would also make it
8 very difficult for that to occur.

9 Q. Of course, you could at least address
10 part of the problem if you differentiated charges on
11 volume; would that be correct?

12 A. I'm not following you.

13 Q. If you were to charge higher-use
14 customers with higher use of minutes?

15 MR. FIPPEN: I'm sorry, could you
16 repeat the question?

17 MR. KRATHWOHL: You know, I'll move on
18 to a slightly different line.

19 Q. Going to the question of whether an IXC
20 could differentiate the called party by a particular
21 CLEC, wouldn't that concept of differential charges
22 be equivalent to differential charges for calls to
23 different countries?

24 A. You know, I don't know what -- I don't

42

1 know. I don't know if it's that simple. So you
 2 have the legal prohibition and then the practical
 3 concerns. How deeply the practical concerns go, I
 4 don't know. It seems to me it's a much easier
 5 solution just to cap CLEC rates at a just and
 6 reasonable level than to try to get the rule changed
 7 on deaveraged rates, because that's statutory.

8 Q. At Page 10 of your testimony you
 9 reference various states that have addressed this
 10 issue, and I see in Footnote 23 you reference the
 11 Illinois commission, and that's a reference to some
 12 action in 2003. Are you aware of any activity at
 13 the Illinois commission on CLEC access charges
 14 recently?

15 A. I'm generally aware that there was a
 16 staff workshop that addressed this issue. I'm not
 17 aware of recent activity at the commission itself.

18 Q. And is it correct that that staff
 19 workshop was initiated to determine whether the
 20 staff would recommend that the commission in
 21 Illinois look into the possibility of capping CLEC
 22 access charges?

23 A. You've already gone past my knowledge of
 24 the staff workshop.

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1 Q. Do you have any knowledge of any similar
 2 considerations in Florida?

3 A. I know that they had an access-charge
 4 workshop. I don't know what the scope of it was.
 5 I've seen a copy of the QSI presentation, and I was
 6 involved in discussions with Mr. Price, who
 7 delivered Verizon's comments at that workshop. And
 8 I don't even know if "workshop" is the right word
 9 for it.

10 Q. Do you know if Florida, the Florida
 11 commission is proceeding with any capping or
 12 benchmarking at this time?

13 A. I don't know. I don't know what's
 14 happened.

15 Q. Now, at Page 12, Line 9, you reference
 16 Verizon's substantial lowering of its intrastate
 17 access rates. Was that a voluntary reduction?

18 A. I'm talking there about the whole
 19 history of the rate rebalancing that started in the
 20 mid-'80s, and I don't know whether that can be
 21 considered voluntary or not. It was started by the
 22 Commission in the order that we discussed earlier,
 23 1731, where the Commission said, "This is what we
 24 will be doing moving forward." So I don't know

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1 whether it was --

2 You know, if NET was willing at the
 3 time, does that make it voluntary? I know that the
 4 Commission in 1731 said, "We shall begin the process
 5 of moving rates towards their underlying costs" and
 6 that what flowed in the years that came, came from
 7 that directive.

8 Q. Let me focus on the time surrounding the
 9 01-31 decision; and the reduction that came out of
 10 that case, was that a voluntary reduction?

11 A. The Commission ordered the company to
 12 include, I don't remember if we said an analysis or
 13 a proposal for access-rate restructuring or
 14 reductions. And it was in the vote to open the
 15 investigation, the order opening the investigation.

16 Q. And ultimately the reduction in access
 17 charges that resulted from that case, was the level
 18 to which the charges were reduced determined in
 19 reference to a cost study for intrastate access
 20 charges of Verizon or its predecessor?

21 A. No. There was no cost study done in
 22 that case.

23 Q. And is it correct that other rate
 24 adjustments were simultaneously implemented so that

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1 that particular change was revenue-neutral to
 2 Verizon or its predecessor?

3 A. No. I answered some discovery on this.
 4 It was the Department decided -- in its order the
 5 Department decided to increase the basic residential
 6 charge towards the imputed unbundled-network-element
 7 cost for the service and decided to make that
 8 increase equal to the revenue reduction from
 9 switched access on an historic-billing-determinant
 10 basis.

11 Q. And what year was that, that that
 12 occurred in?

13 A. Which "that" are you talking about? The
 14 actual rate changes?

15 Q. Yes.

16 A. Well, the order was in April of 2003,
 17 and there were compliance filings and things. I
 18 don't know what the actual tariff dates were. So it
 19 was either -- it was either in 2003 or early 2004.
 20 I'm going to suspect it was 2003 but don't know for
 21 sure.

22 Q. Have you reviewed information regarding
 23 the CLECs' historical access charges?

24 MR. FIPPEN: What do you mean by

46

1 "historical access charges"?

2 MR. KRATHWOHL: Say the access charges

3 in 2003.

4 MR. FIPPEN: For which carriers?

5 MR. KRATHWOHL: I'm referring generally,

6 but I'd be happy if the witness could address the

7 carriers that are present in this proceeding.

8 A. As part of this case I've reviewed what

9 information was provided by CLECs in discovery. Off

10 the top of my head, I don't recall what the time

11 frame was that we were given.

12 Q. Would you accept that in many, if not

13 most, cases those access charges for the CLECs were

14 set by reference to what the Verizon charges were

15 before the 01-31 orders?

16 A. No, I don't know what references, if

17 any, the CLECs used when they set their rates. I

18 haven't seen any -- I don't recall any testimony or

19 evidence on that in this case.

20 Q. Is it your suggestion that CLECs should

21 have voluntarily reduced their access charges at the

22 time Verizon did?

23 A. No.

24 Q. But you have stated in your testimony --

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1 you've used language such as CLECs were trying to

2 exploit the market; is that correct?

3 MR. FIPPEN: Can you refer to the

4 specific reference in his testimony you're referring

5 to?

6 Q. Just for example, on Page 17, there's

7 language about collecting unreasonably high

8 intrastate access rates?

9 A. What line are you looking at?

10 Q. I'm sorry. Line 1 of Page 17.

11 MR. FIPPEN: I believe your question

12 used the word "exploit." I'm asking you to point to

13 testimony that you're examining the witness about.

14 MR. KRATHWOHL: We can take my question

15 as relating to the language I just quoted.

16 A. The language is "permitting CLECs to

17 collect unreasonably high interstate access rates

18 provides those CLECs with a competitive advantage

19 because they are able to recover disproportionately

20 more of their costs from other carriers rather than

21 from their own end users." CLECs are profit-

22 maximizing entities, and if they have an opportunity

23 to earn some additional revenue from an unreasonable

24 charge absent a rule saying otherwise, I am not

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1 surprised to find that they do it.

2 Q. And in fact, that's what MCI has done?

3 A. Yes -- MCI Metro.

4 Q. Yes. And would it be fair for me to

5 conclude that the gist of the language that you just

6 read and surrounding that language is that relative

7 to what you've called a distortion of the market is

8 your contention that Verizon is paying more to CLECs

9 than it would if those access charges were reduced?

10 A. Assuming no change in minutes, yes, we

11 are paying more with an unreasonable rate than we

12 would be if the rate is reduced to a reasonable

13 level.

14 Q. Now, on Pages 18 and 19 of your

15 testimony you reference certain anticompetitive

16 effects of the current level of charges; is that

17 correct?

18 A. In my testimony I identify an incentive

19 for certain anticompetitive effects as a result of

20 unreasonably high access charges.

21 MR. KRATHWOHL: Could I just have that

22 answer read back, please.

23 (Answer read.)

24 A. I'm sorry, and then I provided some

49

1 examples from other states.

2 Q. But you didn't provide any example of

3 any such events in Massachusetts in your testimony;

4 correct?

5 A. Not in my testimony. I did in response

6 to discovery from the Department.

7 Q. And am I correct, that was a single

8 example?

9 A. It was a single company. There were

10 many examples.

11 Q. Going to the incentive: I assume that

12 that incentive has been in place ever since Verizon

13 reduced its own access charges; is that correct?

14 A. Certainly there's an incentive for

15 additional usage. Whether the particular examples I

16 cite here exist because there was some change in

17 technology or market presence or demand for a

18 particular service, I don't know for sure. But in

19 and of itself, the incentive to have additional

20 minutes on an unreasonable rate, yes, is there

21 regardless.

22 Q. Now, in your testimony you also have

23 made some ARPM calculations; is that correct?

24 A. Yes. That's average revenue per minute.

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1 Q. Could you just briefly describe the
 2 point of those calculations?

3 A. The point of those calculations was to
 4 use the information at Verizon's disposal, which is
 5 information about how much revenue we're paying per
 6 minute to certain carriers, in order to do an
 7 apples-to-apples comparison of what we're paying in
 8 access charges to what we're collecting in access
 9 charges.

10 Q. And am I correct that the basis of those
 11 calculations was provided in response to XO-VZ-1-5?
 12 Which I believe is confidential material, but I'm
 13 not going to get into any confidential matters, I
 14 think.

15 A. Those are the workpapers. If that's
 16 what you mean by "basis."

17 Q. Yes.

18 A. Yes.

19 Q. Are you familiar with the manner that
 20 the calculations were made? Let me rephrase that.
 21 Are you generally familiar with the calculations in
 22 the workpapers?

23 A. Yes.

24 Q. Am I correct in assuming -- or viewing

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1 those workpapers as showing that the calculations
 2 were made based on minutes of use and revenues from
 3 the billing months of June through December of 2007?

4 MR. FIPPEN: Do you have a specific
 5 reference to where that information was obtained so
 6 the witness can refresh his recollection?

7 MR. KRATHWOHL: Hopefully. What I've
 8 handed to the witness and counsel is the packet of
 9 the information requests that I had identified on
 10 behalf of One and XO that we'd want to have moved
 11 into the record ultimately. Within that package is
 12 the response to XO-VZ-1-5, which I note is
 13 confidential and proprietary. I don't propose to
 14 ask what any of the specific numbers are, so I think
 15 we can proceed on the public record.

16 MR. DeROCHE: Okay. Any objection to
 17 that?

18 MR. FIPPEN: I have no objection.

19 Q. Turning to -- I guess the label is under
 20 the clip. I was looking at the fifth printed page
 21 of the attachment, and it's labeled XO-VZ-1-5(a),
 22 and it has probably 15 columns. I'd ask if I'm
 23 reading it correctly to -- and then the following
 24 page as well. And perhaps the following page is

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1 more useful.

2 One of the columns is Grand Total
 3 Intrastate SW Dollars, I believe, Access Billed Jan
 4 through June. Am I reading these materials
 5 correctly to understand that the calculations were
 6 based on a six-month period?

7 A. They were annualized, certainly for some
 8 of the data for that particular six-month period.
 9 Yes, but I think your original question was was it
 10 based on June to December, if I'm remembering
 11 correctly.

12 Q. Yes.

13 A. For Attachment A. No, Attachment A, the
 14 data was either February to July or January to June,
 15 2007, and it was annualized. And I think that there
 16 were even particular data points that might have
 17 been not a six-month period. For example -- I can't
 18 recall the proprietary information, but there was
 19 one that might have been a one-month annualized, and
 20 I don't know what the reason was, why that
 21 particular data point was annualized off of one
 22 month.

23 Q. Can you just describe what you mean by
 24 "annualized," please?

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1 A. If it's six months you double it,
 2 because a year is 12 months.

3 Q. And is there any reason that Verizon
 4 didn't look at some longer time period?

5 A. We did. That particular attachment,
 6 Attachment A, was a workpaper that was produced
 7 prior to our petition being filed in this case,
 8 which was in October of 2007. When we filed our
 9 testimony, my testimony, in July of this year, we
 10 used full 12-month-period data, which is reflected
 11 in Attachment H.

12 Q. Am I right that some of the calculations
 13 in those workpapers relate to switching charges?

14 MR. FIPPEN: Can you define "switching
 15 charges"?

16 Q. Well, for example, on the second printed
 17 page of the attachment XO-VZ-1-5(a) there's a column
 18 on the left-hand side; and there's several different
 19 categories, but the categories in bold are carrier
 20 common line, end office, and tandem switched
 21 transport. Am I reading that correctly?

22 MR. FIPPEN: I'm sorry, Mr. Krathwohl.
 23 Could you tell me again what page on the attachment
 24 you're referring to?

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1 MR. KRATHWOHL: Yes, the second printed
 2 page of Attachment XO-VZ-1-5(a).
 3 MR. FIPPEN: I don't believe this is a
 4 proprietary attachment, is it?
 5 MR. KRATHWOHL: It doesn't seem to have
 6 a "proprietary" on the top of it.
 7 MR. FIPPEN: Is that the page you're
 8 referring to?
 9 MR. KRATHWOHL: Yes, it is.
 10 THE WITNESS: So am I safe in referring
 11 to this page?
 12 MR. FIPPEN: It's just the tariff page.
 13 A. This page is showing common rate
 14 elements and then identifying both Verizon and other
 15 carriers and which rate elements they are billing --
 16 to Verizon, at least.
 17 Q. Right, and to come up with the average
 18 revenue per minute, I take it that you used these
 19 various charges and blended them in some fashion; is
 20 that correct?
 21 A. I didn't blend them. We added together
 22 all of the charges from each CLEC to the various
 23 Verizon entities to come up with a total revenue
 24 amount that we were billed, divided it by the

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1 minutes that we were billed, to get average revenue
 2 per minute. That's not what's being shown on this
 3 attachment, though, this Attachment 1-5(d), just to
 4 be clear.
 5 Q. Would you agree that the costs of a
 6 particular carrier are an important consideration in
 7 setting their rates?
 8 A. It's an important consideration in
 9 setting a rate or participating in a market. It is
 10 one significant factor, yes.
 11 Q. I'm sorry, one significant factor?
 12 A. Yes.
 13 Q. And if a regulator were to allow a
 14 carrier recovery of only a level of rates that was
 15 below costs, is that what is known as confiscation?
 16 MR. FIPPEN: Objection. Calls for a
 17 legal conclusion.
 18 MR. KRATHWOHL: And I'd ask for the
 19 witness to talk about it not as a matter of law but
 20 as a matter of how he as a regulator in the past
 21 would have dealt with such issues.
 22 A. My understanding of the confiscation
 23 rule is that the total revenues -- under a claim of
 24 confiscation, the total revenues must be sufficient

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1 to cover a return of the cost of capital.
 2 Q. And is it your view that that concept
 3 should apply equally to ILECs and CLECs?
 4 A. In the event that the regulator is
 5 setting the rate, yes.
 6 MR. KRATHWOHL: I have no further
 7 questions at this time.
 8 MR. DeROCHE: Thank you very much. I
 9 think we'll take a 15-minute break there. We'll
 10 return at 11:45.
 11 (Recess taken.)
 12 MR. DeROCHE: Back on the record. Mr.
 13 Krathwohl?
 14 MR. KRATHWOHL: Thank you, Mr. Hearing
 15 Officer. During the break I conferred with Mr.
 16 Fipphen, who reminded me that in his examination he
 17 had asked Mr. Vasington whether he had prepared or
 18 had the responses to information requests prepared
 19 under his supervision and control, and that, I
 20 believe with the exception of one correction, they
 21 were all correct and essentially adopted. So I
 22 think that the questioning I had just to qualify, to
 23 sponsor the responses that we had identified that we
 24 wanted moved into the record, has been done. So if

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1 the Bench is agreeable with that, I have no further
 2 questions.
 3 MR. DeROCHE: That's fine with me.
 4 MR. GRUBER: Mr. Hearing Officer, AT&T
 5 has the same issue. I did not ask Mr. Vasington to
 6 authenticate his responses or Verizon's responses to
 7 our information requests, the ones that I asked to
 8 be marked into the record. For the same reason as
 9 Mr. Krathwohl, I think we can assume, based on Mr.
 10 Fipphen, that all the responses of Verizon have been
 11 properly authenticated now. Is that fair?
 12 MR. FIPPEN: Yes, that's correct.
 13 MR. DeROCHE: Very good. That's fine
 14 with us.
 15 Moving on: PAETEC?
 16 MR. MESSENGER: I just have a few
 17 questions.
 18 CROSS-EXAMINATION
 19 BY MR. MESSENGER:
 20 Q. I'm John Messenger, representing PAETEC
 21 in this hearing. Good morning, Mr. Vasington.
 22 A. Good morning.
 23 Q. Just a couple of questions. During Mr.
 24 Krathwohl's cross-examination you had stated at one

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1 point that -- or answered a question that if the
2 CLEC rates -- that if a benchmark were set as
3 proposed by Verizon that a CLEC could charge no more
4 than that --

5 And I just wanted to direct your
6 attention to Page 21 of your testimony and ask you
7 to confirm that Verizon is not suggesting that a
8 CLEC could not justify an exception to the cost
9 based on cost or other appropriate factors; is that
10 correct?

11 A. It's the "other appropriate factors"
12 part. My testimony is "based on full demonstration
13 by the CLEC that its own costs for providing
14 switched access require a higher rate."

15 Q. In other words, you're not proposing a
16 firm cap that would be in effect a conclusive
17 presumption of reasonableness, as opposed to a
18 rebuttable presumption; is that right?

19 A. That's right. In effect, what I'm
20 proposing is the same thing the Department adopted
21 for the other caps, for operator services, that
22 CLECs can always file a cost demonstration, if they
23 want, or they can meet the benchmark cap. So the
24 benchmark cap is the rate that the Department has

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1 declared to be just and reasonable, and any CLEC
2 that wants to charge something higher than that cap
3 would have to make a cost demonstration to the
4 Department's satisfaction.

5 Q. Thank you. Moving along: I believe Mr.
6 Krathwohl also asked you at one point whether
7 Verizon could have filed this petition three years
8 ago. Three years ago was prior to Verizon's
9 acquisition of MCI; is that right?

10 A. Three years ago is September 2005, and I
11 was sitting at the witness table in a number of
12 cases looking at the acquisition. It was right when
13 it was happening.

14 Q. Is it fair to say that Verizon's
15 acquisition of MCI gave it a heightened interest in
16 costs and rates for the interexchange business?

17 A. I don't know that to be true.

18 Q. You had talked a little bit about the
19 fact that if CLEC rates were reduced, that would
20 reduce the rates paid by interexchange carriers but
21 not necessarily for end users. Is that correct?

22 A. No, that's not correct. I said earlier
23 that if the Department were to adopt this and
24 require CLECs to reduce their rates, then the rates

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1 paid by Verizon and the other carriers in the
2 Commonwealth would be reduced, and that since those
3 rates are an input cost to a competitive service,
4 those cost savings would ultimately benefit end-user
5 customers over time.

6 Q. Is Verizon proposing that the Department
7 mandate a flow-through of IXC cost savings to end
8 users in their intrastate Massachusetts rates?

9 A. No, because there's no need to do that,
10 because the Department has declared this service to
11 be a competitive service for every provider in the
12 market. And in the situations in the past when the
13 Department reduced Verizon's switched-access rates,
14 it never required any other carrier to demonstrate
15 that the -- to quantify that the savings were
16 flowing through to customers, because it's a
17 competitive market and that's part of the
18 competitive process.

19 Q. If the Department were to order such a
20 thing, would Verizon be in favor of it?

21 A. No, because, as I said, I can't conceive
22 of a way that --

23 First of all, it's not consistent with
24 precedent, as I just mentioned it. Second of all,

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1 it's not consistent with the Department has already
2 found the interexchange market to be competitive.
3 And third, as I mentioned earlier, the cost savings
4 to interexchange may be reflected eventually in
5 reduced rates, they may be reflected in rates that
6 stay stable because it's offsetting another rate
7 increase, or they may be reflected in higher rates
8 that are lower than they otherwise would be because
9 of offsetting other considerations.

10 Q. Is it fair to say that cost savings from
11 Massachusetts intrastate access charges might be
12 applied by an IXC to reduce or stabilize rates in
13 other locations or for other services?

14 A. No, I don't think -- there's no
15 one-to-one tracking of dollars, to say, "All right,
16 we're going to take these dollars and we're going to
17 lower caller-ID charges in Rhode Island." Markets
18 don't work that way.

19 Q. At one point you mentioned that CLECs
20 are profit-maximizing entities. The same is true
21 for interexchange carriers; isn't that correct?

22 A. Yes.

23 Q. There was also some talk of the
24 practicalities and legalities of an interexchange

1 carrier, such as Verizon's IXC arm, targeting
2 specific rates towards specific terminating costs or
3 specific areas; in other words, charging more for a
4 call to a CLEC or rural ILEC that charges higher
5 access than otherwise. Do you recall that?

6 A. Yes, we discussed that there's a legal
7 prohibition against that, but that even if there
8 weren't, there might be practical considerations
9 that would make that unfeasible.

10 Q. Are you aware of whether there is a
11 Massachusetts counterpart to the geographic
12 deaveraging requirement -- or geographic averaging
13 requirement, or deaveraging prohibition in the
14 interstate jurisdiction?

15 A. There was a Massachusetts statutory
16 prohibition against -- I hope I'm getting the words
17 right -- against undue discrimination. Whether that
18 would qualify, I don't know. I don't think so, but
19 I don't know.

20 Q. Is it fair to say that if such a
21 deaveraging were practical and legal, that it might
22 help send pricing signals to the end users who were
23 making particular long-distance calls that might
24 have an effect on the access market?

1 A. On the originating access market, yes.
2 I think I said that that was at least theoretically
3 possible. But again, as I mentioned earlier, it
4 seems like an excessively complex way of getting at
5 a problem that has a more direct solution, and one
6 that the Department and the FCC and other states
7 have used. I don't know why you would look to a
8 more complex and difficult solution to implement
9 when you've got the answer right in front of you,
10 which is to simply apply the policy that you've
11 applied in the past in similar circumstances, which
12 is to cap the CLEC rates at a just and reasonable
13 level.

14 Q. Mr. Vasington, are you aware of what
15 share of the Massachusetts intrastate access market
16 is occupied by CLECs?

17 A. We were asked some discovery on this.
18 Can you define what market you mean?

19 Q. Well, of the total access charges paid
20 by a carrier such as Verizon, is it fair to estimate
21 what proportion would be paid to CLECs for -- let's
22 talk terminating for the moment -- for terminating
23 access, as opposed to calls terminating to Verizon
24 or some other....

1 A. I don't know, but it makes no difference
2 whatsoever to the determination in this case, any
3 more than it made any difference in the operator-
4 services case, to say how much of the aggregate
5 operator-service market. It's kind of like you can
6 say the unemployment rate is 5 percent, but for a
7 person who doesn't have a job it's 100 percent. For
8 the IXC that has to terminate a call and has no
9 choice but to use the carrier that the end-user
10 customer has chosen as their local-exchange carrier,
11 it's 100 percent market share. We have no ability
12 to exercise a choice in that circumstance, which is
13 the same as it was for those other situations. So
14 it doesn't matter what the structure of the market
15 is; what matters is what's the nature of the
16 service.

17 Q. Isn't it fair to say that, just making
18 up an example, that if CLECs had 10 percent of the
19 market, that a \$1 increase in CLEC access-charge
20 costs spread over the customer base of a
21 Massachusetts interexchange carrier would be one
22 tenth, or whatever the market-proportion share was?

23 A. We have to slow down. The CLEC has 10
24 percent of the market. You mean the total switched

1 access?
2 Q. Let's say 10 percent of Massachusetts
3 intrastate calls are terminating to CLECs and the
4 other 90 percent are terminating to Verizon, just to
5 make the example simple. Is it fair to say that for
6 every dollar reduction in CLEC access charges that
7 Verizon on average would experience -- would be able
8 to reduce its intrastate rates by 10 cents, spread
9 over the base of all long-distance calls in
10 Massachusetts? And again, that's oversimplifying,
11 but --

12 A. Very oversimplifying. But your math is
13 correct, under all the scenarios and assumptions
14 you've made.

15 Q. And one assumption you mentioned earlier
16 in your cross this morning was that the minutes
17 stayed the same.

18 A. I was asked a particular scenario,
19 whether or not Verizon's billings from CLECs would
20 be reduced if the CLEC rates were reduced, and I
21 said given the same number of minutes, yes.

22 Q. And where I was trying to go with that
23 was, if for some reason a Commission-ordered
24 reduction in CLEC access charges resulted in a

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1 diminishment of minutes terminating to CLECs, that
 2 would have an effect on the ultimate benefit to be
 3 realized by Verizon or its long-distance customers;
 4 isn't that correct?

5 A. It would certainly change the dollar
 6 amount that Verizon would pay, and ultimately
 7 affecting end-user rates, yes. But when you say
 8 "the benefit," the benefit is an improved market and
 9 more efficient market, and so I think the benefits
 10 are broader than just the direct dollar impact.

11 But, you know, according to your
 12 scenario, if charging a more -- charging a just and
 13 reasonable rate means that CLECs supply less
 14 switched access or fewer minutes, would that reduce
 15 the dollar amount that we and other carriers pay to
 16 CLECs? Yes, it would.

17 Q. Just one further line of questioning
 18 here. Mr. Krathwohl had asked you a little bit
 19 about Pages 18 and 19 of your testimony. This was
 20 your description of other so-called anticompetitive
 21 effects of unreasonably high access charges.

22 A. The incentive for traffic-pumping, yes.

23 Q. Is it fair to say that Verizon is not
 24 asking for any particular Department directive

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1 specifically aimed at traffic-pumping but rather
 2 simply pointing to that as a symptom, Verizon
 3 believes, of high access charges by CLECs?

4 A. It's a symptom, and it's evidence of the
 5 problem. It's evidence that proves our point that
 6 there is market power in switched access, in
 7 providing switched access.

8 Q. If all access charges were reasonable --
 9 and for the sake of argument, let's assume that
 10 Verizon's petition were granted and that CLECs were
 11 capped at Verizon's rates -- under some
 12 circumstances would it not be reasonable for a CLEC
 13 or for Verizon to try to attract a large end-user
 14 whose line of business caused a high volume of
 15 incoming calls to its network?

16 A. Is it reasonable? That's a touchier
 17 question. That's always been a difficult thing for
 18 regulators, in my opinion, when a regulatory-
 19 required policy results in carriers essentially
 20 creating their business plan around nothing more
 21 than just trying to manipulate their traffic in such
 22 a way as to increase their revenues. The question
 23 is, does that increase the net welfare of society?
 24 It's something that this Department has wrestled

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1 with in the past and has addressed in its orders.
 2 So when you say is it reasonable, is it
 3 reasonable to assume that someone might still want
 4 to engage in that kind of business? That certainly
 5 seems reasonable, that somebody would want to do
 6 that. Is it a reasonable outcome or something that
 7 shouldn't be addressed in some form one way or
 8 another I think is a different question.

9 Q. Is it fair to say, though, that
 10 Verizon's proposal is aimed at its -- at the alleged
 11 unreasonable level of CLEC access charges and not at
 12 particular practices per se?

13 A. Right, those particular practices to us
 14 are indicative of the market-power problem that
 15 we're identifying and that we've proposed a solution
 16 to, and we think demonstrate why a solution is
 17 necessary.

18 Q. Backing up to my previous question, for
 19 another try here: In a hypothetical environment
 20 where Verizon conceded that all access charges were
 21 reasonable, and let's say that they were all capped
 22 at Verizon's level; as far as you know, it wouldn't
 23 be illegal, would it, for one LEC to be willing to
 24 forgo some profit margin by sharing some of its

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1 incoming access-charge revenues with an end user
 2 with a high volume of terminating traffic and that
 3 that might be a legitimate form of competition,
 4 provided the overall rate levels were reasonable?

5 A. You asked a couple of different things
 6 there. You said is it illegal. I don't know
 7 whether it's illegal or not. Is it a legitimate
 8 form of competition? That's the kind of issue that
 9 I identified that regulators sometimes struggle with
 10 with these kind of arbitrage opportunities.

11 MR. MESSENGER: I believe that's all I
 12 have. Thank you.

13 MR. DeROCHE: Thank you very much. RNK.

14 CROSS-EXAMINATION

15 BY MR. TENORE:

16 Q. Mike Tenore, for RNK. Good afternoon,
 17 Mr. Vasington.

18 A. Good afternoon.

19 Q. Just a couple of quick questions here.
 20 Have you ever consulted on behalf of a CLEC?

21 A. Help me out with "consulted."

22 Q. Have you ever been a consultant for a
 23 CLEC?

24 A. Do you mean when I was not an employee

1 of Verizon, when I was working for consulting firms?

2 Q. Yes.

3 A. No.

4 Q. Have you ever been employed by a CLEC?

5 A. Here's where you're getting a little
6 trickier, because I've made appearances on behalf of
7 Verizon Access, in this case and in some other
8 states, where, yes, I'm appearing on behalf of a
9 CLEC.

10 Q. Thank you. Without getting into the
11 actual average-revenue-per-minute calculation that
12 you had, without identifying it, is that rate the
13 same as the -- when you add up the elements in
14 Verizon's intrastate switched-access tariff, or is
15 it different?

16 MR. FIPPEN: When you say "the rate,"
17 what are you referring to?

18 MR. TENORE: The ARPM.

19 MR. FIPPEN: You're referring to the
20 ARPM calculations, the revenue-per-minute revenue
21 that's derived. That's not a rate. That's a
22 number.

23 Q. That number, is that the same as the
24 tariffed rate when you add up the elements for

1 Verizon's intrastate switched-access service?

2 A. You're talking about Verizon's average
3 revenue per minute?

4 Q. Yes.

5 A. Is that equal to the access -- the
6 tariffed rate?

7 Q. Yes.

8 A. It's a sum of the tariffed rates for
9 usage-based rate elements. Take the revenues
10 received from all of the rate elements that are
11 usage-based identified in my testimony, divide them
12 by the total minutes, and you get the average
13 revenue per minute that Verizon receives for
14 switched access.

15 We also calculated the average revenue
16 per minute that we pay to CLECs. So I just want to
17 clarify which one we're talking about.

18 Q. Sure. So, now, is Verizon's proposal
19 that CLECs would be capped at the average revenue
20 per minute or the total of all the rates in
21 Verizon's tariff for switched access?

22 A. Neither. It's the total of the rate
23 elements that the CLEC -- for the services that the
24 CLEC provides. That is spelled out best in my

1 errata reply to DTC-VZ-1-14. "CLECs would ensure
2 that the sum of their rate elements is no greater
3 than the sum of the ILEC rate elements for the
4 functions that the CLEC provides." That's how the
5 FCC cap works, and that's what we're proposing here.

6 Q. So you're proposing something similar to
7 the FCC's cap.

8 A. The exact same, yes.

9 Q. Thank you. Moving along to a different
10 topic: Mr. Vasington, there had been some talk
11 about the Department's rulings in 01-31. You're
12 aware of the Department's rulings in 01-31; correct?

13 A. I've read them, yes.

14 Q. In that docket the Department allowed
15 for an increase in the dial-tone residential rates
16 of end users. Is that a true statement?

17 A. Yes.

18 Q. And was that approximately \$2.44?

19 A. Approximately, though the number that
20 was in the order was not the ultimate rate-increase
21 amount. And it also depended on whether you had
22 touch-tone service prior to that or not, because the
23 touch-tone rate -- a separate charge for touch-tone
24 service was eliminated.

1 Q. And is it fair to say that that increase
2 was allowed to offset the approximately \$51.9
3 million that Verizon was losing by reducing its
4 rates?

5 A. Again, as I mentioned earlier, it was
6 calculated to be equal to the revenue effect of
7 going down to interstate rates, assuming historic
8 billing determinants. Whether it was actually
9 revenue-neutral in fact is a function of subsequent
10 access minutes and lines.

11 Q. And to date, is Verizon still charging
12 those surcharges?

13 A. They're not surcharges. They are part
14 of the -- they are part of the charge for local dial
15 tone. They are part of the dial-tone rate.

16 Q. Fair enough. Is Verizon still charging
17 this?

18 A. Verizon is charging the rate that
19 resulted from 01-31 for dial-tone lines, yes.

20 Q. And do you know approximately how much
21 that is on a yearly basis for Verizon, those
22 increases add up to, ballpark?

23 A. I can't even tell you. We've got a lot
24 less lines now than we had before. The other thing

1 you have to remember is that for certain packages
2 there was no additional revenue from customers, even
3 though the dial-tone charge as a component went up.
4 So I couldn't even ballpark it for you. If you're
5 asking how much revenue that equals in September
6 2008, I don't know.

7 MR. TENORE: Mr. Hearing Officer, I'd
8 like to make a record request, on the approximate
9 amount of revenue Verizon is incurring as a result
10 of the increases in dial-tone rates allowed by
11 01-31.

12 MR. FIPPHEN: Could we have a showing of
13 relevance?

14 MR. TENORE: I think it's relevant to
15 the fact that Verizon is attempting to cap CLECs at
16 the 01-31 rates, yet Verizon is still making
17 approximately the same rates they were making before
18 they went down to the interstate levels. Therefore
19 there appears to be relevance of whether this rate
20 is the true rate that should be applied to CLECs.

21 MR. DeROCHE: What's the time period
22 you're looking for?

23 MR. TENORE: I would like to go to 2003,
24 but I could see my way to limiting it for the past

1 three years.

2 MR. FIPPHEN: Mr. Hearing Officer, could
3 I be heard for a minute? Mr. Vasington has
4 testified that essentially the assumption of
5 Mr. Tenore's question is not valid, that these rate
6 elements that were increased do not apply to
7 packages. So a lot of customers have moved from
8 traditional 1MR, 1FR services to packages. So
9 there's just no way that the company could provide a
10 response that would be accurate.

11 MR. ISENBERG: Are you saying, Mr.
12 Fipphen, that you can't provide Verizon's local
13 revenue for the time period specified?

14 MR. FIPPHEN: I'm assuming that the
15 company -- the company certainly, I believe, should
16 be able to provide the amount of local-service
17 revenue that is derived from its intrastate
18 operations in Massachusetts. But how much of that
19 is attributable to, directly attributable to that
20 particular rate increase, I'm not sure that that
21 question is so easily answered. That's what I
22 understood Mr. Vasington's testimony to mean.

23 MR. TENORE: Verizon could also provide
24 those customers who still subscribed to such

1 services that are bundled -- as I think Mr.
2 Fipphen's issue is, that there are certain bundled
3 services that were not accounted for.

4 MR. FIPPHEN: The rate increase did not
5 apply, I believe Mr. Vasington testified, to
6 packaged -- services included in packages.

7 THE WITNESS: We can get the number of
8 1FR and 1MR customers, but that's not answering the
9 question he's asking, which is what is the revenue
10 effect of the rate increase today, in 2008. Plus,
11 we don't now know which of these customers were
12 previously touch-tone customers and which weren't,
13 so we couldn't even put a number on it to multiply
14 it by, to calculate that effect today.

15 Q. Well, the touch-tone portion was, I
16 believe, just a smaller portion of the entire
17 increase. I thought it was 44 cents or something,
18 perhaps.

19 A. The rate increase was lower for
20 customers who had touch-tone service; right. I
21 don't know exactly how much lower it was.

22 MR. ISENBERG: You could back out the
23 increase and just calculate based on the current
24 basic-exchange customers.

1 THE WITNESS: Again, if you want to give
2 us a number that we multiply our current number of
3 1FR and 1MR by, we can do that calculation. My
4 point is, I don't think it answers the question of
5 how much is attributable to that. But certainly you
6 can do the math, and if you want us to do the math
7 on that calculation, we can do it.

8 MR. DeROCHE: Would that be acceptable
9 to you, RNK?

10 MR. TENORE: Could we also get the
11 number of bundled customers that Verizon has?

12 MR. FIPPHEN: How is that relevant?

13 MR. TENORE: I think by seeing the
14 number of bundled customers, we can approximate what
15 your total customer base is, and then be able to
16 back it out that way.

17 THE WITNESS: Back what out?

18 MR. TENORE: Back out what the charge
19 should be -- the increase is.

20 THE WITNESS: But there was no increase
21 for those customers. My point was in my testimony
22 that there's no additional revenue to Verizon from
23 customers of bundled services resulting from that
24 rate increase. That doesn't tell you anything about

1 the revenue effect of that rate increase.
 2 MR. ISENBERG: It would just be the
 3 universe of basic-exchange customers, and that's a
 4 universe, obviously, that's changed over the years.
 5 MR. DENNY-BROWN: I think that would be
 6 the point in getting the bundled customers, because
 7 the bundled customers I would imagine has grown
 8 exponentially in the last five years.
 9 THE WITNESS: The number of our bundled
 10 customers has increased, but there was no revenue
 11 effect from the rate increase from 01-31 from those
 12 bundled customers. So you can know that the number
 13 of those customers increased, but that says nothing
 14 about what I think it is you're looking for here.
 15 MR. DENNY-BROWN: Aren't they replacing
 16 the 1FRs, the bundled?
 17 THE WITNESS: I haven't seen the data to
 18 know -- you know, to see the changes in volumes for
 19 these various services.
 20 MR. DeROCHE: I'm going to grant the
 21 record request, as RNK Record Request 1. That
 22 record request will include the last three years of
 23 revenue, as we decided, backing out those numbers,
 24 for just the basic-exchange numbers. We're not

1 going to include the bundled elements.
 2 MR. FIPPEN: You want the last three
 3 years of revenues for the basic-exchange customers,
 4 1FR, 1MR?
 5 MR. DeROCHE: Correct, as a result of
 6 the increase.
 7 THE WITNESS: Just to be clear what
 8 we're talking about: We're going to take the 1FR
 9 and 1MR numbers for the last three years and
 10 multiply them by which rate -- the one that
 11 includes touch-tone or the one that doesn't include
 12 touch-tone, the rate increase?
 13 MR. DeROCHE: It's the difference.
 14 Correct?
 15 MR. ISENBERG: I'd say the rate that
 16 includes touch-tone.
 17 THE WITNESS: The one for touch-tone
 18 customers?
 19 MR. ISENBERG: Yes.
 20 (Record Request RNK-1.)
 21 MR. TENORE: Mr. Hearing Officer, is
 22 that going to be broken out by year, those figures?
 23 MR. DeROCHE: Right, broken out by year
 24 for the last three years.

1 MR. TENORE: I'm going to hand things
 2 over to my co-counsel.
 3 MR. DENNY-BROWN: Doug Denny-Brown,
 4 special counsel for RNK.
 5 CROSS-EXAMINATION
 6 BY MR. DENNY-BROWN:
 7 Q. I'm going to follow up a little bit on
 8 what Eric Krathwohl had talked about earlier. He
 9 talked about the International Telecharge
 10 alternative operator services and whether or not
 11 those rates were cost-based, and you talked a little
 12 bit about them being derived via a general cost of
 13 service or whether they were service-specific
 14 cost-based rates.
 15 My question is about the inmate calling,
 16 and the question is the same, in terms of whether or
 17 not those inmate-calling rates that you cite in your
 18 testimony, I think at Page 6, starting at Line 16,
 19 were cost-based, either service-specific or derived
 20 via a more pervasive cost-of-service proceeding.
 21 A. I think it's the same cap, but I don't
 22 know for sure. I think that Verizon's and AT&T's
 23 operator-service rates were the caps that were used
 24 for inmate calling. It's a collect-call thing,

1 because the inmate calling, by Department of
 2 Corrections rules, had to be collect calls only --
 3 that that was the cap, that it was the operator-
 4 service charge for collect calls.
 5 I don't think that there is a tariffed
 6 service called inmate calling. If I'm correct in my
 7 suppositions, then my answer is the same, that
 8 because of the fact that operator-service rates were
 9 reduced as part of the rate rebalancing, that they
 10 were not initially based on cost-causation
 11 principles.
 12 Q. So cost-of-service, a more general
 13 cost-of- service -- I mean, a more rate -- a more
 14 general cost-based proceeding than under traditional
 15 ratemaking --
 16 MR. FIPPEN: Could we get that question
 17 from the beginning?
 18 Q. Were they established via a more general
 19 rate-of-return proceeding that looked at overall
 20 costs?
 21 A. Yes, they were established as part of an
 22 overall cost-of-service revenue-requirement
 23 proceeding in which rate elements did not
 24 necessarily have anything to do with underlying

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1 costs. The purpose of that kind of analysis and
 2 investigation in a rate case is to make sure that
 3 the aggregate rates produce the aggregate revenue
 4 requirements.
 5 Q. Moving on: At Page 7, Line 5, you talk
 6 about reciprocal compensation. Again, the same type
 7 of question there: The reciprocal compensation and
 8 the rate that came about, was that based on a
 9 service-specific cost-based manner?
 10 A. It's actually element-specific. It was
 11 TELRIC.
 12 Q. So in essence, it was Verizon's
 13 underlying costs with the elements for the
 14 reciprocal- compensation service, if you will?
 15 A. No, it wasn't Verizon's costs. It was
 16 TELRIC.
 17 Q. Moving on to Page 9 and your discussion
 18 of the FCC's access order, and Footnote 15
 19 specifically. You reference the fact that CLECs can
 20 negotiate higher rates than the benchmark
 21 established by the FCC for interstate switched
 22 access?
 23 A. Yes, they can negotiate them, but they
 24 cannot tariff them.

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1 Q. In your experience working for
 2 Verizon -- and I don't know how much you do on the
 3 IXC side -- are you aware of any carrier attempting
 4 to do this?
 5 A. That wouldn't be within my normal
 6 purview; so no, I don't know. I'm not saying it
 7 hasn't happened; I'm saying I don't know.
 8 Q. I understand. It's outside your area of
 9 expertise.
 10 Moving on: There's been a discussion
 11 about CLEC access charges. In your time at the
 12 Department and working at Verizon, are you generally
 13 aware of CLEC access charges and when they would
 14 increase those access charges?
 15 A. In my time at the Department and in my
 16 time at Verizon?
 17 Q. Right. You were at the Department and
 18 there were certain increases that came in, which may
 19 or may not reached your level, as Commissioner or
 20 Chairman. But certainly at Verizon, are you aware
 21 of various CLEC access-charge increases, and would
 22 they have made it to your attention?
 23 A. The tariffs themselves would not have
 24 come to the Commission. That's not the process that

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1 the Department used at the time.
 2 I was aware of the issue of CLEC access
 3 charges because I was a Commissioner when the FCC
 4 proceeding was going on, so I was aware of what the
 5 FCC was doing.
 6 Since I've been at Verizon, I've been
 7 aware of certain CLEC access-charge increases, and
 8 I've even filed testimony in opposition to one of
 9 them.
 10 Q. How about in Massachusetts specifically?
 11 A. I'm aware of one CLEC access-charge
 12 increase in particular in Massachusetts.
 13 Q. And was that Level 3?
 14 A. Strike that. Make that two.
 15 (Laughter.)
 16 A. One would be Level 3, one would be
 17 PAETEC.
 18 Q. Concentrating on the Level 3 for a
 19 moment: Is that a switched-access increase that
 20 Verizon objected to with the Department?
 21 A. Level 3, I believe we did.
 22 Q. And when you objected and the Department
 23 looked at that increase, what was their ultimate
 24 decision?

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1 A. I'd have to take it subject to check,
 2 but I believe Level 3 withdrew.
 3 Q. And did the Department make any ruling
 4 with respect to cost support for their filing?
 5 A. There was nothing to rule on if they
 6 withdrew. I don't remember if it got to a point
 7 where the Department suspended it or not. The
 8 Department has to vote to suspend a tariff. I don't
 9 know if that happened in this case, but it was my
 10 understanding that Level 3 withdrew, so there was
 11 never any ultimate finding.
 12 MR. DENNY-BROWN: If I could, I'd like
 13 to have the Department's decision in the Level 3
 14 switched-access tariff that eventually I think was
 15 withdrawn -- their decision brought into the record.
 16 We can do it through a record request, if it's
 17 easier --
 18 MR. FIPPEN: That's a Department
 19 decision. That's not a Verizon document.
 20 MR. DENNY-BROWN: Can the Department
 21 supply that into the record?
 22 MR. GRUBER: If I may be heard: Are we
 23 going to start having to introduce into the record
 24 Department decisions? Isn't that typically

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1 something we cite to and we're assumed -- it's the
2 law here?

3 MR. DENNY-BROWN: In this case we're
4 actually not just citing to it, though. The content
5 of that decision could be important and relevant.

6 MR. FIPPEN: You can cite to that, too.

7 MR. GRUBER: We can quote any contents.
8 I've never known us to have to submit as evidence
9 rulings of the Department.

10 MR. DENNY-BROWN: Could we then agree
11 on -- is it possible that we could agree on the
12 contents of that decision?

13 MR. FIPPEN: The decision speaks for
14 itself. Like any court decision, administrative
15 agency decision, FCC decision, it's out there. If
16 you want to cite on your brief, you're free to quote
17 it at length, from one sentence to the entirety. I
18 don't see why we need to bog down, as Mr. Gruber was
19 pointing out, the hearing with something you can
20 cite in your brief.

21 MR. DENNY-BROWN: Point taken.

22 MR. DeROCHE: Are you withdrawing your
23 request?

24 MR. DENNY-BROWN: I'm withdrawing my

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1 request. Thank you.

2 Q. Referring to CLEC access-charge
3 increases, say over the most recent five-year or so
4 period: Besides the two that you're aware of, is it
5 fair to say that CLECs generally do not increase
6 their access charges on an annual or regular basis?

7 A. I don't know. I haven't reviewed the
8 tariffs over time. We did receive some information
9 through discovery for certain CLECs about their
10 access charges. You know, whether that's
11 representative of all CLECs, I don't know.

12 Q. In your testimony you cite, perhaps just
13 for the sake of argument, maybe a dozen example of
14 states that have lowered CLEC access-charge rates,
15 or capped them, if you will, at ILEC rates.

16 A. Well, I didn't count them, but they're
17 identified in my testimony.

18 Q. Yes, a significant number.

19 A. Which was up to the date that I filed my
20 testimony. There may be more since then.

21 Q. Thank you. Are you aware within that
22 group of how many of those have capped CLEC
23 intrastates at interstate levels?

24 MR. FIPPEN: I'm sorry, can you repeat

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1 the question?

2 MR. DENNY-BROWN: Sure.

3 Q. Are you aware within that group of,
4 we'll say for the sake of argument, a dozen, of how
5 many of those have capped CLEC intrastate access
6 rates at ILEC interstate, in effect, levels?

7 A. There was actually a discovery request
8 on this. It was asking for two conditions: Were
9 any of these states where the commission capped CLEC
10 rates at the ILEC rate also states where the ILEC
11 intrastate rate is equal to the ILEC interstate
12 rate, and it identified Ohio.

13 Q. So the answer would be it would be one
14 state?

15 A. Out of the ones I listed here, yes.

16 Q. Thank you. Potentially final question:
17 Are you generally aware of -- in a ballpark manner,
18 are you aware of what Verizon's intrastate access
19 rate was in 01-31, prior to that?

20 A. Am I aware of what Verizon's interstate
21 rate was before 01-31?

22 Q. Intrastate rate, in a sort of general
23 composite manner.

24 A. Off the top of my head, no. I think in

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1 the filing that the company made there was
2 information on that. Off the top of my head, I
3 don't know what it was.

4 Q. If I told you it was somewhere in the
5 middle 3-cent-per-minute range, would that seem
6 accurate?

7 A. I'll take that subject to check. That
8 sounds about right.

9 Q. That's all I'm looking for. Thank you.
10 At that point in time was this rate
11 deemed to be reasonable as a properly tariffed
12 access rate?

13 MR. FIPPEN: Can you read that question
14 back for me.

15 (Question read.)

16 MR. FIPPEN: Deemed by who? The
17 Department?

18 MR. DENNY-BROWN: The Department.

19 A. Yes, as a dominant carrier, all of
20 Verizon's rates for that service were subject to
21 dominant-carrier regulation by the Department, and
22 the Department had approved that rate.

23 MR. DENNY-BROWN: Thank you. I have no
24 further questions.

1 MR. TENORE: Thank you, Mr. Vasington.

2 MR. DeROCHE: The Attorney General?

3 CROSS-EXAMINATION

4 BY MR. REYES:

5 Q. On Page 6 of your testimony you referred
6 to the International Telecharge case and stated that
7 the appropriate method of determining -- I'm
8 paraphrasing. You say that the appropriate method
9 of finding whether rates are just and reasonable
10 would be based on traditional ratemaking principles.
11 That's on Line 9.

12 A. Right. I said that the Department set a
13 cap, had a benchmark of the dominant-carrier rates,
14 because those rates had been found to be just and
15 reasonable based on traditional ratemaking
16 principles, which happened to be the mechanism the
17 Department used at the time for setting dominant-
18 carrier rates.

19 Q. Would it be fair to say that the
20 Department has available to it a number of
21 ratemaking principles for determining just and
22 reasonable rates?

23 A. Yes.

24 Q. When you say that the CLECs rates are

1 unreasonable, in what sense are you calling them
2 unreasonable? Is it based on this methodology for
3 setting a benchmark or some other cost-based
4 methodology?

5 A. Well, at the risk of repeating my whole
6 testimony, it's based on a lot of different factors.
7 It's based on the nature of the service itself,
8 which the FCC and other regulators have concluded
9 provides the carrier with market power. That is
10 then manifested very directly in rate levels that
11 are, as I mentioned, sometimes 15 times higher than
12 the rate that the Department has deemed to be just
13 and reasonable in this state, and also demonstrated
14 by the incentives it provides for abuses like
15 traffic-pumping.

16 So I've identified in my testimony all
17 the various reasons why we believe those rates to be
18 not just and reasonable.

19 Q. So in essence, you argue that the rates
20 are unreasonable because there is market power, an
21 incentive to exert market power, and in fact the
22 rates are several times higher than Verizon's rates.

23 A. Not several times; I mean, sometimes 15
24 times higher. And there's a wide variation in CLEC

1 rates for what is ultimately in essence a commodity
2 service. That alone I think is indicative of the
3 ability for market power.

4 Q. Is it fair to say that your argument
5 doesn't require an analysis of CLECs' actual costs?

6 A. Yes, that's correct. The benchmark is
7 the rate that the Department has deemed to be just
8 and reasonable. If a CLEC wants to challenge that
9 presumption, it can show that its costs justify
10 something different, which is exactly what the
11 Department said in the-operation operator-services
12 circumstances. The Department didn't look at
13 CLECs' -- they weren't called CLECs then; they
14 called them OCCs, other common carriers -- rates.
15 They said, "If you want to show that your costs
16 justify something different, you're always welcome
17 to do that."

18 Q. So in reviewing the CLECs' current filed
19 rates, you would argue that requiring them to meet a
20 benchmark rate -- strike that. You would argue to
21 the Department that in reviewing whether a CLEC's
22 filed rates are just and reasonable, the Department
23 may simply set a rate without determining whether
24 those rates do not represent the CLEC's marginal

1 cost of providing these services?

2 A. Yes, except as I testified earlier, the
3 Department would not be setting the rates. The
4 Department is setting a cap, and the CLECs would
5 then be establishing their rates under that cap --
6 which, by the way, is exactly what they do right now
7 in the Commonwealth for their interstate rates. So
8 if a call crosses the state boundary, this is
9 exactly what they do already for that. We'd just be
10 asking them to do that same exercise for the rates
11 that -- for the calls that don't cross the state
12 boundaries.

13 Q. Is there any particular rate element
14 that Verizon or that you, in your opinion, are
15 arguing is unreasonable?

16 A. No, we identified some rate elements
17 just as for-examples in the testimony. It's really
18 the overall dollar amount that matters in this,
19 which is why the way this cap works and the way the
20 FCC does it, it doesn't say you can't charge this
21 rate element or that rate element. It says your
22 composite rate has to be below -- and for the
23 services you're actually providing. For example, if
24 a CLEC is not providing tandem switching but is

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1 charging a tandem switching rate element, I suppose
2 that can be a bit of a problem.

3 Just viscerally, seeing anybody charging
4 a carrier common-line charge at this point just
5 strikes me as not being appropriate. But that's
6 ultimately not what this proposed rule would do. It
7 would allow the CLECs to structure their rates as
8 they see fit as long as they meet that requirement
9 that the composite for the services they're actually
10 providing does not exceed the composite of those
11 same rate elements for Verizon.

12 Q. That's based on a specific list of
13 elements that would make up the composite rate; is
14 that correct?

15 A. Right. And again, they already do this
16 calculation. They do it right now for interstate,
17 as they identified in their response to discovery.
18 This isn't anything new. This isn't a black box.
19 They already do it today. We're just asking them to
20 do it for the calls that stay within the state.

21 Q. Now to the issue of the flow-through
22 discussion that was covered a few times before. You
23 testified that in a competitive market any reduction
24 in the interexchange costs would ultimately flow to

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1 end users over time.

2 A. Yes.

3 Q. What do you mean by "over time"?

4 A. Not to be flip, but, I mean, from today
5 forward. I was asked earlier what happened within
6 90 days or immediate. I don't know. It's a dynamic
7 market, with a lot of moving parts, a lot of changes
8 in technology, a lot of things coming. I couldn't
9 tell you exactly when this would work within this
10 dynamic communications market, but I do believe that
11 taking the finding that interexchange service is
12 competitive at face value means that any change to a
13 significant cost factor will ultimately be reflected
14 in prices. Whether that's a reduction, stay the
15 same, or less of an increase, I don't know, and I
16 don't know the time period that that would occur in.

17 Q. If Verizon obtained a favorable ruling,
18 requiring all carriers to reduce their average
19 revenue per minute to the benchmark, would Verizon
20 be able to maintain its current rates without
21 passing through its savings through to its
22 competitive services?

23 A. Well, again, I don't know if -- it may
24 be that cost savings allow us to maintain our

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1 current rates in the face of increasing costs for
2 other things that we do. It may be that we increase
3 rates less than we would have because of this. It
4 may mean that there's ultimately decreases. That's
5 exactly what I'm talking about. I don't know how it
6 will manifest itself. But I believe in economics,
7 and I believe that a competitive market will reflect
8 the cost changes over time.

9 Q. But you're not testifying today that
10 there's any specific time when those benefits would
11 ultimately flow through; is that correct?

12 A. I'm testifying that I don't know what
13 that time would be. I couldn't sit here and tell
14 you that it would be tomorrow or a week from now or
15 90 days from now. I don't know.

16 Q. And you're also testifying that you
17 can't -- that it's not possible to say that there
18 will be a one-for-one pass-through at any particular
19 time; is that correct?

20 A. At any particular time? Yes, that's
21 correct. And to be clear, I'm also saying that this
22 is not consistent with Department precedent, because
23 the Department has reduced Verizon's switched-access
24 rates in the past and has never required all of the

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1 many interexchange carriers operating in the
2 Commonwealth to demonstrate a reduction or a flow-
3 through of those. It's relied on the competitive
4 process to do that.

5 Q. Notwithstanding the Department's
6 precedent in not requiring a pass-through of such
7 cost savings, is there anything preventing Verizon
8 from passing such a cost savings through?

9 A. Is there anything preventing us? No,
10 nothing preventing us. I'm saying it will happen;
11 it will just happen over time. So not only is it
12 not preventing us, but I expect it to happen, just
13 not in a quantifiable, predictable manner.

14 Q. Your proposal would essentially
15 establish a ceiling in the average revenue per
16 minute that CLECs may charge; is that correct?

17 A. No. It's the composite of the rate
18 elements for the services that the CLEC is
19 providing.

20 Q. A composite revenue --

21 A. No. It's the rate. Of rather than try
22 to say it again and say it incorrectly: "Under the
23 proposed requirement, CLECs would ensure that the
24 sum of their rate elements is no greater than the

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1 sum of the ILEC rate elements for the functions that
 2 the CLEC provides."
 3 Q. If that level is set -- strike that. Do
 4 you contend that capping those rates to Verizon's --
 5 strike that. Do you contend that establishing an
 6 average-revenue-per-minute benchmark at Verizon's
 7 level would increase total social welfare?
 8 A. I'm just going to correct the first part
 9 of that: We don't propose to set the cap at
 10 Verizon's average revenue per minute. We propose to
 11 set the cap at the composite of Verizon's rate
 12 elements. Would that policy, adopted by the
 13 Department, increase total social welfare? Yes.
 14 Q. If that level is in fact an inefficient
 15 level, meaning -- strike that. If setting that
 16 benchmark doesn't lead CLECs to set their rates
 17 approaching their marginal costs, and in fact sets
 18 their rates lower than their marginal costs, would
 19 that be inefficient?
 20 A. It would certainly be inefficient for
 21 the CLEC, but they have a remedy under the proposed
 22 rule, and that's to demonstrate that their costs
 23 justify a rate that is higher.
 24 MR. REYES: I have no further questions.

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1 MR. DeROCHE: Thank you very much. Why
 2 don't we take this opportunity to break for lunch.
 3 (Recess for lunch.)
 4 MR. DeROCHE: Good afternoon. We'll
 5 come back to order. I believe we have Mr. Vasington
 6 still on the stand, and it is the Department's turn
 7 to ask some questions. We'll turn to Michael
 8 Isenberg, the director of the Competition Division.
 9 EXAMINATION
 10 BY MR. ISENBERG:
 11 Q. Good afternoon, Mr. Vasington.
 12 A. Good afternoon.
 13 Q. There has been testimony this morning
 14 about various Department cases where we have in the
 15 past used Verizon's rates as a proxy for wholesale
 16 rates. A couple of cases that were cited were
 17 94-185 and 01-20.
 18 I'm wondering if you're familiar with
 19 our decision in DTE 00-54? It was an arbitration
 20 between Verizon and Sprint in which the Department
 21 addressed an interconnection rates issue. And if
 22 you're not, I can refer you to copies of the order.
 23 A. I'm a little panicky, because the 00
 24 number suggests that I should be familiar with it,

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1 but off the top of my head, I'm not.
 2 Q. I think your name is on the order. The
 3 first one is the final order in the case, and the
 4 00-54A decision is a decision on reconsideration.
 5 I've highlighted the pages where we talk about the
 6 issue. If you need a moment to review that, please
 7 do.
 8 A. On the pages that you've flagged?
 9 Q. Yes.
 10 A. And what issue is being highlighted?
 11 Q. An issue where the Department was asked
 12 to determine whether Sprint was required to set its
 13 interconnection rates at Verizon's rates unless it
 14 could not provide cost information to show that it
 15 could charge higher rates.
 16 A. Okay.
 17 (Pause.)
 18 A. Okay, I've read the flagged sections.
 19 Q. In your opinion, would that decision be
 20 similar to the other cases that you've cited, where
 21 the Department has found that Verizon's rates -- or
 22 that carriers that have market power are required to
 23 use Verizon's rates absent a showing of higher
 24 costs?

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1 A. Yes, it's very similar. The situation
 2 is one where the Department has to judge rates to be
 3 just and reasonable of a carrier that is otherwise
 4 not regulated and, like the situations with operator
 5 services and inmate calling, gave the carrier the
 6 option of benchmarking to the regulated carrier's
 7 rates, the ILEC's rates, or providing cost
 8 justification to support a different rate.
 9 Q. Thank you. A follow-up question to that
 10 one: With respect to now the three cases we've
 11 identified -- 94-185, 01-20, and 00-54 -- those were
 12 all established either after or right around the
 13 time of the passage of the Telecom Act. I'd like to
 14 know -- and I hope I'm not treading in the area of
 15 seeking a legal opinion here. I'm wondering if
 16 you're aware of any Federal law that required or at
 17 least played a significant part in the outcome of
 18 those decisions that would not in this case, the
 19 case of switched-access rates, apply; or, in your
 20 opinion, were those cases primarily based on the
 21 Department's view of what the appropriate public
 22 policy should be?
 23 A. In the task of setting reciprocal-
 24 compensation rates and in arbitrating an

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1 interconnection agreement, the Department is in
2 effect implementing Federal law, in accordance with
3 both the statute and the FCC's implementing
4 requirement. So, from that perspective, that's
5 always a guiding principle in implementing those
6 kind of decisions. I recognize there's some
7 citation in this order, this 00-54 order, to
8 independent authority under state law to assess
9 whether common-carrier rates are just and
10 reasonable.

11 So I think my answer would be both: The
12 Department based its decision apparently both on
13 Federal law and its reading of state requirements
14 and policy.

15 Certainly in many contexts where the
16 Department was implementing the requirements of the
17 Federal Telecom Act of 1996, you can read the
18 Department's orders and see that the Department
19 implements the law and the FCC's requirements, and
20 sometimes that still doesn't answer the question and
21 the Department has to determine what the appropriate
22 outcome is. That is certainly a consistent theme
23 and principle reflected in many of the Department
24 decisions from '96 on.

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1 Q. But in your opinion that type of a
2 scenario does not in any way distinguish the
3 switched-access- rate situation from these earlier
4 Department investigations where it had to look at
5 wholesale rates or even retail rates in the context
6 of a provider having monopoly power?

7 A. That's certainly true. There's
8 certainly no distinction in the principle being
9 applied, whether it's wholesale or retail, from
10 Federal law. The only distinction I would make is
11 in the intercarrier compensation context, there is
12 actual binding Federal precedent and rules that the
13 Department has to follow. In the instant case, that
14 we're talking about here, about switched-access
15 rates, we hold up what the FCC had done as an
16 example and for reasoning for why they should do it.
17 We're not suggesting that there's anything there
18 that's binding precedent on the Department.

19 So on a principle basis, yes, you're
20 right, there's no conflict at all. The situations
21 are exactly analogous. In fact, for the Federal
22 interstate switched access, it's not just analogous,
23 it's the same service, just for calls that cross
24 state boundaries. So the only difference would be

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1 there's something binding in the implementation of
2 the Federal Telecom Act; there's nothing binding in
3 this sense.

4 Q. Thank you. There was some discussion
5 about whether the use of Verizon's interstate rates,
6 which were investigated by the FCC, whether those
7 rates were reasonable or could be used by the
8 Department and whether they were sufficiently
9 investigated by the Department in DTE 01-31. My
10 question to you is: What ratemaking standards or
11 methodology did the FCC use in setting Verizon's
12 interstate switched-access rates; and specifically,
13 how detailed did they investigate costs?

14 A. Verizon is a price-cap carrier and was a
15 price-cap carrier at the time those rates were set,
16 so there's not a cost investigation for judging
17 those rates. The FCC does a lot of investigations
18 of costs, so they have a -- I believe they have a
19 general notion of what the costs are for switched
20 access. But they did not do a specific service-cost
21 analysis in setting the current interstate rates,
22 nor were they required to. As I said, Verizon is a
23 price-cap carrier, along with most of the -- all of
24 the Tier 1 LECs, local-exchange carriers.

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1 Q. What approach did they use, then, to
2 determine that those rates were just and reasonable?

3 A. Those specific rates were a result of
4 the CALLS proposal, which was a proposal put before
5 the FCC. The FCC then issued calls for comments on
6 that proposal. There was a full opportunity for all
7 interested parties to comment on that, several
8 rounds of comments. The Department commented in
9 that proceeding at the FCC, and the FCC ultimately
10 judged that fairly comprehensive proposal to be an
11 appropriate mechanism for resolving what was at the
12 time one of the stickiest issues that was being
13 faced, which was the level of access charges.

14 Q. Did the Department in DTE 01-31 in any
15 way modify the FCC's rates when it adopted the
16 interstate rates as part of the comprehensive
17 alternate regulation plan for Verizon, or did the
18 Department simply adopt what already existed and had
19 been approved by the FCC?

20 A. My understanding of what happened in
21 01-31 was that the rate structure in interstate and
22 intrastate weren't exactly the same. So for the
23 same types of reasons why we did an ARPM analysis in
24 this case, you couldn't just plug in the interstate

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1 rates into intrastate and say, okay, those are the
2 new rate levels. The proposal that the company made
3 in that case to implement roughly comparable
4 intrastate rates to interstate rates was not to
5 adopt directly the exact rate elements and exact
6 rate-element levels in the interstate tariff, but to
7 do it in a way that it is roughly comparable to the
8 interstate tariff amount.

9 Q. Is it true to say that the Department
10 relied on the FCC's determination of rates being
11 just and reasonable in adopting them for
12 Massachusetts?

13 A. Well, the Department certainly relied on
14 that as the benchmark for assessing what the just
15 and reasonable rates should be for intrastate rates.
16 The Department had independently urged the FCC to
17 approve the CALLS plan, so the Department must have
18 thought that the resulting rates at the interstate
19 level were just and reasonable, and thus --

20 So I don't think the Department's order
21 said anything about, "We trust the FCC's rates are
22 just and reasonable." The Department's order just
23 said, "It would be inappropriate to have different
24 rates -- or higher rates at the intrastate level

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1 than there are at the interstate level, because it
2 would cost more to call across the state than across
3 the country, and therefore, as a policy matter, we
4 think it's appropriate to set the rates to be equal
5 to each other." I think that's what the Department
6 stated in the order. But as I said, the Department
7 had commented favorably on the CALLS proposal, so it
8 must have believed those resulting rates to be
9 reasonable.

10 Q. Okay. Thank you. In your view, have
11 any parties in this case shown that there's a better
12 or more accurate way to identify CLEC access rates
13 than through the use of Verizon's composite-rate
14 approach?

15 A. No, as far as I can tell, the other
16 parties have not proposed any restriction on it
17 other than, as you heard earlier, the potential for
18 a stipulated agreement for Richmond Networks, that
19 the CLEC exemption -- the rural CLEC exemption that
20 currently exists in the Federal rules is an
21 appropriate standard.

22 But, you know, some of the CLECs in this
23 case are in favor of Verizon's proposal and others
24 have I think just suggested that there is no need

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1 for a cap at all, that they would continue to be
2 non-dominant-carrier rates.

3 Q. One thing that I wanted to clarify for
4 the record is the terminology that we've been using,
5 going back and forth between average revenue per
6 minute and composite-rate structure. And then I
7 think at one point -- I'm not sure if it's in
8 somebody's testimony or if it was in a response to
9 discovery, but I think I even saw a composite
10 average rate per minute.

11 Can you just clarify for the record the
12 differences between what I think are just two
13 concepts here, average revenue per minute and
14 composite rate structure?

15 A. Sure. A lot of the guilt for confusing
16 this matter is my own, and I apologize for that. I
17 did send the errata reply to DTC-VZ-1-14, to correct
18 my mistaken answer earlier.

19 Verizon provided average-revenue-per-
20 minute data in its petition and in my testimony in
21 order to do an apples-to-apples comparison of what
22 CLECs were charging us and what we charge
23 interexchange carriers ourself. The cap that's in
24 the FCC rule and which we propose be mirrored here

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1 is not an average-revenue-per-minute cap, and
2 there's good reasons for that. The CLECs don't know
3 what Verizon's average revenue per minute is, so
4 they can't set a cap equal to the number that we
5 have access to the data to produce.

6 So the cap that's in the Federal rule,
7 and what we're proposing here, is a composite cap.
8 The cap is equal to the sum of the CLEC rate
9 elements -- or the sum of the CLEC rate elements is
10 no greater than the sum of the ILEC rate elements
11 for the functions that the CLEC provides. So it has
12 nothing to do with the average revenue per minute.
13 The average revenue per minute is not the cap. And
14 I apologize for the confusion we've created on that
15 point. Really, the VZ-1-14, that response to the
16 DTC question, should clarify what our proposal is.

17 Q. And you testified earlier that CLECs on
18 the interstate side are already calculating their
19 composite rates.

20 A. That's correct.

21 Q. And if Verizon -- if the Department were
22 to adopt Verizon's proposal, then presumably they'd
23 have to do really nothing different on the
24 interstate side.

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1 A. Yeah, I don't know what rate-structure
 2 changes they would want to make, but the end result
 3 should be just about the same, because Verizon's
 4 intrastate rate is based on its interstate rate, and
 5 the CLEC interstate rate is based on Verizon's
 6 interstate rate.

7 Q. That brings up a good point: If there
 8 was a rate-structure difference, how would the
 9 Department know or other carriers know that any one
 10 CLEC was actually calculating their composite rate
 11 for Massachusetts correctly?

12 A. Well, presumably, if you adopt a rule
 13 like this, there would be some kind of compliance
 14 filing by the CLECs where they would spell out --
 15 they would show the calculation of the cap and how
 16 it meets the ceiling. And again, it's the same type
 17 of calculation they already do for the FCC, so I
 18 don't think that it's a large burden or much of a
 19 mystery. And that would be something that, you
 20 know, would be reviewable by the Department, I guess
 21 by -- it's a tariff filing; I guess other parties
 22 could comment on it if they wanted to.

23 Q. Would you expect that over time certain
 24 CLECs would need to change their composite rates?

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1 A. Yes, based on the analysis that I've
 2 done and that I've included with my testimony,
 3 certain CLECs are 15 times what Verizon is charging
 4 on an ARPM basis, and I suspect that -- I don't know
 5 exactly what the calculation would be on the
 6 composite basis, but I think it would be roughly
 7 comparable. So I identified about 40 CLECs who were
 8 charging more than Verizon, and I anticipate that
 9 those CLECs would need to reduce their rates.

10 Q. I'm sorry, I wasn't clear enough. I
 11 mean after they initially set their composite rates
 12 the first time and comply with the cap, do you think
 13 going forward that the Department would see a lot of
 14 occasions where CLECs for whatever reason, changes
 15 in rate structure, would have to calculate new
 16 composite rates?

17 A. Well, I don't want to answer on behalf
 18 of their witness or their party, but there was
 19 discovery. We asked them what process they'd go
 20 through to comply with the FCC cap, and they
 21 described what they do. It didn't seem -- basically
 22 what they said was they evaluate any ILEC rate
 23 filings, and if the ILEC makes a rate filing, then
 24 they would make an adjustment based on it. So I

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1 think it would be driven more by the ILEC's filings
 2 than by the CLEC filings. I guess if they wanted to
 3 change their rate structure in order to come up
 4 under the same ceiling and cap, that's possible.
 5 You'd have to ask them how often they do that, if at
 6 all, in the absence of an ILEC change.

7 Q. But you think generally that from an
 8 administrative standpoint it would not be burdensome
 9 either on the Department or the parties.

10 A. That's correct.

11 Q. Getting back to average revenue per
 12 minute: You use that, of course, to show
 13 differences in switched-access rates between Verizon
 14 and CLECs.

15 A. And between CLECs.

16 Q. And between CLECs and other CLECs,
 17 right. But, of course, for purposes of complying
 18 with the cap, you're proposing that they use a
 19 composite-rate structure.

20 Is there any possibility that use of
 21 those two different methodologies might not provide
 22 the Department with as accurate a picture as to
 23 what's happening in the marketplace? In other
 24 words, would it have been better, comparing apples

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1 to apples, to use the same approach to portray the
 2 discrepancy in switched-access rates in the
 3 marketplace as the approach that would be used going
 4 forward to ensure compliance with the cap?

5 A. That's a good question. You could adopt
 6 an average-revenue-per-minute cap, and I can
 7 anticipate you could say to Verizon, "Provide us
 8 with our average revenue per minute once a year, and
 9 we'll make sure the CLECs are below that."

10 But I think there's an
 11 administrative-efficiency advantage to mirroring the
 12 FCC rule. And as I said, it's a calculation they're
 13 already doing, they're familiar with. Doing it at
 14 the intrastate level, it would allow them to do what
 15 they're already doing and what they have some
 16 experience with, and it would not require the
 17 intermediate step of them having to rely on our
 18 calculation of ARPM and then getting into fights
 19 about whether we're doing it correctly or not. Just
 20 following onto the existing rule I think is the most
 21 efficient and makes the most sense.

22 Q. Okay. Thank you. Getting back to the
 23 calculation of average revenue per minute that
 24 various CLECs and Verizon performed: You had

1 stated -- I believe it might have been in a
2 discovery response -- that the approach used dollar
3 amounts billed by CLECs to Verizon for access
4 multiplied by minutes of use.

5 A. Divided by minutes of use.

6 Q. Divided by minutes of use. Would it
7 have been more accurate for Verizon to have
8 calculated the CLECs' average revenue per minute?
9 Or not for Verizon. But if the Department wanted to
10 get a truly accurate view of CLEC switched-access
11 rates but to do it in an administratively feasible
12 manner, would it be better for the Department to
13 calculate the CLECs' average revenue per minute by
14 examining their access revenues, as opposed to
15 billing data?

16 A. If the Department -- if average revenue
17 per minute was an important factor for the
18 Department in considering this and it wanted the
19 most accurate number to represent the CLECs' actual
20 average revenue per minute, then, yes. The only way
21 you can get that is by getting it from the CLECs
22 themselves. All we have is what we pay them. So
23 based on our own billings, which is the only data we
24 have access to, we calculate the best metric we can,

1 which is average revenue per minute based on
2 billings to the Verizon entities.

3 I think there was some discovery on
4 asking them to do their own calculation of it, and I
5 don't recall -- you know, there was a lot of
6 proprietary filings that were coming in with
7 supplements last week, so I don't remember off the
8 top of my head if that calculation was done by some
9 or all of the CLECs in the case. They were
10 certainly asked for it.

11 But you're correct that if you wanted an
12 actual measurement of what their actual revenue is
13 per minute for all of their own access minutes,
14 including what they bill everybody, yeah, they're
15 the only ones that can provide you with that.

16 Q. How much more accurate do you think the
17 Department could actually get by undertaking that
18 rather burdensome task, as opposed to relying on
19 Verizon's calculations?

20 A. It would be purely speculative on my
21 part, because I don't know what their minutes look
22 like. Certainly from a statistical perspective, if
23 you look at the numbers that are in the attachments
24 to VZ-1-5, I think it's a statistically significant

1 sample size of what you're talking about. Verizon
2 is the only dominant carrier in the state, so I
3 would suspect that whatever the billings are to us
4 are roughly comparable to what they are to other
5 carriers. I'm not a real access -- I don't know the
6 ins and outs of all the rate elements to know that
7 other carriers, AT&T or Comcast, might have
8 different weightings on certain rate elements. I
9 would be somewhat surprised to see a marked
10 difference between what we're calculating and what
11 their actual average revenues per minute are.

12 Q. Thank you. I was wondering if you could
13 turn to -- we may have to go on a sealed record for
14 this. If you could turn to Information Response
15 XO-VZ-1-14.

16 MR. DeROCHE: Are you going to be
17 discussing numbers?

18 MR. ISENBERG: We may.

19 MR. DeROCHE: If we could go off the
20 record for a moment.

21 (Discussion off the record.)

22 MR. DeROCHE: We'll open the record and
23 go on a sealed record.

24 (Confidential portion on sealed record.)

FURTHER EXAMINATION

BY MR. ISENBERG:

Q. Just a few more questions, Mr. Vasington.
Following up on the last several questions: Has the
Department in the past been concerned about
regulatory rate arbitrage? And if so, can you cite
some examples?

A. I can't believe I don't know the docket
numbers, but reciprocal compensation was an example
where that issue was addressed.

Q. Let me help you with one other example,
maybe, that I'm recalling and I think probably
you're aware of. Besides reciprocal compensation,
we also investigated VNXX traffic?

A. Certainly VNXX traffic was investigated. I
don't know that that's the same type of thing,
though. I would categorize that differently, not
primarily as arbitrage. Part of my difficulty here
is that I can only rely on information that's in
Department orders, and I'm in a bit of a bind
because my memory is going back over things I --

I'll just leave it at: I don't believe
that there are other Department decisions on telecom
that address this type of arbitrage scenario. There

<p style="text-align: center;">142</p> <p>were in electricity and gas, but I don't think those are generally precedent for you now, even though the Department at the time had all those various industries under it. Since the split, it's a little bit difficult for me to say that some of those orders might be considered precedent for you in principle, so I won't try to identify those orders. I just remember that type of issue coming up in retail electricity and also in retail gas competition.</p> <p>Q. Thank you. Jumping to another subject: Do you know why the FCC decided not to allow CLECs to cost-justify their access rates if their costs are actually higher than the ILECs?</p> <p>A. I can only go by what the FCC said in their order. I think they had an alternative available to them that you don't have available to you, which is they could allow CLECs to say, "Yeah, we're going to charge more than the benchmark," but the FCC was able to say, "If you want to do that, you can't have a tariff." So they could say, "Yes, we're charging more," but without a tariff, they can't make anybody pay it, and they would have to get somebody to agree to pay it in order to have a higher rate.</p>	<p style="text-align: center;">144</p> <p>obtain the necessary resources to pursue that type of case.</p> <p>But then the other thing I would say is, it should be difficult. If you want to charge 15 times more than a just and reasonable rate, there should be a pretty high fence to jump in order to do that.</p> <p>Q. Going back to the suggested language of your proposal: In the second paragraph -- this is on Page 21, Line 8. It reads, "If a CLEC operates in more than one ILEC's service area, it may establish a single blended rate for switched-access service that the carrier would charge statewide." What does Verizon mean there when it says "more than one ILEC's service area," at least as it applies to Massachusetts?</p> <p>A. I was okay until you said "at least as it applies to Massachusetts," because we were simply copying the FCC language, and there are a number of states where there are several different ILECs, sometimes comparably sized. It could be one ILEC that serves 30 percent of the market, another serves 20, another serves 25. So you've got a bunch of different ILECs.</p>
<p style="text-align: center;">143</p> <p>And then the only other thing I could think of is the FCC generally doesn't do kind of fact-based adjudications of things. They do some things through -- they had done more cost analysis in the past than they've done in recent years, and so it could be very difficult for them to conduct that type of proceeding.</p> <p>So I think with those two factors, they had that other alternative available to them.</p> <p>Q. In your opinion, is it really a viable option for a CLEC, especially for a small CLEC, to cost-justify their rates if their costs are higher, given the transaction costs of doing that?</p> <p>A. It's certainly viable as an effort, because they tried to do it in some other states, which I identified in discovery. I don't think it's avoidable in terms of substance, because I don't think that it's -- I don't believe that the premise can be shown, can be proven. So in that sense it's not viable.</p> <p>In terms of is it practical given the transaction costs: As I said, they have tried to do it in some other places. So clearly, if it means enough to them, they do undertake the effort and</p>	<p style="text-align: center;">145</p> <p>This paragraph really wouldn't make much of a difference in Massachusetts, where the other ILECs -- Granby, Richmond, Taconic -- I don't even know if they're still called Taconic --</p> <p>Q. They are.</p> <p>A. -- and Sentinel Trade, if they're still around, even --</p> <p>You're talking total, out of those four companies, less than 2,000 lines, certainly not much more than that. So you'd be going out quite a few decimal points before this part of the rule made any difference at all. So I think you could safely drop that for Massachusetts and it really wouldn't have any practical effect.</p> <p>Q. That entire second paragraph?</p> <p>A. Yes. Again, it was just because that's what was in the FCC's rule.</p> <p>Q. This is more of a clarification: This is Verizon's response to XO-VZ-2-11.</p> <p>A. Okay.</p> <p>Q. The second sentence of the response reads, "In the only prior instances in which the Department regulated rates for nondominant carriers, it used the benchmark approach instead of conducting a cost</p>

<p style="text-align: right;">146</p> <p>case." Could you identify those prior instances, please?</p> <p>A. The operator services, inmate calling, reciprocal compensation. Those are the three that I identified in my testimony.</p> <p>Q. Thank you. You stated in your testimony and also in discovery responses that in Massachusetts there's no way for CLECs to charge different switched-access rates to the ILEC or to other CLECs because of the statutory tariffing requirement. Is it not possible for CLECs to negotiate in Massachusetts some type of different switched-access rate?</p> <p>A. That's a good question. I suppose it's possible, but I think it's -- if it's an intrastate common-carrier service, even if it's negotiated, say, as a customer-specific thing, it still has to be filed. Every intrastate common-carrier service, the rate has to be tariffed in Massachusetts.</p> <p>Q. But it still could be a different rate than their general tariffed rate?</p> <p>A. Yes, and certainly if two carriers want to agree on paying something other than what is represented in the cap, our position would be that</p>	<p style="text-align: right;">148</p> <p>difficulty: Can you predict exactly what the benefits are of a dynamic competitive market? No. Usually it comes about in ways that no one foresees.</p> <p>But that being said, I think that improvements to competition and improvements in efficiencies in the cost structures for interexchange services are both real benefits to customers.</p> <p>Q. Could you explain specifically why it's harmful to consumers in Massachusetts if some carriers recover disproportionately more of their costs from other carriers rather than their own end users? In other words, why should the average Massachusetts consumer really care?</p> <p>A. Well, the average Massachusetts consumer probably doesn't spend every day wondering about the competitiveness of the local telecommunications market. But they should care because, as the FCC has found and others, the competitive process is improved when this distortion is removed from the market. The FCC specifically identified the scenario you're talking about, that allowing one carrier to recover a disproportionate share of its costs from its competitors instead of its end users</p>
<p style="text-align: right;">147</p> <p>that should be allowed in principle.</p> <p>Regardless of -- not regardless of, but taking aside the legal considerations right now, about what should be tariffed and what shouldn't, Verizon's corporate position has been that the ultimate goal should be for negotiated intercarrier compensation rates. So I think something like that, there would be no -- nothing in principle that would be wrong with that.</p> <p>Q. I know you've touched on this before, and probably I'm being a little redundant here. But if the Department were to adopt Verizon's proposals, what tangible benefits besides the possibility of lower long-distance rates would accrue to Massachusetts consumers?</p> <p>A. Well, apart from long-distance interexchange rates lower than they otherwise would be, just the general improvement to the competition situation in Massachusetts I believe would result in better results for consumers, if you believe that competition generally promotes benefits better than other mechanisms, which the Department has held as policy for many years.</p> <p>But is that tangible? That's always the</p>	<p style="text-align: right;">149</p> <p>gives it an artificial competitive advantage in the marketplace. And an artificial competitive advantage creates distortions that don't increase the net consumer benefit or net consumer welfare, I think we talked about earlier today with some of the other questioning.</p> <p>So in that respect I think it matters quite a bit. I think the challenge has been to create the conditions for efficient competition to win out, and that when that happens, the best results possible are delivered to telecommunications consumers. And so I think this does matter in that respect.</p> <p>Q. Are you speaking primarily long-term?</p> <p>A. No. I mean, I don't know what CLECs are doing with the excessive revenue they're getting from switched-access rates. Are they just keeping it as monopoly rent? Are they using it to fund their own business in ways that they shouldn't be, by subsidizing their own retail operations? Either way, it's a distortion of the competitive market, and it happens every day they're able to charge an unjust and unreasonable rate, and it's growing.</p> <p>So, no, it's an immediate problem, and I</p>

<p style="text-align: center;">150</p> <p>think there would be an immediate improvement if you were to adopt this proposal.</p> <p>Q. This is potentially a hypothetical, since there is testimony, or there was testimony earlier today, that Verizon would not oppose a rural waiver for Richmond Networks.</p> <p>But in response to a Department discovery request, Richmond Networks indicated -- I'll paraphrase, because I think perhaps some of it may have been proprietary -- that it would suffer significant harm from the adoption of Verizon's proposal.</p> <p>Shouldn't the Department take into account in its deliberations on this question the impact of Verizon's proposal on individual carriers?</p> <p>A. Specifically in the case of Richmond, as you already noted, we are not opposed to including the rural CLEC exemption in there, which would allow them to charge the NECA access rate for the highest rate band for local switching. This is, again, consistent with the FCC's ruling.</p> <p>As far as other carriers who claim they'll be harmed by this policy, I don't think any carrier has an entitlement to unjust and</p>	<p style="text-align: center;">152</p> <p>other states.</p> <p>Q. In balancing the interests here, what we've heard today is that the proposal largely is designed to improve the competitive process in Massachusetts, although there has not been up to this point, or up to Verizon filing its petition, any evidence that the competitive process in Massachusetts is not working.</p> <p>And what we've heard from you this afternoon is that, in terms of tangible benefits for the average consumer, there may be, besides ensuring full and fair competition, there may be some possibility of lower toll rates.</p> <p>But you have to balance that with the fact -- and this is clearly a point that you've made strongly in your testimony -- that CLECs, if this proposal's adopted, would likely have to increase their retail rates. So a certain segment of the marketplace or of the end users in Massachusetts will see, potentially see immediate rate increases. How can the Department reconcile those two?</p> <p>A. First of all, there may be certain CLECs who may believe they need to increase their rates, and that's up to them to decide. There may be</p>
<p style="text-align: center;">151</p> <p>unreasonable rates, and they had these rates adjusted seven years ago by the FCC. They're on notice that this is a regulatory issue that may be taken up by other regulators, and should have and should take this into account in their operations. And I don't believe that the Department need concern itself with the effect of taking away what is an inappropriate ability to use market power, in this case by charging unjust and unreasonable rates. I haven't seen any record evidence in this case suggesting that there needs to be consideration of that. I addressed in my testimony some of the overblown rhetoric about the future of local competition being at stake. The Department has heard that before when policies are changing.</p> <p>So for those reasons I don't think that -- I think the Department should just rely on its assessment of the nature of the service we're talking about, comparing it to other situations where the Department has decided to regulate non-dominant-carrier rates, and apply the same kind of remedy that it has applied in the past, a cap based on the benchmark of the ILECs' rates, and know that this has also been done by the FCC and some</p>	<p style="text-align: center;">153</p> <p>others who are just collecting revenues that they don't deserve, in which case they just forgo those revenues.</p> <p>But you also need to keep in mind: This isn't just Verizon that's in here. Every CLEC is paying each other these rates. It's not just Verizon who is here saying, "We're paying too much money." There are also other CLECs in this case who are saying that they're paying too much money here, that this is unjust and unreasonable.</p> <p>And the fact is, these carriers survived the exact same policy that was put in place on them in this state for calls that cross the state boundary and lived to tell the tale, and I don't think there's any reason why they can't implement the same policy for calls that stay within the state.</p> <p>So I guess I'm having a tough time thinking of that as being a balancing act. You don't balance rates that are unjust and unreasonable against something else. If they're unjust and unreasonable, then they need to be fixed. As I've said, the CLECs have been regulated this way in other states and at the FCC. They've been on notice</p>

<p style="text-align: center;">154</p> <p>that this is a regulatory issue. You know, the time has come for that to be corrected.</p> <p>Q. Thank you. Just a few more. I know Verizon's position about a transition period if the Department were to adopt its proposal. But let me pose this question to you: If the Department was intent on adopting a transition period, what would Verizon's -- what would Verizon consider to be an appropriate length of time?</p> <p>A. It's difficult to answer that, because Verizon doesn't think there's been a demonstrated need on the record in this case for any kind of transition period if you adopt it. You have in the record here examples of other states and the FCC that have done transition periods for similar policies. I don't think Verizon has a position on what an appropriate transition period is, because we don't think one's necessary, but you do have some on record already, if the Department decides that it wants that.</p> <p>To be clear: If the choice is between the status quo and doing a transition period, obviously a transition period is preferable to not doing anything. But again, I don't think that</p>	<p style="text-align: center;">156</p> <p>that they're actually providing.</p> <p>Q. Your composite includes originating?</p> <p>A. Subject to check, I believe the Verizon - Massachusetts intrastate access is the same for all local switching minutes. It doesn't differentiate by originating and terminating.</p> <p style="text-align: center;">FURTHER EXAMINATION</p> <p>BY MR. DeROCHE:</p> <p>Q. I have just a quick follow-up, going back to the traffic-pumping: If the composite charges separately for originating and terminating --</p> <p>A. Wait a minute, let me just correct: It's not separate for originating and terminating. Originating and terminating are two components that add up to the composite cap.</p> <p>Q. Okay. So if the two components under the proposed cap could be different and you're worried about traffic-pumping being one of the symptoms of this, if a CLEC chose to load its terminating charge and reduce its originating charge, wouldn't there still be an opportunity for arbitrage there?</p> <p>A. Our proposal isn't designed to cure traffic-pumping. We identify traffic-pumping as, as someone said earlier, I think, a symptom of the</p>
<p style="text-align: center;">155</p> <p>there's anything in the record that would justify or suggest that a transition is needed.</p> <p>Q. In Verizon's response to DTC-Verizon-1-17 you indicated that California had a transition period, or adopted a transition period; but you didn't indicate the length of that. Do you happen to know how long their transition period was?</p> <p>A. Not off the top of my head, but I think we produced the order.</p> <p>Wait a minute, DTC-VZ-1-4 I think gives a little more detail on what California did.</p> <p>Q. Thank you for pointing that out.</p> <p>A. You're welcome.</p> <p>Q. Did Verizon give any consideration to applying its proposal to originating-access rates, and if not, why not?</p> <p>A. Our proposal would apply to originating only in the sense that we're not -- our proposal is for the composite to equal our composite cap. If a CLEC wants to structure it in such a way that some of that's on originating and some of that's on terminating, they can structure it how they want, as long as the composite of what they're adding up adds up to the ceiling of our composite for the services</p>	<p style="text-align: center;">157</p> <p>disease, the disease being a market-power demonstration. We think that an appropriate solution to that that would reduce the incentive for things like traffic-pumping would be to charge a reasonable rate, a reasonable composite rate.</p> <p>Could that still be done and still have traffic-pumping occur? I don't know. It could be. But again, this whole thing isn't designed to put an end to traffic-pumping. That's not the issue here. We have not filed a traffic-pumping complaint. We have just identified that as an incentive. You asked for evidence of that happening in Massachusetts, and we supplied that to you. But that's not what this case is primarily about, from our perspective, at least.</p> <p style="text-align: center;">FURTHER EXAMINATION</p> <p>BY MR. ISENBERG:</p> <p>Q. One final question, Mr. Vasington, at least from me: In that Verizon did not seek to file surrebuttal testimony in this case, do you have any general observations regarding the testimony of Dr. Ankum or any other witnesses in this case?</p> <p>A. Yes, he's wrong; I'm right; the other witnesses who agreed with me are also right.</p>

Just a very general observation: He's applying different precedent here. He's looking -- you know, he's citing to the horizontal merger guidelines. He's citing to macro market-power analyses of the entire structure of the marketplace. And that's complicating matters way beyond what I think this case is about and the types of analyses the Department has done in the past for similar circumstances -- where it's not the structure of the market, it's not how big you are within the context of the entire market. It's about whether or not on a particular call the person who is paying the bill has a choice. That was the situation for operator services. That's the situation for inmate calling. That's the situation here today.

The carrier customers have no choice in paying the bill. That's why the FCC put the rule in place. That's why other states have put the rule in place, why you've put the rule in place for other similar circumstances, and why I think you should do it here. And it matters not a whit if this individual CLEC has 10 percent of the overall number of lines in the state, because for that service, for that individual circumstance, they have market power

and it needs to be controlled.

Q. Thank you.

EXAMINATION

BY MR. GOPALAKRISHNAN:

Q. Going to your calculations of ARPM: What do you think will be the impact of including flat-rated elements into the ARPM?

A. Well, the number would certainly be higher, but then it wouldn't make sense any more, because you'd be dividing flat-rated charges by minutes. You'd be including in the denominator -- I mean in the numerator things that don't vary by minute, but then you'd be dividing them by minutes, which is the denominator, is minutes of use.

Q. But you'd still get a more accurate estimate of the actual switched-access charges being paid by --

A. Overall switched-access, but you'd be capping usage-based rate elements based on a comparison of non-usage-based and usage-based revenues, and that wouldn't be an accurate characterization. We're not asking for CLEC flat-rated charges to be capped. I suppose you could do that if you wanted to, but it doesn't make any sense

under this proposal, and it's not -- it wouldn't be consistent with the Federal calculation any more if you did that.

Q. Would you know, if you did this, would the differentials between the switched-access rates of Verizon and the CLECs, would it increase or decrease if you included the flat-rated elements?

A. I don't know what the CLECs' ARPM would look like. Ours would be higher.

Q. It would obviously be higher, but I am talking of the differential.

A. No, I don't know what the differential -- because, again, we don't usually pay flat-rated charges to CLECs. Remember, we're limited to calculating it based on our own billings. That was the issue I discussed with Mr. Isenberg earlier, that if you really wanted an accurate view of what CLECs are charging the entire market, you'd have to go to them for that data. All we have is what they bill us, and so we're able to calculate a usage-based ARPM because they bill us usage-based things. In order to have that to compare to something, we calculated our own ARPM based on usage-based charges.

Q. Thank you. Referring to Page 7 of your testimony: You referred to the 1994 general rate investigation into interLATA and local-exchange calculation. So did the Department determine or consider CLECs to be a dominant carrier as far as reciprocal compensation is concerned?

A. No, not in general. The Department has not considered CLECs to be dominant carriers except for -- at that time, for both operator services and inmate calling. Since that time it removed that classification for operator services, and it remains only for inmate calling.

Q. So unlike the other two examples which you cited, the Department did not specifically consider the CLECs to be a dominant carrier in this particular case.

A. In setting reciprocal compensation?

Q. Yes.

A. That's correct.

Q. Can you provide any other example where the Department, any Department order has considered a CLEC to be a dominant carrier as far as a wholesale service is concerned?

A. No, I don't believe the Department ever

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designated a CLEC as a dominant carrier for wholesale services. As I said, there were situations where they regulated a rate for a CLEC for wholesale services, but I don't think they ever formally said, "And you are a dominant carrier for provision of this service."

In the orders that Mr. Isenberg was referring to earlier, the Department did refer to the leverage that a CLEC has in a negotiated agreement because the ILEC has an obligation to interconnect with them, but did not specifically say, "And that makes you a dominant carrier."

Q. Thank you. I am referring to the testimony by the joint CLECs, Page 7, Line 12.

A. You have to wait a minute. What page?

Q. Page 7, Line 12 of Dr. Ankum's testimony. I am just referring to a statement that says that the primary cause of higher CLEC access rates is most likely the higher costs of the CLECs.

A. I have a problem, because I still have the Michael Starkey version.

Q. It's the same.

A. Page 7, Line 12?

MR. FIPPEN: Starting, carrying over to

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the next page.

A. I'm sorry. It carries over onto Page 8.

Q. Yes, it carries over to the next page.

A. Yes.

Q. Do you have any comments to offer on that statement?

A. Well, a couple. One would be, I would candle that statement against the evidence I've shown in the attachment to my testimony, which shows a pretty significant range of CLEC charges for switched access in the state on an intrastate basis. If the primary cause of their access rates are primarily a function of their production costs and CLECs are all similarly situated as new entrants into the market, why is there such a wide disparity in charges for what is essentially a commodity service? It all looks the same whether it's one CLEC or another that's providing it.

And the second point I would make here is, if that in fact turns out to be the case, that they require a higher rate based on their higher costs, that option is always available to them. We're doing nothing to prevent them from making that showing.

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But just asserting it without any evidence -- and you'll note that in all this testimony there's no evidence of Massachusetts CLEC costs, including the people who paid for the testimony -- I don't see any basis to just take that assertion and say therefore there shouldn't be a rule. If you're concerned about that assertion, you adopt the rule and allow for the rebuttable presumption that they can show with their own costs.

Q. It's an extension of the previous question: In Massachusetts the market share of CLECs in 2007 was 23 percent. Again, I'm going on the basis of the joint CLECs' testimony. This is down from 24 percent in 2006. Do you think the market share of CLECs provides any information on their market power? Why or why not?

A. I'm going to go at that a couple of different ways. One is, I think that that information doesn't include the entire market. That's only regulated common carriers whose market share is included in there, and it doesn't include all IP-based lines, VOIP lines, even VOIP lines that are not nomadic, not like Vonage, that they're provided on a fixed-line basis. So it understates

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the market.

Second, I think you can go read the Department orders going back to 1992, pointing out that market share in and of itself doesn't tell you very much about market power in a dynamic market such as this one, in telecommunications. That is, there's a whole string of orders that say it's not an important indicator.

Then the last point and the most important point is what I discussed earlier, which is the structure of the market is not what gives market power in switched-access service. It's the ability to charge someone a rate when that customer has no choice but to use your service. Again, the operator-service providers who were coming into the market, ITI, International Telecharge, was very small compared to New England Telephone at the time, but it didn't matter how big they were in the size of the total market. What matter was they were offering a service to customers where the customers had no choice but to use their service or to not make the call, and that's what the Department relied on. We think this situation is just like that.

Q. Thank you. Following up on that, the JLEC,

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the joint CLEC testimony, differentiates between the short-run and the long-run responses to determine if monopoly power exists with the CLECs. Do you agree with this differentiation between the long run and the short run in terms of retail competition disciplining upstream wholesale markets?

A. No, and there's two reasons why. One is the general provision I just discussed, which is that we're not talking about the whole structure of the market here and whether there are entry barriers or not to come in.

And the second is, carry that through to its logical conclusion. Essentially what they're saying is, Verizon's solution -- Verizon has a solution to that problem, Verizon and the other carriers who don't like the CLEC switched-access rates have a solution to that problem, because in the long run they can go and take away the CLEC customers, and then they don't have to pay the CLEC end user to terminate the rate.

So the solution they're talking about there taken to its extreme is, "We can only avoid paying their high switched-access rates by driving them out of the market." Is that the solution that

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the Department wants to rely on to cure unjust and unreasonable rates? I think, given the alternatives between relying on that kind of long-term response, as opposed to adopting a reasonable cap policy, which it's done in other circumstances that are similar, I think it's an obvious choice for the Department.

Q. The next question is, do you consider Verizon's switched-access rates to be economically efficient?

A. They certainly don't maximize economic efficiency. Are they economically efficient, though? Yes.

Q. Following up: Is it possible that a higher switched-access rates for CLECs is economically efficient and maximizes overall welfare?

A. No, even in the circumstances where a cost difference justifies a higher rate, that is a regulatory policy, that is an option. But even then it's not improving welfare. It's not improving economic efficiency.

Q. But if you consider the welfare of the firms and the consumers, is it possible that a higher rate of switched access by CLECs can overall

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improve economic efficiency?

A. I don't see how it could. I am carrying through a scenario where a CLEC comes in and says, "We have higher production costs than the firms we're competing against. We're going to enter the market, and we're going to justify our rate for captive customers on the basis of our higher production costs." That may be okay as a regulatory solution, but I don't see how that improves efficiency.

Q. Thank you. Is there any way you can quantify what a just and reasonable rate should be for -- what can be a just and reasonable rate, switched-access rate, for the CLECs? Is there any formula you can use, or should it necessarily be what you charge?

A. I think it's a very similar formula: It's what we charge, because that's the only rate that the Department has reviewed and declared to be just and reasonable. Remember, it's not that we consider it to be just and reasonable. There's only one rate in the Commonwealth of Massachusetts that the Department has reviewed and affirmatively said, "This is a just and reasonable rate for intrastate

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switched access." That's why we're using that as the benchmark, and that's why the Department has used the dominant-carrier rate as the benchmark in the other circumstances where it's reviewed non-dominant-carrier rates. The Department simply said, "That's the rate that's been subject to the most scrutiny; therefore that's the one that we believe is the most appropriate benchmark, absent costs showing otherwise."

Q. But looking at a standard for just and reasonable, could it not be that it can be a higher rate as far as the CLECs are concerned?

A. Yes, and under our proposal they can have a higher rate if they can justify and demonstrate higher costs. That's the circumstance where you could have a higher rate and it could still be just and reasonable.

Q. I think you answered this question, but I'll put it once again on the record: Do you agree with the process and methodology for determining market power as demonstrated in Page 5, Line 10 of the joint CLECs' testimony?

A. In the circumstance where you're evaluating the structure of the market -- like, for example, in

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the past where the Department has looked at a request to have a service declared sufficiently competitive -- these are the types of standards the Department has used for that kind of analysis, except I would flip No. 4 for No. 3. The Department has said that market share is less important where there's a high degree of supply elasticity. But again, while that's a legitimate intellectual model, it's not the intellectual model to apply to the circumstances we're talking about in this case.

So yes, I agree that it's an appropriate model for other contexts. No, I don't agree that it's the appropriate model to use in this case.

Q. That brings me to my next question, on how broadly do you define the relevant market in this case? Do you agree with the definition of the product and geographical market which the joint CLECs' testimony -- they have provided it on Page 14, Line 7?

A. No, because, again, I wouldn't use that model for evaluating the conditions in this case. The circumstances in this case are not about the geographic size of the market or the product market. This is about whether the customer of the particular

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service at issue here ever has a meaningful choice of provider. It's as simple as that. Does that carrier ever have an opportunity to exercise a choice in who they're paying for that service? And the answer is unequivocally no.

Q. One final question: In your testimony you indicated that there is evidence of traffic-pumping, which shows that there exists market power in switched-access services with CLECs. But my question is, if this were the case, should we not find evidence of more widespread traffic-pumping? You have just given us one example, which could be an isolated one. But if you are trying to make the case that the evidence of traffic-pumping is an indication of market power, should it not be more widespread than what you have already demonstrated?

A. I don't see why it would be more widespread. We only have evidence that we've seen -- that we are able to produce of one carrier doing it. Even in other states where it's more widespread, it's not everybody. Some carriers are real telephone companies, going after real customers and trying to be a real business in the market, and there's nothing wrong with that, and they are

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approaching their business responsibly. To suggest, well, why aren't they doing it, well, they're not doing it because they don't think it's appropriate to do it, clearly.

Q. Thank you. That ends my questions.

MR. DeROCHE: Mr. Mael, did you have a few questions?

I think we're going to call it a wrap for today.

MR. GRUBER: Mr. Hearing Officer, I have some recross, literally one question, that I want to follow up on.

MR. DeROCHE: There's a few members of the Department that have a few more questions for tomorrow, so will it hold until tomorrow morning?

MR. GRUBER: It's going to involve a record request, so it might be easier if I just go ahead and put it on the record, and that way Verizon can get to it when they can get to it, if I could do that.

MR. DeROCHE: Okay. Go ahead.

MR. GRUBER: Thank you.

FURTHER CROSS-EXAMINATION

BY MR. GRUBER:

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Q. Mr. Vasington, you were asked some questions earlier today about the switched-access rate-setting practices of the CLECs in this proceeding, specifically in this proceeding. I want to draw your attention -- you had actually supplied the average revenue per minute as an attachment to your testimony for a number of CLECs. I'm simply going to ask as a record request that you provide in response to my record request the average revenue per minute for the seven specific CLECs involved in the proceeding. Obviously, you would produce it under seal. Those CLECs are -- some of the CLECs are part of an existing CLEC. It would be CTC Communications, Conversent, RNK, XO, Lightship. How many have I given you?

MR. FIPPEN: Five.

Q. Paetec.

Let me read them straightforward: Paetec, RNK, XO, Choice One, Conversent, Lightship, CTC.

MR. FIPPEN: Just to be clear, Mr. Gruber, there are more than these carriers who participated in this proceeding. You want just these seven?

MR. GRUBER: I'm satisfied with just these seven.

MR. FIPPEN: So you want the ARPM that appears in the proprietary attachment?

MR. GRUBER: Yes.

MR. DeROCHE: I'll caption that AT&T Record Request 1.

(Record Request AT&T-1.)

MR. GRUBER: Thank you, Mr. Hearing Officer.

MR. DeROCHE: You're welcome. I will close the record for today, to be opened again tomorrow at 10:00 a.m.

(4:40 p.m.)

REPORTER'S CERTIFICATE

I, Alan H. Brock, the officer before whom the foregoing proceedings were taken, do certify that this transcript is a true record of the proceedings on September 23, 2008.

Alan H. Brock, RDR, CRR

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COMMONWEALTH OF MASSACHUSETTS

DEPARTMENT OF TELECOMMUNICATIONS AND CABLE

DTC 07-9

CONTINUED PUBLIC EVIDENTIARY HEARING,
held at the Department of Telecommunications and
Energy, One South Station, Boston, Massachusetts, on
Wednesday, September 24, 2008, commencing at 10:02
a.m., concerning:

VERIZON NEW ENGLAND, INC.

SITTING: Lindsay DeRoche, Hearing Officer
Michael Isenberg, Director, Competition
Division
Benjamin Dobbs, Assistant Director,
Competition Division
Kajal Chattopadhyay, Deputy General
Counsel
Michael Mael, Analyst
Dinesh Gopalakrishnan, Analyst

-----Reporter: Alan H. Brock, RDR, CRR-----

Farmer Arsenault Brock LLC

50 Congress Street, Boston, MA 02109

617.728.4404

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1	Richard C. Fipphen, Esq. Alexander W. Moore, Esq. Verizon 140 West Street, 27th Floor New York, New York 10007-2109 212.321.8115 fax: 212.962.1667 richard.fipphen@verizon.com alexander.w.moore@verizon.com for Verizon New England, Inc.
6	Office of the Attorney General Jesse S. Reyes, Esq. Assistant Attorney General One Ashburton Place Boston, Massachusetts 02108 617.727.2200 fax: 617.727.1047 jesse.reyes@state.ma.us
10	Rich May, PC Eric J. Krathwohl, Esq. 176 Federal Street Boston, Massachusetts 02110-2223 617.556.3800 fax: 617.556.3890 ekrathwohl@richmaylaw.com for One Communications and XO Communications
14	Paula Foley, Esq. One Communications 220 Bear Hill Road Waltham, Massachusetts 02451 781.466.1220 fax: 781.622.2180 pfoley@oncommunications.com
18	Jay E. Gruber, Esq. AT&T Communications of New England, Inc. 99 Bedford Street, Fourth Floor Boston, Massachusetts 02111 617.574.3149 fax 617.574.3274 jegruber@lga.att.com
21	John V. Messenger, Esq. PAETEC One PAETEC Plaza 600 Willow Brook Office Park Fairport, New York 14450 585.340.2772 fax: 585.340.2563 john.messenger@paetec.com

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1	The Adams Legal Firm, LLC John B. Adams, Esq. 626C Admiral Drive, No. 312 Annapolis, Maryland 21401 202.448.9033 fax: 202.448.9040 jbadams@adamslegalfirm.com for Richmond Telephone
5	Douglas Denny-Brown, Esq. Special Counsel RNK Communications 27 Purvis Street Watertown, Massachusetts 02472 781.760.1097 dougdb@rcn.com
9	Michael S. Tenore, Esq. Assistant General Counsel RNK Communications 333 Elm Street, Suite 310 781.613.6119 fax: 781.297.9836 mtenore@rnkcom.com
13	WolfBlock Deanne M. O'Dell, Esq. 213 Market Street, Ninth Floor P.O. Box 865 Harrisburg, Pennsylvania 17108-0865 717.255.3744 fax: 717.237.7314 dodell@wolfblock.com for Comcast Communications
17	Benjamin J. Aron, Esq. Sprint Nextel Mail Stop: VARESP0201 2001 Edmund Halley Drive Reston, Virginia 20191 703.592.7618 fax: 703.592.7407 benjamin.aron@sprint.com
21	Karen M. Potkul, Esq. XO Communications 1601 Trapelo Road, Suite 397 Waltham, Massachusetts 02451 781.693.3919 fax: 949.417.7270 karen.potkul@xo.com

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1 September 24, 2008 10:02 a.m.
 2 P R O C E E D I N G S
 3 MR. DeROCHE: We'll come to order. Good
 4 morning, and welcome to the second day of the
 5 hearings in Department of Telecommunications Case
 6 DTC 07-9. We'll pick up today where we left off
 7 yesterday, with the testimony of Verizon's witness,
 8 Paul Vasington.
 9 The Department was questioning Mr.
 10 Vasington, and we'll continue from that point.
 11 PAUL VASINGTON, Previously Sworn
 12 EXAMINATION
 13 BY MR. ISENBURG:
 14 Q. Good morning, Mr. Vasington.
 15 A. Good morning.
 16 Q. A follow-up from the questioning of
 17 yesterday. In any of Verizon's prefiled testimony
 18 or responses to information requests, has Verizon
 19 done a calculation of what its composite rate would
 20 be under its proposal?
 21 A. I don't think so, but I just want to check
 22 1-5. I identified the rate elements that we'd be
 23 talking about in my testimony, and we have a sheet
 24 that lists the tariffed price for those rate

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1 elements. But I don't know if it was added up.
 2 I have what is Page 2 for me, in the
 3 attachment to 1-5, which includes tariffs and has a
 4 proprietary designation on the top of the page.
 5 Counsel has confirmed for me that I can
 6 use these numbers, because it's just publicly
 7 available tariff information. So if you have the
 8 same page I'm looking at, comparative rates, Mass.
 9 Q. We don't have that yet.
 10 A. Similar information is the Attachment (d),
 11 so if that's easier to locate, that's the same -- at
 12 least for Verizon; I haven't checked for the other
 13 carriers. (d) was not a proprietary attachment.
 14 Q. I have got it in front of me. Thank you.
 15 A. Now, I have to take subject to check
 16 whether that's actually the composite. But you see
 17 that there's an estimated composite rate for
 18 originating and estimated composite rate for
 19 terminating. For Massachusetts Verizon intrastate
 20 that would be the same because we have the same rate
 21 for terminating as we do for originating.
 22 However, I would note that the operation
 23 of the composite cap is such that the CLEC would
 24 only be allowed to charge the sum of the rate

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1 elements that it's actually providing. So if you
 2 look under tandem switched transport on this list,
 3 you have a rate, a per-minute rate for tandem
 4 switching. I don't know if there are any CLECs that
 5 actually have tandem switches for intrastate
 6 switched access. So they wouldn't have a charge for
 7 tandem switching if they don't have a tandem switch.
 8 So I don't know what the composite cap
 9 would be for any individual CLEC. But building up
 10 from the rate elements in this manner would show you
 11 what the cap would be for originating and what the
 12 cap would be for the terminating, and I will check
 13 to see if this is actually what the cap is.
 14 Q. So just for purposes of clarifying the
 15 record: On Attachment XO-VZ-1-5(d) -- I assume this
 16 is probably the first page of that attachment.
 17 A. I think that's the only page of that
 18 attachment.
 19 Q. What you were discussing was the first
 20 column.
 21 A. Yes, Verizon-DTE-Mass.-15.
 22 Q. And there are four rate elements that make
 23 up the composite rate for both originating peak and
 24 terminating peak; is that correct?

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1 A. Right, separately for originating,
 2 separately for terminating.
 3 Q. But for purposes of the record, Verizon
 4 would not be charging the sum of originating peak
 5 and terminating peak, it would just be charging
 6 one --
 7 A. Well, a minute of use would be one or the
 8 other. It wouldn't be both. If it's both, it's on
 9 your own network.
 10 Q. Under your proposal would you expect -- or
 11 would you have CLECs providing composite rates for
 12 both originating and terminating?
 13 A. Yes, because, remember, the operation of
 14 the cap is such that you are capped for the services
 15 that you are providing for that call. So on the
 16 call you're not providing both originating and
 17 terminating, you're providing one or the other.
 18 It just so happens that the cap in
 19 Massachusetts should be the same for both, because
 20 we don't have a different rate for originating than
 21 we do for terminating.
 22 So, for example, I will check to see if
 23 this number is the actual composite cap. But you've
 24 got a number of .0048. If you take out the .001 for

1 tandem switching, which I don't believe CLECs are
2 providing, you're now at .0038, which just for
3 comparison purposes is in the ballpark of the ARPM.
4 I think we had a question yesterday, how do the two
5 compare to each other.

6 Q. Okay. Well, if we could either make it a
7 record request, or you can just -- you can check it
8 on your own. If you can check whether that would be
9 Verizon's composite rate.

10 MR. DeROCHE: Can we make that a record
11 request, and we will caption it DTC Record Request
12 No. 3.

13 (Record Request DTC-3.)

14 A. Just to be clear: We'll be providing the
15 composite cap for originating, the composite cap for
16 terminating, with the understanding that that
17 doesn't necessarily mean that's what any individual
18 CLEC is charging, because they're charging only the
19 rate elements they're providing.

20 Q. That's right.

21 EXAMINATION

22 BY MR. CHATTOPADHYAY:

23 Q. Mr. Vasington, in your oral testimony up to
24 this point, together with your written testimony in

1 your prefiled and your responses to record requests,
2 has Verizon provided to the Department all evidence
3 in its possession relating to alleged CLEC
4 involvement in traffic-pumping schemes?

5 A. For Massachusetts?

6 Q. For Massachusetts, correct.

7 A. We've provided all documents that we were
8 asked to provide in DTC-1-13. So the documents
9 we've provided is the evidence that we have.

10 Q. Are you saying that you have additional
11 evidence in your possession that --

12 A. No, I'm sorry. I should be clearer: We
13 provided you the evidence that we have.

14 Q. And just to be clear, the evidence that you
15 have provided to us relates to alleged instances
16 involving one company; is that right?

17 A. That's correct, yes.

18 Q. And you will agree with me that operation
19 of a chat room in and of itself is not evidence of
20 any kind of improper practice, if you will?

21 A. Operation of a chat room by a business?

22 Q. Well, let me rephrase that. The harmful
23 element, if you will, of a traffic-pumping scheme
24 involves the payback or the sharing of revenue

1 between the CLEC, if you will, in this case, and the
2 non-CLEC entity. Is that a fair statement?

3 A. That's part of the harm. I mean, the harm
4 is actually in the abuse of the market-power
5 position that CLECs hold, particularly given the
6 high rate levels that they're charging.

7 The way it works in operation is through
8 the cooperation of the customer and the carrier in
9 the providing of kickbacks. But that's not the only
10 aspect of harm that's in it. The primary aspect of
11 harm in it is the sheer volume of traffic at an
12 unreasonably high rate that's producing this
13 artificial arbitrage opportunity.

14 Q. Thank you.

15 A. But again, the testimony, I reference these
16 types of schemes here not to make this a traffic-
17 pumping case -- we haven't filed a traffic-pumping
18 complaint -- just because I think it's very clear
19 demonstration of the incentive for market-power
20 abuse with the unreasonably high rates that we're
21 talk about.

22 Q. Thank you. I understand that. Now, on
23 Page 10 of your prefiled testimony, beginning there,
24 anyway, you discuss some other states' treatment and

1 approaches to CLEC access rates.

2 A. Yes.

3 Q. My question to you, Mr. Vasington, is: Are
4 there states that have dealt with this issue in a
5 way that is different than what you propose to us
6 here today?

7 A. "Different," you mean using other means of
8 capping CLEC access rates?

9 Q. Correct.

10 A. Yes, identified -- if you look on Page 12,
11 Lines 4 through 5, those are some states that have
12 dealt with it in a different manner.

13 Q. Now, are you familiar with what those
14 states have done, the states that you mention that
15 fall in those lines?

16 A. Yes. In fact, I think I have a DTC
17 information request summarizing what those states
18 have done.

19 Yes, it's DTC-VZ-1-4.

20 Q. Thank you.

21 A. You're welcome.

22 EXAMINATION

23 BY MR. MAEL:

24 Q. I have a follow-up. You reference in your

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1 testimony on Page 11 that Illinois in fact has
 2 instituted a cap or some limit on access, whereas on
 3 Page 87 of Mr. Ankum's testimony, representing the
 4 CLECs, he indicated that in fact Illinois decided
 5 not to hold a hearing into CLEC access rates. Could
 6 you explain what seems to be the divergence there?
 7 A. Illinois -- the two times that I'm aware of
 8 that the issue has come to the commission's
 9 attention through arbitration, the commission has
 10 adopted a CLEC access-charge cap. I believe the two
 11 carriers were IDT and AT&T in those circumstances.
 12 Illinois does not have a rule of general
 13 applicability such as we're proposing for
 14 Massachusetts here.
 15 I'm aware that the Illinois staff had a
 16 workshop in the past several months -- I don't know
 17 the exact date -- where they were discussing CLECs'
 18 access charges. I'm not sure if they were
 19 discussing other issues as well; I don't know the
 20 scope of that.
 21 As far as I know, there's been no
 22 further action in Illinois after that. So I don't
 23 know that there's been a determination in this
 24 Illinois not to act. As far as I know, there just

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1 hasn't been any further activity after that staff
 2 workshop. But as I said, the two times I'm aware of
 3 that the issue has come to the Commission's
 4 attention they have in fact capped CLEC access
 5 charges.
 6 Q. You're saying on a case-specific basis
 7 they've done it twice.
 8 A. That's correct.
 9 Q. Are you aware of any states that have
 10 opened proceedings into CLEC access that have not
 11 found a determination of either a cap or some
 12 alternative means of regulating?
 13 A. No.
 14 Q. Thank you.
 15 MR. DeROCHE: I think that concludes the
 16 Department's questioning. Do any of the other
 17 parties have any supplemental questions they'd like
 18 to ask?
 19 MR. MESSENGER: PAETEC does.
 20 MR. FIPPEN: Mr. Hearing Officer, these
 21 parties have had an opportunity to cross-examine Mr.
 22 Vasington before. We're perplexed about why we're
 23 going around again.
 24 MR. DeROCHE: I think after all the

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1 testimony has been heard, there have been some
 2 additional questions that have come up. So I'd like
 3 to offer one last opportunity before we offer
 4 Verizon a chance to redirect.
 5 MR. FIPPEN: On the understanding that
 6 the cross-examination is limited to topics that were
 7 addressed on the other parties' cross-examination,
 8 not another opportunity to look at things they
 9 thought of last night that they now want to ask.
 10 MR. ISENBERG: It would be confined
 11 strictly to the Department's cross-examination.
 12 MR. DeROCHE: PAETEC?
 13 MR. MESSENGER: I just have a few
 14 questions.
 15 MR. KRATHWOHL: XO and One will have
 16 some questions, too.
 17 MR. DeROCHE: Sure.
 18 FURTHER CROSS-EXAMINATION
 19 BY MR. MESSENGER:
 20 Q. Good morning, Mr. Vasington, again.
 21 A. Good morning.
 22 Q. Yesterday afternoon you were cross-examined
 23 by Mr. Gopalakrishnan of the Department particularly
 24 with regard to the fact that Verizon's proposal

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1 excluded fixed-rate access elements and compared
 2 only Verizon's usage-sensitive access elements to
 3 those of CLECs. Do you recall that?
 4 A. Yes. I just want to be clear. I'm saying
 5 those of CLECs. Those usage-rate elements of CLECs.
 6 Q. Yes. And you seemed to indicate that you
 7 felt that this was an apples-to-apples comparison
 8 and was easier to do. Is that the main reason?
 9 A. No, it's consistent with the FCC rule, in
 10 my understanding, and it's an apples-to-apples
 11 comparison. I don't remember if I said it was easy
 12 to do, but it's what makes sense on a per-minute
 13 calculation, when minutes are the denominator.
 14 Q. And I believe the portion of your testimony
 15 this deals with is on Page 14, Footnote 36.
 16 A. Correct.
 17 Q. You mention two flat-rate access elements
 18 in that footnote, those being direct trunked
 19 transport and entrance facilities. Are there other
 20 flat-rate access elements as well? Dedicated tandem
 21 trunk port, for example?
 22 A. Well, the footnote says "e.g.," so it's a
 23 for-example, not all-inclusive. So there may be.
 24 If you can bear with me, I think I have some

1 information on that in the attachment to 1-5. It
2 might take me a little while to go through it.

3 Q. I don't think for this purpose you need to
4 do that.

5 Are you familiar with the access-rate
6 structure in the interstate jurisdiction as it
7 existed before 1997?

8 MR. FIPPHEN: For what company?

9 MR. MESSENGER: Well, for Verizon,
10 price-cap ILECs.

11 A. Prior to 1997?

12 Q. Yes.

13 A. I probably was at some point in my life.
14 As I sit here today, I am not.

15 Q. Is it fair to say that some of the current
16 fixed-access elements once were usage-sensitive
17 before the FCC reformed access?

18 MR. FIPPHEN: Objection. I believe Mr.
19 Vasington just said he does not recall what the
20 structure was before 1997.

21 Q. Let's focus on the current structure,
22 though. The elements you name -- direct trunk
23 transport, entrance facilities -- is it fair to say
24 that those elements are imposed upon IXCs when they

1 directly connect with Verizon's network?

2 A. I don't know how those rate elements are
3 applied, the operation of them. It sounds like a
4 fair supposition, but I can't say yes, because I
5 don't know.

6 Q. So you're not familiar in depth with the
7 access-charge structure as the FCC regulations --

8 A. I'm familiar with the access rate elements
9 as they're listed. How they're actually applied on
10 a particular call, the operative mechanisms that
11 cause it to be applied in any individual
12 circumstance, I don't know.

13 Q. Is it fair to say that if an interexchange
14 carrier, an IXC, wants to connect to Verizon's
15 local-exchange network, that it must do so directly
16 by interconnecting with Verizon, either at a tandem
17 switch or an end office?

18 A. No. Interexchange carriers can wholesale
19 through other carriers who are connecting.

20 Q. But eventually would one of those other
21 carriers need to connect to Verizon's network?

22 A. Somebody needs to connect at some point,
23 yes.

24 Q. And is it fair to say that many CLECs do

1 not directly connect with interexchange carriers,
2 although that option may be available, and that many
3 IXCs connect to a CLEC indirectly through a Verizon
4 tandem switch?

5 MR. FIPPHEN: Objection. This line of
6 questioning seems to be going pretty far afield of
7 the Bench's examination of Mr. Vasington. I'd like
8 to know where this is going. It seems to be
9 irrelevant to what the questions were that were
10 originally put to Mr. Vasington.

11 MR. MESSENGER: I'm trying to explore in
12 greater depth what I took to be the Bench's, the
13 staff's line of questioning and to try to establish
14 that removing fixed-access elements actually skews
15 the balance between ILECs and CLECs and does not
16 result in an apples-to-apples comparison. I
17 apologize for laying the foundation here, but I
18 think that --

19 MR. DeROCHE: We'll let you go a little
20 bit further, but try and constrain.

21 MR. MESSENGER: Thank you.

22 A. I don't know the answer to that question.

23 Q. In that case, maybe I'll leave that for
24 another witness or another time.

1 One other point, though: You've
2 mentioned several times in your responses to the
3 further cross-examination, for example, that where a
4 CLEC is not providing a particular service, that a
5 rate for that service should not be included in the
6 cap, and you've mentioned tandem switching as an
7 example. Do you recall that testimony?

8 A. Yes.

9 Q. If an interexchange carrier wants to have
10 access to a relatively wide area for originating and
11 terminating calls, is it true that, with respect to
12 Verizon's network, the interexchange carrier can
13 connect at a tandem switch and thereby obtain access
14 to the entire territory served by that access
15 tandem?

16 A. I believe that to be true, subject to
17 check.

18 Q. And where an IXC does connect to Verizon's
19 network through a tandem, is it fair to say that a
20 variety of access elements apply to the network that
21 Verizon uses to originate and complete those
22 calls -- specifically, the tandem switching itself,
23 trunking between the tandem and the subtending end
24 offices, et cetera?

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1 A. Well, again, I don't know how the rate
 2 elements themselves are applied and operate for a
 3 particular call. I assume that whatever service is
 4 being provided that corresponds to a rate element,
 5 that rate element is applied and that service is
 6 used.

7 Q. And those rate elements are designed with
 8 the network of the incumbent local-exchange carrier
 9 in mind; is that correct?

10 A. Our rate elements for our access tariff are
 11 based on our network design, yes.

12 Q. Now, if an IXC wants to be able to
 13 originate or terminate calls to a CLEC's end users
 14 in a wide area and it connects directly to the
 15 CLEC's switch, is it fair to say that the CLEC might
 16 cover the same wide area using a different network
 17 structure, and in particular without the array of
 18 end offices that Verizon might have in a similar
 19 situation?

20 A. I'm not familiar with CLEC network design;
 21 but I assume that whatever service it is CLECs are
 22 providing, they have a rate element to cover that
 23 service, similar to Verizon's.

24 Q. In particular, do you know if either the

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1 FCC or the Department's access rate structure has a
 2 rate element to cover the transport between the
 3 CLEC's switch and either a collocation cage or a serving
 4 wire center of the ILEC?

5 A. I don't know.

6 Q. Do you think it's appropriate for the
 7 Department in addressing the issue of CLEC access
 8 charges to take into account that they may have
 9 different network structures in providing
 10 originating and terminating access than Verizon
 11 does?

12 A. I think that's encompassed in the FCC uses
 13 and that we're proposing to mirror here. It simply
 14 says composite rates for the services that you
 15 provide based on the ILEC's rate elements. You
 16 already do this calculation for interstate calls.
 17 Again, I don't think this is anything new. You've
 18 been doing it for seven years, and I assume that the
 19 Department would ask you to do the same thing that
 20 you do for interstate for intrastate.

21 Q. Would it be appropriate for the Department
 22 to treat access service simply as the function of
 23 originating and terminating long-distance calls,
 24 whether provided by a CLEC or an ILEC?

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1 A. I don't understand the question.

2 Q. In comparing a CLEC's access charges to an
 3 ILEC's access charges, would it be appropriate
 4 simply to consider that the same function is being
 5 performed, regardless of differences in network
 6 structure?

7 A. I believe that that is what is being done
 8 through the FCC rule which we're proposing to mirror
 9 here.

10 MR. MESSENGER: Thank you. I have no
 11 further questions.

12 MR. ADAMS: Richmond has a few questions
 13 it would like to ask. I didn't realize there were
 14 other people in line.

15 MR. TENORE: RNK would, too.

16 MR. DeROCHE: Mr. Krathwohl, XO and One?

17 CROSS-EXAMINATION

18 BY MR. KRATHWOHL:

19 Q. Mr. Vasington, good morning.

20 A. Good morning.

21 Q. On your Bench cross yesterday you noted a
 22 growing problem of unreasonable CLEC access charges;
 23 is that correct? Do you recall that?

24 A. Yes.

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1 Q. Is that in your perception a growing
 2 problem because MCI is now a part of Verizon, or are
 3 you asserting that CLECs are generally increasing
 4 their access charges?

5 A. I don't think I made a causation link.
 6 It's a large and growing expense for Verizon, and so
 7 it's made it onto the radar screen of people who are
 8 charged with looking at large and growing expenses.

9 Q. Are you asserting that CLECs are generally
 10 increasing their access charges?

11 A. In Massachusetts?

12 Q. Yes.

13 A. The rate elements themselves or the amount
 14 billed to Verizon?

15 Q. The rate elements.

16 A. No -- other than the two instances that we
 17 talked about yesterday.

18 Q. Thank you. Today, in the Bench cross, you
 19 referenced that excessive charges result from the
 20 CLECs' abuse of their market power in the case of
 21 switched access; is that correct?

22 A. In the case of traffic-pumping, is what we
 23 were discussing when I said that.

24 Q. So in the cases where there's no traffic-

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1 pumping, is it your view that whatever the charges
2 are aren't a reflection of the market power you
3 assert that the CLECs have?
4 A. No, that's not true. In my testimony,
5 throughout my testimony, I discuss the magnitude of
6 the difference between Verizon's just and reasonable
7 rate and the rates that the CLECs are charging, as
8 an indicator of their market power.
9 Q. So, if they have market power and they are
10 profit-maximizing entities, as I think you also
11 noted, wouldn't it stand to reason that they would
12 actually be charging much higher access charges?
13 A. I suppose conscience kicks in at some
14 point.
15 No, it doesn't stand to reason, because
16 I believe that CLECs set their rates at a level that
17 they believe they can maximize their revenue without
18 otherwise creating scrutiny on the level of those
19 charges. I think if they came in with a \$100-per-
20 minute access rate, even though we'd have to pay it,
21 it would certainly not pass the straight-face test
22 at any regulatory agency.
23 So no, I don't think that it's
24 unlimited. I think that there is some attempt to

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1 maximize their revenues through abuse of the
2 market-power position, but not at a level that would
3 cause this type of proceeding to occur.
4 Q. Now, yesterday I believe you testified on
5 recross about arbitrage situations and suggested
6 that, or at least I inferred that, CLECs that might
7 have a high percentage of their revenues coming from
8 switched access were not, quote, "real phone
9 companies." Is that generally a correct statement?
10 A. No. When I made that statement, I was
11 referring specifically to a traffic-pumping scheme.
12 Q. But you have testified in that general
13 discussion about CLECs having a relatively high
14 percentage of their total revenues coming from
15 switched-access payments by other carriers; is that
16 correct?
17 A. I don't recall saying that. My testimony
18 discusses recovering a disproportionate percentage
19 of costs from carrier customers. I don't think I
20 made any reference to share of total revenues coming
21 from switched access. It just so happens the
22 Department now has some evidence, which is
23 proprietary, so I can't go into it here -- but has
24 evidence in response to VZ-1-12, CLECs' response to

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1 VZ-1-12, which tells the Department something about
2 the percentage of intrastate total revenues that's
3 coming from switched access.
4 Q. So just following up on that point: Is it
5 your assumption that that percentage for CLECs is
6 higher than that same percentage would have been for
7 Verizon pre-01-31?
8 A. I haven't made any assumption on that.
9 Q. Would you expect that it is?
10 A. I don't know if it is or it isn't.
11 Q. One more question: Going to the response
12 to XO-VZ-1-5, which is proprietary, but I think my
13 question -- I'm guessing the answer is not going to
14 be proprietary. I guess if it gets there, Mr.
15 Fipphen or Vasington can so note. It might be more
16 than one question, but not many. On the second part
17 of this attachment --
18 MR. FIPPEN: Excuse me, Mr. Krathwohl.
19 There are several parts to this attachment.
20 MR. KRATHWOHL: Attachment (a).
21 A. Can you give me a heading indicator or
22 something?
23 Q. The heading indicator would be 2007
24 Massachusetts Intrastate Switched Access Usage Paid

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1 by Verizon Telecom.
2 A. Okay. I'm there.
3 Q. On the far right, there's a column for
4 comments.
5 A. Right.
6 Q. Some of the comments indicate there that --
7 MR. KRATHWOHL: Let me just confer with
8 counsel for one minute, please.
9 Q. In three places there's a comment that says
10 VZ has already asked redacted to lower their rates
11 per ICA.
12 MR. FIPPEN: Three or two?
13 MR. KRATHWOHL: I see three.
14 MR. FIPPEN: I'm sorry; you're right.
15 A. Yes.
16 Q. Could you just explain what that means.
17 A. ICA is interconnection agreement. I think
18 it's self-explanatory, and my knowledge goes no
19 deeper than what it says in the comment.
20 Q. Okay. On the last page of Attachment
21 1-5(a) --
22 A. Okay.
23 Q. -- there's a reference in the second line
24 that states, "From Mozilla report."

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1 A. Yes.

2 Q. Could you tell us what the Mozilla report

3 is?

4 MR. FIPPEN: Objection. Mr. Hearing

5 Officer, this is the problem that I have with the

6 whole subject of recross. Just because the Bench

7 asked questions about a particular exhibit doesn't

8 sort of open the entire exhibit up. The Bench did

9 not ask specific questions about every line in the

10 document, which shouldn't therefore entitle -- the

11 fact that the Bench asked questions about this

12 exhibit shouldn't entitle Mr. Krathwohl to ask any

13 questions he previously didn't think of about this

14 exhibit. He had an opportunity to ask.

15 I don't have a problem with Mr.

16 Vasington answering this question, but this is the

17 problem that we have with recross, that it opens it

18 all up and we could be here until Friday. I think

19 we need to limit it to a specific question that the

20 Bench asked of Mr. Vasington and limit it

21 accordingly.

22 MR. KRATHWOHL: That's actually my last

23 question, for what it's worth.

24 MR. DeROCHE: The Bench did in fact go

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1 through that exhibit and ask several detailed

2 questions about explanations of the different

3 columns. So I'm going to allow this question. And

4 I understand that's your last?

5 MR. KRATHWOHL: It is.

6 A. Can you repeat the question?

7 Q. I was just looking for an explanation of

8 what the Mozilla report is.

9 A. John Mozilla is in Verizon Partner

10 Solutions, and my understanding is that he produces

11 a report that is then often used to calculate

12 Verizon ARPMs.

13 Q. Thank you.

14 MR. DeROCHE: Mr. Tenore?

15 MR. TENORE: Thank you, Mr. Hearing

16 Officer.

17 CROSS-EXAMINATION

18 BY MR. TENORE:

19 Q. Good morning, Mr. Vasington.

20 A. Good morning.

21 Q. I just have a few quick follow-ups.

22 Is it fair to say that you had testified

23 in response to questions from the Bench that

24 essentially Verizon is at the mercy of CLEC access

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1 rates, and hence the reason why this proceeding

2 needed to be opened up?

3 A. I think I even used that term in my

4 prefiled testimony.

5 Q. I believe so as well. Thank you. Are you

6 aware of any instances where Verizon has argued

7 that, via its interconnection agreement with a CLEC,

8 that the access rates are capped at Verizon's?

9 A. Yes.

10 Q. Do you know, is there a docket involving

11 that in Massachusetts?

12 A. There was. I don't know the docket number.

13 The parties were Verizon and Richmond Networks. I

14 don't know if there was another party in there.

15 Q. So is it fair to say that one way that

16 Verizon could lower CLEC access rates would be

17 through a negotiated interconnection agreement?

18 A. If two parties agree to pay lower rates,

19 then, yes, that is one way; but it requires two to

20 tango in that situation. In that particular

21 situation you're talking about, the Department ruled

22 against us.

23 Q. Thank you, Mr. Vasington.

24 MR. TENORE: I have no further

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1 questions.

2 MR. DeROCHE: Mr. Adams, Richmond?

3 MR. ADAMS: Thank you.

4 CROSS-EXAMINATION

5 BY MR. ADAMS:

6 Q. Mr. Vasington, I would like to examine just

7 a few of your comments in response to questions

8 asked by Mr. Isenberg.

9 A. Okay.

10 Q. If I recall correctly, you testified that

11 rates charged by rural incumbents -- I think you

12 mentioned Taconic, Richmond Tel., and maybe someone

13 else -- that Verizon was not seeking to have those

14 rates changed?

15 A. That's correct.

16 Q. And you also testified that Verizon would

17 not object to the rural exemption as long as rates

18 were set at the NECA rate?

19 A. What I said was Verizon would not object to

20 the rural exemption as it's used in the Federal CLEC

21 cap, which just so happens to be the highest rate

22 band for local switching in the NECA access

23 tariff -- NECA, National Exchange Carrier

24 Association.

1 Q. Are you aware whether Richmond proposed
2 using the NECA rate as the cap in this proceeding or
3 another rate?

4 A. I'd have to go back and look at the
5 testimony.

6 Q. Would you accept subject to check that we
7 propose using the Richmond Telephone rate as the
8 cap?

9 A. I have the testimony open here, so if you
10 could point me to it.

11 I think I've found it, but I have Page 8
12 of Mr. Dullaghan's testimony, on Line 12 says, "If
13 the Department decides to adopt some sort of rate
14 cap for CLECs, it should provide in the rule a rural
15 exemption along the lines of that contained in the
16 Federal rule."

17 Q. Yes, and on down at the bottom of Page 8
18 there's a question that begins at Line 18, "Why
19 should Richmond Telephone's rates be used"?

20 A. Right, but that sentence started, "At a
21 minimum." I thought you were proposing the FCC's
22 rural exemption rule, which is tied to the NECA
23 rate, but you're saying that at a minimum you should
24 get to charge access rates.

1 Now, I suppose -- Mr. Isenberg asked me
2 yesterday about why we included that second
3 paragraph in our proposed rule, which referred to a
4 blended rate of the different ILECs in the state. I
5 don't know if Richmond Tel. is using a blended
6 rate -- well, no, because you don't compete in your
7 own service territory. Richmond Networks doesn't
8 compete in Richmond Tel.'s service territory; you
9 only compete in other people's service territories.
10 So I guess the blended rate wouldn't work there.

11 But my assumption here was that you were
12 proposing to adopt the Federal rule.

13 Q. So was your intent in your testimony to
14 reject outright the notion that the cap could be set
15 at Richmond Tel.'s rate, or was it just that you
16 were assuming the suggestion was to use the NECA
17 rate?

18 A. I was assuming the suggestion was to use
19 the Federal rule, which would be the NECA rate. I
20 don't know how the NECA rate compares to the
21 Richmond Tel. rate.

22 Q. One other brief thing: I believe you also
23 suggested that the use of interstate rates for
24 intrastate services was acceptable; is that correct?

1 I believe it was part of the discussion of mirroring
2 interstate and intrastate rates. There was a
3 discussion of the case from 2000, I believe.

4 A. I think what I said was that the Department
5 decided in 01-31 that the interstate access rate was
6 an appropriate benchmark for the intrastate access
7 rate for Verizon. I also indicated that the CLECs
8 already operate under a cap for their interstate
9 rates, and having the same cap for their intrastate
10 rates was not only acceptable but was actually what
11 we're proposing.

12 Q. It would be the same thing that Verizon now
13 operates under; is that correct?

14 A. Essentially, yes.

15 Q. Historically has it been the case that
16 intrastate rates for access have been higher than
17 interstate rates?

18 A. In every state or in this state?

19 Q. In this state.

20 A. No. Prior to the CALLS proposal, we
21 actually had lower intrastate switched-access rates
22 here than interstate -- at least for Verizon. I'm
23 sorry; I should specify. Verizon's intrastate
24 access rates were lower than its interstate access

1 rates.

2 Q. And then after calls, the interstate rate
3 became higher or lower?

4 A. The interstate rate became lower, and that
5 was then remedied by the Department in 01-31.

6 MR. ADAMS: No further questions.

7 MR. DeROCHE: Any other parties that
8 wish to recross on the Department's questioning?

9 Seeing none, Mr. Fipphen, would you like
10 to redirect?

11 MR. FIPPEN: Could I have a moment to
12 confer with the witness?

13 MR. DeROCHE: Certainly. Why don't we
14 take a five-minute break.

15 (Recess taken.)

16 MR. DeROCHE: We'll go back on the
17 record. Mr. Fipphen, Verizon's redirect?

18 MR. FIPPEN: Yes. We have one question
19 for Mr. Vasington.

20 REDIRECT EXAMINATION

21 BY MR. FIPPEN:

22 Q. Mr. Vasington, do you recall some
23 questioning earlier this morning from Mr. Isenberg
24 regarding the calculation of the composite rate?

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1 A. Yes.

2 Q. Would you care to elaborate on that?

3 A. Yes. I hope that I was clear today on how

4 the composite rate works for an originating minute

5 and a terminating minute, because I'm not sure I was

6 clear on that yesterday in response to questioning

7 from the hearing officer on that.

8 A minute is either a terminating minute

9 or an originating minute, and there's a cap for

10 each. It just so happens to be that the cap would

11 be the same for intrastate Verizon - Mass. because

12 the local switching rate is the same whether it's an

13 originating or terminating minute.

14 But I think that I confused the matter

15 by suggesting that they were additive, essentially

16 that the originating and the terminating would add

17 up to the composite cap. The way I described it

18 this morning I hope was clear on that; but I just

19 wanted to clear up any confusion that the record

20 might have on that matter.

21 MR. ISENBERG: It was.

22 THE WITNESS: Thank you.

23 MR. FIPPEN: That's all we have, Mr.

24 Hearing Officer.

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1 MR. DeROCHE: Mr. Vasington, thank you

2 very much for your testimony.

3 THE WITNESS: Thank you.

4 MR. DeROCHE: AT&T, would you like to

5 call your witnesses?

6 OLA OYEFUSI and E. CHRISTOPHER

7 NURSE, Sworn

8 EXAMINATION

9 BY MR. GRUBER:

10 Q. Dr. Oyefusi, can you please state your name

11 for the record.

12 A. [OYEFUSI] Ola Oyefusi.

13 Q. Could you explain to the Bench your

14 position with AT&T and your responsibilities?

15 A. [OYEFUSI] I'm a manager at AT&T, at the

16 AT&T national access management organization. I'm

17 responsible for all access matters.

18 Q. And your education, sir?

19 A. [OYEFUSI] I'm an economist. I have a

20 Ph.D. degree from George Mason University.

21 Q. And you've testified before in regulatory

22 proceedings, have you?

23 A. [OYEFUSI] Yes, I have.

24 Q. And you provided that list in response to

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1 an information request, I think?

2 A. [OYEFUSI] Yes, I did.

3 Q. Mr. Nurse, please state your name for the

4 record.

5 A. [NURSE] My name is E. Christopher Nurse.

6 I'm the vice-president of regulatory and external

7 affairs for AT&T's Atlantic region, which stretches

8 from Virginia to Maine.

9 Q. And your responsibilities?

10 A. [NURSE] I'm responsible for state

11 legislative and regulatory matters, including in

12 particular initiatives for intercarrier compensation

13 and access charges.

14 Q. You've testified before in Massachusetts, I

15 believe; is that correct?

16 A. [NURSE] Yes, I have.

17 Q. And in other proceedings as well.

18 A. [NURSE] Yes.

19 Q. And a list of those is provided in response

20 to an information request, I believe?

21 A. [NURSE] Yes. A clarification: The

22 testimony said the list was attached, and apparently

23 in the clerical assembly it didn't get attached.

24 And then one of the parties asked us for a data

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1 request, and we supplied the attachment in the data

2 request and circulated to the parties.

3 Q. Gentlemen, you have before you a document

4 entitled Panel Testimony of Dr. Ola Oyefusi and E.

5 Christopher Nurse on Behalf of AT&T Corp. Do you

6 see that?

7 A. [OYEFUSI] Yes.

8 A. [NURSE] Yes.

9 Q. It's dated August 20th, 2008. Did the two

10 of you jointly collaborate to develop this

11 testimony?

12 A. [OYEFUSI] Yes, we did.

13 A. [NURSE] Yes, we did.

14 Q. Also, AT&T has submitted a number of

15 responses to information requests. Did the two of

16 you collaborate to respond to those information

17 requests?

18 A. [OYEFUSI] Yes, we did.

19 A. [NURSE] Yes, we did.

20 Q. AT&T has marked several of those

21 information requests, to be admitted as exhibits in

22 this proceeding. It's on an exhibit list that was

23 submitted on September 19th. Can I ask you, are

24 those information-request responses as well as all

1 the others that have been provided, those are true
 2 and accurate to the best of your belief? Or do you
 3 have any corrections in them?
 4 A. [NURSE] Maybe I'll just start with two
 5 small corrections. That would be DTC-AT&T-1-5. On
 6 that response, in the first paragraph, it's pretty
 7 obvious there's a typo there in the middle of the
 8 paragraph, where it says "December 17, 2008."
 9 Obviously that date hasn't occurred yet. That's
 10 December 17th, 2007.

11 And the second typo is in CLEC-AT&T-1-4.
 12 The original response read, "No, CLECs have
 13 sponsored." Obviously that should say, "No, CLECs
 14 have not sponsored."

15 A. [OYEFUSI] The next one is CLEC-AT&T-1-20.

16 MR. GRUBER: That's a proprietary
 17 response to information requests. We don't intend
 18 to disclose any proprietary information in this
 19 proceeding at this moment.

20 A. [OYEFUSI] While reviewing this response
 21 yesterday, we discovered that the minutes of use
 22 listed on that attachment may not be correct, and we
 23 have not been able to verify those numbers as of
 24 this morning. So we have questions about the

1 minutes of use. We are not standing behind the
 2 calculation of that number, the minutes of use on
 3 that attachment.

4 Q. Dr. Oyefusi, that minutes of use was used
 5 in the ARPM calculation that is also provided on
 6 that page?

7 A. [OYEFUSI] That is correct.

8 Q. So you have the same problem with that?

9 A. [OYEFUSI] Yes, I have the same problem
 10 with that.

11 MR. MESSENGER: I missed the reference
 12 to which response the witness was referring to.

13 WITNESS OYEFUSI: It was CLEC-AT&T-1-20,
 14 and I believe the question was 1-2, part (d), and
 15 there's an attachment on there.

16 A. [NURSE] Just for clarification, I think
 17 it's actually the supplemental proprietary response.

18 MR. GRUBER: We're working, Mr. Hearing
 19 Officer, on trying to figure out what the problem
 20 was on those MOUs and get the corrected response in
 21 as soon as possible.

22 A. [NURSE] We think the revenue number is
 23 good, but the toll conversation minutes looks
 24 substantially off, and the ARPM calculation there is

1 the division of one by the other, so it would also
 2 be off, because it's a derivative.

3 Q. So with the first two information requests
 4 corrected and the third one excluded for the moment,
 5 are all the rest of the information requests and
 6 responses true and accurate, to the best of your
 7 belief?

8 A. [OYEFUSI] Yes.

9 A. [NURSE] Yes, they are.

10 Q. And is the testimony we identified earlier
 11 true and accurate, to the best of your belief?

12 A. [OYEFUSI] Yes, it is.

13 A. [NURSE] Yes, it is.

14 MR. GRUBER: Examination is concluded,
 15 and the witnesses are available for cross.

16 MR. DeROCHE: Thank you very much. Mr.
 17 Fipphen, for Verizon?

18 MR. FIPPEN: We have no cross-
 19 examination.

20 MR. DeROCHE: Comcast?

21 MS. O'DELL: Yes, we have a few
 22 questions.

23 MR. DeROCHE: Please proceed.

24 CROSS-EXAMINATION

1 BY MS. O'DELL:

2 Q. Good morning, gentlemen. My name is Deanne
 3 O'Dell, counsel to Comcast in this proceeding.

4 A. [OYEFUSI] Good morning.

5 A. [NURSE] Good morning.

6 Q. Is AT&T a CLEC in Massachusetts?

7 A. [NURSE] Yes.

8 Q. Can you explain how it's a CLEC, the nature
 9 of the business?

10 A. [NURSE] AT&T is a CLEC, or basically two
 11 CLECs, in Massachusetts. The AT&T side, what was
 12 AT&T Com. of New England, provided primarily UNE-P
 13 service, or formerly UNE-P service, and it also
 14 provided local service to long-distance -- major
 15 long-distance customers with whom it had -- big PBX
 16 customers with whom it had special-access
 17 connections. And then it layered on top of those
 18 long-distance services when those customers were
 19 subtending 4E tandem switches, it grafted onto that
 20 a local service, AT&T Digital Link, ADL, service.
 21 So we have facilities-based connections to some very
 22 large business customers, some big-box stores you
 23 might know; and then the UNE-P customers, which were
 24 typically small-business customers, residential

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1 customers.

2 On the TCG side, TCG in the late '90s,

3 before the merger, and then it was merged into AT&T,

4 built TCG Boston, originally starting in the

5 downtown Boston core with fiber connections from

6 customers to IXC POPs, points of presence, and then

7 connected more buildings downtown, and then grew

8 that network all the way up into New Hampshire and

9 all the way down into Rhode Island. We use that to

10 serve primarily business customers on network. And

11 then we have collocations, and so we go to

12 collocations, and then we serve customers who

13 subtend those collocations as well. We haul them

14 all back onto our network.

15 MR. ISENBERG: Excuse me. Just to

16 clarify one point: "TCG" refers to Teleport

17 Communications Group?

18 WITNESS NURSE: Yes.

19 MR. ISENBERG: Thank you.

20 Q. Have you reviewed the testimony submitted

21 by Dr. Ankum in this proceeding?

22 A. [NURSE] Yes, I have.

23 Q. Do you recall his description of CLEC

24 network architecture?

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1 A. [NURSE] Yes, because it reminded me of the

2 TCG network. A lot of that description, although a

3 lot of it not, I agreed with. It is very similar to

4 the TCG network -- much fewer switches. As

5 described, fiber-optic connections from that switch

6 out to customer premises or out to collocations.

7 Q. So it reminded you of TCG architecture in

8 the sense that it's the same? That's what is

9 described in that testimony?

10 A. [NURSE] Yeah, I would say it was

11 materially a description of the TCG network.

12 Q. Would you take the position that, as a

13 similar network architecture, that it's less

14 efficient than Verizon's network?

15 A. [NURSE] No. I read that, and I thought it

16 was just absurd. I mean, the notion that TCG built

17 a network that was less efficient than Verizon's

18 network and then went out to compete for business

19 customers like Fidelity and Merrill Lynch and very

20 large customers on the basis that we built a less

21 efficient network and we were going to somehow enter

22 the market, be less efficient, and take customers

23 away from Verizon, was just ridiculous.

24 Q. Could you describe for us how in your

222

1 opinion the network is not less efficient than

2 Verizon's?

3 A. [NURSE] Well, there are advantages and

4 disadvantages of being a new entrant and building a

5 new network, like TCG did. Dr. Ankum points out

6 some of the ones -- some of the things he points out

7 are true and relevant. Some of the things he points

8 out are true and not relevant.

9 But on the other side, there were a lot

10 of pluses. A lot of the -- I mean, Verizon is a

11 union shop. A lot of the CLECs are not union shops,

12 so they tend to have lower wages, and they tend to

13 have more job flexibility, and they tend to have

14 lower benefits and lower legacy costs, because there

15 aren't many retirees from a CLEC. There aren't the

16 big pension costs and that sort of thing.

17 So they have more flexibility. They got

18 to choose -- when you're a new entrant, you got to

19 choose which part of the market you wanted to serve

20 and which you didn't. So you might serve just

21 business customers or you might serve just the

22 central business district. You might serve just

23 business customers who have high data and high

24 volume, to get an economy of scale. So you got to

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1 focus where you want to go.

2 You didn't have anything backwards-

3 compatible that you had to deal with. You didn't

4 have all sorts of old software systems and when you

5 started a new service you had to make sure that the

6 OSS would provision and bill and repair and all

7 those sorts of things. So you had a clean slate,

8 and you didn't have to deal with those sorts of

9 problems.

10 You could pick whatever architecture you

11 wanted to. You could do the newest fiber optics.

12 You could do the newest switching. You didn't have

13 big embedded bases that you had just started.

14 Switches might last -- you know, you see

15 depreciation schedules of 15 years or something like

16 that for a switch. So if you bought a switch five

17 years ago, you've got ten more years to go, but it

18 might be a less efficient model, because packet

19 switching came out now. So if you're a CLEC today

20 you might start out with more efficient packet

21 switching. If you started five or ten years ago,

22 that could be a disadvantage.

23 So by being the newest guy, you

24 necessarily have the forward-looking technology. If

1 you remember, the bang on TELRIC studies was that
2 incumbents couldn't achieve the efficiencies in a
3 TELRIC type of network because, you know, they had
4 an embedded network and they couldn't convert to a
5 forward-looking network.

6 So CLECs had a lot of -- they had a lot
7 of advantages, which you weighed against the
8 disadvantages that they had. They did have some
9 smaller scale. They were starting with no
10 customers. On day one they built their network and
11 they had no customers, so they had to grow into it.

12 So some of the criticisms he has are
13 true, but he doesn't provide a balanced pictures
14 because he doesn't cite any advantages that CLECs
15 have. Obviously CLECs have some advantages or they
16 would have been dead off the start. I think the
17 reasonable business prospect -- in order to get
18 people to invest in your business, you can't go and
19 say, "I'm building a less efficient network. My
20 business plan is to be less efficient. I'm always
21 going to be less efficient. I'm just a corporate
22 welfare recipient." That's not the deal. You say,
23 "I have some disadvantages, but I have some
24 advantages. I'm faster. I'm more responsive. I

1 Verizon's access rates.

2 MR. KRATHWOHL: Mr. Hearing Officer, I
3 really must object at this point. I would have
4 objected earlier, but Mr. Nurse was able to keep
5 going on for quite some time.

6 This is really friendly cross-
7 examination. It really amounts to rebuttal
8 testimony of our witness that was not allowed in the
9 procedural schedule. I think it puts the CLECs at a
10 really unfair disadvantage.

11 MS. O'DELL: Your Honor, I'm simply
12 asking AT&T's witness about the testimony that they
13 provided and to give some explanation of their
14 CLECs' system for the benefit of a complete record
15 on all of the CLECs that are in the market.

16 MR. KRATHWOHL: And frankly, what we had
17 in response to the last question was almost in one
18 answer a complete rebuttal testimony, going into any
19 number of reasons why our witness's testimony was
20 wrong. It's wide-ranging, free-ranging beyond
21 anything I've ever seen in cross. So I'll stand on
22 my objection.

23 MR. GRUBER: If I could be heard. The
24 CLECs' expert is going to follow, and if the Bench

1 don't have customers on embedded products and
2 services and price points that I have to worry about
3 cannibalizing." And you try to exploit and exercise
4 those advantages, find market niches where you can
5 work, build your volume and then grow and move
6 along.

7 So that, I think, is the more reasonable
8 picture. There's pluses and minuses. I think he
9 only provided the sort of disadvantages, and then
10 some of the ones, particularly about density and
11 things, I don't think really were on point because
12 it overlooked things like UNE loop access, other
13 things like that that you can use to offset those.

14 Q. You had stated in response to a discovery
15 question -- it was DTC-AT&T-1-1 -- that you would
16 not expect any CLECs' forward-looking --

17 A. [NURSE] Let me catch up here. That's
18 what?

19 Q. DTC-AT&T-1-1.

20 A. [NURSE] Yes.

21 Q. Specifically the last sentence in your
22 response. You state there that you would not expect
23 any CLECs' forward-looking long-run incremental
24 costs of providing switched access to exceed

1 wants the issues really to be joined and the merits
2 of each side to be put up against each other and
3 tested, this is the best way to do it. Otherwise
4 we're just ships crossing in the night.

5 They say one thing. We say another.
6 We're not talking to each other and we're not
7 confronting specifically the issues that we're
8 raising.

9 The way this has been designed is the
10 CLECs have plenty of opportunity to come up and
11 respond, and I would hope that they do.

12 MR. DeROCHE: The Department notes that
13 there was no rebuttal prefiled testimony allowed,
14 and there is no prohibition against friendly
15 cross-examination, so we're going to allow this to
16 continue, noting that the CLECs will have their
17 opportunity to cross-examine afterwards.

18 MR. KRATHWOHL: Not to be a spoilsport,
19 but I would hope that the CLECs similarly have the
20 opportunity for free-ranging supplement, rebuttal
21 explication, all to the elaboration of the record.

22 MR. DeROCHE: I'm not sure I follow you
23 with "free ranging supplemental rebuttal." The
24 CLECs will be given the same opportunity to rebut

1 that Verizon and AT&T and Comcast are afforded.

2 MR. KRATHWOHL: That's fine. Thank you.

3 MR. DeROCHE: Please proceed.

4 MS. O'DELL: Thank you.

5 Q. My question -- we were discussing
6 DTC-AT&T-1-1, specifically your response that you
7 would not expect any CLECs' forward-looking long-run
8 incremental costs of providing access to exceed
9 Verizon's. I just wanted to explore that response a
10 little bit more and understand what you were -- why
11 you have that opinion.

12 A. [NURSE] Sure. The CLECs' costs should
13 look a lot like the TELRIC costs for reciprocal
14 compensation. If you're building a forward-looking,
15 most-efficient network, presumably the guy who just
16 built the network has the forward-looking technology
17 because he just built it, and presumably he built it
18 efficiently, which was his business plan to enter
19 the market.

20 So if you think of the reciprocal-
21 compensation cost that drives the Verizon
22 reciprocal-compensation rate, it's in the nature of
23 .0007, or 7/100 of a cent. That's very, very low.
24 And then the Verizon rate is substantially above

1 that.

2 So there's a big gap between the
3 reciprocal-compensation cost and the Verizon access
4 rate, and that's plenty of room for a CLEC's access
5 cost to get in between the Verizon access cost, if
6 it isn't below the Verizon access cost, and the
7 Verizon access rate.

8 Q. And you are starting with reciprocal-
9 compensation rate --

10 A. [NURSE] The essentially terminating call
11 is a terminating call. There's really no difference
12 in terminating an intrastate call, an interstate
13 call, a wireless call, or a wire-line call. And the
14 FCC has set the intra-MTA, metropolitan trading
15 area, rate for a wireless call at the reciprocal-
16 compensation rate. So if a T-Mobile call -- if a
17 T-Mobile wireless customer terminated a call on the
18 Verizon network, they would pay the reciprocal-
19 compensation rate to terminate that call. So a
20 T-Mobile customer called from Springfield to Boston
21 from a wireless phone to a wire-line phone. When
22 that call terminated on a wire-line network, that
23 call would pay the reciprocal-compensation rate.
24 But if that same customer picked up his land- line

1 phone and called from exactly the same two
2 geographic points, called from their house to that
3 same location in Boston, and terminated and
4 originated on the wire-line network, they would pay
5 the access rate.

6 So for wireless carriers, the
7 reciprocal-compensation rate was deemed by the FCC
8 to be the fair rate for wire-line customers to
9 terminate what basically are otherwise long-distance
10 calls.

11 Q. In Dr. Ankum's testimony he claims that
12 CLECs' switches suffer from low utilization. Do you
13 remember that? Do you recall that?

14 A. [NURSE] Yes.

15 Q. How does it strike you that the CLECs have
16 such low utilization rates?

17 A. [NURSE] Well, it was a little -- I mean,
18 the point about how CLECs deploy their switches --
19 you know, you kind of go to the beginning. The
20 incumbent has all the customers and all the
21 switches, and then the CLEC -- the first CLEC comes
22 in, he puts in the first CLEC switch, and he takes
23 some customers away and usually does that over a
24 number of exchanges. He doesn't go and put a switch

1 in every exchange, because he doesn't need that many
2 switches. He puts one switch in an area and then
3 covers multiple exchanges, even one switch for an
4 entire LATA, and then pulls customers into that,
5 multiple LATAs, even multiple states.

6 And so you either have low utilization
7 or you don't. If you load up a big-enough
8 geographic area and you get enough lines on that
9 switch, your switching costs -- transport costs
10 might be a different thing -- but your switching
11 costs would be the same. If you get 50,000 lines on
12 a switch and the other guy has 50,000 lines on a
13 switch, if your cost for the switch is the same and
14 50,000 lines is the same, your switching cost per
15 line is the same. If you don't load up your switch,
16 then that's inefficient. If you get a 100,000-line
17 switch and you put 10,000 lines on it, then that was
18 not an efficient provisioning. That was not a
19 prudent way to operate.

20 So they either did -- they either have a
21 lot of lines on their switch and it doesn't matter
22 as far as the switching costs or they don't have a
23 lot of lines on their switch and then they didn't
24 provision their switch right, they should have done

1 it a better way.

2 Q. Do you have any experience or knowledge
3 that bears directly on the issue of efficiently
4 provisioned CLEC capacity?

5 A. [NURSE] Yeah. Actually, it's with AT&T
6 Broadband, when AT&T owned the cable company and was
7 providing cable telephony service. That was
8 cable-switched -- circuit-switched cable telephony,
9 and most cable telephony now has migrated to
10 packet-switched cable telephony, because it's more
11 efficient and lower cost.

12 But when AT&T Broadband split off from
13 AT&T, what's now Comcast circuit switching was
14 provided by TCG. So Comcast could have then gone
15 out and bought circuit switches on their own to
16 provide their own circuit switching, their own
17 circuit switching to themselves.

18 They didn't do that. My understanding
19 from the press reports about their post-separation
20 strategy was they wanted to go to packet switching,
21 which they anticipated at that time would be
22 available substantially cheaper about two years down
23 the road. So they didn't want to sink a lot of
24 money into circuit switches and then, you know, have

1 to abandon them to buy cheaper packet switches.

2 So they leased back circuit-switching
3 capacity from TCG, and that contract actually just
4 wound up three or four months ago. I saw the thing
5 come across my desk on that. And so that seemed
6 like an efficient way to, if you needed to buy some
7 capacity -- and they happened to need it sort of for
8 a short period of time, a couple of years, short in
9 the life of a switch -- they went out and they
10 contracted for that capacity.

11 I've seen other instances where other
12 carriers will buy switching capacity from another
13 one. They'll buy a piece of a switch if they don't
14 need a whole switch. If you don't need a whole
15 switch, you shouldn't buy a whole switch. If you
16 only need a part or you only need it for a while,
17 you're going to enter a market, you need some
18 capacity for two years, then when you grow bigger
19 you'll do your own -- that's your classic kind of
20 lease/buy analysis. I've seen that sort of switch
21 leasing multiple times.

22 MS. O'DELL: That's all I have. Thank
23 you.

24 MR. DeROCHE: Mr. Adams, Richmond?

CROSS-EXAMINATION

1 BY MR. ADAMS:

2 Q. John Adams, on behalf of Richmond. Good
3 morning, gentlemen.

4 A. [OYEFUSI] Good morning.

5 A. [NURSE] Good morning.

6 Q. My questions will be short and few. I just
7 want to refer you to Page 19 of your testimony.
8 There's a question and answer that begins on Line 3
9 and continues on through Line 15.

10 A. [NURSE] Yes.

11 Q. Is it accurate to say that essentially you
12 are suggesting that the Department adopt a rate-cap
13 rule that parallels the FCC's rule?

14 A. [OYEFUSI] That is correct.

15 A. [NURSE] Yes, and in fairness, that should
16 include the rural exemption.

17 Q. It should include the rural exemption.

18 A. [NURSE] Yes.

19 Q. So AT&T doesn't oppose adoption of that.

20 A. [NURSE] Yeah. I guess kind of what that
21 means, as I read the rural exemption, part of the
22 idea is that when you build out from Richmond
23 Telephone into Verizon areas out in western Mass.
24

1 Verizon has an averaged local rate and presumably
2 high costs in the rural areas, low costs in the
3 urban areas, and they're geographically cross-
4 subsidizing. So it wouldn't be possible, or it
5 would be difficult, for you to compete against a
6 subsidized cost, geographically subsidized cost.

7 So the FCC rural exemption kind of
8 fudges that by letting you charge a higher access
9 rate to make up for the fact that Verizon's retail
10 rate is, if you will, "too low" in that rural area,
11 and that kind of evens out the scale.

12 That application of the rule I think
13 would be fair. So if there was a carve-out for
14 Richmond that let them compete -- if you recall,
15 serve as a real CLEC, real, normal local customers
16 in western Mass., that would be normal.

17 I would be nervous -- I would want to
18 see some protection against a call-pumping cap. If
19 your call volumes went up by 100-fold, I wouldn't
20 want to see that kind of volume at, you know, the
21 NECA rate, because I don't think that's what the
22 rule -- it's not a call-pumping exemption, it's a
23 rural exemption.

24 So I think if we could get to something

1 that has a volume cap, like 200 or 300 percent of
 2 last year's volume for you, I think that would give
 3 you enough room to grow your local-competition
 4 business but would preclude Richmond Telephone's
 5 CLEC from morphing into a call-pumping operation.
 6 And so if you want to be a rural CLEC, I think that
 7 would give you room to do that. If you want to be a
 8 call-pumping operation, I would be against that.

9 Q. Can you guarantee a 200 to 300 percent
 10 increase under the cap?

11 (Laughter.)

12 A. [NURSE] And that was the intention, was to
 13 try to come up with a number that said I don't want
 14 to get in the way of your business. How fast can
 15 your business grow? 20, 30, 40 percent a year?
 16 It's hard to grow a business really fast. You know,
 17 you just kind of outgrow the management ability to
 18 morph.

19 And so I want to get the cap up high
 20 enough that it has no possibility of interfering
 21 with, you know, sort of genuine CLEC competitive
 22 operations but that protects me, because I've been
 23 on the short end of some of these call-pumping ones
 24 where, you know, tens of millions of dollars end up

1 going to these guys.

2 So I've been working to try to get to a
 3 compromise, because my objective is not to beat up
 4 the rural CLECs, but I have to get some protection
 5 against the call-pumping scheme. The problem is --
 6 I don't think it's your intention -- but with the
 7 800 numbers for these call-pumping schemes, you can
 8 repoint that 800 number on the database to terminate
 9 anywhere. So, you know, you could set up a call-
 10 pumping scheme in Richmond Telephone this afternoon.
 11 It literally doesn't take any more than a database
 12 change to do that. I don't think that's your
 13 intention. I don't have any information about that.
 14 But that's why I would want a cap that would protect
 15 us from that.

16 Q. To be clear, though, you're not asserting
 17 that Richmond is engaged in any sort of call-
 18 pumping?

19 A. [NURSE] No.

20 Q. Were you in the room to hear my exchange
 21 this morning with Mr. Vasington?

22 A. [NURSE] Yes.

23 Q. Do you recall the discussion I had with him
 24 about setting the cap at Richmond Telephone's access

1 rate, as opposed to the NECA rate?

2 A. [NURSE] And what is the NECA rate?

3 Q. The FCC --

4 A. [NURSE] What number is the NECA rate?

5 Q. Well, I'm sorry, I can't testify, being the
 6 attorney. And honestly, I don't know that off the
 7 top of my head.

8 A. [NURSE] My recollection is the NECA rate
 9 is something in a couple of pennies. It's been
 10 going up. I know I just looked at this in New York.
 11 I'm going to say I think the NECA rate is like 3

12 cents, 2 cents, that kind of thing. So
 13 substantially higher than Verizon's but
 14 substantially lower than the Richmond rate, which
 15 was in your testimony at 7 cents and a bit.

16 Q. We will have some testimony on that later.
 17 But you've referred to the NECA rate at around 3
 18 cents. Is that calculated in the same fashion that
 19 Mr. Vasington was calculating the Verizon rate?

20 A. [NURSE] No. The NECA rate comes out at
 21 like -- it comes out of the NECA -- that comes out
 22 of a whole different mechanism.

23 MR. GRUBER: Mr. Nurse, just speak up
 24 for the stenographer.

1 A. [NURSE] The NECA rate comes out of the
 2 NECA pool. That's a pool of carriers that submit
 3 costs to the FCC annually. So they determine a rate
 4 that all the carriers that are adopting the NECA
 5 tariff are supposed to charge until the following
 6 year. So they do that every -- maybe June every
 7 year, and the rate would be effective in July.

8 Q. Let me ask the question this way: Verizon
 9 calculated a composite rate based on its rate
 10 elements.

11 A. [NURSE] Right.

12 Q. Your reference to the NECA rate at
 13 somewhere around 3 cents per minute, is that the
 14 same sort of summation of those rate elements?

15 A. [NURSE] And I'm not sure that that -- I'd
 16 have to go back and look at the NECA rate, because
 17 it may have -- I forget, is there a common-carrier
 18 line in the NECA rate?

19 A. [OYEFUSI] Yes, some of them are. Some of
 20 them have, they still have the common-carrier line.

21 Now, I believe what he's referring to is
 22 the -- you're talking about the different rate
 23 structure in the NECA tariff, and then you're trying
 24 to determine the composite rate, a composite NECA.

1 So what you do then is to, you have to have the
2 demand for that particular carrier that is
3 submitting a tariff trying to meet the cap, and you
4 use that demand using the NECA rate components to
5 determine a weighted average. Your composite rate
6 is nothing but a weighted average of all those
7 different components, because the volume of traffic
8 going through the tandem is different from the
9 volume of traffic going through the end office. So
10 to get a composite rate, you have to use the demand
11 for that component and then develop a weighted
12 average. That's what it is.

13 Q. So just to be clear, the 3 cents a minute
14 does not necessarily reflect an apples-to-apples
15 comparison with the way Verizon calculated its
16 composite rate?

17 A. [NURSE] It probably doesn't. I'd have to
18 go back and check the NECA structure. I think,
19 given Richmond Tel.'s scale, you know, you could
20 probably end up just settling on a number, you know,
21 a rate not to exceed X. You don't have to make it
22 too complex for the volume of traffic that's going
23 on. That could probably be an easy way to carve it
24 out in the order.

1 A. [OYEFUSI] Just to be clear, the 3 cents a
2 minute that Mr. Nurse mentioned is not supposed to
3 mean that that is the rate that we're saying you
4 should cap your rate by. The 3 cents a minute is an
5 approximation that somebody in the office may have
6 calculated when doing some rate comparison, to be
7 able to say, okay, NECA is about 3 cents.

8 So when you're doing your compliance
9 filing, you have to actually go through -- just like
10 the carriers go to the FCC every year and submit a
11 rate schedule and determine this is the average rate
12 for that carrier. So that is the process that has
13 to happen when you try to apply any rule that the
14 Department comes up with here.

15 Q. I think we'll be finished with that, then.
16 Thank you.

17 EXAMINATION

18 BY MR. ISENBERG:

19 Q. I'd just like to ask a clarifying question:
20 Are you saying that the compliance filing that
21 Richmond would have to submit to the Department
22 would be for purposes of determining the rural
23 exemption rate?

24 A. If you adopt a cap, if you decide to cap

1 CLEC access rates, and you adopt a rural exemption
2 as part of that proposal, as part of that ruling,
3 the ceiling for the components on that rural
4 exemption will be different from the ceiling for the
5 non-rural carriers. So one set of carriers will be
6 complying with the Verizon ceiling, and the other
7 set of carriers that meets the rural exemption that
8 you set up would be complying with the NECA -- if
9 NECA is your benchmark.

10 A. [NURSE] You basically could do a de
11 minimis exception for Richmond. They're so far
12 west, they're so small; I don't think you need the
13 complexity that we talked about of calculating those
14 composite caps for the carriers, you know, sort of
15 in the Boston end of the state, with the high
16 traffic. It's probably just not worth the
17 administrative headache for the volume in minutes.

18 So if you said, you know, the cap is,
19 you know, X cents, that makes the compliance very
20 straightforward. If their rate is below X, they're
21 good.

22 Q. Is there some guidance in the FCC's rules
23 as to how to calculate a rural exemption rate?

24 A. [NURSE] Yes, because the -- you could look

1 for Richmond Tel.'s CLEC interstate access rate
2 because their interstate access rate is capped at
3 the NECA, I think it's Band 8 rate. So their CLEC
4 today has a tariff in place that complies with the
5 FCC rule on the interstate side. If you wanted to
6 bring that same rule in, you essentially, you know,
7 could just cut and paste interstate to intrastate.

8 I think actually that's probably the
9 most -- that's administratively the simplest way to
10 do it for all the carriers. All these carriers have
11 an interstate rate and rate structure on the
12 interstate side that is capped at Verizon's
13 interstate rate. And Verizon's intrastate rate is
14 equal to Verizon's interstate rate. So if you want
15 to cap the CLECs at Verizon's intrastate rate,
16 that's the same thing as capping the CLECs at
17 Verizon's interstate rate or the CLECs' interstate
18 rate.

19 So to make life easy on the
20 administrative side, you could just tell the CLECs,
21 "You have to have the same rate and rate structure
22 on your CLEC intrastate tariff as you do on your
23 CLEC interstate tariff." And then it's just a
24 stare-and-compare on the two tariff pages, and as

1 long as they were in compliance at the FCC, they'd
2 be in compliance here.

3 Q. And we would do the same thing for Richmond
4 and the rural exemption?

5 A. [NURSE] Right.

6 Q. Thank you.

7 MR. DeROCHE: Why don't we take 15
8 minutes. We'll come back at noon, and we'll go to
9 1:00 o'clock. We'll have lunch then until 2:00.

10 (Recess taken.)

11 MR. DeROCHE: We'll go back on the
12 record. Mr. Krathwohl?

13 MR. KRATHWOHL: Thank you.

14 CROSS-EXAMINATION

15 BY MR. KRATHWOHL:

16 Q. Good afternoon, Dr. Oyefusi and Mr. Nurse.

17 At Page 6 of your joint testimony, you
18 note that AT&T serves a shrinking base of small
19 business customers. Is that a function of a change
20 in marketing plans?

21 A. [NURSE] The observation there is that we
22 serve a shrinking base of consumer and small
23 business customers formerly served through the UNE-P
24 arrangement. When the UNE-P arrangement was taken

1 away and then it got to be a commercially contracted
2 service, it wasn't at a TELRIC price. And as the
3 price has gone up, we've had to raise our prices as
4 our costs have gone up, and that drives customers
5 away, both consumer and business customers.

6 Q. Also on Page 6 you reference adverse
7 consequences to the public, I believe.

8 A. [NURSE] What line are you referring to?

9 Q. Actually, Line 22.

10 A. [NURSE] Yes.

11 Q. Can you identify a very specific, tangible
12 adverse consequence to the public, or are you just
13 talking about general economic theory?

14 A. [NURSE] No, the high access rates -- in
15 particular, call-pumping is one of the clearest
16 ones -- you know, our filing which we filed here is
17 that that's nationwide sucking hundreds of millions
18 of dollars into call-pumping schemes and that that's
19 obviously money that's getting diverted that would
20 otherwise be going into broadband or other network
21 buildouts, providing customers either with new
22 services or with lower prices. So it's bad for --
23 it drives up costs, and it drives up -- and it slows
24 down investment, slows down innovation.

1 It also is sort of an unfair type of
2 competition, because when a new entrant comes in who
3 has a high cost but presents a lower price because
4 their other costs go into these access rates that
5 we're talking about, that distortion is unfair. I
6 mean, if Verizon's local --

7 Well, make it real simple: If there
8 were no access and Verizon's local cost, local rate
9 was \$25, a CLEC came in and your rate was \$27 for
10 exactly the same service, if you went to a customer
11 and said, "How would you like to pay me more for
12 nothing more," he'd say, "Get out of here. I'm not
13 going to pay you \$2 more for nothing more." But if
14 you came in in a world that had access and your
15 costs were 27 and you said, "How about if I charge
16 you 23," you'd say, "Oh, that looks good: \$2 less."
17 Where did the other \$4 go? You pushed that onto
18 access because the access customers can't say no.

19 That's unfair, because that's unfair to
20 the other competitors, other CLECs and the ILEC.
21 And our proposition is that you should present your
22 products and your product offering and your value
23 proposition and your prices to customers who can say
24 yes or no. And if you have an attractive product

1 and a value proposition, customers will say yes.
2 And if your product is not valuable, if it's not
3 worth what you charge for it, customers will and
4 should be able to say no.

5 Q. On Page 13 of your testimony there are
6 references to CLECs increasing access rates; is that
7 correct?

8 A. [NURSE] Are you talking Line 6?

9 Q. Yes, I see it at Line 6, Line 11.

10 A. [NURSE] Yes. Line 6 is talking about
11 originating access rate.

12 Q. And on Line 11 you're talking about no
13 adverse consequences from raising access rates.
14 Would that apply to originating or terminating?

15 MR. GRUBER: Just for the record, the
16 statement is no adverse consequences from raising
17 access rates for the CLEC. I just want to make sure
18 the record is clear that that's what was said.

19 MR. KRATHWOHL: Yes.

20 A. [NURSE] Right, that for the CLEC there's
21 no adverse consequence for raising access rates as
22 high as it can. I think your point's a fair one,
23 that primarily this is getting at terminating access
24 rate in particular.

1 Q. Now, are you suggesting that the CLECs have
2 been raising their access rates?

3 A. [NURSE] They are high. I have seen some
4 filings to increase some, and we've opposed some,
5 like from Level 3 here and in other states.

6 Q. And in Massachusetts are you aware of any
7 efforts to raise access rates other than the two
8 that Mr. Vasington testified about yesterday?

9 A. [NURSE] No.

10 Q. On Lines 6 and 16 on that page you are
11 referencing originating access rates. Is that
12 correct? Or do you mean terminating access rates?

13 A. [NURSE] It's true for originating -- it's
14 true for originating access rates. It's also true
15 for terminating access rates. Generally, most of
16 the problem with high access rates is more so on the
17 terminating end than on the originating end in
18 particular. The situations as we described in
19 testimony are a little bit different. The
20 terminating end is especially bad. The originating
21 end is a little less bad.

22 Q. Are AT&T's terminating access rates the
23 same as Verizon's?

24 A. [NURSE] AT&T, if you will, has two access

1 rates in Massachusetts. We have rates for AT&T
2 Com., traditional AT&T, and for TCG. And no, both
3 of them are about in the middle of the pack of CLEC
4 access rates. They're around 3 cents, which we cite
5 in testimony. And that's way higher than I think it
6 should be in a good policy outcome, but that's kind
7 of in the middle of the market of crazy CLEC access
8 rates, and we've volunteered that we'd be happy to
9 take those rates down to the Verizon rates when the
10 other CLEC rates go down, but we're not going to
11 unilaterally disarm. I mean, that would be crazy.

12 Q. But you're testifying that your current
13 access rates are, quote, "crazy CLEC access rates"?

14 A. [NURSE] All those access rates are too
15 high, yeah.

16 Q. So, likewise, I assume that your language
17 talking about abusing market power, exploiting the
18 market, extraordinarily high levels of access
19 charges also apply to your employer?

20 A. [NURSE] Yes. That's why we'd like to see
21 them brought down, because that would be fair, and
22 then everybody would be on a level playing field.
23 You can't unilaterally disarm and have AT&T walk
24 away from millions of dollars of revenue and then

1 compete against other companies that are at 5 cents
2 or 6 cents and could go higher. So we think the
3 right thing to do is to take that part of the
4 equation away for all the carriers and then all the
5 carriers can collect their revenue from their data
6 services or from their local rates, present those
7 rates to the customers, and get them, and then we
8 won't have this bad stuff going on.

9 Q. On Pages 14 and 15 you talk about harm to
10 the customers.

11 A. [NURSE] Yes.

12 Q. And what you would hope comes out of this
13 proceeding is a benefit to end-use customers; is
14 that correct?

15 A. [NURSE] Yes.

16 Q. So, then, is it your testimony that AT&T
17 will reduce its charges to end-use customers once
18 intrastate switched-access charges are reduced?

19 A. [NURSE] AT&T's been reducing its toll
20 rates before access rates went down for years and
21 will continue to do so, and we have to, because one
22 of our primary competitors is wireless call
23 termination, and their access rate is near zero, and
24 thus their toll rates are, you know, "free nights

1 and weekends." So the toll competition that we face
2 is, customers could pick up their home phone, make
3 that long-distance call on Saturday, or they could
4 reach in their pocket and make it on their cell
5 phone for free. So we face somebody who has a price
6 floor of near zero and an incremental usage rate of
7 near zero, and that is enormous pressure, and so our
8 toll price is going down all the time and will have
9 to continue when these access rates go down.

10 Q. So if AT&T realizes a \$10 million annual
11 benefit from reduction of switched-access rates in
12 Massachusetts, will that same amount then be
13 immediately flowed through to AT&T's customers in
14 Massachusetts?

15 A. [NURSE] No, I would think --

16 A. [OYEFUSI] When you say 10 million, are you
17 just talking hypothetically?

18 Q. Yes.

19 A. [NURSE] No, I would think the increase
20 would be more. The numbers I've been looking at
21 around the country is that our toll prices are
22 falling faster than access prices are falling, that
23 we're getting squeezed to be more efficient, that
24 access is a higher proportion of our toll prices

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1 than it was. And that's because we're competing in
 2 an unfair way against wireless carriers who have a
 3 near-zero access rate and a very, very low toll
 4 price.
 5 Q. And what I'm getting at is, will there be
 6 an immediate pass-through of any reduction in
 7 charges?
 8 A. [OYEFUSI] In the toll market, carriers
 9 compete in different ways. It could be in the form
 10 of different plans that they offer to customers, and
 11 every time a customer takes a low-cost plan, that
 12 customer technically is getting a rate reduction.
 13 Even though the carrier may not come to the
 14 Department and tariff that "I'm dropping my rate
 15 from 10 cents a minute to 5 cents a minute or to 6
 16 cents a minute," but the fact that the customer is
 17 taking the plan that the carrier offers as a result
 18 of competition or in response to competition from
 19 other carriers that do not pay access charges. And
 20 that is something that happens constantly. It's not
 21 something that is scheduled for a certain time of
 22 the year, that is supposed to happen maybe every 1st
 23 of the month or every three months. It is a dynamic
 24 process that carriers in the toll market respond to

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1 as a result of the competition that we've been
 2 facing for several years now.
 3 So your question is asking whether we
 4 will come and post a tariff that will say that we'll
 5 drop our rate? I wouldn't see how that is
 6 practical, because of the way we'll be competing.
 7 We don't file plans, pretty much. Which rate that
 8 you want to see went down? We may not know which
 9 rate went down by how much when we have a bundle of
 10 different services.
 11 But what we've done over the years is to
 12 study the revenue that we actually collected from
 13 those toll customers that they pay to us after we
 14 pay the access, and what we've seen, including here
 15 in Massachusetts, is that the revenue that the toll
 16 customers pay to AT&T has been going down steadily.
 17 Q. So to the extent that you already have
 18 these plans in place, an end-use customer can go out
 19 and he's going to get a benefit, he or she is going
 20 to get a benefit now whether or not the
 21 switched-access rates are reduced here; is that
 22 correct?
 23 A. [OYEFUSI] Well, you're assuming that that
 24 plan is going to be stagnant. Like I said,

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1 competition in the toll market is a dynamic process.
 2 We don't know what plan AT&T is going to offer next
 3 month. We don't know what plan AT&T will offer
 4 after the Department issues a ruling, if it happens
 5 to be a rate reduction.
 6 But what I'm explaining to you is that
 7 when -- if you think about access, access that we
 8 pay to your clients is an input to our offering of
 9 toll service to the end user. So if the cost of our
 10 input goes down, it gives us a better opportunity to
 11 compete and maybe far better product offerings to
 12 the customers.
 13 Q. Now, earlier you indicated, or I believe
 14 Mr. Nurse indicated, that due to various regulatory
 15 changes, some of the AT&T offerings, there had to be
 16 price increases, and that led to driving customers
 17 away. Is that correct?
 18 A. [NURSE] Yes. Those are local offerings.
 19 Q. On Page 18, you're suggesting, starting at
 20 Line 15, essentially that CLECs should recover
 21 greater costs, if they have greater costs, from
 22 their customers by raising their rates to their
 23 end-use customers; is that correct?
 24 A. [OYEFUSI] That's what the testimony says.

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1 A. [NURSE] Yes. And the FCC regime here says
 2 if on the interstate side a carrier has a rate
 3 higher than the incumbent, if you want to try to get
 4 that rate, you have to go negotiate with the IXC,
 5 and you have to tell him, "This is the access I
 6 offer, and this is the price that I want to charge,
 7 and it's 20 percent higher than Verizon," and you
 8 have to negotiate with them and they have to agree
 9 to pay a higher price. So you'd have to have my
 10 quality is better or my coverage is better. You'd
 11 have to have some reason to motivate them to agree
 12 to a higher price.
 13 So under the FCC rule, the key here is,
 14 if you want a higher price, because you have --
 15 well, for whatever reason -- it could be because you
 16 have higher costs, just because you want a higher
 17 price -- you have to go to the end user, in this
 18 case, the carrier customer, and say, "I want a
 19 higher price from you, and here's the reason," and
 20 you agree or you don't agree. If the IXC says no
 21 and you can't reach a deal, then you're capped at
 22 the ILEC rate.
 23 What we're saying here is the same
 24 thing, that if the access rates went down and those

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1 revenues went away from the CLECs, those CLECs would
 2 have to go to their local customers or their data
 3 customers, and they would have to say, you know --
 4 well, I don't know where their costs and where their
 5 rates are. But to the extent that they need higher
 6 rates or they want to try to get higher rates, they
 7 have to go to their customers, ask them for a higher
 8 rate, tell their customers why they think they ought
 9 to get a higher rate, and if their customers think
 10 it's worth paying them more, they will, and if they
 11 won't, the CLEC will have to adjust his costs, if
 12 costs is the driver, or the CLEC will have to accept
 13 a lower margin, or the CLEC will lose the customer
 14 because the customer won't pay a higher rate.

15 But that's excellent. That's a
 16 competitive outcome of customer choice and winnowing
 17 out the weak. That's exactly what you want to do.
 18 You don't want to encourage high-cost producers.
 19 You want to encourage low-cost producers.

20 A. [OYEFUSI] And if you note, there we were
 21 citing the FCC CLEC access reform order. That is
 22 the seventh report and order.

23 If you really go through what the FCC
 24 was doing here in that order, the FCC was trying to

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1 impose, mimic the type of discipline that a
 2 competitive market will impose on any carrier. And
 3 the FCC is saying that if you claim that your cost
 4 is greater than your competitor's, you can either
 5 try to recover that cost from the customer that you
 6 have, and that actually making the choice -- because
 7 in this particular case the customer that you tried
 8 to charge was not the customer that selected your
 9 client. Somebody else selected your client, and
 10 you're trying to charge another person, another
 11 entity, to pay the cost of the action taken by that
 12 individual.

13 So the FCC is saying that if you now
 14 make the costs that are related to the person that
 15 selected you and you present your case that "My
 16 costs are higher, so you have to pay me higher than
 17 my competitor," and the person says no, the second
 18 time, you know that for you to continue to keep
 19 those customers, you will have to figure out a way
 20 to be more efficient than your status quo, so that
 21 you can reduce your costs and be able to keep that
 22 customer.

23 These are decisions that companies make
 24 in any market, regardless of what type of product

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1 they make. When they try to enter a market, they do
 2 their own business plan. They figure out what is
 3 the current price in that market. They look at
 4 their own costs. Nobody else knows their costs.
 5 They know their costs, and they know how much
 6 they're going to pay for their raw materials. They
 7 figure all of that out. They hire all the experts
 8 that they need. And once they determine the costs,
 9 they look at the market: Can that price in the
 10 current market cover the costs that I'm trying to --
 11 that I will qualify under?

12 And all of those decisions must be made
 13 before companies enter that market. They don't just
 14 come into the market, set up shop, and say, "Gee, I
 15 can't cover my costs." It doesn't happen that way
 16 in the competitive market.

17 The type of discipline that you see in
 18 the competitive market is not by accident. It is
 19 because in that market, when you present your price
 20 to the person that is making the decision, you don't
 21 ask somebody -- you don't let somebody make a
 22 decision to buy something and ask somebody else to
 23 pay for it. It doesn't happen.

24 That is the disconnect we have in this

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1 type of process, because the person making the
 2 choice did not see the price signal. They didn't
 3 see your full price.

4 Q. And I take it as new entrants continue in
 5 business, they will either drive down their costs,
 6 presumably through, for example, putting more
 7 customers on a switch, or ultimately, if they can't
 8 drive down their costs, then they'll go out of
 9 business; correct?

10 A. [OYEFUSI] Like I said, these are decisions
 11 that companies make every day in any market.

12 Q. I'm sorry, this really is a yes-or-no
 13 question.

14 WITNESS OYEFUSI: Repeat the question.
 15 MR. KRATHWOHL: Could you read it back,
 16 please.

17 (Question read.)

18 A. [OYEFUSI] Yes, if they can't drive down
 19 their costs, yes, they won't -- and the current
 20 price cannot support that cost, they will have to go
 21 out of business.

22 A. [NURSE] And that question assumes that the
 23 cost of the CLECs is just below the price, and
 24 there's no evidence of what the CLECs' costs are.

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1 So it isn't necessarily the case that the CLEC is
 2 charging 7 cents -- it isn't necessarily the case,
 3 for example, the CLEC with the very highest access
 4 rate in Massachusetts is the CLEC with the very
 5 highest cost, most inefficiency, so that if he had
 6 to lower his access rate, he would be at his costs.
 7 There's no evidence of what the CLECs'
 8 costs are. So it could be just that the CLECs'
 9 costs are plenty low enough now to charge the
 10 Verizon rates and if they had to lower their access
 11 rates they might leave their retail rates alone and
 12 just take a smaller margin. There's no evidence.
 13 But if you suppose in your question implicitly cost
 14 was just below price and price came down, you'd have
 15 to lower costs to survive in the long run, yes.
 16 Q. And your last comment about what CLEC costs
 17 are is really purely speculative, isn't it?
 18 A. [NURSE] No, I'm saying that there's no
 19 evidence in the case here as to what the CLEC costs
 20 are. There's no CLEC cost study.
 21 Q. Right. So you have no knowledge that CLEC
 22 costs might be sufficiently low that they could
 23 lower the costs without having significant financial
 24 distress.

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1 A. [NURSE] I have no knowledge and there's no
 2 evidence in the case of what the CLECs' costs are.
 3 MR. KRATHWOHL: I have no further
 4 questions.
 5 MR. DeROCHE: Mr. Messenger, PAETEC?
 6 MR. MESSENGER: Thank you. I do have a
 7 few.
 8 CROSS-EXAMINATION
 9 BY MR. MESSENGER:
 10 Q. Good afternoon, gentlemen.
 11 A. [OYEFUSI] Good afternoon.
 12 Q. I'm John Messenger, representing PAETEC.
 13 There was a little bit of discussion of
 14 the so-called flow-through of the benefits of cost
 15 reductions that might result from the adoption of
 16 Verizon's proposal, but I'm not sure you were asked
 17 directly: Would AT&T oppose a Department plan to
 18 require that such cost reductions be flowed through
 19 to Massachusetts long-distance ratepayers, as
 20 opposed to somewhere else?
 21 A. [NURSE] Well, we would -- more broadly, we
 22 would oppose, because it's unnecessary, a regulatory
 23 requirement to lower toll rates. I think Mr.
 24 Vasington testified yesterday, for example, that

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1 there are other cost increases that go on as you
 2 take the current toll rates and say, okay, I need to
 3 see the toll rates 10 million lower. If you were
 4 doing a traditional rate case, you might say, you're
 5 paying \$4 a gallon for gas and health insurance went
 6 up really high and so you have a cost increase and
 7 the rates might have gone up rather than down or
 8 they might have gone up a little bit. So it would
 9 be the difference in the rate.
 10 But at bottom, it would be
 11 unnecessary -- we would oppose it as a policy matter
 12 because it's unnecessary. The Department has found,
 13 and I think it's indisputable, that the toll market
 14 is extremely competitive, and in a competitive
 15 market lower costs flow through to lower prices.
 16 That's beyond question.
 17 So its unnecessary, and I think there
 18 is -- unless you're going to do rate-of-return cases
 19 on every IXC in the state, it's impossible to really
 20 effectively go through and design a mechanism and to
 21 then enforce it.
 22 Q. Is it your position, then, that the
 23 Department should in effect trust market forces to
 24 cause any cost reductions to trickle down, so to

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1 speak, to Massachusetts ratepayers, as opposed to
 2 going to ratepayers in other jurisdictions or
 3 investors or other services?
 4 A. [NURSE] No. It's not a speculative or
 5 hypothetical prospective construct. It's an
 6 empirical historical experience. Toll rates have
 7 been going down, down, down for decades as access
 8 rates have been going down, down, down. And that's
 9 the ticket.
 10 The Department has limited resources,
 11 and they need to apply those resources, you know, to
 12 their highest uses. And since the Department has
 13 found that the toll market is competitive, it isn't
 14 necessary to go and police toll prices to make sure
 15 that costs are there. The Department didn't go in
 16 when gas prices went up and say, "We're going to
 17 regulate toll prices now to make sure that toll
 18 prices aren't going up more than they should because
 19 gas prices are going up." They said, "The toll
 20 market is competitive, a competitive market. Prices
 21 move towards costs, and lower costs flow through to
 22 lower prices."
 23 The Commission does have a lot of work
 24 to do in implementing, you know, a compliance

1 section on the access, and the access is not a
2 competitive market, so that's where the regulatory
3 resources should be applied.

4 Q. Thanks you. There was some talk of your
5 statement on Page 13 that for a CLEC there are no --

6 A. [NURSE] Excuse me. Let me get there.

7 Q. -- for a CLEC there are no adverse
8 consequences from raising access rates as high as it
9 can. Why do you suppose, then, that AT&T and other
10 CLECs aren't charging, for example, 7 cents, like
11 Richmond Telephone, rather than the 3 cents that you
12 described as the ballpark for AT&T's current rates?

13 A. [NURSE] The question is two parts, so I'll
14 answer in two parts as to AT&T versus the other
15 CLECs. AT&T has no problem lowering its access
16 rate, which is too high here, when all the other
17 CLECs simultaneously lower them, and then we'll
18 adjust to whatever that means. That's not a
19 problem.

20 Around the country AT&T has been
21 aggressively trying to reform access rates in the
22 interstate and intrastate jurisdictions, and that's
23 typically involved rate rebalancing, similar to what
24 Verizon did here in Massachusetts. So AT&T, you

1 know, is not going to be increasing access rates
2 because it would be inconsistent with our position
3 and our policy nationally that access rates should
4 be moving towards costs.

5 As a business person, you know, I would
6 say if this case doesn't lower access rates, if
7 somebody asked my business advice, I'd say, "Yeah,
8 go up to 20 cents, 25 cents. Why not? You'd be a
9 fool not to." AT&T I don't think can do that
10 credibly because of our policy at the FCC and other
11 states that access should go down and subsidies
12 should be explicit and not implicit.

13 As to the other CLECs, their rates are
14 somewhat random. When I look at them, I see some of
15 them that are low, I see some of them that are high.
16 It's not my sense that there's a cost correlation,
17 because the variation is so huge -- you know, 15 to
18 1. I don't think that that's cost-driven. I think
19 that some of the CLECs filed them nationally. I
20 think some of the CLECs, you know, were a little
21 more sort of astute about the local environment and
22 figured out that they could get away with it here if
23 they're not really reviewed. And I think that they
24 are fairly high, and they're probably -- you know,

1 when you start getting the 7-cent rate, that kind of
2 thing, I think they're probably as high as a lot of
3 them think they could get away with without
4 attracting too much scrutiny.

5 Q. My question to AT&T was not so much
6 directed at what you would do in the event the
7 Department acts in this case but your statement
8 about the effective market forces on CLEC access
9 charges. There apparently is some constraint
10 operating even prior to the petition being filed,
11 and I'm trying to get at what you think that might
12 be.

13 A. [NURSE] I don't think CLECs can charge a
14 million dollars a minute, because I think if you got
15 to, you know, a conscience-shocking rate, the
16 Department would act. And so I think the
17 gamesmanship if you're a CLEC is, "How high can I
18 get it up without getting too much attention?" You
19 know, given that some of them are 15 times higher
20 than Verizon, you don't see a competitive market
21 where one commodity supplier gets a 15-to-1 price
22 differential.

23 A. [OYEFUSI] I suppose your question is
24 trying to test the logic as to whether it is more

1 acceptable to be somewhere in the middle than to go
2 to the extreme of this spectrum. I don't think that
3 is really one of the matters -- the section that you
4 are quoting in that system, really.

5 What we are saying here, we are trying
6 to answer a question, why don't we leave it to the
7 market? What we are trying to test here, or what we
8 are trying to explain here, is that there is no
9 incentive for the customer that is making the choice
10 to say no. So if the access -- if we have to make
11 the decision, we won't pick your client. As the
12 customer -- every customer in the market, looking at
13 the same product from two providers, is going to
14 pick the one that charges the lowest rate. That is
15 just basic economics.

16 Q. I'm not asking you to repeat your entire
17 testimony, but simply answer the question.

18 A. [OYEFUSI] I'm just -- because you're --

19 Q. Picking up off Mr. Nurse's answer for a
20 moment: Is it fair to say, then, that the mere fact
21 that the Department of Telecommunications and Cable
22 exists and has jurisdiction over these rates
23 exercises some constraint on a CLEC's behavior?

24 A. [NURSE] Not -- well, not in a particularly

1 meaningful way. I mean, I would say that a 15-to-1
2 differential is a breakdown. I mean, that's not --
3 if you're looking to see a market being competitive
4 for a commodity product, you wouldn't have that kind
5 of really high rate differential.

6 I mean the same way under rate of
7 return, when the regulatory commission brought a
8 carrier in for overearnings, by the time you brought
9 the carrier in for overearnings, if you will, the
10 regulatory process kind of had broken down, because
11 the carrier had already overearned. I think we're
12 kind of in that same situation.

13 But the competitive market is not a
14 constraint on our rate or our rate wouldn't be five,
15 six times as high as Verizon's.

16 Q. There was some talk earlier --

17 MR. ISENBERG: Pardon me, I'd just
18 like -- not to disturb your flow, Mr. Messenger.

19 MR. MESSENGER: Please do.

20 MR. ISENBERG: I'd like to follow up on
21 one question.

22 Mr. Nurse, isn't it true, though, that
23 in terms of constraints, the question of what kind
24 of constraint the Department puts on access rates,

1 that the Department does have the ability either on
2 its own motion or based on a tariff protest to
3 suspend a tariff?

4 WITNESS NURSE: Yes.

5 MR. ISENBERG: And investigate its
6 reasonableness.

7 WITNESS NURSE: Yes, which we think they
8 should exercise here now to push the CLEC rates down
9 to the Verizon rates. I'm just saying that the
10 pragmatic experience has been that CLEC filings are
11 pragmatically automatic. The Commission retains
12 jurisdiction over them. I think this is a case
13 where the Commission should exercise the
14 jurisdiction to push them down.

15 It really should be -- the key, I think,
16 is that if you push the access revenue down for the
17 CLECs, they can do whatever they need to do on the
18 retail side. If they're competitive, they can
19 collect from the competitive market their
20 competitive costs, and if they can't recover in the
21 competitive market their competitive costs, then
22 they're not competitors, they're losers.

23 You know, competition means there are
24 winners and losers. There's the faster guy in the

1 race and the slowest guy in the race. Not everybody
2 is the winner.

3 Q. Getting back to possible constraints of a
4 pragmatic nature on CLEC rates, though: You've
5 mentioned that AT&T would be crazy not to charge 20
6 cents a minute, and yet it charges 3 cents, and I
7 believe one reason you gave was that AT&T has taken
8 certain policy positions in other jurisdictions and
9 it doesn't want to be too out of line with those
10 positions. Is that fair?

11 A. [NURSE] Yeah, I said as -- from a
12 businessman's perspective, you'd be walking away
13 from the revenue. So if you looked and you saw the
14 highest CLEC rate in the state, if you were another
15 CLEC, you would figure, "That's kind of a safe
16 harbor. I could probably goose my rate up to there
17 or maybe minus a little bit, and I probably wouldn't
18 get attention, because I'd be in the range." If
19 somebody objected, you'd say, "My rate -- I wouldn't
20 be the highest guy, I would be the second-highest
21 guy."

22 So that's a very reasonable sort of
23 regulatory gamesmanship that could go on. But AT&T
24 has committed and admitted that our rate's too high

1 and that we'll lower it and that we'll suck it up.
2 I think Verizon had the same thing about their MCI
3 affiliate, has sort of a similar pedigree. So that
4 would be a good thing.

5 And then all those carriers will have
6 the regulated rate in the access market, where
7 competition doesn't work well, and they can recover
8 their costs in the competitive market to the best of
9 their ability.

10 Q. Is it fair to say that the ease or
11 difficulty of collecting the access charges from
12 interexchange carriers might be another possible
13 constraint on a CLEC from charging, say, 20 cents a
14 minute, as opposed to 3 cents?

15 A. [NURSE] No, I think it works the other way
16 around. The problem is the ease of tariffing the
17 rate and compelling the CLEC to pay, and I think
18 that there's, you know -- I'm not the lawyer, and
19 they'll do it on a brief. But there are some filed
20 rate-doctrine cases that if the CLEC rate is filed
21 in the tariff, it's the rate, and you can't
22 challenge the rate retroactively as being
23 unreasonable. And if he provided you the service at
24 the tariffed rate and you don't like the price,

1 tough luck. You can go and protest about the rate
2 prospectively, but not retroactively.

3 Q. Is it AT&T's policy, as an interexchange
4 carrier, always to pay any CLEC's tariffed rate
5 without regard to any views of reasonableness or
6 rate level?

7 A. [NURSE] Well, the question is kind of
8 compound. But to back it out: AT&T as an IXC
9 protests and objects to high access rates through a
10 number of vehicles -- sometimes regulatory filings,
11 I think sometimes lawsuits against the call pumpers,
12 I think sometimes in business negotiations with
13 various carriers.

14 So, yes, we're a big company, and we try
15 as hard as we can, and even as big as we are and as
16 hard as we try, we have not been able to get access
17 rates reformed to a reasonable level across the
18 company. And if we can't do it, it's even more
19 difficult for smaller carriers to do it.

20 Q. Speaking of business negotiations, there's
21 been some discussion about the theoretical
22 possibility under the FCC benchmark that a CLEC
23 could charge on a negotiated basis a rate that was
24 even higher than the maximum level allowed under

1 tariff. Are you aware of having agreed with any
2 CLEC in the country to pay a higher than benchmark
3 rate for interstate switched access?

4 A. [NURSE] I don't believe AT&T or any IXC
5 has agreed to pay a higher price.

6 Q. Are you aware of AT&T using or attempting
7 to use its size and market power to negotiate a rate
8 that was lower than the benchmark rate, either on
9 the intrastate or interstate side?

10 A. [NURSE] I can't accept the premise in your
11 question that AT&T as an IXC has market power.

12 Q. All right, let's delete that phrase from
13 the sentence.

14 A. [NURSE] Although I admit that AT&T as a
15 CLEC has market power over its access customers,
16 which is why we have a 3-cent rate.

17 Q. Well, I'm trying to get to why you have a
18 3-cent rate in light of your testimony that there
19 are no constraints whatsoever, and we've addressed
20 several aspects. You've talked about business
21 negotiations. Is it true, regardless of any
22 characterizations of market power, that -- is it the
23 case that AT&T has attempted or succeeded at
24 negotiating lower-than-standard tariffed rates with

1 any CLECs around the country?

2 A. [NURSE] Yes.

3 Q. How do you square that with your
4 characterization of the filed-rate doctrine as
5 requiring in effect full and complete and timely
6 payment of all tariffed charges?

7 A. [NURSE] Because that's what the filed-rate
8 doctrine says. But it doesn't mean that if you went
9 to a carrier that you couldn't come to a meeting of
10 the minds as to why.

11 It could be rational for a carrier who
12 had a very high access rate and who feared a
13 challenge to that high access rate to, you know,
14 settle for a half a loaf is better than none. If
15 the carrier had a high access rate, feared a
16 commission challenge and review of that rate, they
17 might agree to contract for a reduction in that
18 rate. That's a rational business decision that a
19 CLEC could make. They'd look at the cost of
20 litigation, the risks of the adverse outcome, the
21 certainty of a different business arrangement. They
22 could see that as a rational outcome.

23 But there's a lot of CLECs and a lot of
24 ILECs, and it's very inefficient to try to go to

1 just thousands and thousands of folks all around the
2 country --

3 It's not an efficient or rational way to
4 do it. You have to renew them when they happen, and
5 it's particularly crazy for every IXC to have to go
6 to every CLEC and every ILEC and do that. I mean,
7 there's, what, 10,000 ILECs. You do the
8 combinations and permutations; the tens of thousands
9 or hundreds of thousands of contracts it would take
10 to do that by contract is just, the transaction
11 costs would be huge.

12 And we differ from Verizon in that. I
13 don't think that contracts is the way to do it.
14 It's a pretty inefficient way, and it's pretty
15 ineffective. It's only partially effective.

16 Q. It's easier to use the regulators than to
17 negotiate contracts?

18 A. [NURSE] Well, because you mentioned
19 contracts, it gets to what the problem is as to why
20 a contract doesn't work. In a general contract or
21 bargain negotiation, you have offer, acceptance, and
22 consideration, in my lay understanding. And the
23 ticket is, you have a willing buyer and a willing
24 seller, and if you agree on a price point, you'll

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1 have a transaction, and if you don't, you won't.
2 The problem here is that it's a -- it's
3 a trilateral relationship when you buy local
4 service. You really almost have two parts of it:
5 You have the local service and the access service,
6 and you have a price for local and you have a price
7 for access. The IXC is forced to pay the access
8 rate, but the IXC didn't agree that they wanted to,
9 you know, be -- you know, buying that access rate.
10 That access rate came tied or bundled with the local
11 service.
12 So you've got the local-service customer
13 saying, "I like that local rate. It's low, I'll
14 take that." And he doesn't know or really care what
15 the access rate is. And it's that trilateral
16 arrangement that's dysfunctional.
17 MR. MESSENGER: Mr. Hearing Officer, I'm
18 trying to be patient, but I have the feeling
19 Mr. Nurse is giving lengthy, digressing answers to
20 what are in effect simple questions. In the
21 interests of time, if nothing else, if we could sort
22 of stick to the question, that would help.
23 Q. Let's move on to the difference between
24 originating and terminating access. I believe you

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1 stated during your earlier cross that terminating
2 was more of a problem than originating.
3 A. [NURSE] Yes.
4 Q. Do you recall that?
5 A. [NURSE] Yes.
6 Q. What are some of the constraints on the
7 originating switched-access side that might not
8 exist on the terminating side?
9 A. [NURSE] Well, on the originating side, you
10 could tend to have a lot of traffic originating from
11 one source, and you could kind of backwards-chase
12 that to see it, and then you could, you know, try to
13 do something about that.
14 With the terminating access, once you're
15 the IXC and the customer dials the number, you have
16 to complete the call. You don't really have any
17 control. If you have a local customer and you
18 provide them a bundle of local and long distance,
19 you know where the customer is, you can control the
20 originating side. There's a lot of, you know -- I
21 mean, that's kind of a big lift.
22 On the terminating side, if you're an
23 IXC, wherever the customer dials the call, you have
24 to complete the call, and whatever the rate is,

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1 basically, you have to pay the rate.
2 So the terminating one tends to be quite
3 dispersed, and it's very difficult to control. I
4 mean, in Massachusetts -- if you wanted to make it
5 simple, you could say in Massachusetts your strategy
6 might be to compete only in the Verizon area, but if
7 you're an IXC, you have to -- even though you don't
8 have any originating customers in Richmond
9 Telephone, you would still have to terminate calls
10 into Richmond Telephone. So as an IXC you kind of
11 can't get away from it on the terminating side. You
12 could avoid Richmond's originating access in
13 Massachusetts by not offering service, maybe --
14 intrastate service, by not offering it in Richmond
15 Telephone.
16 Q. Is it fair to say, then that the Department
17 could have some beneficial effect merely by
18 constraining CLECs not to charge more for
19 terminating switched access than they do for
20 originating switched access?
21 A. [NURSE] No, because it could be a dollar a
22 minute for originating and a dollar a minute for
23 terminating. So that doesn't provide any relief.
24 Q. Although that's not the case today under

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1 the free operation of market forces.
2 A. [NURSE] Well, I don't agree that there's
3 free-market operation on access. But equalizing a
4 high rate at a high rate doesn't make the rates
5 right, it makes them the same.
6 Q. My last line of questioning relates to
7 access-charge elements and their rate structures.
8 I'm not sure which one of you is the best suited;
9 but if you're equally familiar, you can take it as a
10 toss-up.
11 Are you familiar with the access-charge
12 structures that ILECs such as Verizon use?
13 A. [OYEFUSI] Yes, generally.
14 Q. In supporting Verizon's petition, does AT&T
15 support the notion that fixed-rate elements should
16 be removed from the equation and the comparison
17 should be between the usage-sensitive access
18 elements of the CLEC versus the usage-sensitive
19 access elements of an ILEC?
20 MR. GRUBER: Objection. Let's get
21 specific about fixed-rate, flat-rate, so we can know
22 what the question relates to.
23 MR. MESSENGER: If there's a difference,
24 I meant flat rates.

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1 MR. GRUBER: Whichever you said, if you
 2 meant flat rate, let's be specific.
 3 Q. Let's back up a bit. Is it true that some
 4 usage elements are usage-sensitive and some are
 5 flat-rate?
 6 A. [NURSE] Yes.
 7 A. [OYEFUSI] There are some access rates in
 8 the tariff that are priced on a per-minute basis.
 9 There are other access rates that are priced on a
 10 monthly basis. You can buy a trunk, a trunk, like a
 11 dedicated trunk, and you agree to pay a certain
 12 amount, dollar amount, per month for that. And
 13 whether or not you use it or you -- whether you put
 14 zero traffic on it or you put one million minutes a
 15 month on it, whatever you use, that's what you pay
 16 per month.
 17 Q. So some charges are per-minute charges, and
 18 some charges are monthly recurring charges, let's
 19 call them.
 20 A. [OYEFUSI] That's correct.
 21 Q. Is it true that in terms of physical
 22 network elements, some of those items might be the
 23 same? In other words, a trunk, one type of trunk
 24 might be charged on a per-minute basis and another

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1 trunk might be charged on a monthly recurring basis
 2 or flat-rate basis?
 3 A. [OYEFUSI] When you say one type of trunk,
 4 you have to be specific.
 5 Q. Let's assume a T-1 trunk between an IXC's
 6 network and Verizon's network.
 7 A. [OYEFUSI] And if the IXC is buying that
 8 T-1 as a dedicated trunk that nobody else is using
 9 and it's just that IXC that is using it, the IXC
 10 will have made sure, I believe, that it is going to
 11 carry enough traffic to that customer on a monthly
 12 basis to be able to justify paying that dedicated
 13 fee.
 14 Is that what you're asking?
 15 Q. Yes, so far. I'm trying to get there. In
 16 other words, for a given trunk or, for example, a
 17 port on a tandem switch, it might be charged on a
 18 per-minute usage-sensitive basis or might be charged
 19 on a flat monthly recurring basis based on whether
 20 that particular physical element is dedicated to a
 21 particular IXC or not; is that correct?
 22 A. [OYEFUSI] If it is dedicated, it's not
 23 going to be priced on a per-minute basis.
 24 A. [NURSE] Yes.

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1 Q. Cell phone toll prices, it's dedicated, it
 2 will be charged flat; and if it's shared or common,
 3 it will be charged on a per-minute basis.
 4 A. [OYEFUSI] Yes.
 5 Q. Let's look at Verizon's access network.
 6 IXCs can connect to Verizon's network either through
 7 an tandem access switch or through a particular end
 8 office. Is that true?
 9 A. [OYEFUSI] Yes.
 10 Q. And in any case, the IXC, the trunk
 11 connecting the IXC's network is going to be
 12 dedicated to that IXC and therefore charged on a
 13 flat-rate basis. Is that your understanding?
 14 A. [OYEFUSI] Well, if the -- like I said, if
 15 the IXC decides to buy the trunk -- I mean, there is
 16 some traffic that will not go through the dedicated
 17 trunk. So let's separate this.
 18 Q. Can you give an example, by the way?
 19 Because that's what I was getting to.
 20 A. [OYEFUSI] Example of what?
 21 Q. Traffic that would not go through a
 22 dedicated trunk.
 23 A. [NURSE] Common.
 24 A. [OYEFUSI] It would just be somebody

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1 dialing from a home that is not a big user, doesn't
 2 really generate a lot of volume. I would not see
 3 why an IXC will put a dedicated trunk to somebody's
 4 house. Probably the person will make 200 minutes of
 5 calls a month, and I wouldn't see how 200 minutes of
 6 calls would justify putting a dedicated trunk to
 7 somebody's home.
 8 MR. ISENBERG: But for a large customer
 9 that needs a dedicated trunk, all of their traffic
 10 is going to travel over that dedicated facility;
 11 correct?
 12 WITNESS OYEFUSI: That is correct. And
 13 the IXC will have had the traffic portion of that
 14 customer and will have known that there is a need
 15 for that dedicated trunk before it agrees to put
 16 that dedicated trunk to that customer's location.
 17 A. [NURSE] Just for clarification: Your
 18 point is about the dedicated and the common-usage
 19 shared trunks that multiple carriers use. That
 20 arrangement could happen from an end office to a
 21 customer premises, which the Bench was asking, or it
 22 can happen between an end office and a tandem.
 23 Also, they're not necessarily mutually exclusive.
 24 The carrier may have dedicated and then may use some

<p style="text-align: right;">284</p> <p>1 common or may use dedicated and common for overflow. 2 Q. And if AT&T as an interexchange carrier 3 wants to exchange access traffic with a CLEC, it 4 could either directly connect to the CLEC's switch 5 or it could go through a Verizon Access tandem; is 6 that correct? 7 A. [OYEFUSI] That is correct. 8 A. [NURSE] Well, there can be limitations on 9 it. Yes, you can directly connect, and then 10 depending on ICAs, sometimes they limit how much 11 traffic you can indirectly connect -- but that's 12 local traffic -- but how much you can indirectly 13 connect through Verizon. Sometimes they compel you 14 after a certain volume, after a T-1 or two T-1's, 15 they compel you to shift that traffic to the other 16 carrier directly. 17 Q. And if an IXC is connecting to a CLEC 18 through the Verizon Access tandem, then the trunks 19 between the CLEC's switch and the Verizon tandem 20 would be common with respect to IXC traffic, 21 wouldn't they? 22 A. [NURSE] Not necessarily. We could connect 23 directly to the dedicated trunk, to the Verizon 24 tandem, and then the Verizon tandem to the CLEC is</p>	<p style="text-align: right;">286</p> <p>1 don't have to worry about any gaming, that someone's 2 misrepresenting what flavor traffic that is to try 3 to get the higher rate for basically otherwise 4 indistinguishable traffic. 5 Q. The only point I'm trying to make is this: 6 Verizon's revenues that it receives from 7 interexchange carriers for switched-access service 8 consists of revenues from usage-sensitive elements 9 and revenues from monthly recurring or flat-rate 10 elements. Is that right? 11 A. [NURSE] Yes. 12 A. [OYEFUSI] And they are priced different. 13 They are priced separately in the tariff, because 14 they are not considered as the same product in 15 Verizon's tariff. 16 Q. By the way, in asking this question, I'm 17 not talking about a dedicated line all the way to an 18 end-user customer, which would be special access, 19 but only focusing on switched access. Some of 20 Verizon's elements are dedicated -- are flat-rate 21 and some are usage-sensitive. Is that right? 22 A. [NURSE] Yes. 23 Q. And that's based on whether those -- the 24 pieces of the network to which those elements apply</p>
<p style="text-align: right;">285</p> <p>1 whatever it is. 2 Q. Which is what, common or shared? 3 A. [NURSE] Well, it would be -- it wouldn't 4 be dedicated to AT&T at that point, I wouldn't 5 think, because at that Verizon tandem Verizon would 6 be taking traffic in from multiple carriers, and 7 then Verizon would be mixing that traffic together. 8 And so once you go from the Verizon tandem to the 9 CLEC tandem, you know, to me, my traffic is then 10 mixed in common with Sprint and other people's. 11 You, the CLEC, might look at that and say that's a 12 dedicated Verizon trunk and all that traffic is 13 Verizon's. 14 MR. ISENBERG: Is it all just access 15 traffic? Is there any local traffic? 16 WITNESS NURSE: That's where it gets 17 untidy, is that often you have combined traffic, 18 where you mix intrastate toll, interstate toll, and 19 sometimes even local traffic on the same trunk, and 20 then you have to have factors or other methods to 21 differentiate the one time from the other; and 22 that's the great advantage of having a common rate 23 for your interstate access and your intrastate 24 access. When you have the traffic commingled, you</p>	<p style="text-align: right;">287</p> <p>1 are dedicated to a particular IXC or shared in 2 common among multiple IXCs. Is that right? 3 A. [NURSE] Yes. 4 Q. By the way, isn't it true that certain of 5 those charges were formerly usage-sensitive before 6 the FCC reformed access in 1997 and now they're 7 dedicated? In other words, the same piece of 8 technology could be structured as a usage-sensitive 9 element or not, depending on how the access rules 10 are written? 11 A. [OYEFUSI] Well, the FCC went through 12 several changes over the years, and the movement has 13 been to get away as much as possible from usage- 14 sensitive pricing if the cost did not occur on that 15 basis. So what you're saying, yeah, it reflects 16 what the FCC might have done over the years, and 17 that continues. 18 Q. Under the former structure, in other words, 19 something called tandem switched transport was 20 usage-sensitive, and then the FCC reformed access 21 and broke it into several elements, some of which 22 are now flat-rate or monthly recurring elements; is 23 that correct? 24 A. [NURSE] Right. Part of their reform has</p>

1 been to align a rate design so that flat-rated costs
2 have flat-rated prices and usage-sensitive costs
3 have usage-sensitive prices.

4 Different carriers have different
5 structures on the interstate side, the intrastate
6 side. But the reality is that PAETEC today has an
7 interstate access tariff that is compliant with the
8 FCC rule for parity with the Verizon rate, and all
9 these issues that need to be addressed have been
10 addressed in that FCC regime. The Commission
11 doesn't have to resolve these questions in order to
12 implement parity with the FCC rule. The FCC has
13 already equilibrated Verizon's interstate access
14 rate and PAETEC's interstate access rate, and the
15 Commission can import the benefit of that regime
16 into Massachusetts. And these other questions are
17 interesting, but they're not a bar to importing that
18 solution here.

19 Q. Is it your understanding that the FCC's
20 CLEC benchmark for interstate switched access only
21 includes and only looks at the ILEC's usage-
22 sensitive elements and doesn't look at the total
23 cost of switched access?

24 A. [NURSE] It includes what it includes.

1 There are some elements that are per-cost, like
2 database lookups, that are on a per-call basis. It
3 doesn't include every aspect of access. But it
4 doesn't need to. It's a reasonable solution that's
5 been in place for seven years. Substantially I
6 think we calculated for us it would take 85 percent
7 of our access revenues away. So it is -- in one of
8 the data responses. So it's a substantial
9 reduction.

10 And yeah, there are little parts -- you
11 could quibble, you know, on some piece parts or the
12 other, 15 percent or whatever. But if you
13 implemented the FCC regime, our calculations, it
14 would take 84, 85 percent of our access revenue
15 away, and that is substantial progress.

16 MR. MESSENGER: Mr. Hearing Examiner, I
17 did have another question or two, but I know we've
18 gone beyond --

19 MR. DeROCHE: If you're ready to wrap
20 shortly, we'll go on. If you've got something
21 substantial more to go, we'll take a break.

22 MR. MESSENGER: The questions are short.

23 MR. DeROCHE: Why don't we try and
24 finish up. Mr. Nurse, if you could try and keep

1 your answers as brief as possible.

2 MR. MESSENGER: On further reflection, I
3 think I'm finished.

4 MR. DeROCHE: Thank you very much.
5 We'll break there. We will come back at five
6 minutes after 2:00.

7 (Recess for lunch.)

8 MR. DeROCHE: We'll go back on the
9 record. I believe it's RNK. Mr. Tenore, do you
10 have any questions for these witnesses?

11 MR. TENORE: Yes. Thank you.

12 CROSS-EXAMINATION

13 BY MR. TENORE:

14 Q. Good afternoon, gentlemen.

15 A. [NURSE] Good afternoon.

16 A. [OYEFUSI] Good afternoon.

17 Q. Just a couple of quick questions here. Are
18 you aware -- just getting back to the line of
19 questioning that Mr. Messenger had about flowing
20 through savings to end users: Are you aware of any
21 jurisdictions where there was a reduction in, let's
22 say, ILEC rates and the commission had required the
23 IXCs to flow it through to end users in that state?

24 A. [NURSE] There have been some -- I don't

1 have the list, but I know from experience there have
2 been some efforts to do it. I don't think it ever
3 really works as a comprehensive showing.

4 Q. On Page 14, Line 3 of your prefled
5 testimony you talk about unfettered increases to
6 CLEC access-charge rates.

7 A. [NURSE] Yes.

8 Q. Outside of the two that we've already
9 discussed in Massachusetts, being Level 3 and
10 PAETEC, are you aware of any CLEC access-charge
11 increases since 2002?

12 A. [NURSE] I haven't done a study since 2002.
13 I was aware of the two other ones. But the issue
14 there is increases and the level that they're at.

15 Q. That brings me to my next line of
16 questioning here. In response to RNK-1-1, you
17 replied that TCG has not raised its interstate
18 switched-access rates since 1997.

19 A. [NURSE] This is Parts C and D?

20 Q. Yes.

21 A. [NURSE] Yes.

22 Q. And approximately, those rates are within
23 the 3-cent-a-minute range?

24 A. [NURSE] Yes, round number.

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1 Q. Were you here yesterday for Mr. Vasington's
 2 testimony, when he indicated that Verizon's
 3 pre-01-31 rate, prior to the reduction in Verizon's
 4 access rates, was around 3 1/2 cents a minute, 3.8
 5 cents a minute?
 6 A. [NURSE] I was here. I don't recall
 7 specifically what he said the rate was.
 8 Q. Are you aware of what Verizon's rate was at
 9 that time?
 10 A. [NURSE] You know, not to the decimal
 11 place. But I'll take it subject to check that it
 12 was around 3 cents.
 13 MR. GRUBER: If I could just make clear
 14 for the record that the average revenue per minute
 15 for AT&T and TCG is stated right on the document.
 16 MR. TENORE: Yes, I understand. I was
 17 actually looking at the tariffed rates rather than
 18 the average revenue per minute.
 19 A. [NURSE] Right.
 20 Q. Are you aware of what the average CLEC rate
 21 in Massachusetts is?
 22 A. [NURSE] What kind of average?
 23 Q. Average of the composite switched-access
 24 rates?

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1 A. [NURSE] Do you mean like a weighted
 2 average by volume of the CLECs?
 3 Q. Just a rote average?
 4 A. [NURSE] You mean a straight average of the
 5 tariff rates?
 6 Q. Yes.
 7 A. [OYEFUSI] We, I believe in response to
 8 some data requests, we attempted to do a comparison.
 9 I believe it was CLEC-1-15. We can look at it.
 10 This was just an attempt to have some
 11 form of comparison. I believe, according to this
 12 chart, for the ones that we selected, it was like
 13 .3, .4 cents.
 14 It's about .4 cents, based on just a few
 15 CLECs that we're able to see the tariffs.
 16 Q. I thought you said 3.4 cents.
 17 A. [OYEFUSI] No, about 0.4 cents.
 18 Q. So that is approximately around where
 19 Verizon's rate may have been prior to 01-31,
 20 assuming, of course, subject to check, that the rate
 21 was about 3.6, 3.8 cents per minutes; correct?
 22 A. [OYEFUSI] Well, I don't remember what
 23 Verizon's rate was before the change. But subject
 24 to check, I will accept that.

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1 Q. Just a clarification: That was 4 cents per
 2 minute?
 3 A. No. That was four tenths of a cent per
 4 minute.
 5 I'm sorry.
 6 MR. GRUBER: Just so that I know, let's
 7 just make clear what rate we're talking about.
 8 MR. TENORE: The switched-access rates.
 9 MR. GRUBER: Of?
 10 MR. TENORE: The average switched-access
 11 rates of CLECs in Massachusetts right now.
 12 A. [OYEFUSI] Let me correct the record: This
 13 chart that we submitted as a response to CLEC-1-15
 14 does not calculate the average. It calculates the
 15 average for each CLEC, and it shows Verizon's rate
 16 as four tenths of a cent.
 17 So you can do an average on this chart,
 18 to get an average on this chart. I thought we
 19 already calculated the average, but we did not.
 20 So it's just the average that is shown
 21 here --
 22 Q. It looks like there's a decimal problem in
 23 there.
 24 MR. DENNY-BROWN: It is about 4 cents,

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1 but it does say four tenths.
 2 A. [NURSE] The numbers are small. If you go
 3 to the CLEC Average line on the left and you run
 4 across, that line has no dollar values until you get
 5 to the three percentages in the right-hand column.
 6 Q. Okay, yes.
 7 A. [NURSE] So there's no CLEC average rate
 8 calculated here.
 9 Q. Okay.
 10 A. [OYEFUSI] And all that line is doing is
 11 saying that on average the total CLECs on this chart
 12 are on average about 487 percent above Verizon.
 13 Q. If you could make a guess, just a ballpark,
 14 based on those rates for CLECs in that column of
 15 terminating, what would you say the guesstimate rate
 16 would be for an average?
 17 A. [OYEFUSI] You can multiply Verizon's
 18 average on here and increase it by 487 percent. I
 19 don't have a calculator.
 20 A. [NURSE] Five times higher.
 21 A. [OYEFUSI] Yes, five times higher than
 22 Verizon, about.
 23 A. [NURSE] And that's the 487 percent in the
 24 far right-hand column under Blended on the CLEC

1 Average row.

2 MR. DENNY-BROWN: And is that weighted?

3 WITNESS NURSE: No, that's the rote
4 average you asked for.

5 MR. TENORE: I'm going to hand it over
6 to my co-counsel for follow-up.

7 EXAMINATION

8 BY MR. DENNY-BROWN:

9 Q. A quick question about summer of 2007 and
10 the Level 3 petition. Are you familiar with Level
11 3's initial petition to raise its access rate in
12 Massachusetts?

13 A. [NURSE] I believe so. Is this their 8YY
14 tariff?

15 Q. Yes, including their switched-access rate.
16 They included their switched-access rate in
17 Massachusetts.

18 A. [NURSE] I was on a campaign against Level
19 3's 8YY tariff across the country, and so that's how
20 I'm thinking. Without seeing the document, I don't
21 remember all the particulars in it, but it was a
22 substantial increase, which we opposed.

23 MR. ISENBERG: If I might jump in. Is
24 that the one that's referenced or is an attachment

1 to RNK-AT&T-1-4?

2 MR. DENNY-BROWN: It depends, because
3 there were two. There was an initial one and the
4 subsequent filing. The initial one is the one I'm
5 talking about, which I think is in the summer of
6 2007.

7 Q. Level 3 was attempting to file a
8 switched-access tariff increase up to MCI's rate at
9 the time, which I think was about 4.2 cents per
10 minute or something. Does that sound familiar?

11 A. [NURSE] That's outrageous. I remember
12 that Level 3 filed some tariffs to increase rates,
13 but I don't remember the exact details about that
14 rate increase at this time.

15 Q. Do you know if AT&T intervened in that case
16 or was involved?

17 A. [OYEFUSI] You're talking about two cases
18 now.

19 Q. Just that first one, where they attempted
20 to meet MCI's rates.

21 A. [OYEFUSI] I don't know exactly which one
22 we intervened. I remember that we filed -- I
23 remember that we intervened in one of them, in one
24 Level 3 rate-increase request.

1 Q. Are you aware of how the DTC ruled on that
2 first attempt by Level 3 to increase their rates, or
3 how that was resolved?

4 MR. GRUBER: Can you restate the
5 question, please?

6 MR. DENNY-BROWN: Sure.

7 Q. Are you aware of how that first attempt by
8 Level 3 at the DTC was resolved?

9 A. [OYEFUSI] I don't remember, but I know
10 that it did not go into effect.

11 A. [NURSE] That's the second filing.

12 A. [OYEFUSI] I remember, whichever one that I
13 remember that we intervened did not go into effect.

14 A. [NURSE] And apparently we intervened on
15 November 7th.

16 Q. To be clear, though, I think that was the
17 second filing.

18 MR. ISENBERG: Just for the record, is
19 there any way to more specifically identify each of
20 these filings?

21 MR. DENNY-BROWN: I don't have that
22 information with me at this time.

23 MR. ISENBERG: Either by date or by
24 proposed tariff number?

1 MR. DENNY-BROWN: It's the same case
2 that Paul Vasington and I were discussing
3 yesterday -- we can get it -- which is Level 3's
4 initial petition to increase their rate in
5 Massachusetts.

6 MR. GRUBER: Just to cut the time down:
7 I don't believe there's anything in our papers that
8 references that, so the witnesses are not going to
9 have known from the preparation of our case about
10 that. Now, I don't know what they know, but they
11 won't know from the preparation of the case, and
12 there won't be anything in our papers on it.

13 MR. DENNY-BROWN: Other than that it did
14 go into effect.

15 MR. GRUBER: Frankly, I'm not sure which
16 filing they thought went into effect, the record was
17 so confused.

18 MR. DENNY-BROWN: Why don't we do this:
19 RNK will submit --

20 I think we made a stipulation yesterday,
21 actually, to have -- we'll include both filings in
22 our brief. We'll cite to both of them, so it will
23 be clear in terms of what happened and which was
24 when and all that stuff.

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1 MR. GRUBER: So there's no question for
2 the witnesses?

3 MR. DENNY-BROWN: No question. I will
4 retract the question. I have no further questions.

5 MR. DeROCHE: Mr. Reyes, the Attorney
6 General?

7 CROSS-EXAMINATION

8 BY MR. REYES:

9 Q. You testified earlier today that you think
10 that CLECs' switched-access rates that are higher
11 than Verizon's composite switched-access rates are
12 too high. Do you recall this?

13 A. [NURSE] Yes.

14 Q. Do you believe them to be too high because
15 they are priced above the long-run incremental costs
16 of providing switched-access services?

17 A. [NURSE] I think they are above long-run
18 incremental costs. I think they're too high in part
19 because they vary too much, and I think that they're
20 too high because they generate too much money from
21 customers who can't say no.

22 Q. Is there a level that's above that long-run
23 incremental cost where you believe the rate becomes
24 unreasonable?

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1 A. [NURSE] Yes. I'm thinking of the costs
2 being somewhere in the less than -- comfortably less
3 than a half a cent a minute. And so when you get
4 rates that get to be multiples of cost, that is a
5 problem. I mean, you know, when you're 100, 200,
6 300, 400, 500 percent higher, that seems like an
7 unreasonable rate.

8 And it wouldn't be unreasonable for the
9 retail rate per se. I mean, if a carrier's cost of
10 providing local service was \$10 a month and he went
11 to a customer and said, "I want to charge \$50" and
12 the customer said okay, to me that wouldn't be
13 unreasonable, because if it was unreasonable, the
14 customer wouldn't buy it.

15 But on the access side I'm very
16 concerned that I don't want to see the rates, you
17 know, more than sort of the half-a-cent neighborhood
18 because we don't have any ability to walk away.

19 Q. Is there an objective measure where you
20 would say half a cent is an appropriate level before
21 you would determine it unreasonable?

22 A. [NURSE] I'm looking at it for the TCG rate
23 now. To go to the Verizon rate, I think it would
24 take out 84 or 85 percent of the revenues we collect

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1 in access. So in a reasonableness way I'm saying,
2 if we take 85 percent out, there's not much rate
3 left that isn't, you know, closely related to cost;
4 and at that point the rate is pretty close to cost.

5 So if cost was a quarter of a cent and the rate was
6 a half a cent, that's still a rate that's twice cost
7 but not a rate that's 15 times cost.

8 So when you get down into the, you know,
9 the half-cent range, plus or minus, I think that's a
10 reasonable rate.

11 Q. And by "costs" do you mean the long-run
12 incremental cost?

13 A. [NURSE] Yes.

14 Q. Do you believe that entry by new entrants
15 into the terminating switched-access market is
16 possible?

17 A. [NURSE] I'm sorry, say it again?

18 Q. Let me just rephrase that. Do you believe
19 that anyone -- that entry into the provision of
20 terminating switched-access is possible?

21 A. [NURSE] Well, yes -- sort of yes and no.
22 And yes, anybody can start being an access provider.
23 Anybody can come in, become a CLEC, and they'll be
24 providing access to certain end users.

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1 But once a CLEC becomes the end user's
2 customer, at that point what was a competitive
3 market that might have 100 different potential
4 suppliers -- once that customer picks a carrier for
5 their local service, that customer's access,
6 terminating access service becomes a monopoly
7 service.

8 I don't want to get into the economics
9 and tread on their territory. But essentially, each
10 customer's terminating access, you know, on each day
11 is a separate market. If a carrier has -- you know,
12 if an end user has Verizon today and I have to
13 terminate a call to that end user today, I have to
14 pay Verizon's rate today. And whether there's one
15 more or 100 more CLECs who might be able to take
16 that customer from Verizon tomorrow, that doesn't
17 help me today. I have to pay today whatever
18 Verizon's rate is. So I'm captive to the current
19 CLEC of each customer at the current time.

20 Q. When a competitor competes for that
21 end-user customer, isn't it true that they're not
22 competing on the basis of terminating
23 switched-access service rates?

24 A. [NURSE] Yes. When customers -- it's the

1 trilateral arrangement we were talking about
2 earlier. When carriers compete for end-user
3 customers, they quote them end-user local-service
4 rates, and they don't tell them if customers don't
5 ask, "Well, how much is your access rate?" If your
6 access rate is a tenth of a cent or 10 cents, end
7 users don't know and they don't care, because they
8 don't see what difference that distinction makes.
9 They see what's the local rate.

10 And that's the problem: Those customers
11 pick the local-service provider, and they
12 essentially compel the IXC to pick that local-
13 service provider, too.

14 A. [OYEFUSI] The end user would not know what
15 is the access. They won't know what it is. They
16 won't know how it relates to their end-user service
17 in any way unless there's a way to tell them that
18 that access is actually affecting how much you pay
19 for your call. They don't have that information.

20 Q. Given that the end user isn't observing the
21 cost of terminating switched access, doesn't it make
22 more sense to price that service based on cost of
23 service rather than a long-run incremental cost?

24 A. [NURSE] Well, in a cost of service -- kind

1 of like some sort of rate case and then some sort of
2 rate design and allocation of costs. But I would
3 say no, because you can't really take a guy and say
4 that we're going to have like a rate of return --
5 sort of like a rate-of-return/competitive hybrid.

6 The problem with the high access rates
7 is that there's no pressure to lower those rates,
8 because the customers who pay those rates don't
9 choose that provider, and the customers who pay the
10 local rate do choose the provider.

11 The effect would be, if you lowered the
12 CLEC access rates to the Verizon rate, is they would
13 shift whatever costs -- you know, they would have to
14 respond, and whatever revenue they lost, they would
15 look to their data services, they'd look to their
16 local services, they'd look to their other services
17 from those customers and other customers to collect
18 those costs. And that would force them to present
19 all their costs to their customers and present all
20 their products to those customers. And those
21 customers could look and say, "Is this product worth
22 this price?" That's a good outcome. If they have a
23 good product at a fair price, they'll sell a lot,
24 and if they don't, they won't, and they shouldn't.

1 So that's better.

2 And then the long-distance market will
3 all be competing with that level playing field of
4 everybody paying the same access rate, and so that
5 makes the long-distance market work better, because
6 you've got a level playing field on the price floor
7 and so you can get better competition on the retail
8 rate, and it makes the local market work better
9 because those costs are being presented to customers
10 who can say no. And it makes the competition more
11 fair amongst the CLECs as well.

12 So I don't see a downside so it, you
13 know, other than some customers who might be paying
14 rates that are too low now, because they're cross-
15 subsidized, would instead see what the real costs
16 are, or at least see what the real price is that
17 their CLEC wants for it.

18 Q. You testified earlier that AT&T faces
19 competition from wireless services.

20 A. [NURSE] AT&T's long-distance services face
21 competition from the long-distance service-provider
22 wireless carriers.

23 Q. So they're currently under -- toll services
24 by AT&T as well as other providers are similarly

1 subject to those competitive pressures; correct?

2 A. [NURSE] Other toll providers -- say like
3 Sprint -- would be under the same sort of pressure
4 because their long-distance service would be
5 competing against wireless "free nights and
6 weekends" type service from wireless carriers.

7 Q. Are those toll services perfect substitutes
8 for the wireless services?

9 A. [NURSE] To look at the -- keeping on the
10 long-distance part and not the basic part --

11 Q. Let me back up, then. AT&T provides
12 bundles of services; is that correct?

13 A. [NURSE] Yes.

14 Q. And other providers provide bundles of
15 different services; would you agree with that?

16 A. Yes.

17 Q. And those bundles are different from the
18 services that wireless providers provide. Is that
19 correct?

20 A. [NURSE] Yes.

21 Q. Are those services substitutes for each
22 other?

23 A. [NURSE] That's a pretty big, complicated
24 question, that would take days to answer.

1 Q. You can answer yes or no.
 2 A. [NURSE] It's not a yes-or-no question.
 3 It's like a thesis.
 4 Q. I asked you if they were substitutes.
 5 A. [OYEFUSI] The bundles, the packages?
 6 A. [NURSE] There's some substitution. The
 7 degree with which, you know, all those different
 8 services compared to all the different ones are
 9 substitutable for each other is a complex question.
 10 As to the long-distance component, long-
 11 distance wire-line service is relatively a close
 12 substitute with the long distance on your wireless
 13 service, recognizing that everybody with a cell
 14 phone knows that often the clarity of the connection
 15 on a wireless phone and the reliability is not as
 16 good as it is on your wire-line phone, but often the
 17 price differential is so great that I make my
 18 long-distance calls on my wireless phone because
 19 it's free. I work for the phone company. But, you
 20 know, I understand free is good.
 21 Q. So are you testifying, then, that they're
 22 not perfect substitutes?
 23 A. [OYEFUSI] The group that determines
 24 whether a service or a bundle of services are

1 perfect substitutes or somewhat substitutes are the
 2 customers. And when you look at the record over the
 3 years, we have seen customers shifting their
 4 services from one provider to another provider.
 5 So in that customer's perspective, that
 6 particular service satisfies that customer's needs,
 7 and that's why we've been losing. So a minute is a
 8 minute is a minute. It doesn't matter whether it is
 9 carried on wireless technology or it is carried on
 10 wire-line technology, according to that customer.
 11 If the customer selects that wireless, somehow that
 12 customer has determined that the wireless service
 13 satisfies his or her needs, core needs, and that is
 14 the person that is making the payment, and there is
 15 no need to really get into whether or not it is
 16 perfect or imperfect. That customer has determined
 17 that it is okay for its need and is making the move.
 18 A. [NURSE] Right. A quick metric is that the
 19 FCC data looked at the average number of toll
 20 minutes per access line is falling over time. So
 21 that means either people are making fewer
 22 long-distance calls than they used to or they're
 23 making their long-distance calls somewhere else, and
 24 the wireless data is that obviously people are

1 making long-distance calls on their cell phone that
 2 they used to make on their home phone, on their
 3 wire-line phone.
 4 Q. All other things equal, if a customer on
 5 the margin is choosing between using one of those
 6 services versus another, would an incremental change
 7 in price of the bundle of services for, say, AT&T's
 8 toll services have the same effect as the same
 9 incremental change in price as for a wireless
 10 provider, provider's services?
 11 MR. GRUBER: I'm sorry, I just don't
 12 understand the question. But if the witness
 13 understands --
 14 MR. REYES: I may have mangled the
 15 direction I was going with that.
 16 A. [OYEFUSI] Please repeat the question.
 17 Q. Would an incremental change in the price of
 18 AT&T's bundle of services for toll services have an
 19 effect on the number of minutes used by a
 20 customer -- have the same effect on the number of
 21 minutes used by that customer as the same
 22 incremental change in price in a wireless provider's
 23 price and minutes used by that customer?
 24 A. [NURSE] It's kind of odd, because I think

1 the way you can say it, the incremental cost of long
 2 distance for a lot of the long-distance calling
 3 people do on their wireless phone is zero, you know,
 4 under free nights and weekends. It's hard to get
 5 into an elasticity and say if you had a 5 percent
 6 change in a price that was zero what would it be,
 7 because the price would be the same.
 8 But I think your point is, if I look on
 9 the weekend, I can call my mom for free on my
 10 long-distance phone or I can call my mom for 5 cents
 11 a minute on my wire-line phone. Yes, I choose to
 12 call my mom on my wireless phone because, you know,
 13 I talk for an hour and I could talk for an hour.
 14 Zero is cheaper than \$3. Although they're not
 15 perfect substitutes, when the price differential is
 16 big enough, it forces people to choose -- the price
 17 differential, not the cost differential -- chooses
 18 people -- drives people to choose the one or the
 19 other because of the price. And because access is
 20 cheap for wireless carriers and expensive for
 21 wire-line carriers, it tends to drive what would be
 22 kind of irrational economic behavior, because people
 23 are responding to the prices rather than the costs.
 24 Q. So if price for switched access is capped,

1 in your opinion, is there sufficient competition
2 from wireless to force CLECs to flow through any
3 cost savings they may attain through that cap?

4 MR. GRUBER: I think you mean an IXC.

5 MR. REYES: IXC. Sorry.

6 A. [OYEFUSI] Yes, I believe there is enough
7 competition for toll service to force the IXCs to
8 respond to that competitive pressure.

9 And what usually keeps most companies in
10 line is the threat that they will lose that customer
11 if they do not respond to their competitor's price.
12 So that goes to -- this whole issue that we've been
13 dealing with, it goes to one thing: It is the
14 customers that decide. If the customer pays the
15 price, the customer usually makes the right
16 decision -- unless they are deceived in any way,
17 that they didn't really get the right information to
18 make their decision.

19 A. [NURSE] But to your question about do
20 cheap wireless calls discipline CLEC access rates,
21 do they discipline IXC toll rates: Cheap wireless
22 long-distance rates pressure IXCs to bring prices
23 down, so that is dragging prices down over time, and
24 that's -- and traffic is shifting to wireless,

1 perhaps uneconomically to some degree, perhaps to
2 get the benefits of mobility to some degree.

3 But the mobility competition for long
4 distance is dragging IXC prices down. It doesn't
5 have the same effect on dragging CLEC access rates
6 down, and the problem is the CLEC access rates,
7 access rates in general, are an input, and so
8 they're a price floor limiting the rate at which
9 IXCs can bring their rates down and squeezing their
10 margin as the prices come down relative to the
11 access cost.

12 So it has some -- there is some benefit
13 from CLECs' substitutability on the long-distance
14 part of mobility, but it's not enough to make it
15 right, doesn't make it efficient. It's better than
16 nothing, but it's not good enough.

17 Q. Is it possible for IXCs to maintain their
18 current rates even if switched-access rates were
19 capped?

20 A. [NURSE] Capped at what?

21 Q. Let me say that again. Is it possible for
22 IXCs to maintain their current toll rates if CLEC
23 access rates are capped at Verizon's switched-access
24 rate, or composite switched-access rate?

1 A. [NURSE] No, because I think that CLEC
2 rates are being dragged down inevitably. And so
3 if --

4 MR. GRUBER: I think you mean IXC rates.

5 A. [NURSE] I'm sorry, IXC rates are being
6 dragged down. And so if the access price floor goes
7 down and you have competition amongst the IXCs for
8 toll and you have -- including Verizon, and you have
9 competition from wireless long distance, that's all
10 to the good, and with that large number of
11 competitors, that's going to drag the price of toll
12 down. And so that would be a good thing.

13 So you want to get that cost floor down
14 so you can keep pushing the price down, because if
15 you took, for example, the access pricing and
16 brought it right up to whatever the average cost of
17 toll was today, IXCs wouldn't be able to bring their
18 toll prices down at all, and the only way customers
19 could get a lower price would be to go to wireless.
20 Even if wireless's costs might be higher or it might
21 not be the most efficient, it would be the
22 regulatory treatment that wireless carriers get
23 cheap call termination and IXCs have relatively
24 expensive call termination.

1 And if you get down to the Verizon rate,
2 relative to some of the rates we saw today, that
3 are, you know, five times higher on average -- if
4 you get that rate down, that doesn't make it
5 perfect, but it makes it substantially better, it
6 makes it very materially better. For us, it would
7 mean our access revenues would go down 85 percent.

8 So it's not a perfect solution. It's
9 not a perfect world. But it would very much move in
10 the right benefit -- in the right direction, and
11 consumers would benefit from that.

12 Q. Are you able to state today that for every
13 dollar saved through the cap of switched-access
14 rates, a dollar would flow through in the long run
15 to toll rates or other competitive services?

16 A. [NURSE] I think more than a dollar. When
17 we look at access as a percentage of our toll rate,
18 access increases as a percentage of our toll rate
19 over time because we're forced to be a more
20 efficient toll provider over time.

21 I actually would like -- if the
22 Department would prohibit toll rates from going down
23 any more than access rates go down, that would be
24 some welcome relief, but I don't think that's the

1 direction that they want to go. Toll rates are
2 going down for decades and will continue to do so.

3 A. [OYEFUSI] Even if the Department decides
4 to stop toll from going down, which I don't think is
5 going to happen -- because toll service is a
6 competitive service. And theoretically, even if
7 there's a rule that says toll rates should not go
8 down below where they are today, what are you going
9 to do with the wireless services? Customers will go
10 to wireless. So you can't stop that customer from
11 selecting the cheaper wireless service.

12 Q. Do you believe that Verizon's rates are
13 priced at the long-run incremental cost of providing
14 switched-access services?

15 A. [NURSE] No. I think they're priced above
16 the long-run incremental cost of access. But I
17 think in the scheme of things, in the scope of
18 things, relative to the CLEC access rates we're
19 looking at, that are five times the Verizon rate --
20 you know, the Verizon rate might be twice their
21 cost. So if you got down to the Verizon rate, that
22 might cut the CLEC rates 80 percent on average, if
23 they're five times the Verizon rate. That would
24 move you, in the relative scale -- you'd move 80

1 percent of the way to the Verizon rate, where the
2 Verizon rate is relatively close.

3 I mean, I think -- I was thinking about
4 it as far as like dollars per line. If you said a
5 Verizon customer had 100 minutes of interstate
6 access use a month and the Verizon rate was, say, a
7 half cent, for easy math, that's 50 cents a month.
8 So if you're talking five times that, you're talking
9 \$2.50.

10 So if you moved from \$2.50 a line to 50
11 cents a line, you took care of, you know, 80 percent
12 of the issue. Some part of the 50 cents is cost.
13 So if you give them, you know, 25 cents for cost or
14 something like that, 30 cents for cost, 35 cents for
15 cost, there's not much left between their access
16 revenues and their access costs.

17 Q. Do you believe that Verizon's switched-
18 access rates are reasonable?

19 A. [NURSE] Yes.

20 Q. Given that those rates are higher than the
21 long-run incremental cost of that service, why do
22 you think that's reasonable?

23 A. [NURSE] I think in a pragmatic sense, the
24 difference isn't much, and certainly by the relative

1 measures of the access world, we're talking about
2 problems that are 1500 percent. You know, if you're
3 talking about a rate that's, you know, a fraction of
4 a penny above cost, that's sort of good enough for
5 jazz.

6 Q. So you're testifying there's a range of
7 reasonableness?

8 A. [NURSE] Yes, reasonableness is always a
9 range. I forget what the Verizon average minutes of
10 use is. I think the FCC data was 43 minutes. But
11 if Verizon is generating something like 50 cents,
12 say, for example, a line, that rate can't be more
13 than 50 cents above costs, if their costs were zero.
14 You know, if their cost is somewhere in the middle,
15 you're talking about being within a few pennies a
16 customer a month of perfect, sort of economically
17 perfect. So that's pretty good, when we're talking
18 about rates that are off by, you know, an order of
19 magnitude or 12 to 1 or 15 to 1.

20 So that would be good enough to go, and
21 that's an administratively easy, judiciously
22 economic thing to do. You can get there by
23 mirroring the FCC regime.

24 Q. What's the basis for your opinion that the

1 long-run incremental cost of switched-access service
2 is lower than Verizon's current rate?

3 A. [NURSE] Well, the FCC essentially said
4 that Verizon and all carriers have to terminate
5 calls from wireless carriers at reciprocal comp, and
6 the network cost, the network functionality, to
7 terminate a minute is the same whether you're
8 terminating an interstate --

9 The FCC set up for wireless carriers
10 that they can terminate at the reciprocal-
11 compensation rate, which is, you know, like 7/100 of
12 a cent a minute, near zero. And the network
13 functionality of terminating a minute is the same
14 whether that minute is an international minute, an
15 interstate minute, an interstate/intraLATA minute,
16 an intrastate/interLATA minute, a local minute, a
17 wire-line minute, a wireless minute, a CLEC-to-ILEC
18 minute. A minute is a minute. The costs are the
19 same.

20 And so that rate is compensatory, and
21 that's what your TELRIC studies would say it was, by
22 that measure, if you like TELRIC. And this rate is
23 many times higher than that. If you're at 7/10 of a
24 cent instead of 7/100 of a cent, you know, that's an

1 order of magnitude higher.
 2 So I think Verizon's rate is reasonably
 3 set above their cost, comfortably above cost. And
 4 given that, you know, you're down to something
 5 that's generating pennies a line a month, I don't
 6 think there's much head room, much benefit for
 7 trying to knock Verizon's rate down much more, you
 8 know, on a limited basis. We and Verizon have said
 9 the simplest thing to do would be to set terminating
 10 rates for all flavors of traffic -- VOIP, wire line,
 11 wireless -- set it all at reciprocal comp and then
 12 let, you know -- then resolve everything else by
 13 adjusting USF or local rates or whatever. That
 14 would be, you know, one comprehensive swoop across
 15 all different businesses and industries and
 16 jurisdictions. I'm not holding my breath for that
 17 to happen.

18 Q. Are you testifying today that that is a
 19 reasonable solution for the Department to implement,
 20 should it find that the current rates are
 21 unreasonable?

22 A. [NURSE] No, I'm not recommending that. I
 23 mean, I'm not denying that AT&T and Verizon filed
 24 with the FCC for a unified termination rate for all

1 flavors of traffic, VOIP and wire-line, wireless.
 2 But our recommendation is, if they took the CLEC
 3 rates and capped them at the Verizon rate, everybody
 4 would be on a level playing field, and that would be
 5 a substantial improvement from where we are. That
 6 would take care of well more than 80 or 85, 90
 7 percent of the problem, and that would be -- and
 8 very easily do so. And that would be good.

9 And if you went beyond the FCC rate,
 10 then you would lose the benefits of parity, of
 11 mirroring the rates.

12 We were talking earlier about mixing
 13 traffic of two different jurisdictional flavors on
 14 the same trunk. If they're both at the same rate,
 15 it doesn't matter. If someone misreports their
 16 percentage interstate use, it doesn't matter if
 17 they're both priced the same. They can report it at
 18 zero or 100 or 50/50. It's going to be the number
 19 of minutes times a rate that's the same.

20 So there's a lot of audit,
 21 administration, contract, enforcement benefits from
 22 having the rates the same. So there are
 23 disadvantages of getting the intrastate rate lower
 24 than the interstate rate.

1 MR. REYES: I have no further questions.

2 MR. DeROCHE: Thank you very much. Just
 3 to be clear: Is counsel for Level 3 here? No.
 4 How about counsel for Qwest? No.
 5 And counsel for Sprint?

6 MR. ARON: Sprint's counsel is here. We
 7 don't have any cross-examination.

8 MR. DeROCHE: Thank you.

9 EXAMINATION

10 BY MR. CHATTOPADHYAY:

11 Q. Good afternoon.

12 A. [OYEFUSI] Good afternoon.

13 Q. I am looking at Exhibit (a) to the prefiled
 14 testimony that you submitted in this matter, Page 1.

15 This is a chart of what other states have done in
 16 addressing CLEC switched-access rates. Correct?

17 A. [OYEFUSI] Yes.

18 Q. Are you familiar with other states' actions
 19 that are summarized in this chart?

20 A. [NURSE] Yes, some more than others.

21 A. [OYEFUSI] Familiar with some of them, but
 22 not all of them.

23 Q. Is it fair to say that some states have
 24 adopted an approach that is different than what

1 Verizon and AT&T are proposing here in this
 2 proceeding?

3 A. [OYEFUSI] That is correct.

4 A. [NURSE] I mean, that includes that reform
 5 in some states as implemented has not gone as far as
 6 Verizon. Some states haven't implemented any reform
 7 at all.

8 Q. I'm going to direct your attention to
 9 California in particular. Is that a state that you
 10 have knowledge of the proceeding that has taken
 11 place there?

12 A. [OYEFUSI] Yes, I'm familiar with the order
 13 that was issued in that case.

14 Q. And what was their approach to dealing with
 15 this issue?

16 A. [OYEFUSI] They decided to go with the ILEC
 17 cost, I believe, 10 percent.

18 Q. Is there any explanation that they have
 19 given in terms of how they arrived at that 10
 20 percent figure?

21 A. [OYEFUSI] I believe that was a proposal by
 22 one of the parties. I'm not exactly sure at this
 23 point. But I think that was a proposal by one of
 24 the parties. But it wasn't -- I don't think it was

1 linked to any particular calculation.

2 A. [NURSE] I do know, because I worked on
3 part of the case, that it was controversial because
4 the cap, the rate was higher than some of the CLECs
5 were then charging; and when the cap was
6 implemented, they stepped it down, and some carriers
7 boosted their rate up to the new cap, which was kind
8 of backwards.

9 I mean, if you're trying to make
10 progress, trying to move these rates toward cost,
11 trying to move these rates down -- it was certainly
12 not anticipated by AT&T, that initiated the case,
13 that the rates -- you know, that the commission
14 order would drive rates up. But some of the CLECs
15 said, "Hey, the cap says 2 1/2 cents. I'm going
16 up." And we filed a protest that that was not what
17 it meant; that if your rate was above 2 1/2 you were
18 supposed to come down, not that you could go up to
19 it.

20 The commission said no, it's a cap, and
21 you can go up to the cap even if you're below the
22 cap. And then the AT&T affiliate, TCG in
23 California, then actually raise its rate up to the
24 cap because we were below the cap. That's not an

1 ideal policy outcome, but, you know, we didn't
2 foresee that outcome in the case. We objected to
3 that interpretation of the order. Once they said
4 those were the rules of engagement, we weren't going
5 to unilaterally disengage and keep our rate lower
6 while our competitors raised it.

7 So it's not a model outcome. It had
8 some -- from my perspective, it had some sort of
9 poor outcomes in its implementation.

10 Q. Let me ask you this: Throughout your
11 testimony, and I believe throughout Mr. Vasington's
12 testimony as well, there's been mention of the fact
13 that CLEC rates span a wide variety of rates, up to,
14 I think it was, 1500 percent above the Verizon rate.

15 A. [NURSE] Right.

16 Q. Given that scenario, is the 10 percent cap
17 that California has implemented, is that something
18 that would address some of the concerns that you as
19 AT&T have in this case?

20 A. [NURSE] No, I think it was kind of a
21 political compromise, in the sense that CLECs were
22 making the same type of complaints, arguments they
23 are here: "If I have to show my costs to my
24 customers, my customers won't pay my costs, and I'll

1 be out of business." The commission took pity on
2 them and said, "All right, we'll give you 10 percent
3 more." I mean, 10 percent of 2 1/2, they gave them
4 a quarter of a cent.

5 So, you know, I don't think it's a good
6 model of an outcome. I wouldn't recommend adopting
7 it. I think politically it's a small enough delta
8 that, you know, it let the CLECs -- you know, it let
9 the commission do something for the CLECs but not do
10 much for them. So in the process of, you know,
11 handing out a little bit to all the parties in a
12 political context, I think that's what the 10
13 percent represents.

14 But certainly you're looking at, you
15 know, CLECs here who have rates that, you know, are
16 a nickel higher or, you know, 1500 percent, as you
17 said.

18 A. [OYEFUSI] And if you compare 1500 percent
19 to 10 percent, 10 percent is better.

20 A. [NURSE] Although I would say one
21 disadvantage of 10 percent on the Verizon rate, if
22 you're at sort of .6 and you'd otherwise be at sort
23 of .66, that small little delta doesn't generate
24 much revenue, but it opens up a whole administrative

1 headache, because you don't have parity on the two
2 rates, and you have joint-use trunks that you have
3 to keep track of different traffic types whose price
4 would only differ by a pretty small amount.

5 I don't think the extra bit of that
6 revenue, that 6/100 of a cent, would be worth the
7 administrative headache; and it would make it more
8 difficult for the Department here to set up
9 compliance for the CLEC compliance, because if you
10 mirror the Verizon rate, you could have them Xerox
11 their Federal tariff and file it here at the
12 Department. If you put a 10 percent delta on, then
13 you have to have another mechanism for how and where
14 you put that 10 percent on. I just don't think
15 that's worth the administrative efficiency and the
16 transaction costs for 6/100 of a percent.

17 Q. Thank you. Just following up a question
18 from the Attorney General: My understanding was
19 that you agreed that there is a range of reasonable
20 of the rate that can be set for CLEC access rates.

21 A. [NURSE] For all rates, reasonableness is
22 always a range.

23 Q. So it's not that the Verizon rate is the
24 only rate that would be just and reasonable.

1 A. [NURSE] Right. Reasonableness is a
2 judgmental range, not a particular point.

3 Q. I want to direct your attention to your
4 response to DTC-AT&T-1-1.

5 A. [NURSE] Yes.

6 Q. This is a question that deals with the
7 relationship between cost of providing access
8 service and the rate at which that cost -- that
9 access rates are capped. Is that fair to say?

10 A. [NURSE] Yes.

11 Q. And I believe in your response you say that
12 you don't think a CLEC's cost of providing access is
13 relevant to determination of what a reasonable
14 charge for switched access would be. Is that fair?

15 A. [NURSE] Yes. A competitor's costs are
16 irrelevant in a competitive market. A competitive
17 market sets a price, and competitors are
18 price-takers -- for a homogeneous product, to make
19 it simpler.

20 In a competitive market, the market
21 determines the price. A new entrant meets that
22 price, because no customer would pay more for a
23 commodity from one provider than another, regardless
24 of what his costs of production were, as long as the

1 other providers could provide all the market
2 quantity.

3 So, I mean, you wouldn't pay \$15 for an
4 Exxon station on one side of the street and \$4 on
5 the other. You'd say no way, it's the same thing,
6 I'm going across the street.

7 So in a competitive market, competitors
8 do not set their price based on their costs, they
9 set their price based on their market price, and
10 then they manage their costs to get under the market
11 price.

12 Q. Are you saying that cost is then unrelated
13 to the inquiry?

14 A. [NURSE] Yes, that the market price is the
15 market price. If a CLEC's cost -- if a CLEC came
16 and entered the market today and his cost of
17 providing access was \$5 a minute, that would be
18 irrelevant. I don't think you can say, "Well, this
19 guy is really super, super inefficient. We're going
20 to give him a really super, super high rate."

21 Regulation is supposed to emulate
22 competition and provide reasonable outcomes. That's
23 an unreasonable outcome. The CLEC has to come in,
24 and if he's a competitor, he has to meet the

1 competitive challenge, he has to meet the
2 competitive market price. That's why we say push
3 the costs that they're getting today out of the
4 access market into the local market. They can
5 present those costs in the competitive market, and
6 if they're competitive, they can recover those
7 costs, and if they can't recover those costs, it's
8 because they're not competitive. They say they're
9 competitors. If you're a competitor, you shouldn't
10 be afraid to compete, but you can compete against
11 customers who can say no. Competing against
12 customers who are captive is cowardly.

13 Q. Following up on your response: Should the
14 Department be considering the impact that any change
15 in the current rate structure would have on
16 competing carriers? Is that a relevant factor to be
17 considered by the Department, the impact of any
18 change in the current rate structure that we
19 implement?

20 A. [NURSE] It's a factor that you would have
21 to consider. I think the question goes to the
22 weight to which you would assign the factor. You'd
23 have to consider all the things that change, and
24 then you'd have to assign weights, if any, to them.

1 If the case is that today CLECs are
2 charging too low for some retail services, below
3 their cost, say, because they're charging too high,
4 if you will, for access rates, and if you push their
5 access rates and revenue down to the Verizon level
6 and that caused them to raise their local rate, that
7 might be viewed as adverse, but I think that's
8 positive, because that means the prices would
9 reflect the cost, and it would mean, if that's the
10 case, that someone who is uncompetitive but is
11 masquerading as competitive, because they're cross-
12 subsidizing from access to local, would then be
13 revealed, not as a new-entrant efficient competitor,
14 but as a new-entrant inefficient competitor. At
15 that point they would be forced to become
16 competitive or they would be forced to exit, either
17 one of which are better societal outcomes. You
18 don't want to attract higher-cost providers and
19 displace lower-cost providers. You want to go the
20 other way around. You want to reward the good and
21 penalize the bad.

22 That doesn't mean that there isn't some
23 pain to somebody, that some customer won't pay some
24 higher rate for some service. But you're fixing a

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1 distortion, and that's a positive thing.

2 Q. You're saying that result would, to borrow

3 a phrase from yesterday, would increase or improve

4 consumer welfare?

5 A. [NURSE] Yes, definitely. If you take --

6 you know, if you take the total cost of production,

7 the rate times the number of customers, and you

8 started with Verizon having all the customers, if

9 CLECs came in and they took 10 percent of the market

10 and they were 10 percent more efficient than

11 Verizon, total telecommunications costs would go

12 down by 1 percent overall. Society would be better

13 off. That was the point of introducing competition.

14 If the CLECs come in and their costs are

15 higher, then the total costs for the state, for the

16 community of all the people and business in the

17 state, goes up. If there's no other offsetting

18 change, no improvement in quality or whatever,

19 that's a net drag for society, for the state.

20 That doesn't mean that there won't be

21 necessarily some individual who's better off in that

22 distortion. Total costs went up. Society was worse

23 off. That doesn't mean there isn't some individual

24 who got some benefit under the deal.

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1 But certainly consumers as a whole are

2 worse off if you develop a system that allows

3 high-cost providers to displace low-cost providers,

4 everything else being equal.

5 Q. So even if end-user rates were to go up as

6 a result of capping access rates, you're saying that

7 the benefits to competition trump or outweigh any

8 increase in end-user rates that may result because

9 of that?

10 A. [NURSE] Yes, in the long run -- I mean, I

11 don't know that the CLECs would have to raise their

12 rates. We don't know what their costs are. There's

13 no evidence. I don't know that they wouldn't absorb

14 it. I don't know that they wouldn't, you know,

15 spread it over data services rather than local

16 services, interstate services over intrastate

17 services. I don't know that two of them wouldn't

18 merge together and become more efficient. All kinds

19 of things could happen.

20 But it is possible, and I don't think

21 it's really a bar, if they had to raise their rate

22 for a local customer who was getting a price that

23 was below cost today because the Commission or the

24 Department moved costs from the access market to the

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1 local market -- although that would be bad for that

2 particular customer, you know, immediately, overall

3 customers would immediately be better off than --

4 from the efficiency second-order effects they'd be

5 better off still.

6 A. [OYEFUSI] And in case there's a concern

7 for the end user, the end user will only have to

8 endure that price increase up to the point where the

9 end user has no alternative provider that can offer

10 that same service at a lower price.

11 A. [NURSE] Right. If RNK had to raise their

12 price \$5 and they were then above Verizon or above

13 Comcast or above AT&T, those customers would flee to

14 the other providers, which would temper RNK's

15 ability to raise that price. That's what

16 competition is. You can't raise your price above

17 the market price in a competitive market.

18 Q. Thank you. Now, if the Department were to

19 lower rates and/or grant Verizon's proposal here and

20 cap CLEC rates at the Verizon rate, what would your

21 position be on implementing some sort of a

22 transition period to implement such rate changes?

23 A. [NURSE] Shorter is better. They've

24 operated under this regime on the interstate side

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1 for seven years, so they're very familiar with what

2 it means and how it works. You know, the sooner the

3 transition happens, the better. I mean, I think it

4 would take something like 90 days to do the

5 administrative part of it.

6 I can see a case -- you know, what if

7 you had contract customers that you were locked in

8 on? I think usually most -- most business contracts

9 would have a change-of-law provision that would

10 reopen those contracts, or the Commission could

11 provide -- the Department could provide a fresh look

12 if they had those.

13 But generally, you want the market to

14 quickly reflect changes in cost in the changes in

15 price, so I think you want a short transition. I

16 think you want a transition in terms of some number

17 of months.

18 Q. So it's AT&T's position that some

19 transition period would be appropriate in that kind

20 of circumstance?

21 A. [NURSE] Yeah, I think you would need three

22 months, just administratively, you know, maybe six

23 months. But I don't think the transition should be

24 in terms of years.

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1 Q. We may have touched on this, but I'll ask
2 it and see if the response is the same as the one
3 that's already been offered. If the Department were
4 to adopt the Verizon proposal, what tangible benefit
5 would the Massachusetts consumer, telecommunications
6 consumer see?

7 A. [NURSE] Well, they would see lower toll
8 rates, which they've been seeing and they'll
9 continue to see. That's a pretty direct one,
10 because the price floor for toll will come down.

11 To the extent that CLECs were
12 inefficient and it's going to drive resources to a
13 more efficient engagement, that's a benefit. If
14 CLECs' business hypothetically were propped up only
15 by high access rates and otherwise were not viable,
16 that's not where we want to have resources
17 attracted. That's an uneconomic, inefficient
18 undertaking. So when you increase the efficiency of
19 that local market, that long-distance market, the
20 data-services market, you're going to drive the
21 resources to a better engagement if they're
22 currently inefficiently engaged.

23 But they'll see lower toll rates.
24 They're going to be a better-functioning

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1 local-exchange market. There may be local-exchange
2 carriers now, if they don't engage in this access
3 cross-subsidy, who can't compete because they're not
4 doing it. So those guys are being harmed, and their
5 customers are being harmed, and all the benefit from
6 their competition is being denied.

7 So I see it as being better on the local
8 side and better on the long-distance side. The only
9 downside is some customers may -- who have prices
10 that might be below cost may see price increases.
11 But those are business customers who have
12 alternatives for their service. The business market
13 is very competitive, and so I don't see those
14 customers as facing a price increase that they can't
15 escape, and I think that will temper the price
16 increase that they would be looking at, because you
17 don't raise the price of the guy who can get away,
18 you raise the price of a guy like an IXC who can't.

19 Q. Why in your opinion would only business
20 customers see increases in rates and not residential
21 customers as well?

22 A. [NURSE] I think of the CLECs as --
23 facilities-based CLECs as predominantly serving
24 business customers. It wouldn't necessarily be

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1 exclusively business customers. I mean, if
2 Verizon's, you know, price with basic and some
3 features is \$25 and RNK or somebody wanted to raise
4 the price above that, a residential customer would
5 snap his service over to -- you know, back to
6 Verizon or over to Comcast in a heartbeat.

7 So to the extent that the CLEC serves
8 some residential customers, they could theoretically
9 face some service (sic). But residential service is
10 pretty simple. It's not like you have to install a
11 T-1 line to the customer prem. before, and you don't
12 have to do the conversions.

13 Residential service is relatively
14 straightforward, and I think almost without
15 exception every single residential customer in the
16 state has Verizon facilities to the premise, and
17 then a large portion of them have Comcast or other
18 cable telephony facilities. And so given that
19 there's two facilities-based providers for most
20 customers ready to step in right away, it's going to
21 be difficult to raise residential prices.

22 Q. Thank you. Now, in DTC-AT&T-1-5 -- this is
23 a question pertaining to alleged traffic-pumping in
24 Massachusetts. You provide a response to that

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1 question.

2 A. [OYEFUSI] Yes.

3 Q. Does your response include all information
4 available to AT&T regarding alleged traffic-pumping
5 activity in Massachusetts?

6 A. [OYEFUSI] Yes, as of the time that we
7 prepared this data response. Yes, that was the
8 information we had. And in fact, I think the
9 response also indicated that we had just observed
10 this trend, the spike on the minutes. The provider
11 was not shown here.

12 But we observed the trend in some
13 particular lines, and the investigation continues on
14 a daily basis to find out what is going on with that
15 line and why the sudden spike.

16 But as of the time that we prepared
17 this, this was the information that we had for
18 Massachusetts.

19 Q. Thank you.

20 MR. CHATTOPADHYAY: I'm just going to
21 remind the parties that they have a continuing duty
22 to update responses to information requests with new
23 information as that information becomes available.
24 And to the extent that there is additional

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1 information in response to DTC-AT&T-1-5, that
 2 obligation also holds.
 3 MR. GRUBER: We'll follow up.
 4 MR. CHATTOPADHYAY: Assuming that that
 5 information is entered into the record.
 6 EXAMINATION
 7 BY MR. ISENBERG:
 8 Q. Just one question, gentlemen: What are
 9 your views of the market-power analysis in Dr.
 10 Ankum's testimony? And is it necessary for the
 11 Department to undertake that analysis in order to
 12 find that CLECs had market power, are dominant,
 13 and/or are monopoly providers of switched-access
 14 service?
 15 A. [OYEFUSI] Well, you have two questions
 16 there. My view about the five different steps that
 17 Dr. Ankum says we need to go through to determine
 18 whether or not there is market power: I don't
 19 define market power that way. I believe that, like
 20 I said in previous responses, that the person that
 21 determines who wins in a free market is the
 22 customer. Every carrier -- or every company comes
 23 into a market to win the customer over. Whether or
 24 not there is market power or whether or not one

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1 carrier has 10 percent or 2 percent, where you have
 2 a captive audience, where you have a captive
 3 customer in the particular instance that we're
 4 discussing, it doesn't matter whether that is the
 5 only customer that that carrier has. The customer
 6 does not have the opportunity to say no, and that is
 7 what really determines the market power.
 8 I know the DOJ used the guidelines and
 9 suggested that you do the guidelines and determine
 10 all the tests that you determine from the index. I
 11 don't believe that that is really necessary to
 12 resolve this case, especially when we are not really
 13 asking you to determine the price for each CLEC. We
 14 are asking you --
 15 This is pretty much requesting a rule
 16 change. Under the existing rule, there are some
 17 things that we mentioned are causing the market not
 18 to react the way the market should really react.
 19 That is all we're trying to fix. If you change the
 20 rule, it will fix those imperfections, and there is
 21 incentive to behave properly by each operator that's
 22 in the market.
 23 Q. So in your view, we can determine that
 24 CLECs have a monopoly for switched-access service --

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1 A. [OYEFUSI] Yes.
 2 Q. -- without conducting the analysis that Dr.
 3 Ankum has suggested, including looking at demand and
 4 supply elasticities, market share, and also the
 5 merger guidelines?
 6 A. [OYEFUSI] I believe you can do that. You
 7 will not be doing anything wrong if you do that.
 8 A. [NURSE] All that stuff is really
 9 irrelevant. You know, the problem is, when we get a
 10 call to go to terminate to that customer, the
 11 CLEC -- certainly the LEC serving that customer is
 12 the monopoly provider of access to that customer,
 13 and the number of other providers is irrelevant to
 14 us. If there were no other providers or 100 other
 15 providers -- if 100 providers had a price of free,
 16 there's no competitive benefit to me at that time
 17 for that customer. I can't switch and say, "Oh, I
 18 want CLEC B to terminate this call to Mrs. Smith."
 19 I'm stuck with CLEC A terminating the call.
 20 And that's why, you know, the issue that
 21 you might look at if you were merging steel
 22 suppliers together -- you know, is there going to be
 23 less competition when people go out to bid for
 24 steel -- that's relevant in that kind of market.

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1 But this structure, the access market has a bizarre
 2 structure, with this trilateral arrangement and
 3 carriers being compelled to carry calls. You don't
 4 usually have someone compelled to buy in most
 5 markets -- car companies are compelled to buy steel
 6 from U.S. Steel or something like that.
 7 So I just don't think that it really
 8 applies. And all those things that you had to do
 9 really just get in the way of the Department doing
 10 what the FCC did seven years ago. Seven years is a
 11 long time to wait.
 12 Q. Any other observations on Dr. Ankum's
 13 testimony?
 14 A. [OYEFUSI] Well, I noticed that he made
 15 several assertions about the costs of the CLECs are
 16 higher because they do not have economies of scale
 17 relative to Verizon. We still don't know what the
 18 costs are.
 19 What I've said earlier was that these
 20 are the decisions that companies make prior to entry
 21 into the market, when they determine what it's going
 22 to cost to provide something in the market, and they
 23 weigh that against the price they're going to be
 24 able to charge. If it pays to enter, they will

1 enter.

2 But in this particular case, there is no
3 incentive to keep their price within the market cap.

4 A. [NURSE] I mean, my observations first
5 would be, the testimony was very long, and my
6 recommendation would be not to assign any weight to
7 its merit based on its length, because there is
8 none.

9 It's really 20 pages of testimony spread
10 out over 100 pages, and there's just a lot of sort
11 of rambling discussion that doesn't really go to the
12 point. The discussion about irrelevant points,
13 complaining about how the FCC set the regime and
14 they weren't in the negotiations and then they had a
15 comment period but they did or they didn't
16 comment -- all this is almost dicta. It doesn't
17 really go to the issue.

18 There's no evidence in there. There's
19 no cost study for the CLECs. The CLECs' access
20 rates vary hugely, but there's no investigation of
21 did you look at why some of your clients have low
22 access rates and why some of your clients have
23 hugely higher access rates? Is that based on their
24 hugely higher profit margin? Is that based on

1 premise is that they're inefficient, they have these
2 high costs, and they can't get them on a competitive
3 market, and so they have to get them out of the
4 uncompetitive access market -- but that doesn't hold
5 up.

6 So there's a lot of cases where there's
7 conjecture or sort of theoretical projections, where
8 instead there could have been empirical evidence
9 that would have had more weight. If there was a
10 correlation analysis that when CLECs -- every state
11 where CLECs went to parity all the CLECs were driven
12 out of business, that would have a lot of weight.
13 You'd say, "Wow, there seems to be a connection
14 here." But there's none of that. It's projections.

15 So, you know, some of it's good. Some
16 of it's true. Some of it's relevant, some of it's
17 not. But I would just, you know, sort of read it
18 with that eye: Is this really relevant? So what?
19 How does it work in the interstate jurisdiction?
20 How does it work in the other states?

21 Q. Thank you.

22 MR. DeROCHE: Bearing in mind that
23 recross will be limited to evidence presented during
24 the Department's questioning of the witnesses, can I

1 hugely different cost structures? There's no there
2 there.

3 When I read the testimony, I was struck
4 by it kept saying "Well, it's likely that this" and
5 "It's likely that that" and "It's likely that this."
6 So I searched the testimony for how many times it
7 said "likely," and I forget the number exactly, but
8 something like 28 times. It struck me that there
9 aren't hard factual assertions in there because
10 there aren't any hard facts in there. I think Mr.
11 Vasington said there wasn't any evidence there.

12 That's really the problem. It's sort of
13 a canned piece of testimony that just sort of has
14 these general descriptions and sort of based on
15 anybody's experience at QSI. They can kind of
16 generally say, "This is the way we observe things."

17 It's not what I would look for. I'm
18 doing access cases in other states, and I see cost
19 studies, I see hard evidence, I see, you know, a
20 factual discovery to support these things.

21 It just doesn't match that a number of
22 states have gone to parity and they have CLECs. I
23 live in Maryland. Maryland's a parity state. All
24 the CLECs didn't leave Maryland. And yet his

1 just get a quick show of hands how many parties
2 intend to recross?

3 MR. MESSENGER: PAETEC has none.

4 MR. DeROCHE: Very good.

5 Would you like to do redirect before we
6 take a break?

7 MR. GRUBER: May I have one minute?

8 MR. DeROCHE: Sure.

9 MR. GRUBER: I'm pleased to say, Mr.
10 Hearing Officer, no redirect.

11 MR. DeROCHE: Very good.

12 EXAMINATION

13 BY MR. MAEL:

14 Q. Given your experience in other states, have
15 you come across any jurisdictions where in fact they
16 have had a proceeding investigating the access rates
17 and have in fact not come to some kind of regulatory
18 solution?

19 A. [OYEFUSI] You're asking if it is still
20 pending or --

21 Q. One that has come to a decision which did
22 not cap access rates or some alternative means of
23 regulating.

24 A. [OYEFUSI] No, I don't know of any.

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1 Q. Is that true for both of you?

2 A. [NURSE] If I can give sort of a short

3 answer, and it's really the long answer. But I

4 understand the access arrangement in Florida is

5 generally described kind of as a cabal. There was

6 legislation. Orders were reversed, and things were

7 done that are being redone. I don't have the whole

8 history. But I understand that Florida is kind of a

9 mess.

10 A. [OYEFUSI] Wait a minute. Florida just had

11 a workshop, and we filed comments in Florida, so

12 nothing has happened in Florida. In fact, it wasn't

13 a docketed case yet. It was just Florida asking

14 parties to comment on whether or not staff should

15 recommend to the commission in Florida that they

16 should open up a case. So there was no access, CLEC

17 access case on CLEC access rates.

18 Q. A follow-up to Mr. Chattopadhyay's

19 question: With regard to states, when we talked

20 about possibly, if the cap was instituted over a

21 period of time rather than to flash-cut immediately,

22 similar to California -- and I believe the FCC's

23 order also was over a period of three years?

24 A. [OYEFUSI] Yes.

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1 Q. And California was over a period of two

2 years?

3 A. [NURSE] Two, maybe two steps.

4 A. [OYEFUSI] Well, California was a flash

5 cut, but it happened in steps. It's like

6 immediately they set a cap, a capped actual rate,

7 and then about a year later the rate goes down a

8 little bit, and another year then it goes to 10

9 percent above --

10 Q. What I was trying to get at, that it did

11 not immediately go to the cap; rather, in both cases

12 it went in stages.

13 A. [OYEFUSI] Well, the California case,

14 really it was a cap. It was just like the cap was

15 stepping down. It was capped right away at a

16 certain number, and the cap was stepping down until

17 it gets to 10 percent above the ILEC.

18 Q. And you believe that's not efficient?

19 A. [NURSE] I don't think -- I think you want

20 competitive markets to reflect competitive

21 conditions sooner rather than later. You've got an

22 administrative sort of time lag in the front end to

23 put it in, but I think you want to do it relatively

24 quickly.

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1 I know I worked on the case in Virginia,

2 and they did it on a flash cut. A number of states

3 have done it on a flash cut. I haven't seen any

4 evidence that states that did it right away ended up

5 worse off than states that took a longer time to do

6 it.

7 Q. I think the concern is more CLECs who have

8 more of their revenue share tied up in access versus

9 others, the effect on them.

10 A. [NURSE] You shouldn't care in that sense.

11 I mean, if a competitor is inefficient and he is

12 getting a big, uneconomic subsidy and he can't

13 compete, if it's a fair race, why would you want to

14 kill him off in two years instead of killing him off

15 sooner? I mean, if he's inefficient and he's not

16 competitive, why would you want to drag it out?

17 Q. Thank you.

18 MR. DeROCHE: Keeping in mind there was

19 some new testimony, can I poll the parties: Is

20 there any recross? No. Any redirect?

21 MR. GRUBER: No.

22 MR. DeROCHE: Let's take ten minutes.

23 We'll come back at 3:45.

24 (Recess taken.)

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1 MICHAEL D. PELCOVITS, Sworn

2 DIRECT EXAMINATION

3 BY MS. O'DELL:

4 Q. Please state your name and business

5 address.

6 A. Michael D. Pelcovits, 1155 Connecticut

7 Avenue Northwest, Washington, D.C. 20036.

8 Q. And on whose behalf are you testifying here

9 today?

10 A. I'm testifying on behalf of Comcast.

11 Q. Have you sponsored prefiled testimony in

12 this matter on behalf of Comcast?

13 A. Yes.

14 Q. Was it prepared by you or under your

15 supervision and direction?

16 A. Yes.

17 Q. Do you have any additions or corrections

18 you wish to make to this testimony?

19 A. No.

20 Q. Is your testimony true and correct, to the

21 best of your information, knowledge, and belief?

22 A. Yes.

23 Q. And if I asked you the questions set forth

24 in the testimony today, would your answers be the

1 same?
 2 A. Yes.
 3 Q. Did you also sponsor discovery responses on
 4 behalf of Comcast in this proceeding?
 5 A. I did.
 6 Q. Are the answers that you provided to those
 7 discovery requests true and accurate, to the best of
 8 your knowledge?
 9 A. Yes.
 10 Q. And if those same questions were asked of
 11 you here today, would your answers be the same?
 12 A. Yes.
 13 MS. O'DELL: Our witness is available
 14 for cross-examination.
 15 MR. DeROCHE: Thank you very much. Mr.
 16 Fipphen?
 17 MR. FIPPEN: I have no questions for
 18 Dr. Pelcovits.
 19 MR. DeROCHE: Thank you very much.
 20 Mr. Gruber?
 21 MR. GRUBER: I do, but I only have one
 22 question.
 23 CROSS-EXAMINATION
 24 BY MR. GRUBER:

1 different ways, which I've discussed in my
 2 testimony. There's really no benefit to this type
 3 of regime, where the CLECs are allowed to charge
 4 rates -- even if they reflect their costs -- but to
 5 charge rates that could not be supported if there
 6 were indeed some market check, some competition that
 7 was controlling those rates, someone who could say,
 8 "No, I don't want to buy it at that price."
 9 That's the simple thing that's missing,
 10 and with that missing, there's no market control to
 11 make sure those rates are reasonable.
 12 MR. GRUBER: I promised only one
 13 question. I'll leave it at that.
 14 MR. DeROCHE: Thanks very much.
 15 Mr. Adams, Richmond?
 16 CROSS-EXAMINATION
 17 BY MR. ADAMS:
 18 Q. Good afternoon.
 19 A. Good afternoon, Mr. Adams.
 20 Q. You've probably guessed my question before
 21 I ask. Somehow, I think I might know what your
 22 answer might be before I ask, but to get it in the
 23 record: Would Comcast oppose or support the idea of
 24 a rural exemption for rural CLECs?

1 Q. Good afternoon, Dr. Pelcovits.
 2 A. Good afternoon, Mr. Gruber.
 3 Q. Dr. Pelcovits, I want you to explain to us,
 4 why aren't access prices that are set at CLEC costs,
 5 why aren't they necessarily just and reasonable?
 6 Speaking from the point of view of an economist and
 7 public-policy analyst and recognizing that "just and
 8 reasonable" is also a statutory term.
 9 A. I will just begin by taking your
 10 assumption, which is that CLEC costs are higher. If
 11 they are higher, then the question becomes is it
 12 good policy to have those reflected in higher
 13 call-termination rates. My answer to that is no,
 14 that that would be inconsistent with what you would
 15 see in a fully competitive market environment.
 16 And particularly here you're in a
 17 situation where I think it's been said quite a lot
 18 the customer making the choice of carrier -- namely,
 19 the customer subscribing to a CLEC -- is not being
 20 affected by those high termination rates, so there
 21 is no market control over those high termination
 22 rates.
 23 What this simply does is, it leads to
 24 significant distortions in the market, a number of

1 A. At this point Comcast has not taken a
 2 position on this issue.
 3 Q. So you neither oppose nor support it.
 4 A. I neither oppose nor support it.
 5 Q. Thank you.
 6 MR. DeROCHE: Mr. Krathwohl?
 7 CROSS-EXAMINATION
 8 BY MR. KRATHWOHL:
 9 Q. Good afternoon, Dr. Pelcovits. My name is
 10 Eric Krathwohl. I'm here on behalf of One
 11 Communications and XO Communications.
 12 A. Good afternoon to you.
 13 Q. On Page 5, going to Page 6 -- I guess
 14 really on Page 6 -- you state that ILECs have the
 15 ability and the incentive to raise price and degrade
 16 quality of interconnection to competitors. Do you
 17 have any examples of Verizon doing that?
 18 A. I want to make sure I'm at the right line
 19 here.
 20 Q. I was looking at Line 14. I'm sorry.
 21 A. I don't have examples specific to
 22 Massachusetts, but I believe that the dominance of
 23 the ILECs is pretty clear throughout the country,
 24 and they have acted on this dominance in how they've

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1 set above-cost access rates with respect to a number
 2 of the different access rates.

3 And in terms of the quality, I think the
 4 most pressing question and issue that I'm aware of
 5 is some of the concerns of some of the competitors,
 6 in terms of making sure that they could exchange
 7 packet-switched traffic under the same conditions as
 8 they exchange the circuit-switched traffic.

9 But here I'm just talking about the
 10 general overall powerful incentive of the carrier
 11 with a very large market share when it's involved in
 12 interconnection issues with other competitors.

13 Q. And going to that general statement, I
 14 guess picking up on one of the statements from your
 15 immediately preceding witnesses, talking about a
 16 fair race: Do you call it a fair race between the
 17 ILECs and competitors?

18 A. I think you'll need to be a little more
 19 specific. It's kind of a decathlon, so we need to
 20 specify which race.

21 In terms of the overall -- I think I
 22 want to answer and try to get right to the point of
 23 how this relates to interconnection. I think as I
 24 said already, the issue of interconnection is very

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1 possibly one of the most important issues left for
 2 regulatory telecommunications agencies to deal with,
 3 and that is because even if a competitor can get
 4 into the market -- it doesn't face any other
 5 barriers to entry, it can get out there, it can get
 6 capital, it can build facilities, it can reach
 7 customers -- it still needs to interconnect.

8 And it is a problem in trying to provide
 9 a telecommunications service if you cannot
 10 interconnect. You need to be able to have your
 11 customers talk to other carriers' customers.

12 So in that sense, if you're a small
 13 carrier in the market and there is someone who is
 14 very big, they have far less need for you than you
 15 have for them, the "you" being the CLEC. I think
 16 this is a well-established point in economics and in
 17 telecommunications, that this is an area where you
 18 need to have regulation, to make sure that the terms
 19 and conditions governing interconnection are fair
 20 and reasonable.

21 Q. And one of the areas that competitors would
 22 need the ILEC, for example, might that be in
 23 transporting of their calls?

24 A. Specifically if you're talking about

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1 transport, in terms of transport for purposes of
 2 terminating a call -- essentially, this is under the
 3 general rubric of tandem transport? Is that what
 4 you have in mind?

5 Q. Sure.

6 A. Yes, there's still an ILEC dominance in the
 7 overall local transport market with respect to
 8 routing and aggregating of traffic of tandems and
 9 with respect to some of the, what's known as the
 10 special-access market. So, yes, there is a
 11 dominance of the ILEC in those markets.

12 Q. The special-access market being special-
 13 access services?

14 A. Different special-access services, yes,
 15 yes.

16 Q. Are you familiar with the docket in
 17 Massachusetts 01-34?

18 A. No.

19 Q. But when you talk about special-access
 20 services, is that one of the situations that you see
 21 that ILECs have imposed high prices that are perhaps
 22 above what their costs would justify or, if there
 23 weren't a market-power situation, that a competitive
 24 market would lead to?

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1 A. It would lead to lower rates. Yes, I
 2 believe that the special-access market, which is
 3 principally an interstate market, that the ILECs
 4 have very, very high rates of return. They have, I
 5 would say, set higher rates where they have engaged
 6 in the least competition, and they have engaged in
 7 various actions to limit the customers' ability to
 8 switch business to the CLECs, by tying customers
 9 into various type of volume discount plans that make
 10 it very expensive for the customer to shift a little
 11 bit of his volume to a competitor.

12 Q. On Page 8 of your testimony, I guess the
 13 carryover answer, you talk about the options or
 14 maybe lack of options for originating carriers to
 15 address perceived excesses in terminating access
 16 charges. Is that correct?

17 A. Yes.

18 Q. And at least theoretically, isn't there one
 19 more option, that those carriers could charge more
 20 for a call to a high-cost terminating carrier's
 21 customer?

22 A. I think I did talk about that. That's on
 23 Page 8. Maybe I didn't.

24 Well, yes, theoretically the potential

1 effect in the market, assuming no regulatory
 2 impediment to doing it, is to charge a higher rate
 3 to the caller to place a call to a customer served
 4 by a CLEC that has high terminating access rates.
 5 That's theoretically possible. I have absolutely no
 6 knowledge or understanding --
 7 Let me put it this way: I have not seen
 8 anything that would lead me to believe it's
 9 practical to do that, because you would need to be
 10 able to actually identify the CLEC serving the
 11 called party on a sort of instantaneous basis and
 12 let the customer know that. And given that there's
 13 number portability and you can't associate a number
 14 with a carrier on a sort of ongoing basis, I think
 15 it's almost -- I can't see how to do it. I mean,
 16 from my knowledge of billing and telecommunications
 17 and what I've seen, I've never seen anything on that
 18 detailed a basis.
 19 Q. Have you seen the information provided in
 20 this case where there's been extensive tracking down
 21 by various carriers, certain numbers that show up as
 22 having been called?
 23 A. I have seen the response to a Verizon
 24 discovery request that I believe Mr. Vasington spoke

1 about this morning in relationship to this issue of
 2 traffic-pumping. If that's what you're referring
 3 to, yes, I have seen it.
 4 Q. And in fact, just within the last hour we
 5 looked at the same sort of exhibit, I believe, from
 6 AT&T, didn't we?
 7 A. You probably caught me snoozing. I don't
 8 recall that.
 9 Q. I think also on Page 8, is it fair to say
 10 that you're expressing I guess at least a
 11 theoretical concern that CLECs with high terminating
 12 access rates will be able to unfairly attract more
 13 customers than they otherwise would be able to? Is
 14 that correct? Perhaps on Lines 17 and 18.
 15 A. Yes, I think that specifically is
 16 addressing the market dynamic which could lead to
 17 customers being attracted to the CLECs with
 18 excessive terminating access charges because those
 19 high terminating access rates would give the CLEC
 20 the ability to set lower subscription or originating
 21 rates.
 22 Q. Have you ever studied the relationship
 23 between higher-terminating-access-charge CLECs and
 24 their ability to obtain customers?

1 A. I have not seen that, and in fact the
 2 response of the CLECs in this proceeding is that
 3 they're constrained by competition in how they set
 4 prices to their customers. I think it would be
 5 difficult to actually do an empirical study to
 6 figure that out.
 7 But with respect to an obvious effect of
 8 this, there are certainly carriers that attract
 9 customers that have disproportionately large amounts
 10 of terminating traffic, and that's evident from some
 11 of the discovery material, some of it confidential,
 12 which reflects carriers with very large percentages
 13 of their revenues from access charges.
 14 Q. And in the scheme of thing even in the
 15 universe of CLECs, would those carriers with the
 16 highest ratios that you've just referenced, would
 17 those be the smaller or the larger carriers?
 18 A. I must say, I have not looked and compared
 19 the numbers, one CLEC to another, and I think we
 20 start to slip into proprietary issues.
 21 Q. I'm just looking for a general answer.
 22 A. I don't know if I can say that.
 23 Q. That's fine. Turning to Page 9 of your
 24 testimony: Do I infer correctly from your testimony

1 that if there were not toll-call price averaging,
 2 that the concern of excessive CLEC terminating
 3 access charges could be solved by the market?
 4 A. I don't think so because, as I said
 5 earlier, I don't think it's practical to set --
 6 Ultimately you need to have the calling
 7 party's carrier be able to associate the calling to
 8 these high-terminating-access charge CLECs with the
 9 rates the customer is paying. And unless there's a
 10 way to set up the billing system and some sort of a
 11 call-interrupt system or something to be able to
 12 reflect that in the price, the problem remains.
 13 I mean, the problem -- the terminating-
 14 access problem here is not something that just came
 15 from nowhere. It's essentially a regulatory-created
 16 problem, so it needs a regulatory-created answer.
 17 The regulatory problem is the obligation to
 18 terminate, and the problem is there's an obligation
 19 without a price, and essentially it's half of a
 20 solution. I cannot see that it would make sense to
 21 create the problem with this halfway thing and then
 22 expect carriers to come up with complicated billing
 23 systems to get around the distortion that that
 24 obligation has created.

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1 Q. Continuing through your testimony and a
2 couple of pages in: In Footnote 7 you reference the
3 different elements of access charges, and you note
4 that transport-related charges seem to be much less
5 of a concern for you. Is that correct?
6 A. Yes.
7 Q. Are transport charges usage -- priced on
8 the basis of usage?
9 A. Some of them are. And some of them are
10 not.
11 Q. And to the extent that carriers' costs are
12 a relevant consideration in determining -- in a
13 regulator determining what their charges should be,
14 should there be consideration of elements that
15 are -- the cost of which does not vary on the basis
16 of usage?
17 A. I don't think I understand that question.
18 Q. I don't blame you. First of all, would you
19 agree that there should be some consideration of a
20 carrier's costs in determining what charges they
21 should be allowed by regulators to impose on
22 customers?
23 A. In most circumstances, yes. With respect
24 to terminating access, no. I think that, as I said

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1 in response to Mr. Gruber's question, if a carrier
2 has higher costs, I think it's very inefficient for
3 it to recover those higher costs from customers that
4 don't have a choice of whether or not to use that
5 particular carrier. I think that just simply leads
6 to very inefficient choices and allocation of
7 resources in the market.
8 And with respect to cost and price
9 setting in general in the market, well, generally
10 it's the ILECs that are regulated when it comes to
11 setting rates, and those are at least supposedly
12 related to some analysis of costs.
13 Q. And in the context that a regulator is
14 looking at costs, should they consider only costs of
15 elements that vary by usage?
16 A. Well, it depends what rate they're looking
17 at. If I start with your assumption or with your
18 essentially hypothetical here that a regulator
19 should be looking at costs in determining whether a
20 rate is acceptable or not, it should try to look at
21 costs in relationship to the way in which the
22 charges are imposed, and hopefully those should
23 track. Namely, a usage-sensitive cost should track
24 into a usage-sensitive rate; a non-usage-sensitive

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1 cost should hopefully track into a non-usage-
2 sensitive rate.
3 Q. Now going to the case of terminating
4 access, and you just referenced back to your answer
5 to Mr. Gruber, and you were talking about
6 terminating switched access, where the -- I guess
7 the originating carrier doesn't have a choice about
8 using that service: The lack of that choice is why
9 you see a problem with the level of the switched-
10 access charges; correct?
11 A. It's why I see there's a need to regulate
12 switched-access charges. In other words --
13 I'll go back to what I said earlier,
14 because I think it's very important and I think it's
15 not been focused on to this point, which is that
16 it's not that there's a fundamental market failure
17 in the sense that you have CLECs and they suddenly
18 have acquired market power from somewhere and can
19 overcharge for terminating access. The problem is
20 because every other carrier has a mandate, an
21 obligation to terminate traffic on those CLECs.
22 Once you give an obligation or
23 requirement, you have to set a price, because
24 otherwise it's really -- you know, it's really just

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1 sort of a half a loaf. It's just not the whole
2 thing.
3 So I think it's very important to keep
4 that in mind, keep that front and center.
5 Q. And that terminating access consists of
6 both switching and transport elements; is that
7 correct?
8 A. Yes, in the sense that switched access does
9 have rates for both transport and switching. I
10 think the, what I'll call the terminating-access-
11 monopoly problem with respect to the CLECs I think
12 is, as far as I am aware, an issue only with respect
13 to switching, because certainly Verizon can get its
14 traffic to the CLEC using its own facilities. So
15 once the traffic arrives at the switch, the only
16 charge that I'd really be concerned about is the
17 charge to get it from wherever the handoff is
18 through the switch.
19 Q. Doesn't it still have to go to the end
20 user, then?
21 A. That's not switching, that's termination,
22 and that's not transport, either.
23 Q. On Page 11 of your testimony you referred
24 to the HAI study.

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1 A. Yes.

2 Q. Can you briefly state how that study

3 determined the cost of call termination?

4 A. The HAI study has a switching module, is

5 what it's called, and it sizes the switch based on

6 the number of lines in the ILEC's central office,

7 and then it generates the capital costs for the

8 switch and the associated investments. And then it

9 has other calculations to derive essentially an

10 annual expense from this capital cost.

11 And then it takes that annual expense

12 for the capital cost and has to do a separation

13 between non-traffic-sensitive and traffic-sensitive.

14 And then it divides the non-traffic-sensitive by the

15 number of lines and the traffic-sensitive by the

16 number of minutes.

17 Q. And to come up with the resulting cost of

18 call termination, what carriers' costs were used in

19 that study?

20 A. Well, all of my friends at Verizon would

21 beat me up if I tried to say anything other than it

22 was a hypothetical network. That's what they've

23 always said.

24 It is. It's an engineering economic

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1 model. Namely, it is not looking at the actual

2 expenditures of the ILECs on switches; it's looking

3 at the engineering needs and the cost of the switch.

4 And it's obviously sized and engineered for whatever

5 ILEC you're doing the study for -- although it's a

6 pretty generic model.

7 So it's tailored -- and particularly in

8 this case the one I've cited is tailored -- for that

9 particular ILEC in that particular situation. The

10 inherent model, as I said, is not derived from the

11 ILEC's actual costs; hence the name "hypothetical."

12 Q. But it's done in the context of an ILEC

13 network design as opposed to a CLEC network design?

14 A. I would say it's more done in the context

15 of a particular mix of lines, trunks, and usage, and

16 it's pretty flexible in that sense. As I said, it's

17 engineered to meet the demand on the switch.

18 The basic connection between HAI and the

19 ILECs -- and this stuff has been going on for 15

20 years or so, that I've been doing it. The sort of

21 crafting of the HAI model to fit the ILECs, 99

22 percent of that effort is the loop costs. The

23 switching cost is almost a separate module. It's

24 put in there. It fits the demand and some of the

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1 other characteristics of the ILEC. But any carrier

2 that uses a switch in a similar way is going to, at

3 least in the model, generate reasonably similar

4 costs.

5 Q. So what you've just said was that the

6 switching costs would be generally similar for

7 whatever carrier it was, but is it fair to say that

8 the capital costs for a switch would be much lower

9 for a larger, higher, better-rated, better-credit-

10 rated entity than otherwise?

11 A. I think that's certainly historically been

12 true, that bigger ILECs get bigger discounts,

13 although all the information on switched discounts

14 is proprietary and kind of guarded with armed Brinks

15 guards.

16 I don't know how true that is now and in

17 the last couple of years with respect to circuit

18 switches, because it's become the old technology and

19 there's not much demand for them. Rumor is you can

20 buy them on eBay.

21 So I think at that point it's not really

22 a volume-discount type of transaction; it's, you

23 know, get rid of this for whatever price we can.

24 So actually, I think that I would say,

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1 if you really looked into it, this number is way too

2 high, given the surplus of these switches.

3 Q. You also referred to a West Virginia survey

4 of local switching charges; is that correct?

5 A. I don't think it's done under the auspices

6 of West Virginia. It's just Billy Jack Gregg, who

7 is well-known in the NARUC world. And this is

8 simply a survey of rates that he has collected and

9 maintained up until probably the date that the

10 discovery request was propounded on me, because when

11 I did it, I found it on the website, and when you

12 did it, you couldn't find it and I couldn't either

13 at that point. So someone pulled it down, but I had

14 records of it.

15 Anyway, a digression. Sorry.

16 Q. But the data that you were referring to

17 that is on Page 12 and referenced in Footnote 10 was

18 updated in 2004?

19 A. Yes, that's correct.

20 Q. And again, is that ILEC rates that is being

21 referred to?

22 A. That's right. Those are ILEC UNE rates.

23 Q. On Page 15 you assert three benefits would

24 result from forcing down CLECs' intrastate access

1 charges. The first would be to reduce traffic-
2 pumping. Is that correct?
3 A. Yes.
4 Q. To the extent that some of the exhibits
5 that we saw relating to, quote, "traffic-pumping,"
6 quite a number of the calls were actually
7 interstate. Would that get you to question whether
8 the lower rates will have that effect?

9 A. I would think that it would still have the
10 effect that I talked about. It's simply the
11 intrastate access charges of the CLECs are much
12 higher than their interstate rates. It's hard for
13 me to draw from one set of tables about calling, but
14 there's certainly a lot of intrastate calling that
15 appears to be traffic-pumping. It appears to be
16 concentrated on whatever they call them, adult chat
17 lines, purveyors of porn or whatever.

18 There's clearly right now -- if you
19 think about what's going on and what I'm talking
20 about in this testimony, the high call terminating
21 rates are more than anything else a subsidy for
22 people that want to be on chat lines. It's not so
23 much a subsidy to the CLECs; it's a subsidy to porn.
24 And if it's public policy to continue that subsidy,

1 fine. But that's a subsidy where, you know, Millie
2 Smith in Bedford is paying more to call her sister
3 across state and her son is being subsidized in his
4 time spent on adult chat rooms.

5 It's a catch line, but it's true. If
6 you think of the economics of this, it's a subsidy
7 to call termination, and who seems to be using the
8 call terminations the most but these chat lines.

9 Q. Of course, there are other end uses that
10 have been discussed as being traffic-pumping that
11 perhaps may not be so stigmatized; isn't that
12 correct?

13 A. Yes, I naturally chose the most stigmatized
14 example. But there are other cases. I know you can
15 now get free conference calling. So in that case
16 it's not --

17 Wait a second. To the extent that,
18 let's say, Lehman Brothers uses conference calling
19 for free due to high terminating access rates and
20 again Millie Smith is paying for that, that's
21 probably even more stigmatized than porn at this
22 point.

23 Q. One of your other benefits that you
24 reference is a right realignment. Does that mean

1 that there is going to be a reduction in the price
2 to end users?

3 A. Yes.

4 Did I catch you unaware with a short
5 answer?

6 Q. Is that based on the sort of testimony that
7 we've heard earlier from AT&T, saying that
8 ultimately cost goes down and somehow, some way,
9 we'll filter that into a pricing scheme at some
10 point in time?

11 A. I think I could put it better.

12 Q. Maybe if you could just try a yes or no to
13 that one.

14 A. Well, if all the loaded parts of that
15 question and having to adopt everything Mr. Nurse
16 said on that, I'd say I can't give a yes or no.

17 Q. I don't blame you.

18 A. If you want me to answer the question in
19 general about whether there's a pass-through that
20 will occur in the market, I'd be happy to do that.

21 Q. Do you think there would be a one-for-one
22 pass-through?

23 A. Pretty much so, in the sense that in a
24 competitive market, with highly elastic supply,

1 changes in marginal costs do get flowed through just
2 about dollar for dollar -- if you believe it's a
3 competitive market. If it's not a competitive
4 market, no, then it's a lot more complicated answer.
5 Some gets passed through. It's actually sometimes
6 more than in a competitive market.

7 Q. And one of your other benefits was that
8 there would be a financial benefit to companies with
9 lower access charges, so I'm assuming not only your
10 client but Verizon would be one of those. Is that
11 correct?

12 A. Could you refer me to a place in the
13 testimony, please?

14 Q. Let's see if I can do that. I guess that
15 would be on Page 16, Lines 8 through 10. You're
16 specifically referencing there allowing Comcast to
17 compete more fairly. But would that then also mean
18 that Verizon would be competing more fairly?

19 A. Yes. I think it makes the market less
20 distorted. Competition is fairer. I think you used
21 the term "financial benefit." I would not agree
22 that this is primarily a financial windfall for any
23 company or a financial loss for any company. I
24 think this is a realignment of prices with costs,

1 which is, I think, an important objective in this
2 industry. We've had too many distorted prices for
3 too long, and this is one that just sticks out
4 there, and I think it makes a lot of sense for
5 everyone to bring it in line with costs.

6 Q. Of course, we are talking about a transfer
7 of dollars essentially from the carriers with the
8 higher-cost access charges to other carriers; is
9 that correct?

10 A. We're talking about a change in an
11 intercarrier rate going forward. I don't think
12 anyone is talking about reaching back.

13 So the financial effects on the
14 companies are, at least in the long run, if you have
15 competition in the market, are really not the major
16 effect of changing the price. Yes, there are
17 periods until you reach a new equilibrium where
18 companies, some might be a little better off, some
19 might be worse off. But the main effect here -- and
20 I think it would be a mistake to have the Department
21 think this is primarily a question of who wins and
22 who loses among the companies. It's primarily an
23 issue of getting the prices proper and also, as I
24 said earlier, finishing the job which you start with

1 when you impose an obligation to terminate traffic
2 without price.

3 Q. And in your summary am I correct in taking
4 it that your suggestion is that the correct solution
5 would be imposition of a bill-and-keep regime?

6 A. Nationwide, that would be a correct regime.
7 I'm not recommending that in Massachusetts at this
8 time.

9 Q. So there's really a more global problem
10 here that's involved?

11 A. There is a global problem of
12 interconnection pricing; yes, there is. And it will
13 require ultimately a global solution. I have no
14 idea when we're going to get there. There's plenty
15 of people trying to claim it's going to happen very
16 soon, but, you know, I wouldn't bet on that. And
17 until you get that, you'd have to try to tackle
18 problems one at a time, and this is one of them.

19 Q. Am I correct in thinking that you have in
20 fact -- strike that.

21 In your testimony you state that you
22 worked for MCI for approximately four years?

23 A. One four, 14.

24 Q. I'm sorry.

1 A. If we include the unfortunate period after
2 WorldCom acquired it, yes.

3 Q. I stand corrected. And during that time
4 period you were a vice-president and chief
5 economist; is that correct?

6 A. Yes.

7 Q. And was part of your duties to be
8 responsible for filings that were made at various
9 regulatory agencies?

10 A. I don't think -- I tried to take as little
11 responsibility as possible. I mean, essentially
12 it's true. I was sort of -- the best way I put it,
13 I was like head of an in-house consulting firm, and
14 I would provide technical economic and policy advice
15 to the whole public-policy department and advocate.
16 But I don't think I ever filed or was directly
17 involved in any tariff filings.

18 Q. And would you have generally been in
19 agreement with positions taken in those regulatory
20 filings, economic and otherwise?

21 A. Not in all cases. There's times when my
22 advice was ignored.

23 Q. Well, let me cut to the chase: In the
24 FCC's third report and order, at Paragraph 80, the

1 FCC states, and I quote -- and I'll provide you a
2 copy of this to look at.

3 MS. O'DELL: Can you tell us the docket,
4 at least?

5 MR. KRATHWOHL: FCC 99-238.

6 MS. O'DELL: Is that an intercarrier
7 compensation docket?

8 MR. KRATHWOHL: I believe so, but I may
9 be able to get a more definitive statement shortly.

10 Q. Let me take one step backwards first. Are
11 you familiar with a Dr. Mark Bryant?

12 A. Yes.

13 Q. And did he work for you and with you at
14 MCI?

15 A. Yes.

16 MR. KRATHWOHL: If I didn't say in terms
17 of identifying it that it was UNE remand order, I
18 meant to.

19 Q. Anyway, going to that order, at Paragraph
20 80 there's a reference to a declaration of Dr.
21 Bryant. If I could show you that paragraph and ask
22 that you read the sentence starting where I've
23 marked it, and then just tell me if you would agree
24 with that statement, I'd appreciate it.

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1 MS. O'DELL: You said Paragraph 80;
2 correct?
3 MR. KRATHWOHL: Yes, eight zero.
4 A. I can't say. This is not a well-crafted
5 footnote. I can't really follow the way it's
6 putting this. I don't know the whole context.
7 Q. Well, you have had an opportunity to read
8 that paragraph. If I could just read the sentence:
9 Quote, "Because the per-customer costs decrease as
10 the number of subscribers served by the carrier
11 increases, a carrier must acquire a sufficient
12 customer base if it is to recover substantial costs
13 associated with deploying its facilities." Is that
14 an accurate recitation of what you see before you?
15 MS. O'DELL: Do we have a date on this
16 order, when it was released?
17 MR. KRATHWOHL: Sometime in the middle
18 of 1999.
19 MS. O'DELL: Would you have been with
20 MCI at the time?
21 THE WITNESS: I would have.
22 A. To try to speed things along: As I said,
23 I don't know where this fits into the overall
24 discussion here. I don't find the reference to Dr.

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1 Bryant's declaration very informative. There are
2 too many variables here.
3 I would agree that as a general matter
4 there are economies of scale in various parts of the
5 local telecommunications network. I think the cost
6 of switching reaches those -- or I should say
7 achieves those economies of scale relatively
8 quickly. You don't need very large market share to
9 use a switch efficiently.
10 Q. One more question: A couple questions ago
11 we talked about potential flow-through of reduction
12 in access charges, should that result from this
13 proceeding. I think that you indicated a degree of
14 confidence that there would be a flow-through like
15 that. Do you have that same level of confidence
16 that that would be a flow-through to Massachusetts
17 end-use customers?
18 A. Yes, to the extent that there is a change
19 in the marginal cost of providing toll service to
20 Massachusetts customers, the competitive market will
21 drive those savings through in the rates charged to
22 Massachusetts customers. That's sort of part of the
23 basic structure of looking at this as a competitive
24 market.

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1 MR. KRATHWOHL: I have no further
2 questions.
3 MR. DeROCHE: Thank you very much.
4 Q. Thank you, Doctor.
5 A. You're welcome.
6 MR. DeROCHE: Mr. Messenger?
7 MR. MESSENGER: No questions.
8 MR. DeROCHE: RNK, Mr. Tenore?
9 MR. TENORE: I have a few.
10 CROSS-EXAMINATION
11 BY MR. TENORE:
12 Q. Good afternoon, Doctor. My name is Mike
13 Tenore. I represent RNK. And my co-counsel, Doug
14 Denny-Brown, is also here; he may be asking a couple
15 of questions.
16 Are you aware of what Comcast's
17 composite switched-access rate prior to 2002 was?
18 A. No.
19 Q. In 2002 are you aware if Comcast lowered
20 its rate to Verizon's switched-access rates?
21 A. As I say, I don't recall. I might have
22 been informed at one point, but I don't recall the
23 history of Comcast's rates.
24 MR. TENORE: Mr. Hearing Officer, could

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1 I have a record request on that?
2 MR. DeROCHE: A record request on the
3 history --
4 MR. TENORE: Comcast's switched-access
5 rates, what they were prior to 2002 and then when
6 they were reduced to Verizon's switched-access
7 level.
8 MS. O'DELL: I believe these would be
9 publicly available in Comcast's tariffs.
10 MR. TENORE: The current tariff we might
11 be able to get, but the previous one I'm not sure.
12 Comcast might be the easiest person to get at it.
13 MR. DeROCHE: What years are you looking
14 for?
15 MR. TENORE: I'm just looking for the
16 rate prior to their most recent reduction.
17 MR. DeROCHE: So the single rate prior
18 to their most recent reduction.
19 MR. TENORE: Yes.
20 MS. O'DELL: Okay.
21 MR. TENORE: Thank you.
22 MR. DeROCHE: I'm going to enter that in
23 as RNK Record Request 1.
24 (Record Request RNK-1.)

1 Q. Moving along, trying to get us out of here
2 by 5:00: Let me refer you to Page 14 of your
3 prefiled testimony, Lines 16 through 18.

4 A. Yes.

5 Q. You characterize Verizon's rate as a
6 generous upper bound for CLECs. Is that
7 generosity in regards to Verizon's costs?

8 A. It is generous relative to what I have seen
9 in cost studies, the results of which I think, as I
10 discussed earlier, should be broadly applicable, in
11 the sense that the cost of switching on a per-minute
12 basis is very, very low, if not zero, on an
13 incremental basis. So I believe it is generous both
14 with respect to Verizon and with respect to the
15 CLECs.

16 Q. But you know of no particular knowledge as
17 to the costs of any particular CLEC in this
18 proceeding?

19 A. None has been provided, and I know there is
20 reference to a study that I tried to get that was
21 not provided. So, no, I have not seen the CLECs'
22 studies. I do know that at least some CLECs use
23 DMS-500s, and those switches are very similar in
24 architecture to ILEC switches. As I said, based on

1 my experience in looking at costing models and time
2 spent with telecom engineers, I would see no reason
3 why the CLECs' costs of switching should be higher
4 than the ILECs'.

5 Q. That was a long "no."

6 A. I wanted to make sure the record was clear.

7 Q. Moving along to Page 16, Lines 3 and 4:
8 This is where you state a second benefit will be the
9 reduction of call-termination costs. Would this
10 necessarily make, for example, Comcast's bundled-
11 service offerings more profitable?

12 A. Not necessarily. I think that in a
13 competitive market the prices are driven to cost; so
14 to the extent cost goes down, the prices should go
15 down and overall profits should remain about the
16 same.

17 Q. In the short term?

18 A. No, I think that's more of a longer term.
19 In the short term it's hard to say. Could Comcast
20 possibly get higher profits? It's possible. I
21 don't think it's easy to try to figure out every
22 single thing that happens in the short run.

23 Q. Thank you, Doctor. I'll hand it over to my
24 co-counsel.

1 CROSS-EXAMINATION

2 BY MR. DENNY-BROWN:

3 Q. My name is Doug Denny-Brown, and I'm with
4 RNK. I have a few quick questions.

5 In your testimony you have referred a
6 number of times to the fact that Comcast didn't
7 really have an option, it's a sort of captive
8 customer, if you will, when paying CLEC intrastate
9 access rates. Is this accurate?

10 A. That's pretty much accurate. I made the
11 statement, I think, with respect to all originating
12 carriers.

13 Q. Are you aware of whether Comcast has ever
14 refused to pay an intrastate access charge on the
15 basis that the rate was too high?

16 A. I'm not aware of that. I know there are
17 numerous access disputes, and throughout this
18 industry there have been forever. That doesn't mean
19 there's not a market-power problem.

20 Q. Would this normally be within your
21 knowledge base?

22 A. Well, no, it would not be within my
23 knowledge base what disputes or billing
24 disagreements Comcast has entered into. But from my

1 experience in the industry I am very well aware that
2 disputes over various intercarrier charges have
3 been -- there has been a tremendous number of them
4 over the years. It's part of the industry.

5 Q. And that would be an option available to
6 Comcast if it chose to go that path?

7 A. I guess I'd have to understand the question
8 a little better, in terms of what particular action
9 you are saying Comcast would pursue in addition or
10 on top of participating in this proceeding.

11 Q. Right. So maybe with an individual CLEC,
12 if Comcast felt the rate was unreasonable, Comcast
13 would have the ability to dispute that rate with
14 that individual CLEC.

15 A. Well my understanding is that ultimately
16 that would come in front of some decision-making
17 body.

18 Q. It could.

19 A. Well, it's fine to dispute, but if you
20 dispute and the other party to the transaction says,
21 "Pay up," it goes in front of someone.

22 Q. Right, lacking resolution, it goes to an
23 adjudicating body like the DTC.

24 A. So we're here. I concede, yes, it is

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1 possible that instead of sitting here on a case
2 brought by Verizon, we could be here on a case
3 brought by Comcast. This seems to be a little more
4 efficient.

5 Q. Are you aware that Comcast has ever been
6 proactive in attempting to negotiate lower
7 intrastate access rates with CLECs?

8 A. I don't know specifically. I do know that
9 Comcast does engage in numerous negotiations with
10 numerous carriers over a wide range of rates. So I
11 would say I don't know specifically, but I'm not
12 surprised if there are negotiations on these issues.

13 Q. And further, does Comcast have any
14 arrangement with AT&T to consult on their behalf in
15 terms of -- to the extent you are permitted to say,
16 of course -- to consult on their behalf in terms of
17 challenging various intercarrier compensation rates?

18 A. I want to make sure I heard the question
19 right. You said consult on their behalf?

20 Q. Right -- for example, to challenge rates
21 with other carriers on their behalf.

22 A. I'm not sure what you mean, but I wouldn't
23 know even if there was any sort of arrangement
24 between the two carriers.

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1 Q. Or as I'm reminded, is AT&T still a billing
2 agent of some sort for Comcast?

3 A. I don't know.

4 Q. That's the end of that line of questioning.
5 Earlier Mr. Tenore asked you about Comcast lowering
6 its access rate potentially in and about 2003
7 from -- and I would suggest that that rate was
8 lowered approximately from Verizon's then rate of
9 somewhere in the ballpark of 3.5 cents per minute to
10 their current rate -- again, for sake of argument --
11 down to about half a penny a minute. Are you aware
12 whether this resulted in Comcast charging higher
13 rates to its end-user customers?

14 A. I would start by saying I don't know the
15 history of the Comcast access charges, and I don't
16 know the history of Comcast's retail rates, so I
17 can't say.

18 Q. Fair enough. My last line of questioning:
19 Earlier --

20 MS. O'DELL: I'd just like to make a
21 clarification: You made an assumption regarding the
22 previous rate of Comcast. I think you said 3.5
23 cents. That's not been established in the record.

24 MR. DENNY-BROWN: I understand that.

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1 That was just a ballpark I threw out, which may or
2 may not be true.

3 Q. Earlier we heard you state that CLECs
4 should not be able to recover their costs associated
5 with interstate access charges to the extent they
6 exceed Verizon's. Is that a fair and accurate
7 statement or summation of your statement?

8 A. I think the way I put it is, if the CLECs
9 have higher costs than Verizon, I would recommend
10 against allowing them to set higher rates and
11 thereby passing on those higher costs to other
12 carriers' ratepayers.

13 Q. Even if they had higher costs?

14 A. That's my position: even if they had
15 higher costs, yes.

16 Q. Do you believe that there is a competitive
17 market for interstate access charges in
18 Massachusetts?

19 A. I guess we'll have to break that down.
20 First of all, you said interstate.

21 Q. Intra. If I said inter, that was a
22 mistake.

23 A. So is there a competitive market for
24 intrastate access charges in Massachusetts? There

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1 is, I would say, not really even a market when it
2 comes to terminating access charges. A market would
3 imply that there is some choice -- or
4 "substitutability" is probably a better word --
5 between terminating my traffic on RNK versus XO;
6 that you can't go to the store and, you know, choose
7 Brand A rather than Brand B. So that's not a
8 market.

9 I think there is a market for
10 terminating access on RNK.

11 Q. How so?

12 A. It's a market because the customer will
13 transact business with RNK to get the traffic
14 terminated on RNK. There's a market. There's one
15 supplier. That supplier is RNK. There is no
16 substitute for that.

17 Q. Looking at some of the underpinnings for
18 intrastate access charges: Is it true that
19 intrastate access charges, instead of having an
20 economic basis, are grounded more in law and
21 regulatory proceedings, such that a carrier can
22 recover their costs?

23 A. I was with you until the last part of the
24 question. I think, yes, intrastate access charges

1 are the result of a regulatory process, a very long
2 history of regulatory rate-setting, that has
3 generally set those rates above cost and brought
4 them closer to cost over time, but they're still
5 above cost.

6 Why they are is -- I think we could take
7 a long time to talk about that. But there are many,
8 many factors that go into the determination of
9 regulated rates.

10 Q. But isn't it true that the purpose for
11 those four tariffs -- I'm sorry, for intrastate
12 access tariffs is to allow the carrier to recover
13 its costs directly and then charge the rest of the
14 market on a nondiscriminatory basis, so to treat
15 everyone the same?

16 A. Well, I'd agree that they're there to treat
17 everyone the same. That's the nature of a tariff,
18 that it's establishing a generally available rate.
19 And the purpose of the regulation of the rate is
20 principally to prevent overpricing of that
21 particular service.

22 As I think I also added, yes, there's
23 some relationship in a broad sense in rate-setting
24 to costs of the regulated company, but it's a very

1 complicated relationship, and individual rates are
2 by and large not set exactly at cost. They are set
3 for many services above cost, and other rates are
4 either not regulated or there's some possibility
5 that rates are set below costs.

6 Q. But the statutory underpinnings of these
7 intrastate tariffed access rates are regulatory and
8 legal in nature and not economic.

9 A. I think the statutory underpinnings by
10 their very nature, since they're statutory, are
11 legal. There are economics that inform the
12 decision-making process. But economists don't rule
13 the world, and probably that's a good idea, but they
14 certainly don't even run the rate-making world.

15 Q. And a final question, I think you'll be
16 happy to hear: Would you agree that CLECs are
17 required to terminate any traffic that comes to them
18 from other carriers?

19 A. Yes.

20 Q. That's all I have.

21 MR. DeROCHE: Thank you very much. I
22 recognize it's five minutes after 5:00. I would
23 like to try to finish up with Comcast's witness
24 today, if we could. Why don't we take a five-minute

1 break, and we'll come back and continue with the
2 Department's questions.

3 (Recess taken.)

4 MR. DeROCHE: I thank everybody for
5 bearing with us. I believe we've got about 25, 30
6 minutes of questions left, so we'll try and wrap
7 this up before 6:00 o'clock.

8 Why don't we go on the record. Before
9 we begin questioning, there's just a small matter on
10 AT&T's record request.

11 MR. GRUBER: Yes, Mr. Hearing Officer.
12 As we discussed, and we just want to get it on the
13 public record: I asked a record request yesterday,
14 to be provided with seven CLEC average-revenue-per-
15 minute numbers that are included on the attachment
16 to Mr. Vasington's testimony. That's already been
17 submitted and is in the Department's files now.
18 Those numbers are available to the Department.

19 They were not provided to AT&T because
20 in Verizon's view it's proprietary information of
21 the seven CLECs. I've spoken to the CLECs' counsel,
22 Mr. Krathwohl, and he's agreed that we can treat
23 those proprietary responses as being subject to our
24 nondisclosure agreement, so that the record-request

1 response could be made available to AT&T.

2 Is that a fair statement?

3 MR. KRATHWOHL: Yes.

4 MR. GRUBER: And I might note that AT&T
5 has already provided its response to that question
6 to all the other parties, in response to an
7 information request.

8 MR. DeROCHE: Very good. Thank you very
9 much.

10 MR. FIPPEN: Just so we're clear, Mr.
11 Krathwohl represents two of the companies. I just
12 want to get on the record, before I give it to
13 Mr. Gruber, that RNK and PAETEC consent to the same
14 agreement.

15 MR. MESSENGER: Yes, we do.

16 MR. TENORE: Sure.

17 MR. DeROCHE: Good. Thank you very
18 much. Mr. Reyes?

19 EXAMINATION

20 BY MR. REYES:

21 Q. On Page 14 of your testimony, Lines 16
22 through 17, you testified that Verizon's intrastate
23 access charges are well above incremental cost. By
24 "incremental" do you mean long-run incremental cost?

1 A. I do.

2 Q. Further down, Lines 18 and 19, you state
3 that ideally Verizon's intrastate access charges
4 should be reduced to economic cost. And by
5 "economic cost" are you also referring to long-run
6 incremental cost?

7 A. I am.

8 Q. Is it reasonable for intrastate access
9 charges to be set well above incremental cost?

10 A. It's inefficient. The term "reasonable"
11 doesn't have an economic meaning. But it is
12 inefficient, and it creates a loss in economic
13 welfare.

14 Q. If a rate is inefficient, are you saying
15 that it doesn't necessarily mean that a rate is
16 unreasonable?

17 A. Well, I try to avoid that word, because I
18 know it's used in the legal language. As I said,
19 I'm an economist, and I don't want to try to
20 interpret the law.

21 As an economic matter, as I said -- I
22 would just repeat what I said: Something that is
23 that far above long-run incremental cost will not
24 lead to reasonable levels of economic efficiency.

1 Q. So is there any economic basis for setting
2 access charges, intrastate access charges above
3 incremental costs?

4 A. I don't believe so. I think, more broadly,
5 I believe intercarrier compensation rates of any
6 sort should be set no higher than long-run
7 incremental cost.

8 Q. In your opinion, what is the long-run
9 incremental cost of switched-access service?

10 A. Well, there are several different rate
11 elements and components of switched-access service.
12 Are you referring to just switching or --

13 Q. Why don't we start with Verizon's proposed
14 composite switched-access-rate proposal.

15 A. Well, there I would distinguish that there
16 are switching-related rates and transport-related
17 rates. Switching rates are, I believe, in the range
18 of three tenths of a cent. The HAI model that I
19 quoted in my testimony has a cost of 3/100 of a
20 cent.

21 Q. Do you agree with that model's results?

22 A. Yes. I think the model results are right;
23 and as I said also, I think there's a reasonable
24 case to be made that the switch is not sensitive to

1 the amount of usage, which would say that call
2 termination should be priced at zero. But I
3 think --

4 There's a lot still to be considered as
5 to whether it's better to set a rate at long-run
6 incremental cost or do bill-and-keep, which is
7 essentially setting it at zero. But either way, I
8 think this study for what has been -- I think
9 Mr. Nurse talked about the rates that their
10 companies have been putting in their filings on
11 intercarrier compensation, what the FCC has used,
12 which is this triple-zero seven, which is \$.0007,
13 which is, you know, 7/100 of a cent. Again, those
14 are numbers you see out there.

15 I'd say by and large, cost studies that
16 I have seen over the last several years have never
17 shown rates above a tenth of a cent for switching.

18 Q. So on Page 11 of your testimony, where you
19 cite the HAI study, Lines 6 through 8, do you
20 believe that the incremental cost of call
21 termination is zero?

22 A. I've not made up my mind on that issue. I
23 really -- I don't know. I could say that it's no
24 higher than approximately 3/100 of a cent. But is

1 it completely and totally not at all usage-
2 sensitive? That's a difficult question. I think it
3 is very possibly slightly marginal, but I don't
4 know.

5 Q. So is it fair to say that you today have no
6 opinion as to the cost of call termination?

7 A. Yes, my opinion is that it's no higher than
8 3/100 of a cent. Where it is between zero and 3/100
9 of a cent I have at this point no firm opinion.

10 Q. You stated earlier that the obligation to
11 terminate calls is a regulatory creation. If that's
12 the case -- is that fair?

13 A. Yes. I don't know if "creation" or
14 "obligation." That's probably a better word.

15 Q. If that's the case, why is it appropriate
16 to set the price of that service to long-run
17 incremental cost? Where there is no market?

18 A. Whether there's a market or not, there's an
19 effect of setting a particular rate. And as I said,
20 if this is a regulatory obligation, then I believe
21 it's also a regulatory obligation to set a rate, and
22 set a rate at a level that does not distort the
23 market. A rate at long-run incremental cost will
24 provide the most efficient price signals in the

1 market.

2 The other problem is that if you have
3 nonreciprocal rates, that, too, sort of adds a layer
4 of distortion and complexity in the market, where
5 you tend to, you know, benefit certain carriers over
6 others.

7 No. 1, they should be reciprocal, in my
8 opinion; and No. 2, as low as possible, getting down
9 there to 3/100 of a cent, and I wouldn't lose sleep
10 if it was zero.

11 Q. One last question: You testified earlier
12 that if you believe that the market's competitive,
13 that any reduction in the marginal costs would be
14 passed through one for one. Is that a fair
15 assessment of your testimony?

16 A. Yes.

17 Q. Do you believe that the markets are
18 competitive such that a marginal-cost reduction
19 would be passed through to retail rates for toll
20 services in Massachusetts on a one-for-one basis?

21 A. Yes, I have not studied the Massachusetts
22 toll market specifically, but based on my knowledge
23 of the industry as a whole, I would say that the
24 competition should be intense and effective enough

1 to result in a pass-through of cost reduction.

2 Q. Are there any factors that would make --
3 sorry about the follow-up on this. Are there any
4 factors relevant to the Massachusetts market that
5 would make the operation of that market any
6 different from the national markets that you've just
7 described?

8 A. No. If there were to be some odd
9 exception, it might, you know --

10 Well, I'm trying to think even where you
11 would have an exception to what I just said. There
12 seems -- even from learning about it more from just
13 sitting on this case, Massachusetts seems to have
14 very active competitors, and it seems like
15 competition is working.

16 Q. Thank you.

17 MR. DeROCHE: Mr. Isenberg?

18 EXAMINATION

19 BY MR. ISENBERG:

20 Q. Good evening, Mr. Pelcovits. Why should
21 non-traffic-sensitive costs not be included in the
22 calculation of terminating access rates?

23 A. I'd say the first reason is that it
24 ultimately will reduce usage of the telephone

1 network. The higher your usage rates are, the less
2 the usage. And by setting rates above the costs
3 that are imposed by the usage, you are discouraging
4 usage that people want to make and they're willing
5 to pay what it costs to actually generate and create
6 and handle that usage.

7 Q. And then I take it your opinion is that
8 those costs should be recovered from a local-
9 exchange carrier's end users?

10 A. Yes. I would say that, if you were to go
11 as far as a bill-and-keep regime, then all costs are
12 going to be recovered from the retail carrier's
13 customers. If we have a terminating rate set at
14 long-run incremental cost, then that usage-sensitive
15 cost is being recovered ultimately from the calling
16 party.

17 Q. What type of analysis should the Department
18 employ if it is to find that CLECs have a monopoly
19 or have market power on terminating access?

20 A. I think it has the evidence it needs from
21 what's been presented to it in this case. This is
22 not an analysis or a judgment that I think requires
23 the type of data and empirical analysis and
24 statistical analysis that you would do, let's say,

1 in an antitrust case, where you're trying to, for
2 example, decide whether a merger of, you know, Coke
3 and Pepsi would be an anticompetitive merger and
4 trying to figure out are there other soft drinks
5 that are substitutes for them or will people
6 substitute water. That's the typical type of
7 antitrust analysis, where you hopefully would have a
8 lot of data and a lot of analysis.

9 I think here the economic framework of
10 this issue is very straightforward. It's been
11 presented, I think, very clearly in the testimonies
12 here. I'll go back to what I said earlier -- and I
13 don't think it really goes beyond this -- which is
14 when my carrier has to terminate a call on someone
15 else's carrier, do they have a choice of who to put
16 that call onto? Is there any substitutability? If
17 you want to terminate a call on a customer served by
18 RNK, there is no substitutability, and that's a
19 transaction which takes place, it's required under
20 regulation that it has to occur, the call has to be
21 completed. And if you have that situation, I think
22 it's very clear what's been set up and what the
23 problem is, and I don't know what other analytical
24 tools would shed any more light on it.

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1 The other thing is that the data that's
 2 here that's very useful is indeed the very
 3 significant range in prices for call termination
 4 across the industry: ten times rates, fifteen times
 5 rates. I think that's also very, very powerful
 6 evidence that there's no real market discipline on
 7 these rates.

8 Putting aside the question of whether
 9 they even are representative of the costs of the
 10 different carriers and that a carrier with a rate
 11 fifteen times higher than Verizon's has costs that
 12 are fifteen times higher and a carrier with five
 13 times the rate of Verizon's has a cost five times
 14 higher -- putting all that aside, which I think just
 15 makes the whole thing even more suspect, I think the
 16 fact that you have rates with such huge disparities
 17 means that these are not substitutes for each other.

18 You don't see in a market, in any sort
 19 of well-defined market, that huge range of prices.
 20 It would be like saying -- I hate to do analogies.
 21 That just occurred to me because I went to the Red
 22 Sox last night. It's kind of like trying to say
 23 that tickets to go to a Little League game are
 24 substitutes for tickets to the Red Sox games. No.

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1 They're obviously not in the same market. They're
 2 both baseball, but they are far from being in any
 3 way, shape, or form substitutes.

4 Q. Is there any reason to believe that the
 5 cost of terminating an interstate call is different
 6 than terminating an intrastate call?

7 A. No, absolutely none. The actual function
 8 of the switch is exactly the same regardless of
 9 where the call originated.

10 Q. Do you believe that CLECs, or at least some
 11 CLECs -- and I think Mr. Nurse touched on this point
 12 a little bit -- have economies of scale or scope?

13 A. I think if the question is have they
 14 disadvantages because they have not reached certain
 15 scale: I don't know for sure with respect to all of
 16 their network and all of their services, but I
 17 believe that with respect to switching there are
 18 certainly, from what I've seen in the discovery,
 19 there are -- that I recall, CLECs have multiple
 20 switches serving the Commonwealth. So they've
 21 already reached the point where one switch has
 22 achieved its scale economy, and it's time to buy
 23 another one. So I'd say that scale economy in
 24 switching is not a disadvantage of the CLECs.

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1 Q. What about other components that would make
 2 a terminating access service?

3 A. Well, with respect to transport -- in other
 4 words, getting the call from, let's say, Comcast to
 5 One Communications, I think both Comcast and One
 6 Communications are not at the level of having
 7 sufficient network or sufficient demand for that
 8 piece of transport to equal the scale economies and
 9 historic advantages of Verizon. So I think in the
 10 transport part of the business the scale economies
 11 are still with Verizon.

12 When it comes to the loop network -- in
 13 other words, I would divide the calls in general
 14 into make a call, you get from the customer to the
 15 switch -- I'll call that a loop; and then you've got
 16 to get through the switch -- that's switching; and
 17 then there's transport to get you to some other
 18 switch.

19 On the loop, that depends a lot on what
 20 type of customer you're serving, what type of
 21 traffic they have. But as a general matter, I would
 22 say that most --

23 Let me restate that. Again, in that
 24 area Verizon still has some significant advantages

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1 or dominance over all of its competitors, and that's
 2 manifest in what I think I talked about earlier,
 3 special access, which is simply a loop, but with
 4 more capacity. And with respect to that market, I
 5 don't believe that Verizon has an equal in terms of
 6 the ability to serve all customers very efficiently
 7 and take advantage of all the network and scale
 8 economies.

9 Q. Is it even relevant in your view, in terms
 10 of your analysis of whether the Department should
 11 adopt Verizon's proposal, that it look at any
 12 existing disadvantages that CLECs may have with
 13 respect to economies of scale or scope?

14 A. I don't think it's relevant. I think it's
 15 sort of -- you're getting -- you can get yourself
 16 sort of ensnared in an endless process to try to
 17 figure out the cost structure of every company that
 18 comes in front of you in the telecommunications
 19 industry. It's enough to try to deal with Verizon.
 20 Frankly, costing and looking at network costs is by
 21 and large a very complex, difficult process.

22 And there are so many different ways to
 23 look at it that I think that since we're dealing
 24 with one specific issue -- we're not talking about

1 regulating CLECs, and in fact, I don't think the
2 Department should be regulating them or subsidizing
3 them or doing anything with respect to the CLECs
4 other than making sure that they can interconnect
5 with other carriers, and in particular Verizon, and
6 that that interconnection does not disadvantage the
7 CLECs.

8 This case is really not about harming
9 the CLECs; it's about completing the job of giving
10 them the advantage of mandated interconnection. If
11 you sort of think of a benchmark of what would
12 happen in a competitive world: If this market was
13 structured in such a way that you could really have
14 competition and there was no bargaining disadvantage
15 with respect to interconnection -- suppose there
16 were 50 carriers, each with 2 percent of the market.
17 You wouldn't need to regulate interconnection,
18 because in that case the negotiations would almost
19 certainly work out very well, and you would not need
20 to mandate it, nor would you need to set the price.

21 So really what we have is a result of
22 Verizon's dominance, and as a result of Verizon's
23 dominance, you have to, properly so, require Verizon
24 to interconnect with the CLECs. But, as I said, if

1 you require them to interconnect and don't set a
2 price, it's not the whole package, it's just partway
3 there.

4 Q. Is it true that Verizon's interstate
5 terminating access rates are not cost-based?

6 A. I'm not, you know, very familiar with the
7 whole history of how those rates were set. I've
8 read about what's been said about them. And what I
9 would say is that they are the result of a
10 regulatory history. They are mirroring interstate
11 rates, as far as I understand it. And I don't
12 believe interstate rates are cost-based. They are
13 regulation-determined rates. And they are, I think
14 as recognized by Verizon in its FCC filings and many
15 other pieces of supporting evidence, they are above
16 cost.

17 Q. Are you familiar with the data that the FCC
18 relied on when it determined Verizon's interstate
19 rates?

20 A. Yes. The FCC set these rates as a result
21 primarily of the CALLS plan that was submitted to it
22 by the carriers. I was personally part of the group
23 that was working on CALLS, until my employer pulled
24 us out of the coalition, in part because we didn't

1 think they were really paying attention enough to
2 costs and they were basically moving money from one
3 rate to another. So they were really set based on a
4 recovery of historic levels of cost rather than set
5 based on a going-forward analysis of what the costs
6 of these particular functions of the network were.

7 Q. I'm not quite sure from your answer
8 specifically the types of data that the FCC looked
9 at. Could you help me out a little?

10 A. Sure. The FCC looked at data from -- back
11 a second.

12 In setting these particular rates or the
13 regulations that govern these rates, the FCC was
14 looking primarily not at the costs of the ILECs but
15 rather the pot of revenue that they were recovering
16 from interstate ratepayers and was looking at ways
17 to move money from one rate-collection mechanism to
18 another, under the general belief and knowledge that
19 traffic-sensitive rates should be very, very low.
20 And up until that time, traffic-sensitive rates were
21 much higher.

22 So the effort during the CALLS process
23 was simply to find a way to shift revenue recovery
24 from traffic-sensitive to non-traffic-sensitive

1 sources or rate elements.

2 Q. Not to interrupt you: Was it essentially
3 some type of a rate rebalancing?

4 A. Yes. I think that's exactly the way to put
5 it. It was a rate rebalancing with --

6 To the extent it's informed by a sort of
7 knowledge or analysis of cost, there was an
8 underlying, I would say, acceptance of the fact that
9 traffic-sensitive costs were much lower than the
10 rates, and that's based on whatever knowledge,
11 evidence there was of costs, both accounting and
12 economic forward-looking costs.

13 Q. And I assume it was done on a revenue-
14 neutral basis?

15 A. It was done within the constraints of the
16 price-caps system. So it was revenue-neutral,
17 although subject to overall price-cap constraints,
18 which built in productivity adjustment.

19 Q. You mentioned that looking at network costs
20 is very difficult for Verizon and especially for
21 CLECs. If the Department -- well, let me back up.

22 Assuming that you agree that Verizon's
23 interstate rates, which they propose to use as the
24 interstate cap, serve as a sort of proxy for costs,

1 is there a way or can you think of a way that the
2 Department might develop a proxy for CLEC costs, as
3 a way to avoid the burdensomeness of conducting
4 individual or industry-wide rate cases?

5 A. I think that, based on what I know and what
6 I've talked about today, I believe that the ILEC
7 costs of switching are a reasonable benchmark for
8 the CLEC costs of switching, due to the nature of
9 what the switch does and its functions and, as I
10 said, sort of a very generous gap between Verizon's
11 prices and its costs.

12 If that is not going far enough, I was
13 trying to think, is there any other thing you could
14 do? And about the only thing I could think of, if
15 you wanted to benchmark the CLECs against
16 themselves, what you would do is benchmark their
17 terminating rates based off their retail rates. In
18 other words, if a CLEC is really higher-cost and
19 it's 15 times more costly than Verizon, then the
20 only way it can really stay in the market is to
21 charge 15 times more than Verizon on its retail as
22 well as on its terminating rate.

23 So if you wanted to say to a CLEC --
24 again, you have to do this properly. It's not just

1 its originating access charge, because that can be
2 an internal transfer. But if you want to say, if
3 you charge your retail customers -- whether it's
4 flat, per minute -- but if you work out how much
5 you're charging your customers per minute for
6 originating, that's the market test. That's what
7 your customers are willing to pay. They're willing
8 to pay 3 cents a minute for outgoing calling. Maybe
9 that's a reasonable proxy for their costs and that
10 should be the terminating access rate. I think it's
11 the only thing I can think of, short of doing a cost
12 study, and I think it's fair in the sense that it's
13 based on what they're doing.

14 Q. Thank you. That's all I have.

15 EXAMINATION

16 BY MR. GOPALAKRISHNAN:

17 Q. I have a few questions. Do you know of any
18 cases where Comcast and any other CLEC have
19 negotiated switched-access rates through an ICA?

20 A. I don't know. Sorry.

21 Q. You had referred to the long-run
22 incremental costs. I was wondering, why is the
23 long-run incremental cost more appropriate than the
24 long-run total costs?

1 A. That's an extremely good question. I've
2 been thinking, because I automatically went to
3 long-run incremental costs, as opposed to the total
4 TELRIC costs.

5 First of all, I don't expect, with
6 respect to measures of switching, that they're going
7 to be very different. In fact, the cost studies
8 that I referred to are generally TELRIC cost
9 studies.

10 The reason I used the term "LRIC" here,
11 is I think in this context it more appropriately
12 captured the nature of the supply for that
13 particular usage. If you're dealing with TELRIC,
14 one of the problems is you have to know what element
15 you're talking about. It's total-element long-run?
16 Is the element line? Is the element DS-1
17 equivalence? Is the element minutes? Once you have
18 something that has these multiple different elements
19 that it's providing, I think you lose the sort of
20 good arguments for TELRIC that are used in the UNE
21 context.

22 In practice I don't think it makes a lot
23 of difference, but conceptually I think it's a lot
24 cleaner and easier to think about what's the

1 incremental cost being imposed by terminating usage.

2 Q. But if these numbers are actually
3 different, what options does a CLEC have to recover
4 the difference between incremental cost and total
5 cost? And if you recover it elsewhere, would you be
6 defeating the purpose of trying to recover the costs
7 where they occur?

8 A. Well, I think that if there is a difference
9 and -- I would back up a second.

10 When I refer to long-run incremental
11 costs and the measures that I've looked at, it's not
12 accepting the cost of the switch itself as fixed and
13 then talk about usage on top of that. That's
14 generally not what the studies measure.

15 But as a general matter, I think that
16 when we're looking at intercarrier compensation
17 issues, that carriers should not be imposing any of
18 their sort of overhead costs or common costs on
19 competitors; that that creates the problem of
20 potentially imposing your own cost structure, your
21 own inefficiencies on your competitors.

22 So that's why I think the appropriate
23 benchmark, the appropriate method for looking at
24 this issue of intercarrier compensation is really

1 look at the additional calling that takes place. If
 2 I'm Comcast and I'm sending RNK 100 minutes and now
 3 I'm going to send them 200 minutes instead of 100
 4 minutes, how much more does it cost them to handle
 5 the additional 100 minutes -- rather than get into
 6 everything else, which I think would, No. 1, obscure
 7 and distort competition, and, No. 2, almost be
 8 impossible to solve if you tried to, you know, get
 9 some cosmic sense of fairness out of that.

10 Q. Assuming that the CLECs have market power,
 11 is the remedy of capping CLECs' switched-access
 12 rates the best remedy? Can you think of any other,
 13 more efficient remedies to that problem?

14 A. No, I think once you have to control that
 15 market power, you need to set a rate, and I think
 16 the use of Verizon's rate is very compelling. First
 17 of all, it gives you reciprocity, and I think that's
 18 important in intercarrier compensation, that you
 19 don't have, you know, one carrier with exactly the
 20 same amount of traffic going to the other carrier,
 21 and as the other carrier sends to it -- you don't
 22 have money changing hands when you don't have a
 23 different amount of traffic being imposed on the
 24 different carriers. I think that's Point 1.

1 A. I think it is. I think there are two
 2 possibilities here: one, that the CLEC is less
 3 efficient and, if it can't get it -- if it can't
 4 recover its costs from its competitors, it's not
 5 going to be able to recover it from its retail
 6 customers, then it should not be artificially
 7 propped up in the market.

8 And the other possibility is that if you
 9 have a CLEC that's based its business plan off of,
 10 let's say, traffic-pumping, then if you make a
 11 change and this reduces their ability to remain in
 12 that business, I think that's fine and that's
 13 exactly the correct outcome from a social-welfare
 14 standpoint.

15 Q. Thank you.

16 MR. DeROCHE: Thank you. Are we going
 17 to have any parties request recross? Richmond? Why
 18 don't you come forward and ask.

19 CROSS-EXAMINATION

20 BY MR. ADAMS:

21 Q. I'll try to make this really quick, but I
 22 just want to talk a little bit more about this line
 23 of questioning, as I have previously, questions from
 24 the Department about this notion that the costs to

1 And Point 2 I think is what we've talked
 2 about already, which is that I think the Verizon
 3 rate is a generous rate relative to measures of
 4 long-run incremental cost or even total-element
 5 long-run incremental cost.

6 So I think that's good. And as I
 7 discussed with Mr. Isenberg, the only other thought
 8 that occurred to me is some sort of a self-
 9 benchmarking, and I think that would be -- take some
 10 extra steps to put it into place. But if there was
 11 a desire to say to the CLECs -- again, keeping a
 12 close eye on what you really mean when you're
 13 looking at their retail rates, because if it's an
 14 ILEC without much outgoing usage, you're not going
 15 to be able to identify it. But if it's an ILEC with
 16 a million minutes outgoing and a million minutes
 17 incoming and you look at what they're charging their
 18 retail customers, and if it's not 3 cents a minute,
 19 they shouldn't be charging their competitors 3 cents
 20 a minute.

21 Q. If this remedy results in the ability -- I
 22 mean it reduces the ability of the CLECs to compete
 23 effectively in this market, then is this outcome a
 24 desirable outcome for society?

1 terminate intrastate are the same as the costs to
 2 terminate interstate.

3 I have a question about that, and I'm
 4 having difficulty formulating it very specifically.
 5 I keep thinking about separations and that process,
 6 that historical-legacy process that was out there.
 7 Could you comment a little bit on how we went from
 8 there to how we got to here? Maybe that's too
 9 vague.

10 With a little bit of latitude here:
 11 Verizon's rates at one time were set under rate-of-
 12 return principles.

13 A. Yes.

14 Q. And its costs under FCC rules were
 15 separated into the interstate jurisdiction and the
 16 intrastate jurisdiction.

17 A. Yes.

18 Q. And the FCC did its thing and figured out
 19 what rates were to recover the interstate portion of
 20 those costs.

21 A. Correct.

22 Q. And the states essentially did the same
 23 thing.

24 A. For the intrastate portion.

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1 Q. For the intrastate portion.
 2 And then eventually we moved to price
 3 caps.
 4 A. For price-cap carriers.
 5 Q. For price-cap carriers at the Federal
 6 level.
 7 A. Yes, and in the states there were
 8 various -- it depends on the state, it depends on
 9 the carrier. There were various incentive
 10 regulation plans.
 11 Q. Was it the case that price caps essentially
 12 started with the rate-of-return rates, rates that
 13 were set under the rate-of-return regime?
 14 A. Yes.
 15 Q. And then that brings me to this question
 16 about costs. If I remember your testimony
 17 correctly, you were saying we were taking those
 18 historical costs and changing the way we were
 19 recovering them.
 20 A. I think what I was talking about was the
 21 CALLS plan and the shifting of what was called cost
 22 recovery, but essentially revenue-requirement
 23 recovery, from different rate elements.
 24 Q. Thank you. I think that's the word that I

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1 was looking for, was revenue recovery, and that has
 2 its roots back in the rate-of-return days.
 3 A. It does.
 4 Q. Is what you're proposing is moving from
 5 that old-fashioned legacy regulation that was
 6 created for a monopoly market to what should rate
 7 regulation look like as we transition to a
 8 competitive market?
 9 A. I think I scratched the surface on that
 10 whole issue.
 11 Q. Right.
 12 A. I mean, I think what we're dealing with
 13 here is much less complicated than that. All we're
 14 dealing with here is setting a rate where a rate was
 15 not set before.
 16 Q. For the CLECs.
 17 A. Correct.
 18 Q. What about for a carrier like Verizon, and
 19 to benchmark its rate? Is that rate really the
 20 result of a competitive market?
 21 A. No, it isn't a result of a competitive
 22 market. I mean, we're not setting that rate here,
 23 as far as I understand it.
 24 Q. No.

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1 A. So I think if you're asking me where does
 2 it come from -- I think we've talked about that at
 3 length. It's not based off of an economic cost
 4 study of terminating switched access, although it
 5 can be -- the rate can be compared to cost studies
 6 of switching.
 7 Q. The last question: Were there policy
 8 reasons historically why regulators elected to set
 9 various rates for cost-recovery reasons above cost
 10 for that service?
 11 A. Yes, there were reasons then, and those
 12 still figure into how regulators set rates.
 13 Q. And is universal-service concerns, for
 14 example, one of those?
 15 A. That's the phrase that's used to describe
 16 what's been done, and there's a lot of, I'd say, in
 17 my mind questions as to whether that's still the
 18 nature of why these rates are where they are. I
 19 don't think that Verizon's ability to serve its
 20 customers depends on charging anyone, any
 21 competitor, more than its costs that it imposes on
 22 Verizon.
 23 Q. I don't mean to belabor the point. I'm
 24 trying to think if there's another question to

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1 actually tie all this together.
 2 If there are reasons that a regulator
 3 even today might want to set a rate above cost, does
 4 the regulator have the authority to do that, or
 5 should the regulator do that?
 6 A. I won't speak to authority. But in terms
 7 of should it do that? I think it should, when we're
 8 talking about intercarrier compensation, because
 9 otherwise we're getting into something I don't think
 10 we can cover in one evening.
 11 But intercarrier compensation is not the
 12 place where I think it would ever be reasonable to
 13 recover anything above cost. I think that just
 14 takes you directly to competitive-market
 15 distortions, and do not pass go, do not collect
 16 anything.
 17 Q. And this is truly my last question: Given
 18 the legacy rates that we're dealing with, isn't
 19 really that the situation that we have? We have
 20 these above-cost rates, that they're there because
 21 of legacy regulation?
 22 A. Yes, and that's why the proposal here is to
 23 cap the CLEC terminating rates at Verizon's
 24 terminating access charge, not at long-run

1 incremental cost.

2 MR. ADAMS: That's all my questions. I
3 don't know whether it was helpful, but I feel
4 better.

5 MR. MESSENGER: Can I break my previous
6 promise and do two questions?

7 MR. DeROCHE: Quickly, yes.

8 CROSS-EXAMINATION

9 BY MR. MESSENGER:

10 Q. I'm John Messenger, from PAETEC. You've
11 done a lot of talking about switching and switching
12 costs and efficiencies of switching, and you alluded
13 briefly to other elements, categories, which I
14 understand you to describe as transport on the one
15 hand and loops on the other.

16 A. Yes.

17 Q. Is it efficient for a new entrant looking
18 to compete with the ILEC to put one switch into a
19 rather wide territory and try to cover a broad
20 geographic area with a single switch and fill it up?

21 A. Yes, I believe it is. It's tended to be
22 the way that the industry has evolved.

23 Q. And in that case, if I'm a CLEC with a
24 single switch serving a wide area, I might only

1 incur one set of switching costs, but I still need
2 to get from that switch all the way out to my
3 various end users scattered around the territory; is
4 that correct?

5 A. Yes, you do. You still need to get it to
6 your end users. You have a longer loop, would be
7 another way to put it.

8 Q. A much longer loop, or perhaps a sort of
9 hybrid form of transport?

10 A. I wouldn't call it hybrid form of
11 transport. As I said, I'd call it a longer loop.
12 Is it less efficient? It depends on the type of
13 customers you have. It might not be on a per-minute
14 basis any more costly to serve business customers
15 with lots of volume on long loops than it is to
16 serve residential customers with short loops.

17 So it's different, and the cost
18 structure's different absolutely. But I don't think
19 you can conclude that there's some easy way to
20 translate differences in network structure into
21 different recommendations for this case.

22 Q. If I'm an ILEC, on the other hand, and I
23 have a hierarchical network and saturated end
24 offices all over the territory and I have transport

1 trunks, common trunks, connecting the tandems and
2 the end offices, isn't it true that I'm likely to
3 recover through my switched-access charges more than
4 just the costs of switching, and that, for example,
5 common transport and some other elements --

6 In other words, getting from a single
7 tandem switch out to end users that might be miles
8 away from that tandem switch will partly be exposed
9 on interexchange carriers through switched-access
10 charges; is that correct?

11 A. If we divide this up, as I've tried to,
12 between switching and interoffice transport, if you
13 set the rates at cost, which has not been done,
14 you're recovering your switching cost from your
15 switching rate, you're recovering your interoffice
16 network cost from your various transport rates. And
17 those costs and the need to recover those costs are
18 going to be different for different carriers.
19 That's why I've sort of tried to focus much more on
20 the whole switching issue.

21 When you're talking about transport,
22 it's some very different issues, and I think it's
23 very important to -- very, very important to control
24 Verizon's rates properly, to make sure those are not

1 excessive, to make sure you have, you know,
2 nondiscriminatory, efficient use of any sort of a
3 Verizon transport network, because no other carrier
4 is really comparable to them in terms of that
5 network.

6 Q. From a cost-comparison standpoint, is it
7 fair to compare a CLEC network with one switch
8 covering a wide territory with a single ILEC end
9 office serving a saturated exchange full of local
10 loops? Are they the same? Are they comparable?

11 A. That depends what you mean by "fair." Is
12 it fair to charge the same for switching? Yes. Is
13 it fair to charge the same for transport? Well,
14 you're not really charging transport in the case of
15 the CLEC.

16 Q. Is it fair to charge the same for switched
17 access in both network structures?

18 A. I think it's fair to charge --

19 Well, actually, let me say the
20 following: Again, I look at switching; it's fair to
21 charge the same. Should there be something more
22 along the lines of the reciprocal-compensation
23 rules, where a CLEC that serves an area through a
24 single switch that the ILEC serves through a tandem

1 and they charge the same reciprocal rates? I think
2 the recip-comp arrangement is better. If I ruled
3 the world and could rewrite access tariffs, I would
4 think it would be better to do it more along the
5 lines of reciprocal compensation.

6 There's a limit to what I think we can
7 accomplish in this case, and that's why, if we can
8 get the switching rates cleaned up -- a very broad
9 term -- that's an enormous first step. It's getting
10 rid of a clear distortion. And then I'll probably
11 be on the same side of the table as you when it
12 comes to making sure we're regulating Verizon's
13 transport rates properly.

14 Q. If there's any client left to be on the
15 same side of. But thank you. I have no further
16 questions.

17 MR. DeROCHE: Ms. O'Dell, do you have
18 any redirect?

19 MS. O'DELL: May I have one minute.
20 (Discussion off the record.)

21 MS. O'DELL: Just one follow-up
22 question.

23 REDIRECT EXAMINATION

24 BY MS. O'DELL:

1 by the intrastate regime, by the intrastate
2 termination rates.

3 You don't need to have high interstate
4 rates and intrastate rates in order to see both high
5 interstate and intrastate traffic.

6 MS. O'DELL: That's all I have.

7 MR. DeROCHE: Thank you very much,
8 Mr. Pelcovits.

9 THE WITNESS: You're welcome.

10 MR. DeROCHE: Thank you very much for
11 bearing with me, everybody. We'll see you tomorrow
12 at 10:00 o'clock.

13 (6:12 p.m.)

16 REPORTER'S CERTIFICATE

17 I, Alan H. Brock, the officer before
18 whom the foregoing proceedings were taken, do
19 certify that this transcript is a true record of the
20 proceedings on September 24, 2008.

24 _____
Alan H. Brock, RDR, CRR

1 Q. You had a discussion with Mr. Krathwohl
2 about the traffic-pumping, and there was a
3 discussion about the intrastate traffic-pumping
4 versus the interstate traffic-pumping. Can you
5 elaborate on that, on the differences there?

6 A. Yes.

7 Q. The interplay.

8 A. I think I was asked whether the data that I
9 looked at showed a lot of interstate as well as
10 intrastate terminating traffic, and, if so, was that
11 not indicative that the problem of traffic-pumping
12 was much greater than high intrastate termination
13 rates.

14 I think that, while it's hard to say
15 everything that contributes to traffic-pumping, if
16 you do have high intrastate termination rates and
17 you have a chat line or some service with a phone
18 number that you can reach, that number can be
19 reached from other states as well as within the
20 state. And therefore, if you're only making these
21 very high margins on your intrastate traffic and
22 you're also collecting some interstate traffic as
23 well, it's still a very good way -- or it's still
24 something that you would see encouraged and caused

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COMMONWEALTH OF MASSACHUSETTS

DEPARTMENT OF TELECOMMUNICATIONS AND CABLE

DTC 07-9

CONTINUED PUBLIC EVIDENTIARY HEARING,
held at the Department of Telecommunications and
Energy, One South Station, Boston, Massachusetts, on
Thursday, September 25, 2008, commencing at 10:02
a.m., concerning:

VERIZON NEW ENGLAND, INC.

SITTING: Lindsay DeRoche, Hearing Officer
Michael Isenberg, Director, Competition
Division
Benjamin Dobbs, Assistant Director,
Competition Division
Kajal Chattopadhyay, Deputy General
Counsel
Michael Mael, Analyst
Dinesh Gopalakrishnan, Analyst

-----Reporter: Alan H. Brock, RDR, CRR-----

Farmer Arsenault Brock LLC

50 Congress Street, Boston, MA 02109

617.728.4404

1	Richard C. Fipphen, Esq. Verizon	432
2	140 West Street, 27th Floor New York, New York 10007-2109	
3	212.321.8115 fax: 212.962.1667 richard.fipphen@verizon.com for Verizon New England, Inc.	
4		
5	Office of the Attorney General Jesse S. Reyes, Esq.	
6	Assistant Attorney General One Ashburton Place	
7	Boston, Massachusetts 02108 617.727.2200 fax: 617.727.1047	
8	jesse.reyes@state.ma.us	
9	Rich May, PC Eric J. Krathwohl, Esq.	
10	176 Federal Street Boston, Massachusetts 02110-2223	
11	617.556.3800 fax: 617.556.3890 ekrathwohl@richmaylaw.com	
12	for One Communications and XO Communications	
13	Paula Foley, Esq. One Communications	
14	220 Bear Hill Road Waltham, Massachusetts 02451	
15	781.466.1220 fax: 781.622.2180 pfoley@onecommunications.com	
16	Jay E. Gruber, Esq. AT&T Communications of New England, Inc.	
17	99 Bedford Street, Fourth Floor Boston, Massachusetts 02111	
18	617.574.3149 fax 617.574.3274 jegruber@lga.att.com	
19		
20	John V. Messenger, Esq. PAETEC	
21	One PAETEC Plaza 600 Willow Brook Office Park	
22	Fairport, New York 14450 585.340.2772 fax: 585.340.2563	
23	john.messenger@paetec.com	
24		

1	The Adams Legal Firm, LLC John B. Adams, Esq.	433
2	626C Admiral Drive, No. 312 Annapolis, Maryland 21401	
3	202.448.9033 fax: 202.448.9040 jbadams@adamslegalfirm.com	
4	for Richmond Telephone	
5	Douglas Denny-Brown, Esq. Special Counsel	
6	RNK Communications 27 Purvis Street	
7	Watertown, Massachusetts 02472 781.760.1097	
8	dougdb@rcn.com	
9	Michael S. Tenore, Esq. Assistant General Counsel	
10	RNK Communications 333 Elm Street, Suite 310	
11	781.613.6119 fax: 781.297.9836 mtenore@rnkcom.com	
12		
13	WolfBlock Deanne M. O'Dell, Esq.	
14	213 Market Street, Ninth Floor P.O. Box 865	
15	Harrisburg, Pennsylvania 17108-0865 717.255.3744 fax: 717.237.7314	
16	dodell@wolfblock.com for Comcast Communications	
17	Benjamin J. Aron, Esq. Sprint Nextel	
18	Mail Stop: VARESPO201 2001 Edmund Halley Drive	
19	Reston, Virginia 20191 703.592.7618 fax: 703.592.7407	
20	benjamin.aron@sprint.com	
21	Karen M. Potkul, Esq. XO Communications	
22	1601 Trapelo Road, Suite 397 Waltham, Massachusetts 02451	
23	781.693.3919 fax: 949.417.7270 karen.potkul@xo.com	
24		

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1	September 25, 2008	10:02 a.m.
2	PROCEEDINGS	
3	MR. DeROCHE: We'll go back on the	
4	record. Good morning, and welcome to day three of	
5	DTC 07-09 hearings. It's nice to see everybody back	
6	after yesterday's marathon session.	
7	It looks like after that we are back on	
8	schedule. Today we have two witnesses that we'd	
9	like to get through, Richmond's witness and then the	
10	CLECs'. So I think we're going to begin right away,	
11	if there are no procedural matters to deal with.	
12	Mr. Adams, would you like to call your	
13	witness?	
14	MR. ADAMS: Thank you. Richmond calls	
15	John Dullaghan.	
16	JOHN A. DULLAGHAN, Sworn	
17	DIRECT EXAMINATION	
18	BY MR. ADAMS:	
19	Q. Mr. Dullaghan, would you please state your	
20	name and title for the record.	
21	A. John Dullaghan, vice-president of customer	
22	care and communications.	
23	Q. On whose behalf are you appearing today?	
24	A. Richmond Networks and Richmond Telephone.	

1 Q. Have you prepared or caused to be prepared
2 prefiled testimony in this proceeding?

3 A. Yes, I have.

4 Q. Do you have any corrections or changes to
5 that testimony?

6 A. Yes. First off, I'd like to include a rate
7 sheet from Verizon's tariff which demonstrates a UNE
8 loop cost in the rural areas.

9 MR. ADAMS: Mr. Hearing Officer, this
10 document was previously marked as Richmond Exhibit
11 3. It is referenced in the prefiled testimony; it
12 was just omitted from the testimony.

13 MR. DeROCHE: Okay.

14 Q. I've just distributed a document marked as
15 Richmond Exhibit 3. Is this the rate sheet that you
16 mentioned?

17 A. Yes.

18 Q. Is this a true and accurate copy of the
19 page from Verizon's tariff?

20 A. Yes, it is.

21 MR. ADAMS: Mr. Hearing Officer, at this
22 point I would move admission of Richmond Exhibit 3
23 into evidence.

24 MR. DeROCHE: I'll accept this document

1 as Richmond Exhibit 3.

2 MR. ADAMS: Thank you.

3 Q. Mr. Dullaghan, do you have any other
4 changes or corrections to your testimony?

5 A. Yes, I do. Page 6, Line 7 of my testimony,
6 Q&A on that line: After listening to Mr. Vasington
7 describe how Verizon calculated their composite
8 rate, we did not do it in the same fashion, and I am
9 not confident that those numbers are accurate.

10 Q. Just for clarification, when you say
11 "accurate," are you saying it's not an apples-to-
12 apples comparison with Verizon's calculation?

13 A. Yes, I am.

14 Q. Are there any other changes?

15 A. Yes. In light of conversations with
16 Verizon prior to the hearing and subsequent
17 conversations with other parties, if the Federal
18 rule is adopted in its entirety with the rural
19 exemption, Richmond would be willing to adopt the
20 NECA rates as the rural benchmark and omit Richmond
21 Tel.'s rates as a proxy.

22 Q. Are there any other changes?

23 A. Yes. With that, the stipulation that if
24 the NECA rates change due to any Federal access

1 reform, that Richmond would be able to hold onto
2 those interstate access rates until the Department
3 makes a decision on the interstate rates.

4 Q. Any other changes?

5 A. No.

6 Q. With those changes, if you were asked the
7 same questions today, would your answers be the
8 same?

9 A. Yes.

10 Q. And do you adopt your prefiled testimony as
11 corrected and amended?

12 A. I do.

13 Q. Did you also prepare or cause to be
14 prepared discovery responses, responses to discovery
15 from the Department?

16 A. I did.

17 Q. Do you have any corrections or additions to
18 those?

19 A. I do. On Discovery Request
20 DTC-Richmond-1-12, I'd also like to remove that, for
21 the same reason that I mentioned, that the
22 calculations were not performed in an apples-to-
23 apples comparison to the way Verizon had calculated
24 their composite rate. So those numbers were based

1 on our composite rate that we had calculated
2 earlier.

3 Q. Are there any other changes?

4 A. No.

5 Q. With that correction, if you were asked the
6 same questions today, would your responses be the
7 same?

8 A. Yes.

9 Q. And did you also prepare or cause to be
10 prepared responses to discovery requests from the
11 CLEC group?

12 A. I did.

13 Q. Do you have any changes or corrections to
14 those?

15 A. No.

16 Q. If you were asked the same questions today,
17 would your responses be the same?

18 A. They would.

19 MR. ADAMS: At this time I'd like to
20 tender the witness for cross-examination.

21 MR. DeROCHE: Mr. Fipphen, Verizon?

22 MR. FIPPEN: We have no cross-
23 examination.

24 MR. DeROCHE: Mr. Gruber, AT&T?

1 MR. GRUBER: Yes, Mr. Hearing Officer.
 2 I can't resist, but it's very short.
 3 CROSS-EXAMINATION
 4 BY MR. GRUBER:
 5 Q. Good morning.
 6 A. Good morning.
 7 Q. You're here on behalf of Richmond Networks,
 8 is it?
 9 A. Correct.
 10 Q. And you're also here on behalf of Richmond
 11 Telephone?
 12 A. I'm here on behalf of Richmond Networks.
 13 Q. And is there a Richmond Telephone?
 14 A. There is.
 15 MR. ADAMS: For clarification, the
 16 testimony was filed on behalf of both Richmond
 17 Telephone and Richmond Networks. Richmond Networks
 18 is a subsidiary of Richmond Telephone.
 19 MR. GRUBER: Okay. Thank you.
 20 Q. Does that sound accurate?
 21 A. It does, yes.
 22 Q. Richmond Networks, when did that begin
 23 operation?
 24 A. Around the 2000 time frame.

1 Q. I'm John Messenger, for PAETEC.
 2 You describe in your testimony that
 3 Richmond Telephone provides service within its ILEC
 4 territory and that Richmond Networks provides
 5 service outside of that territory, in the rest of
 6 Berkshire County; is that correct?
 7 A. Yes.
 8 Q. Does Richmond Networks provide service
 9 anywhere else in Massachusetts?
 10 A. I know Richmond Networks does provide some
 11 ISP services outside, but very limited. We don't
 12 market it in that area, and there are some -- I
 13 don't know, maybe a handful that I can think of --
 14 that are related because the customer wanted a
 15 single bill so far as they could come to us for it.
 16 Q. Does Richmond Networks have any plans to
 17 provide service outside of Berkshire County?
 18 A. Not at this time.
 19 Q. Is it restricted legally or otherwise from
 20 doing so?
 21 A. No, I don't believe so.
 22 Q. You had handed out Richmond Exhibit 3,
 23 which is the Verizon tariff page. It lists
 24 different rates for metro, urban, suburban, and

1 Q. When it began operation, did it purchase a
 2 switch?
 3 A. I wasn't around at that time, but I don't
 4 believe so.
 5 Q. How did it get its switch capability?
 6 A. I really don't know how the whole
 7 engineering worked out. I wasn't around at that
 8 time. But I know that it did utilize some of
 9 Richmond Telephone's switching.
 10 Q. And today does it still utilize some of
 11 Richmond Telephone's switching?
 12 A. It does.
 13 MR. GRUBER: Thank you. That's all the
 14 questions I have.
 15 MR. DeROCHE: Ms. O'Dell, Comcast?
 16 MS. O'DELL: No cross.
 17 MR. DeROCHE: Mr. Krathwohl?
 18 MR. KRATHWOHL: No cross.
 19 MR. DeROCHE: Mr. Messenger?
 20 MR. MESSENGER: I do have a little.
 21 CROSS-EXAMINATION
 22 BY MR. MESSENGER:
 23 Q. Good morning, Mr. Dullaghan.
 24 A. Good morning.

1 rural categories; is that correct?
 2 A. That is.
 3 Q. Do you know if under Verizon's tariff all
 4 of Berkshire County is considered rural?
 5 A. I don't -- we did look at the census map,
 6 and according to the census map, most recent data
 7 that we looked at, it did demonstrate that it was
 8 rural, from what I could see.
 9 Q. What's the largest city in Berkshire
 10 County? Would that be Pittsfield?
 11 A. Yes.
 12 Q. And you're stating that that's considered
 13 rural by Verizon?
 14 A. Well, by the census data, it's considered
 15 rural. It may not be considered rural by Verizon.
 16 I apologize if I made that....
 17 Q. You describe in your testimony how
 18 Verizon's rural unbundled loop rate exceeds its
 19 basic-exchange rate in rural territories by, I
 20 believe, \$5 a line. Do you recall that testimony?
 21 A. I do.
 22 Q. And that's one of the reasons you give for
 23 why the Department should allow Richmond Networks to
 24 charge significantly higher for switched access?

1 A. That's one of the reasons access is
2 important to us, yes.

3 Q. If a nonrural CLEC like PAETEC wanted to
4 provide service to a customer in Berkshire County,
5 would PAETEC have to provide -- pay the same
6 unbundled loop rate that Richmond Networks was if it
7 was obtaining unbundled loops?

8 A. I would think so.

9 Q. Is there any reason why any CLEC shouldn't
10 be allowed to charge the higher switched-access
11 charges that Richmond Networks is urging in
12 Berkshire County?

13 A. Well, we provide service in Berkshire
14 County. That's the mainstay of our business. So we
15 don't have the ability to leverage that cost over
16 urban areas and that sort of thing, and metro areas.
17 We don't have that ability to leverage that cost.
18 So for us it's a different scenario.

19 Q. So you're saying a nonrural CLEC should not
20 be allowed to charge higher access charges in a
21 rural area?

22 A. That's -- that's not something for me to
23 decide right now, I think. I don't know what the
24 ruling would be on that. I'm just talking about my

1 own company.

2 MR. MESSENGER: I have no further
3 questions. Thank you.

4 MR. DeROCHE: Mr. Reyes?

5 MR. REYES: I have no questions.

6 MR. DeROCHE: Mr. Tenore, RNK?

7 MR. TENORE: No, thank you, Mr. Hearing
8 Officer.

9 EXAMINATION

10 BY MR. ISENBERG:

11 Q. Good morning, Mr. Dullaghan.

12 A. Good morning.

13 Q. Just to be perfectly clear: If you were
14 allowed to use the rural exemption or the Department
15 approved the rural exemption for Richmond Networks,
16 your company would use the NECA rate, as opposed to
17 the composite rate that you discuss in your
18 testimony and answers to discovery?

19 A. Correct.

20 Q. How does the NECA rate compare to your
21 current tariffed rate?

22 A. Well, we have been up to this point unable
23 to calculate the NECA rate because of our size. The
24 people that do work on that are out of the office

1 and attending certain trainings and whatnot, so
2 we've been unable to calculate that. But they did
3 assure me that we would be able to survive on the
4 NECA rate.

5 Q. So it would be a lower rate, then.

6 A. Yes, I believe so.

7 Q. Do you know how the NECA rates are
8 calculated?

9 A. I don't know personally, so I can't say
10 that I do.

11 Q. Are they calculated by the carriers or by
12 NECA?

13 A. Well, seeing that I don't know how it's
14 calculated, I wouldn't be able to answer that.

15 Q. If you could please refer to your answer to
16 DTC-Richmond-1-6. In your answer you propose
17 language to be added to the proposed rate-cap rule
18 that Verizon has offered in this case. Is that
19 language still relevant given that you now intend to
20 use the NECA rate?

21 A. I would say that it is, because the Federal
22 rule did -- the Federal rule did have a portion that
23 was referring to the NECA rate and using that as the
24 rural benchmark, from what I understand.

1 Q. So the language in the first sentence, that
2 refers to highest-composite-rate tariff, would not
3 create any inconsistency or ambiguity with Richmond
4 using the NECA rate?

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

6 MR. ADAMS: Could I have a moment to
7 confer?

8 MR. ISENBERG: Okay.

9 (Pause.)

10 Q. Did you have something to elaborate on?

11 A. Yes, that we don't think that the language
12 would apply any longer, now that we're going to
13 accept the NECA benchmark.

14 Q. I'd like to ask a record request: If you
15 could provide us revised language that you think
16 will be sufficient to address the rural extension.

17 MR. DeROCHE: We'll caption that DTC
18 Record Request No. 4.

19 (Record Request DTC-4.)

20 Q. Just to be clear for the record: You're
21 not asking the Department to adopt the Federal rule;
22 you're asking the Department to adopt something
23 similar to the Federal rule for Massachusetts. Or
24 you're not asking -- let me rephrase that.

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1 You're not asking the Department to
 2 allow Richmond Networks to take advantage of the
 3 Federal rule, but you're asking us to create a
 4 similar rule here in Massachusetts that would allow
 5 for a similar exemption. Is that correct?
 6 A. That is.
 7 Q. Are you aware of any FCC rules or case law
 8 that would prevent a state from doing what you're
 9 asking us to do?
 10 A. No, I'm not aware of the rules.
 11 Q. In one of your responses to Department
 12 discovery -- and I'm sorry, I don't have the
 13 number -- but I believe that you had said that you
 14 thought it might be difficult to implement the
 15 exemption. And I was wondering what you were
 16 referring to when you say "difficult."
 17 MR. ADAMS: Could we clarify which
 18 response that is? I don't recall that substance.
 19 A. I believe it's DTC-Richmond-1-9.
 20 MR. ADAMS: I don't believe the response
 21 was that it would be difficult to implement the
 22 rural exemption. I believe the response was that it
 23 would be difficult to implement Verizon's proposal
 24 of a cost-based exemption.

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1 Q. One final question: In your testimony you
 2 referred on Page 7 to a price squeeze that Richmond
 3 Networks operates under, given the difference
 4 between Verizon UNE rates and Richmond -- and
 5 Verizon retail rates and Richmond retail rates. Are
 6 you asking the Department to address that price-
 7 squeeze situation?
 8 A. We're not asking the Department to address
 9 that. We were just using that as evidence as to why
 10 the rural exemption would make sense for us.
 11 Q. Thank you.
 12 MR. DeROCHE: Thank you very much. Is
 13 there any party that wishes to re-cross-examine the
 14 witness?
 15 Is there any rebuttal testimony?
 16 MR. ADAMS: No, Mr. Hearing Officer.
 17 We're done.
 18 MR. DeROCHE: Thank you very much for
 19 your testimony.
 20 THE WITNESS: Thank you.
 21 AUGUST H. ANKUM, Sworn
 22 MR. DeROCHE: Mr. Krathwohl?
 23 MR. KRATHWOHL: Thank you, Mr. Hearing
 24 Officer.

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1 DIRECT EXAMINATION
 2 BY MR. KRATHWOHL:
 3 Q. Dr. Ankum, could you please state your
 4 name, your business address and business affiliation
 5 for the record?
 6 A. My name is August H. Ankum, 1027 Arch
 7 Street, 304, Philadelphia, Pennsylvania 19107.
 8 Q. Are you familiar with the document that's
 9 entitled Prefiled Testimony of Dr. August H. Ankum
 10 on Behalf of One Communications, PAETEC
 11 Communications, Inc., RNK Communications, and XO
 12 Communications Services, Inc.?
 13 A. Yes, I am.
 14 Q. And are you familiar with the various
 15 responses to information requests, which responses
 16 were filed on behalf of those four CLECs that I've
 17 just referenced?
 18 A. Yes.
 19 Q. Including the various supplements to those
 20 responses?
 21 A. Yes.
 22 Q. Are all the factual matters in the
 23 testimony and in the responses as supplemented true
 24 and correct, to your best knowledge?

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1 A. Yes.
 2 Q. Would the testimony and supplemented
 3 answers be the same today if you testified as to all
 4 those matters under oath?
 5 A. Yes, they would.
 6 Q. Dr. Ankum, could you please provide a very
 7 brief summary of your testimony.
 8 A. Yes, I can.
 9 MR. FIPPEN: Objection. I thought we
 10 had established at the beginning there would be no
 11 live direct testimony of substance. I believe, if
 12 we go back to the transcript on the first day, that
 13 you had indicated that that would not be allowed.
 14 MR. DeROCHE: That's correct. The
 15 Department has indicated that. I believe I know the
 16 point of confusion that's happened here. Mr.
 17 Krathwohl, what I indicated to you on the second day
 18 of testimony, I believe, when AT&T's witness was
 19 being cross-examined by Comcast, was that the CLECs
 20 would be afforded the same opportunity as any other
 21 party in the case to cross-examine the witness, be
 22 it friendly or unfriendly.
 23 In this particular instance what's
 24 happened is that One Communications, PAETEC

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1 Communications, RNK Communications, and XO
 2 Communications have jointly called the same witness.
 3 So I'm afraid that none of those parties will be
 4 allowed to offer any direct testimony outside of
 5 what we listed on the first day, being corrections
 6 and updates to the written filed testimony.
 7 MR. KRATHWOHL: I understand and respect
 8 the instructions and the practice that was set out
 9 at the outset here. Certainly I think the record
 10 will be served -- it has been noted -- one thing
 11 that we can agree with Mr. Nurse on is that Dr.
 12 Ankum's testimony is long.
 13 Also, in part, and in part because of
 14 some severe mischaracterizations of his testimony by
 15 Mr. Nurse, I think that it would help the record
 16 considerably to have a very brief summary of as well
 17 as to put everything in one place as we've been --
 18 sort of the mantra we've been trying to adopt, at
 19 least most of us, I think, in the proceeding here,
 20 cutting to the chase.
 21 I am confident that Dr. Ankum in his
 22 answers to questions, if afforded the latitude of
 23 Mr. Nurse, will be able to get in more than we're
 24 certainly going to put in for a brief summary here,

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1 and, if not, in redirect.
 2 So I think really it's a matter of
 3 trying to present succinctly, clearly, upfront,
 4 cutting to the chase, letting Dr. Ankum have a few
 5 minutes to really summarize what he has tried to put
 6 forth here.
 7 MR. GRUBER: Mr. Hearing Officer, before
 8 you rule, I'd like to be heard. I would have been
 9 delighted to have allowed my witnesses to present it
 10 succinctly, all in one place, upfront as well. I
 11 think we've all got to live by the same rules.
 12 MR. DeROCHE: Thank you. I agree. I
 13 think that the parties would be prejudiced if I were
 14 to allow you to enter this summary as part of direct
 15 testimony. As you pointed out, you will have an
 16 opportunity to offer rebuttal testimony; and if it's
 17 a little out of order, then so be it. But at least
 18 everybody will be given the same shot. So I'm going
 19 to deny that.
 20 MR. KRATHWOHL: The witness is, then,
 21 available for cross-examination.
 22 MR. DeROCHE: Thank you very much.
 23 MR. GRUBER: May I ask for a
 24 clarification of your statement? Is the opportunity

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1 for redirect that the CLECs will have, or is it for
 2 rebuttal? Is there a specific provision for
 3 rebuttal? That's all I'm trying to understand.
 4 MR. DeROCHE: I'm sorry, they're going
 5 to have opportunity to offer redirect.
 6 MR. GRUBER: I mean, I'll understand
 7 that they'll probably want to make it a rebuttal,
 8 but at least I wanted to understand your ruling as
 9 well.
 10 MR. DeROCHE: It will be limited to what
 11 was asked of the witness during the testimony.
 12 Richmond, Mr. Adams, would you like to
 13 begin?
 14 MR. ADAMS: No questions.
 15 MR. DeROCHE: Mr. Reyes, the Attorney
 16 General?
 17 MR. REYES: No questions.
 18 MR. DeROCHE: Mr. Gruber, AT&T?
 19 MR. GRUBER: I have a few questions.
 20 MR. DeROCHE: Please begin.
 21 CROSS-EXAMINATION
 22 BY MR. GRUBER:
 23 Q. Good morning, Dr. Ankum.
 24 A. Good morning.

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1 Q. The testimony that you have in front of
 2 you, sir, did you write it, or did Mr. Starkey write
 3 it?
 4 A. It's an iterative process. You want to
 5 know the genealogy?
 6 Q. Yes, why don't you give me the genealogy.
 7 A. I think the genealogy runs as follows: In
 8 1986 --
 9 Q. Can I just stop you? We only have a day.
 10 A. I'll skip a decade, then, 1996, and this is
 11 very serious now, because this addresses your parent
 12 company, SBC.
 13 In Illinois there was a case called
 14 Ameritech Customers First, and the idea that CLECs
 15 would have market power with respect to switched
 16 access, to my knowledge, first emerged in that
 17 particular proceeding. I at the time worked for
 18 TCG, a company that has been discussed yesterday by
 19 some of the AT&T witnesses. And together with some
 20 MCI witnesses we testified in this proceeding, and
 21 we all testified, including MCI, that CLECs did not
 22 have market power. And the arguments that we
 23 developed and presented there were kind of the
 24 genesis for the subsequent policy paper that evolved

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1 over time.

2 The next place where I systematically

3 laid out my ideas was in a Virginia case, where I

4 wrote a roughly 20-page type of white paper. That

5 white paper then evolved into system testimony for

6 Texas McLeod, again all along the same lines.

7 We then developed -- I developed it

8 further into a white paper that was presented in

9 Florida, and that white paper has been presented to

10 you in response to data requests. And that white

11 paper then was subsequently turned into this

12 particular piece of testimony by one of the

13 consultants that worked for QSI, Mr. Patrick Phipps.

14 He has been referenced in the discovery responses.

15 The initial witness then was

16 Mr. Starkey. Due to time conflicts, he could not be

17 testifying, and so I adopted the testimony. But the

18 genesis has pretty much consistently been my

19 thoughts in terms of the policy arguments.

20 Of course, there's a whole number of

21 facts that have been introduced. We do rate

22 analyses. We show how rates vary across the

23 country. Those types of empirical analyses have

24 been performed by Dr. Denny, who is part of QSI.

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1 She has access to a large database of switched-

2 access charges; and switched-access charges, as you

3 know, they vary widely across the country. They

4 vary in the state. I didn't personally do that.

5 She did that.

6 I also worked with, or our firm has a

7 Dr. Rodriguez, who worked for the Federal Trade

8 Commission for seven years. He did antitrust

9 analysis. He has published widely on antitrust

10 issues. He worked closely with me on drafting the

11 white paper.

12 Those thoughts about the market-

13 dominance analyses that focus so prominently in this

14 proceeding he and I worked on together to make sure

15 that what's found its way both into the QSI white

16 paper as well as into this testimony is fully

17 consistent with traditional antitrust analyses and

18 the horizontal-merger guidelines that have come up

19 during the discussion yesterday. I referenced that

20 throughout his testimony. I applied the

21 horizontal-merger guidelines in a very consistent

22 manner, consistent with the Department of Justice

23 and Federal Trade Commission practices. So Dr.

24 Rodriguez had an input into that.

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1 And now I've adopted this testimony, and

2 it's presented to you.

3 Q. I'm delighted to have it. You, I take it,

4 relied on Mr. Rodriguez as your expert on the

5 horizontal-merger guidelines?

6 A. I relied on him as a sounding board, so to

7 speak: I had used the horizontal-merger guidelines

8 in one of my first market-dominance analyses with,

9 interestingly enough --

10 Q. I'm sorry, I just asked you whether you

11 relied on Dr. Rodriguez.

12 A. I said as a sounding board, but I am the

13 primary author of those concepts and the

14 applications thereof. And I was telling you, I was

15 going back to AT&T's market-dominance case in Texas,

16 where you requested to be declared nondominant. And

17 that's when I first started as an economist working

18 with the horizontal-merger guidelines. I applied

19 them in Texas, and I have over the years studied

20 them.

21 I just want to make sure that with

22 respect to this particular case that what I was

23 saying was consistent with what the Federal Trade

24 Commission and the Department of Justice do. And

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1 for that I used as a sounding board Dr. Rodriguez.

2 Q. Thank you. Let's turn now to some matters

3 directly pertinent to the issues in the case. I'd

4 like to start off with trying to see where we can

5 agree and then get a little bit more focused on

6 where we don't agree.

7 First of all, can we agree that as a

8 policy matter competition is good if we can get it

9 introduced into telecom markets?

10 A. Yes.

11 Q. And as a general proposition, competitive

12 markets have produced good results for society? I

13 think we can all agree on that, generally speaking.

14 A. Yes, although events of the last two weeks

15 may cast some doubt on that. But generally, as an

16 economist, I do agree.

17 Q. Understood. I take it it's also your

18 recommendation to the Department that the Department

19 should implement policies that promote and encourage

20 competition in the telecommunications market.

21 A. Yes.

22 Q. And one of the reasons why competition is

23 good is because it has the characteristic of driving

24 down costs; is that right?

1 A. Yes.

2 Q. That's one of the reasons.

3 A. Yes.

4 Q. And in a competitive market, when costs are
5 driven down, there's a tendency for prices to
6 follow, as a general proposition.

7 A. Yes.

8 Q. Now I want to look at -- and I think we're
9 still in agreement, but you can correct me if I'm
10 wrong. I want to talk about what economists
11 typically say are the good characteristics of a
12 price in the competitive market, and I want to focus
13 on economic efficiency. I'll read you a paragraph,
14 and you tell me if you agree with it. It consists
15 of about three or four sentences.

16 Prices serve to signal to all economic
17 participants, buyers and sellers, in a society the
18 relative scarcity of products and services. As
19 such, they help to determine how much society will
20 consume of a certain product or service. This means
21 that if prices are out of alignment with costs, then
22 society perceives the wrong signals about relative
23 scarcities. The result is that society will either
24 overconsume or underconsume certain products or

1 services. In any event, price distortions will lead
2 to economic inefficiencies. Is that a statement
3 that you can generally agree with?

4 A. Yes. In fact, I think I've pretty much
5 argued that in this testimony, that prices must
6 reflect underlying costs.

7 Q. Good.

8 A. If those costs vary, then when regulators
9 set those prices, prices should follow those
10 variations in cost.

11 Q. Let's just now talk about prices. We're
12 getting some basic principles down before we get to
13 where we are going to argue.

14 Can we agree that prices above the
15 marginal cost of producing the item are inefficient
16 in an economic sense?

17 A. If you have a single-product environment, I
18 would say generally yes. Of course, we're dealing
19 with a multiproduct environment, and there again,
20 it's much more complex, since in a multiproduct
21 environment the marginal cost of a single product
22 may be relatively low, but if you set all prices
23 based on marginal costs for a multiproduct firm, it
24 may not recoup the share in common costs, and that

1 is true for every multiproduct company. And
2 therefore, if you were to set prices at marginal
3 cost across the entire product range, a company, any
4 company, no matter how efficient, would go out of
5 business, as long as there's sharing of common costs
6 involved.

7 So the answer is, in a single-product
8 environment, which is not relevant here, the answer
9 is yes. In a multiproduct environment, which is
10 relevant here, the answer is no.

11 Q. For the sake of argument, let's accept the
12 assumptions I'm asking you to make. We otherwise
13 are going to be here all day. We can then relax
14 those assumptions later.

15 A. I'm so relaxed already.

16 Q. So something that costs \$5 to make that's
17 selling for \$10 is inefficient because there are
18 people who value it at 8 but can't buy it, even
19 though it only costs \$5 to make; right?

20 A. Yes. And you asked me to accept your
21 assumptions, so I presume now -- let's make this
22 explicit -- that the assumption is a single-product
23 environment.

24 Q. A single-product environment.

1 A. In a single-product environment, what you
2 just said is correct.

3 Q. And society is worse off in that example by
4 \$3 if the prices are set in relation to costs in the
5 way I describe.

6 A. Yes. Well, it's more complex. But you're
7 saying 8 minus 5 is \$3. There's an overpricing by
8 \$3.

9 Q. Yes.

10 A. Society is not worse off by \$3. There is a
11 different analysis that underlies that. There's a
12 demand function, supply function. You find what is
13 called a dead-weight loss.

14 But as a shorthand, society is worse
15 off -- it could be worse off as much as \$3, but
16 possibly less. So somewhere between zero and three
17 dollars.

18 Q. But it's worse off.

19 A. Yes.

20 Q. And something that costs \$5 to make that's
21 selling for \$3, that's a problem, too, isn't it?

22 A. Yes.

23 Q. Because society will tend to overconsume
24 that; right?

1 A. Yes.

2 Q. Now I want to talk -- again, this is just
3 establishing some principles. Now I want to talk
4 about applying these principles to a single,
5 homogeneous product, not a multiproduct industry --
6 at least not a multiproduct industry in the sense
7 that you're probably talking about.

8 I want you to think about oil for a
9 second, and assume that oil is going for \$100 a
10 barrel in the world market, which is not far off
11 these days. And assume a company, and let's call it
12 West Texas Petro, out in West Texas, a small
13 operation looking to get into the oil business. It
14 costs them \$150 to produce a barrel of oil.

15 Now, assuming that the buyers of the oil
16 are under no legal compulsion to buy it or other
17 noneconomic compulsion to buy it, you would agree
18 with me, wouldn't you, that ExxonMobil has no
19 incentive to pay West Texas Petro more than \$100 a
20 barrel?

21 A. Yes.

22 Q. And that's because ExxonMobil can get that
23 barrel for \$100 from somebody else.

24 A. Yes.

1 Q. Now let's assume that a member of the royal
2 family in Saudi Arabia has an oil well in his
3 backyard, the backyard of his palace. And let's
4 further assume that it costs this Saudi Prince Petro
5 only \$30 per barrel to produce a barrel of oil
6 bubbling out of the backyard.

7 A. Yes.

8 Q. I think we can also agree that the Saudi
9 Prince Petro oil company is probably not going to be
10 satisfied with \$30 a barrel.

11 A. Correct.

12 Q. He's going to sell it for \$100 a barrel;
13 correct?

14 A. In your hypothetical case, yes.

15 Q. So in my hypothetical case, we can agree
16 that prices set at a market for a commodity like oil
17 tend to coalesce around a single market-clearing
18 price.

19 A. Yeah, and of course, I'm allowing you to
20 make all these assumptions because we know that
21 there are various distortions in particular markets
22 relating to OPEC, which is a cartel trying to
23 control prices. But for purposes of maintaining a
24 clear example, I'm making all the assumptions that I

1 think you want me to make, and so the answer is
2 yes -- which is no reflection -- go ahead.

3 Q. I want to go back to the West Texas Petro
4 example for a minute and understand if we change one
5 of the conditions we're looking at. Let's assume
6 that the government steps in and makes, requires
7 ExxonMobil to buy a barrel from West Texas Petro at
8 \$150 a barrel, the cost that West Texas Petro incurs
9 to produce it. Would you agree with me that those
10 extra \$50 are an approximation of the net loss to
11 society in that scenario? Is that correct?

12 A. I wouldn't say approximation, but I
13 understand you're trying to qualify the question in
14 light of our earlier discussion about dead-weight
15 loss. So with that understanding, yes.

16 Q. It constitutes some kind of dead-weight
17 loss. We're spending more resources to get the same
18 amount of oil, is basically the case; right?

19 A. Yes.

20 Q. Now let's go a little beyond that, to the
21 issues where we might not agree as well. Now,
22 you've testified that CLEC access prices are higher
23 than Verizon's probably because they have higher
24 costs -- they, the CLECs, have higher costs. Is

1 that a fair characterization of your testimony?

2 MR. KRATHWOHL: Could we have a page
3 reference, please?

4 MR. GRUBER: I don't have a page
5 reference. This is just the general gist I got out
6 of his testimony.

7 A. It's slightly different. My testimony is
8 that the CLEC access charges are part of a bundle of
9 services that the CLEC's offering to market. The
10 bundle of services translates into a certain amount
11 of profit. In the absence of barriers to entry,
12 that profit is controlled by market forces.

13 So my testimony is, slightly different
14 than what you suggest, that it is those market
15 forces that push down on the amount of profit that
16 CLECs can extract from access charges. What I'm
17 saying is, markets abhor excess profits.

18 Now, exactly how markets tackle those
19 things, I assume none of us knows that exactly
20 because the marketing geniuses typically don't
21 participate in these type of proceedings; they're
22 out there making money. But one thing we do know,
23 if there's no barrier to entry -- i.e., if other
24 firms can step in to compete for excess profits, we

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1 know they will, one way or another. And I've
 2 suggested in my testimony that the company ideally
 3 situated to compete for those excess profits is
 4 Verizon.

5 So my testimony, then, is that it's
 6 market discipline that controls whether CLECs are
 7 going to be setting their prices for all of their
 8 products, including switched access, which is just
 9 another price, and it's just another price that
 10 translates into just another profit. And it's just
 11 another piece of profit that is subject to
 12 competitive strife. There is nothing different.
 13 But the question becomes --

14 Q. Dr. Ankum, I ask the questions, sir.

15 MR. KRATHWOHL: Mr. Hearing Officer, I
 16 really have to jump in here. I mean, we went
 17 through this yesterday. Myself, Mr. Messenger,
 18 probably others were quite dismayed with the extent
 19 to which Mr. Nurse went afield. I think that
 20 between myself and Mr. Messenger we asked 50
 21 yes-or-no questions. He testified for two hours or
 22 more in response to those questions. 50 yesses or
 23 nos could have been done in five minutes.

24 I think this is wholly within the same

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1 rules as Mr. Gruber has asked for, to allow Dr.
 2 Ankum to answer the question and to provide his
 3 explanation of the relevant information that bears
 4 upon his answer.

5 MR. GRUBER: May I be heard on that?

6 MR. DeROCHE: Yes.

7 MR. GRUBER: First of all, I don't
 8 recall Mr. Krathwohl asking -- interrupting a
 9 nonresponse and objecting to the response. I think
 10 this is a different situation. Had Mr. Krathwohl
 11 done so, you might have made a ruling, and we might
 12 be talking about, you know, equal rules for both
 13 sides.

14 But what I'm trying to do is to keep us
 15 on track today, so that we can join the issues. If
 16 Mr. Krathwohl thinks that something's been left out
 17 that I have raised on cross, he's more than welcome
 18 to ask Dr. Ankum. But I'm never going to get
 19 through this cross if Dr. Ankum starts to pose the
 20 questions, as he was doing there, that he intends to
 21 answer, instead of answering the question that I
 22 asked.

23 MR. KRATHWOHL: I must beg to differ. I
 24 specifically asked the Bench for rulings and the

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1 disciplining of the witness. There was some
 2 direction given, which I think did not really carry
 3 through with the witness's answers. Rather than
 4 having a perpetual argument between the lawyers,
 5 which is what we will have at this point -- we had
 6 made our point to the Bench. We had hoped that the
 7 witness would abide by what the Bench's directions
 8 were. That's the way we approached it.

9 So I really have to disagree with
 10 Mr. Gruber's characterization.

11 MR. DeROCHE: Mr. Gruber, I'm going to
 12 deny that objection. The witness is going to be
 13 free to answer the question in the way that he feels
 14 he must. He's got to elaborate on his testimony.

15 You can certainly feel free to try and
 16 redirect the witness and to keep the witness in line
 17 with the questions that you ask. But if he feels he
 18 needs to elaborate on something, I think I'm going
 19 to have to let him do that.

20 I will instruct the witness to try and
 21 keep your answers as succinct as possible and as
 22 direct to the point as the questioners are asking.

23 THE WITNESS: I will do that, Your
 24 Honor.

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1 A. Ironically, I was about to reask your
 2 question, to finalize the answer.

3 Q. Do you want me to restate it?

4 A. Well, let me try, and you correct me if I'm
 5 wrong. But I believe the question was, are the
 6 CLECs' access rates higher than Verizon's because
 7 their costs are higher?

8 Q. That wasn't my question.

9 A. Something like that.

10 Q. I asked you whether one of the general
 11 points of your testimony was that CLEC access rates
 12 are higher than Verizon's because their costs are
 13 higher.

14 A. Fair enough. I understood that to be
 15 comparable questions.

16 Q. Did I hear that your answer to my question
 17 was yes, that is an important part of your
 18 testimony?

19 A. No, the way that I -- everything I said in
 20 response to the earlier question, I would say
 21 exactly the same thing. And I would want to
 22 conclude that CLECs set their rates relative to
 23 competitive pressures and, like all companies in
 24 competitive markets, the squeeze between the

1 competitive pressures and their own internal cost
 2 considerations. So it's not that the prices are set
 3 just based on costs; it's the twin considerations of
 4 their costs and their pressures, and the competitive
 5 pressures. That is the gist of my testimony.
 6 Q. Can I turn you to Page 24, Lines 14 through
 7 16. We're going to have to do it this way, I think.
 8 Let me know when you're there. Are you there?
 9 A. Yes. Give me a second, please. Yes.
 10 Q. My question's a very simple one. I'm going
 11 to read the following sentence: "Contrary to
 12 Verizon's claim that CLEC rates are higher is not an
 13 indication of market power but more likely a product
 14 of the cost differences between CLECs and Verizon,
 15 as well as the manner in which Verizon's intrastate
 16 switched-access rates have been established." Did I
 17 read that correctly?
 18 A. Yes, I did.
 19 Q. And you answered that.
 20 And it's fair to say, isn't it, that the
 21 fact that CLEC costs for providing access is higher
 22 than Verizon's is an important part of your argument
 23 in support of allowing CLECs to set their access
 24 prices higher than Verizon's? Isn't that right?

1 A. Yes.
 2 Q. So an important part of your argument is
 3 that there is some relationship between the cost
 4 that the CLECs incur and the prices that they set
 5 for switched access; is that correct?
 6 A. Yes, their wholesale prices, and the
 7 standing paradigm for the last 100 years is that
 8 when we look at wholesale prices in this industry --
 9 MR. GRUBER: This I don't see as
 10 relevant to what I asked.
 11 MR. DeROCHE: Mr. Gruber, I think he's
 12 explaining his answer. I'm going to have to let him
 13 do that. If you feel that that is going too far
 14 astray, then please feel free to make an objection
 15 and we'll make a ruling. But I think we're going to
 16 have to hear that.
 17 THE REPORTER: We don't have the end of
 18 that answer on the record.
 19 MR. DeROCHE: Dr. Ankum, would you
 20 please repeat your answer.
 21 A. Yes. I believe I said yes, that the
 22 standing practice for the last 100 years in this
 23 industry has been to set wholesale rates at cost,
 24 and we would expect to find prices for wholesale

1 services to reflect company-specific costs.
 2 Q. And in fact, what you just stated there is
 3 a central aspect of your argument; is that correct?
 4 A. Yes.
 5 Q. But you in this case have presented
 6 absolutely no evidence that the cost of any of these
 7 CLECs, specific CLECs, reflect or relate to the
 8 price that they specifically charge; isn't that
 9 correct?
 10 MR. KRATHWOHL: Objection to form.
 11 MR. GRUBER: This is cross-examination.
 12 MR. KRATHWOHL: I disagree with the
 13 premise. I don't think there's been any
 14 establishment by Mr. Gruber that his premise is
 15 correct.
 16 MR. GRUBER: Mr. Ankum has testified in
 17 his prefiled testimony. It's there.
 18 MR. KRATHWOHL: He hasn't testified what
 19 Mr. Gruber just said.
 20 MR. GRUBER: He's free to object. This
 21 is cross-examination.
 22 MR. KRATHWOHL: That's what I'm doing.
 23 MR. GRUBER: No, I meant the witness is
 24 free to object.

1 MR. DeROCHE: And I would agree. I
 2 don't think Mr. Gruber has put forth any hypotheses.
 3 He's posed a question, and the witness is free to
 4 agree or disagree. But I don't think it's an
 5 objectionable question, at least for cross-
 6 examination.
 7 The witness will please answer that
 8 question.
 9 A. The way I understand Verizon's proposal to
 10 be is that it would apply not just to the four
 11 companies that are sponsoring my testimony but to
 12 all CLECs in Massachusetts.
 13 So what I've done in my testimony, I've
 14 presented a whole number of reasons, or a large
 15 number of reasons, why one may fairly conclude that
 16 CLECs have higher costs than Verizon. And I do cite
 17 evidence in my testimony, and among many other
 18 things that I cite, I refer to FCC orders, a number
 19 of FCC orders, in which this has been established.
 20 I have a discussion of switch-vendor contracts. I
 21 have an extensive discussion of AT&T's and Verizon's
 22 switch-vendor contracts, and as this Commission
 23 knows, those contracts entail huge discounts. I
 24 made references to cases in which that has been

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1 established.

2 I also discuss that CLECs, because they

3 don't have that buying power, do not get the same

4 cheap switches, they pay much more for switches than

5 Verizon does. I believe that's evidence. One can

6 only conclude, if you pay more for your inputs, even

7 if everything else were to be exactly the same -- if

8 you both drive a Ford Taurus but you put more gas in

9 your tank, or you put gas in your tank but one

10 person pays twice as much as the other person,

11 ultimately you have higher costs.

12 So I have a whole discussion in my

13 testimony about how input prices impact costs.

14 There are extensive discussions in my testimony

15 about how the network architectures of CLECs are

16 different than ILECs. Again, I reference FCC

17 orders. I explain how most of the CLECs have to use

18 collocation facilities that they purchase from the

19 ILECs. I point out in my testimony that those

20 collocation facilities that are not used by Verizon

21 in terminating access must be used by the CLECs; but

22 moreover, that the cost of those collocation

23 facilities has been pushed up by the ILECs across

24 the country. I have not examined the collocation

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1 charges in Massachusetts specifically, but I believe

2 that there are generally important pressures on

3 those input costs.

4 CLECs must use transportation costs

5 between their own switches and those collocation

6 spaces. I present evidence about those

7 transportation costs, and I discuss that Verizon

8 doesn't have those costs.

9 So those are all costs that CLECs, even

10 optimally efficient CLECs, must incur in the

11 provision of switched access. They cannot avoid

12 those costs.

13 So if you ask me is there evidence in my

14 testimony with respect to the cost structure of

15 CLECs in Massachusetts in general, I say yes,

16 there's ample evidence. In fact, I have a number of

17 other very specific analyses in there that compares

18 the rate of switch utilization of CLECs. It's an

19 empirical analysis that I have in there. I have

20 provided empirical analysis about customer densities

21 that CLECs experience versus what ILECs experience,

22 and I explain that when a company has a lower

23 customer density, it has higher costs, which is

24 exactly what all commissions have found, and I refer

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1 to that in my testimony. The lower the customer

2 density, when you look across the nation and when

3 you look in Massachusetts itself -- the lower the

4 customer density, the higher is the cost of serving

5 the customer.

6 So yes, I do have those discussions, and

7 yes, that evidence has been presented.

8 Q. Dr. Ankum, can you turn to

9 Comcast-CLECs-1-7.

10 MR. KRATHWOHL: Do you want to give the

11 witness a copy of that, or shall I?

12 MR. GRUBER: The hearing officer had

13 said we're all responsible for bringing our own

14 copies, so I assumed that's what we were going to

15 do.

16 MR. KRATHWOHL: I have approached a

17 witness before and had attorneys object to that, so

18 I don't want that to happen to me.

19 MR. GRUBER: No objection.

20 MR. KRATHWOHL: And the reference is

21 Comcast-CLECs-1-7.

22 A. May I have a second? (Pause.)

23 Yes, I'm ready.

24 Q. It reads -- correct me if I'm wrong --

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1 "Please provide any analysis conducted by

2 Mr. Starkey that shows the relationship between the

3 retail rates of CLECs and their higher usage costs."

4 Did I read that correctly?

5 A. Yes, you did.

6 Q. After the objection, it states,

7 "Notwithstanding this objection, Dr. Ankum responds

8 as follows." And then it says, "Neither Mr. Starkey

9 nor Dr. Ankum has undertaken any such analysis."

10 Did I read that erectly?

11 A. Yes.

12 Q. So despite the fact that this by your own

13 testimony was a very important part of your

14 position, do we agree that neither you nor

15 Mr. Starkey undertook an analysis showing the

16 relationship between the retail rates of CLECs and

17 their higher usage costs, as you stated there? Is

18 that true or not?

19 A. Yes, the way that this question here is

20 phrased, this answer as provided to you in discovery

21 is correct.

22 Q. Thank you. Now, the CLEC access rates that

23 we saw in Massachusetts vary widely. Can we at

24 least agree on that?

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1 A. Yes -- and they should.
2 Q. Just to get some sense of what's going on,
3 Mr. Vasington had said in his testimony that they
4 vary up to 15 times Verizon's rate. Do you dispute
5 that?
6 A. Well, to say "vary" by up to 15 times,
7 that's a somewhat imprecise statement. I don't know
8 what specific example he had in mind of which
9 specific CLEC. So I will let Mr. Vasington's
10 statement stand and speak for itself.
11 Q. Is it a fair statement that you filed your
12 testimony after Mr. Vasington?
13 A. Yes.
14 Q. And it's a fair statement to say that you
15 didn't take issue with Mr. Vasington's statements
16 here?
17 A. I have taken issue with the thrust of his
18 argument, which is that CLEC rates are out of
19 alignment.
20 Q. I didn't ask you that question. We're
21 talking about rate variation here.
22 A. I have also presented --
23 MR. KRATHWOHL: Also, if I could ask for
24 a clarification: Are we talking about rate

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1 variation among the four CLECs or among the universe
2 of competitive carriers?
3 MR. GRUBER: At the moment I'm talking
4 about the universe of competitive carriers in
5 Massachusetts. I'm talking, in fact, about
6 Mr. Verizon's --
7 (Laughter.)
8 MR. GRUBER: I'm simply referring to Mr.
9 Vasington's testimony, that was never disputed by
10 Dr. Ankum. That's what I'm referring to.
11 Q. Why don't we do this: We've certainly
12 agreed that the universe of CLEC rates vary somewhat
13 in Massachusetts. I think, Dr. Ankum, you did agree
14 with that?
15 A. Yes, and I said they should.
16 Q. And that they should. Now, do you have a
17 copy of AT&T's response to CLEC-1-15(a)? And I do
18 happen to have a copy of that. If you'd just turn
19 to the last chart. I'm going to represent to you
20 what this is and ask you to assume it's that; and
21 obviously, if I'm incorrect, your response will not
22 be based on anything accurate. This is in the
23 record, and it will be reviewed and determined
24 whether my statement about it is correct or not.

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1 Your answer, understand, is only based on my
2 statement and what you see in front of you.
3 I'm asking you, do you see the right-
4 hand row there? I'm sorry; that doesn't make sense.
5 First of all, let me back up for a
6 moment. This was compiled by AT&T as a composite
7 access rate based on tariffed elements, not based on
8 average revenues per minute, of many of the CLECs in
9 Massachusetts. There are two or three -- most of
10 the elements are usage-based, per MOU, so there's no
11 dispute about that. One of the elements has a mile
12 component in it, and the assumption was a 10-mile
13 transport facility. And then, of course, one has to
14 make an assumption about how much of the traffic is
15 tandem-routed, and the assumption here was 20
16 percent.
17 And so under those assumptions, if you
18 look in the right-hand column, you'll see AT&T's
19 calculation of the blended access rates in relation
20 to Verizon. Are you with me so far?
21 A. Yes.
22 Q. Is it fair to say that on this chart it
23 varies from, among the CLECs who are sponsoring your
24 testimony --

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1 First of all, Choice One is one of the
2 One Communications companies, isn't it?
3 A. I believe so.
4 Q. So if we look at Choice One, its blended
5 rates as AT&T calculated run about 16 to 20 percent
6 above Verizon's; is that right?
7 A. Yeah, they have a peak and an off-peak
8 rate, and I presume these are tariffed rates, so
9 there's nothing proprietary.
10 Q. That's correct.
11 A. Yes, that's what these numbers here show.
12 If you're saying 16 to 20 percent, if you refer to
13 the far-right column --
14 That's what you're referring to; right?
15 Q. Yes.
16 A. These numbers, 16 and 20 percent, appear
17 there. I'm not speaking to the veracity of the
18 underlying numbers, of course.
19 Q. I understand. And Conversent
20 Communications there, that says that it's 1,277
21 percent higher than Verizon's; is that correct?
22 A. That's what the number says, yes.
23 Q. And Conversent is also one of the One
24 Communications companies; correct?

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1 A. Yes, I believe so.

2 Q. If these numbers are correct, that's, then,

3 you would say, a fair amount of variation, wouldn't

4 you?

5 A. I think the variation is much smaller in

6 nominal terms -- again, assuming that these numbers

7 are correct. The variation in nominal terms is much

8 smaller than what's suggested here by the

9 percentages. That's Point 1.

10 Secondly, you asked me is this a large

11 degree of variation. That, of course, is relative

12 to what one would expect. But I believe the

13 percentages are what they are.

14 One third point: The Conversent rates

15 are somewhat higher than, if I'm scanning the rates

16 here, of other carriers, but are not grossly out of

17 alignment with those other carrier rates. So if you

18 are asking me to speak to whether there's an undue

19 variation here or whether Conversent is an outlier,

20 I don't think that one can necessarily conclude that

21 from the percentage that AT&T has calculated here --

22 in addition, of course, to the obvious observation,

23 as I've already made in my testimony, that Verizon's

24 rates are a benchmark of nothing other than some

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1 regulatory process, which is hardly a touchstone for

2 meritorious rates for anybody other than Verizon

3 itself.

4 Q. Dr. Ankum, just to keep us on track here:

5 We weren't focused on whether CLEC access rates were

6 higher or lower than Verizon's; we were focused on

7 the variation. So we could have put any number in

8 there as the benchmark -- right? -- and we still

9 would have the same variation; is that correct?

10 A. Not percentagewise, and the numbers would

11 suggest very different things.

12 Q. But they all have the same relationship to

13 one another no matter what Verizon's rate is. Is

14 that a fair statement?

15 MR. KRATHWOHL: A clarification:

16 Mr. Gruber used the word "relationship." Are we

17 talking about percentage relationship, which has

18 been the subject of the last several questions, or

19 something else?

20 Q. Let's take the least expensive, the lowest

21 rate on here, and let me ask you: Is it fair to say

22 that Conversent's actual rate is over 1,000 percent

23 higher than Choice One's actual rate, or something

24 approaching that?

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1 A. You're asking me if Verizon's rate --

2 Q. I'm sorry, I may have misspoken. If

3 Conversent's rate is something like 1,000 times

4 higher than XO's rate.

5 A. XO.

6 Q. I am misspeaking.

7 A. You're straining my eyesight.

8 Q. I'm sorry, I am misspeaking all over the

9 place. Let me see if I can make it more clear.

10 I'm asking you whether Conversent

11 Communications' rate is in the neighborhood of 1,000

12 percent higher than Choice One's rate. Hopefully I

13 got it right.

14 A. Which Choice One rate? I'm playing with

15 you now.

16 I think generally these numbers speak

17 for themselves, assuming that they're correct. What

18 you're asking me, is there a number 1277 percent?

19 The answer is yes. And I presume that number stands

20 in relationship to the Verizon rate, at least as how

21 you presented it. And I have no problem with that

22 statement.

23 Q. Now, four of your clients merged into One

24 Communications; is that correct?

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1 MR. KRATHWOHL: Could I have the

2 question repeated by the stenographer, please.

3 (Question read.)

4 A. One Communications is the client.

5 Q. Your client is a merger of four CLECs; is

6 that correct?

7 A. I don't know that. Subject to check, I

8 would accept that.

9 Q. Let me understand this correctly: You're

10 saying that there's a relationship between the CLEC

11 access rates and their costs, and you don't even

12 know whether some of these CLECs have combined into

13 a larger company?

14 MR. KRATHWOHL: That wasn't the

15 question.

16 MR. GRUBER: That's my question now.

17 A. Well, there are two components to that

18 question; right? Are CLEC access rates set just

19 based on cost? And I believe we had a discussion

20 earlier, so I won't repeat that.

21 Now, the second question is how do I

22 incorporate those observations into my testimony --

23 I believe that's what you're asking -- and do I need

24 to examine the particular circumstances of each one

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1 of the constituent companies that merged into One
 2 Communications and have I done that? And I haven't
 3 done that, and I don't believe it's germane to my
 4 discussion here.

5 Q. Dr. Ankum, do you believe that the merger
 6 of four smaller companies into one larger company
 7 has an effect on economies of scale?

8 A. Yes.

9 Q. And wouldn't you expect that the merger of
 10 these four companies would produce an improved
 11 economy of scale?

12 A. Yes, that is my testimony.

13 Q. And as far as you know, sir, there's been
 14 no change in the access rates of those companies,
 15 have there, since the merger has taken place? Is
 16 that correct?

17 A. I have not looked at that.

18 Q. Wouldn't that be an important thing to look
 19 at to test your hypothesis that access costs are in
 20 part a function of the size of the CLEC?

21 A. I don't know what the financial
 22 relationships are between the underlying entities
 23 that make up One Communications. That's Point 1.
 24 Secondly, we're talking generally

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1 whether there are competitive pressures being
 2 brought to bear on CLECs and CLEC access charges.
 3 One doesn't need to establish what's going on with
 4 each individual CLEC in the marketplace, just like
 5 in any other market we do not need to establish
 6 whether the prices offered by all firms in the
 7 industry are appropriately aligned. Companies are
 8 involved in their own assessment of what the market
 9 can bear he, and some companies may overshoot that,
 10 other companies may undershoot that. And
 11 particularly in a multiproduct environment, that
 12 particular adjustment and assessment where prices
 13 should be is a fairly complex one. So I have not
 14 ventured to go into the constituent companies of One
 15 Communications to examine that. That's, I believe,
 16 way beyond the scope of this proceeding. And I've
 17 already been accused of having filed too many pages.

18 Q. Let me understand this: You don't believe
 19 that testing your hypothesis that higher access
 20 rates are a function of, in part, economies of scale
 21 would merit actually trying to do that with the
 22 companies that you're here on behalf of today?

23 A. I've tested the hypotheses that economies
 24 of scale translate into lower cost. I've filed

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1 extensive testimony on that. Then I filed extensive
 2 testimony on the variations in access charges across
 3 the state, across the nation. I've also stated, and
 4 again earlier this morning, that access charges are
 5 set with an eye on cost-recovery, but that's not the
 6 exclusive consideration.

7 So there is simply no way for me --
 8 first of all, I haven't really asserted that
 9 economies of scale directly impact the access
 10 charges of CLECs, so for that reason I have not
 11 examined it. But also, as I said, it's not really
 12 germane to see what the underlying economies for the
 13 constituent companies do with respect to One
 14 Communications and their access charges.

15 Q. Is it your testimony that economic pressure
 16 should, one would expect, force down the access
 17 charges of, let's say, Conversent if it acquires, as
 18 it should, economies of scale through this merger?

19 A. I think the pressures are there regardless
 20 of what Choice One's economies of scale are. The
 21 tariffed access rates are there for everybody to
 22 see. Every company in this industry can take a look
 23 at these access charges. Every company in this
 24 industry can look at that and say, "Hmm, there's a

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1 fair amount of profit being made." The question is,
 2 can every company step in and compete for those
 3 customers, those Choice One or Conversent customers?
 4 And that becomes a question of are there barriers to
 5 entry.

6 Now, obviously there will be some
 7 companies, some CLECs, that will not be well
 8 positioned to compete for those Choice One
 9 customers; but that is not the question. The
 10 question is, are there companies that are well
 11 situated to compete for those profits, and the
 12 answer there, of course, is yes -- most notably, of
 13 course, Verizon is ideally positioned to compete for
 14 those customers. They know who those customers are.
 15 On the originating side Verizon knows not only who
 16 the customer is, but chances are that customer is a
 17 presubscribed long-distance customer of Verizon.

18 So Verizon already has an established
 19 connection with that customer. It knows where the
 20 customer lives. It knows calling patterns. It
 21 knows credit ratings. It has building access. It
 22 has right-of-way. It has facilities -- because
 23 typically the CLECs offer their services over
 24 Verizon loops, UNE loops. So Verizon has the

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1 facilities in place and obviously has the switches
 2 in place, because these loops terminate in Verizon
 3 offices.
 4 So everything is in place for a company
 5 like Verizon to compete for those customers. The
 6 only question is, does Verizon have the will? Well,
 7 that's not an economic consideration for me.
 8 So to the extent that Choice One has
 9 high access rates, the question is not will the
 10 market -- or, broader: If Conversent begins to
 11 experience or Choice One begins to experience
 12 economies of scale, will the market as a response to
 13 those economies of scale being down the access
 14 charges. Rather, it is everybody can see how much
 15 profit there is, and the market will put pressure on
 16 Choice One and Conversent regardless of their
 17 economies of scale.
 18 Q. The market will put pressure on Conversent.
 19 So now is it your testimony that the prices set by
 20 CLECs are without regard to their economies of
 21 scale?
 22 A. There's the market and there's the CLECs.
 23 Those are two different concepts. Conversent will
 24 obviously consider its own costs. Rates have to be

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1 compensatory. The market doesn't care that
 2 necessarily. Now, I think regulators should, but
 3 the markets don't really care about that.
 4 What I'm saying is, if there's profit
 5 being made by a company, markets won't tolerate
 6 that. So markets will put pressure on the
 7 individual companies to keep their access charges
 8 and everything else within reasonable limits.
 9 Now, does the market tolerate that
 10 Choice One or Conversent is setting the access
 11 charges higher than some other company? Well,
 12 obviously it is, and what are the reasons for that,
 13 you're asking me, or somebody could ask. And those
 14 reasons we don't know, because I'm not privy to why
 15 Verizon chooses to compete for some customers and
 16 chooses not to compete vigorously for other
 17 customers -- because one can put the question on its
 18 head: What is it that keeps Verizon from gaining
 19 the converse sent and Choice One customers? It
 20 could, but it chooses not to. Now, is that
 21 irrational, or is that an economic decision? I
 22 don't know what goes into those economic decisions
 23 that Verizon makes.
 24 Q. This is a very interesting part of your

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1 testimony, which, quite frankly, Dr. Ankum, I
 2 struggled hard to understand. And what I'm
 3 understanding you to say is that the market is going
 4 to put downward pressure on access rates. Is that a
 5 fair statement?
 6 A. Yes.
 7 Q. And that will keep CLECs from earning
 8 supernormal profits. I think you stated on that on
 9 Page 21, Lines 13 through 15.
 10 A. Yes.
 11 Q. And so this is what I'm struggling with, is
 12 how that happens. So I'm going to pose a
 13 hypothetical to you. I'm going to say I'm an IXC
 14 and you are a CLEC, and you have very high access
 15 rates, that I'm paying each time I terminate a call
 16 from one of my customers to one of your customers.
 17 You've recently, in my hypothetical,
 18 raised your rates to supernormal levels, let's
 19 assume, because we're trying to see how the market
 20 is going to prevent that, push it back down. So now
 21 I as the IXC have an incentive, you say, to acquire
 22 that customer. Is that right?
 23 A. No. Do you want me to explain?
 24 Q. No. Let me go one step further. I

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1 understood you to say that I, as the IXC, have an
 2 incentive to vertically backwards-integrate, to
 3 become a CLEC -- or, in the case of Verizon, since
 4 they're already vertically integrated here, they
 5 don't have to do that. But in either event, a
 6 vertically integrated company has an incentive to go
 7 after that customer as a local-exchange customer.
 8 Did I get it right that time?
 9 A. No, you got it wrong. Do you want me to
 10 explain?
 11 Q. Let me keep trying for a second. Well, why
 12 don't you explain.
 13 A. Are you sure you want to ask that question?
 14 Q. Within reasonable bounds, yes.
 15 A. Not every purchaser of access needs to be
 16 in a position to compete for the customer. All he
 17 needs are guardians of the market. The question is,
 18 are there a sufficient number of customers that when
 19 a CLEC earns excess profits, are there guardians in
 20 the industry that could step in and grab for those
 21 profits by taking those customers?
 22 And again, the key is each customer of
 23 that CLEC that has those high access charges --
 24 those high access charges translate into profits.

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1 So that's like, you know, like the target -- you've
2 got these special sales, there's a little blue light
3 coming on at Kmart. That's kind of what's happening
4 in the market; right? Everybody can look at these
5 access charges, and these access charges are like
6 these special sales, like the little light coming
7 on, that says, "Hey, here's profit, excess profit,"
8 we should call it.

9 When the guardians in the industry or in
10 the marketplace, like Verizon, which is fully
11 vertically integrated, those guardians could step in
12 and snap shows customers up -- and with the customer
13 comes all that profit. That's really what the game
14 is all about.

15 So it's the presence of a number of
16 companies that are positioned to compete that puts
17 the pressure on the CLEC. Now, if the CLEC could
18 price-differentiate and charge Verizon low access
19 charges or some of the other CLECs and IXCs low
20 access charges -- but if it could then look at
21 another smaller IXC, for example, that has
22 absolutely no alternatives and charge them high
23 access charges, so price-discriminate, so to speak,
24 then you have a problem, that they can do it.

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1 So the CLEC is under pressure to keep
2 all of its rates, but also its access rates, at a
3 reasonable level, where the lights don't go off,
4 where the lights don't say, "I'm making so much
5 money; come and get me," because then the big guys
6 will come in and take it away. As long as you make
7 sure that these access rates are across the board
8 the same for a CLEC, that the CLEC cannot
9 price-discriminate, then the guardians make sure
10 that these access charges don't spin out of
11 control -- and I presented empirical evidence in my
12 testimony that they don't -- and then the other
13 IXCs, the one that you're postulating about, will
14 ride on the coattails and reap the benefits of the
15 competitive pressures that are being applied by the
16 guardians.

17 Q. Are you done?
18 A. Yes.
19 Q. Thank you. I want to go back to my
20 example, because I still don't get it. Now, one
21 way, if I'm one of those guys that's standing there
22 ready to acquire that customer -- and I don't think
23 I misstated what you said, even after your answer --
24 one way that I would try to acquire that customer is

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1 to lower my retail rate to that customer. Is that a
2 fair statement?
3 A. Yes.
4 Q. And one way that the CLEC that has that
5 customer can retain that customer is by lowering
6 further its retail rate; is that right?
7 A. Right. There will be price -- among many
8 other considerations. But that will be one way to
9 do it. But I must add to that, and this is very
10 important to note, that -- and we're talking, of
11 course, mostly about business customers here,
12 because CLECs, they serve small, medium-sized
13 business customers, sometimes large business
14 customers. They also serve residential customers,
15 but I think it's fair to say that a fair amount of
16 their revenue base comes from business customers.

17 Particularly with business customers,
18 it's not just price that drives why a customer will
19 choose your company. There's a whole host of other
20 considerations that go into that. This has to do
21 with the flexibility of the service, the
22 responsiveness of the salespeople -- just all these
23 other considerations.

24 And the key really is that we're not

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1 really dealing with commodities. That word has been
2 thrown around so much the last few days: "Oh, it's
3 a commodity." Nothing could be further from the
4 truth, of course. When you're dealing both with
5 switched access and with the medium-sized business
6 customer, it's not a commodity. Customer service is
7 important.

8 So competition plays out in more than
9 price, and that begins to shift the analysis. But
10 go ahead.

11 MR. DeROCHE: If I could just interrupt
12 for a second. I don't want to interrupt your flow,
13 Mr. Gruber, but we're going to need a break fairly
14 shortly. Are there many other questions along this
15 line?
16 MR. GRUBER: Yeah. I'd like to just
17 finish this section, and then we could take a break.
18 Of course, it's going to depend on Dr. Ankum's
19 answers. Let's give it a try.
20 Q. If I recall correctly, you stated in
21 response to an information request -- and I believe
22 it was Comcast-CLEC-1-6, that in the retail market,
23 for retail customers, CLECs are price-takers; is
24 that correct?

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1 A. Yes.

2 Q. The way they get retail customers is to

3 price their retail services at or below current

4 market prices; right?

5 A. Generally speaking, yes.

6 Q. So in order to get this retail customer and

7 therefore acquire the access revenues that go along

8 with it, any company is going to have to lower its

9 retail price, not its wholesale price; correct?

10 A. Generally, yes. It's the retail

11 competition that controls the wholesale market. But

12 generally that's how the competition could play out.

13 Q. So, now, one way in which a company that's

14 unfettered by any regulatory requirements could

15 accomplish the result of acquiring a retail

16 customer, and therefore the access revenues, is, as

17 we stated, to lower their retail rates. And one way

18 they could actually do that is lower it below their

19 costs of providing retail, if they had a source of

20 supernormal profits in access rates. Is that

21 correct?

22 A. Well, they can always choose -- I mean, you

23 said unfettered by regulations. Companies can

24 always choose, as a loss leader, for example, to

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1 lower their prices below cost. We see that in many

2 industries, and we have seen it surely in

3 telecommunications.

4 To give you an example -- again, going

5 back --

6 Q. Could I just finish the hypothetical? Is

7 that all right? Or do you really want --

8 A. Go ahead.

9 Q. So you did agree with me that one way they

10 could do this -- and that's all I want to do right

11 now -- is to price their retail services below cost

12 using excess revenues for access charges; correct?

13 That's one way they could keep their retail rates

14 low. I mean, we have to look at the incentives that

15 they're under, and that's what I'm trying to do.

16 A. You're asking me is that one of the ways

17 that they could do that. I suppose that could be

18 one of the ways in which they do -- I can't

19 foreclose that particular line of reasoning.

20 Q. So if the carriers competing for that

21 retail customer can do it, if they want to acquire

22 the retail customer and the access rates that go

23 along with it, don't they have an interest in

24 keeping access rates high?

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1 A. And I think this is where we're running the

2 risk now of trivializing the price-setting in a

3 multiproduct environment. In a multiproduct

4 environment, where companies offer 10, 20 different

5 products, where they may compete on the full array

6 of services face to face with one of its competitors

7 but there are other competitors where they have a

8 smaller set of products that they compete on, the

9 price-setting is much more complex. The price-

10 setting will have a multitude of considerations.

11 The subsidy argument that you're rolling

12 out -- and, by the way, let me say, I don't agree

13 with the word "subsidy." That needs to be

14 qualified. But the dynamic you're laying out, as I

15 understand it -- and correct me if this is not the

16 dynamic that you're hinting out -- that somehow this

17 is going to be putting upward pressure on access

18 charges and obviously downward pressure on retail,

19 let's say business rates -- which I would consider

20 to be a good thing, and I presume that you consider

21 the upward pressure on the access charges to be a

22 bad thing --

23 Now, you asked me --

24 Q. I didn't say that, so don't presume that.

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1 A. Now, the question is is it possible that

2 the company would do that. My answer is yes. Is it

3 likely that all companies will be boosting their

4 access charges in this arrangement to get the lowest

5 possible retail rates? My answer to that is no --

6 and again, for the very same reasons that I alluded

7 to earlier: The more you begin to boost these

8 access charges, the more you begin to flag to

9 everybody that you're doing something out of the

10 norm and the more attractive becomes your customer

11 base. And the CLECs have to fight hard to find a

12 niche in the market where they have a competitive

13 advantage, and the last thing they want is to create

14 situations where they're going to be raising flags

15 so that what was their niche now becomes a common

16 pool.

17 Also, empirically, we haven't really

18 seen this.

19 Q. Well, that's a matter of dispute in the

20 case. You're testifying, I guess you're saying to

21 me, that the rates we see here are not supernormal

22 rates, providing excess profit, and you're doing

23 that on the basis of not having done a cost study?

24 A. The reason I'm saying that these rates are

1 not out of alignment with what we wanted to see --
 2 with what we expect to see, is, first, the rates
 3 that you are looking at --
 4 Q. Wait a minute. Start with the question
 5 that I asked, and then you can go on, because I lose
 6 track if you don't answer my question. Can we at
 7 least get an answer to the question and then you can
 8 explain?

9 THE WITNESS: Can I have the question
 10 read back.

11 (Question read.)

12 A. And I proceeded to give you the basis of my
 13 conclusion.

14 Q. Could you state your conclusion first and
 15 then give me your basis?

16 A. I have done cost studies, and I think I've
 17 stated as much in response to data responses -- or
 18 data requests -- and the basis for my conclusion
 19 that rates are not out of alignment is simply an
 20 empirical one, to look at the rates of the CLECs,
 21 and you find that they're very close to where
 22 Verizon's rates were prior to their last rate
 23 reduction, in DTE 01-31. In fact, the average of
 24 the CLECs is slightly below where Verizon was.

1 It's important to realize, as I state in
 2 my testimony, part of the basis for my conclusion,
 3 that Verizon had a reduction in rates, but it did
 4 not have a reduction in its revenues. As you may
 5 recall, Verizon lowered its rates. There was a \$50
 6 million shortfall. That \$50 million shortfall was
 7 then placed on the inelastic residential customer.
 8 That's the construction; right? So that at the end
 9 of the day or the end of the year Verizon is still
 10 reaping the same revenues.

11 I've also pointed out the problem with
 12 that construction: If you ask CLECs to follow suit,
 13 the problem with asking the CLECs to follow suit is
 14 that CLECs don't have inelastic customers, because
 15 the very definition of an inelastic customer is that
 16 the customer is captive, captive to Verizon. CLECs
 17 don't have such customers.

18 Therefore, if you just look at the
 19 revenues that are being earned, Verizon is still
 20 earning the same amount of revenues, and CLECs have
 21 not followed suit in that rate reduction. But if
 22 you compare them to the 2002 rates of Verizon, the
 23 CLEC rates fall right in line with that. There's
 24 nothing really anomalous there.

1 MR. DeROCHE: If I could interrupt you
 2 there. I'm afraid we're really going to have to
 3 take a break. Why don't we take 15 minutes. We'll
 4 come back at 10 after 12:00.

5 (Recess taken.)

6 MR. DeROCHE: Dr. Ankum, just before we
 7 begin, I'd just like to remind you that we are under
 8 a tight deadline. I don't want to constrain your
 9 answers in any way, but I would ask that you confine
 10 your answers to the questions that are asked by
 11 counsel and try not to answer additional questions
 12 until they're asked.

13 THE WITNESS: I'm appreciative of that
 14 deadline. I have one myself -- very urgently,
 15 actually. It's a commonality of interests.

16 MR. KRATHWOHL: That does allow for
 17 explanation of the answer to the question, though;
 18 correct?

19 MR. DeROCHE: Absolutely -- and I don't
 20 want to try and pen you in too much. But please
 21 just stick to the subject matter of the question.

22 THE WITNESS: I'm homeless. I checked
 23 out of my hotel. I have no place to go.

24 MR. DeROCHE: Hopefully we'll get you

1 back home before that becomes a problem.

2 Mr. Gruber, would you like to continue?

3 MR. GRUBER: Yes. Thank you,
 4 Mr. DeRoche.

5 Q. Where we left off, Dr. Ankum -- I had asked
 6 you a question, and I'm not sure I got the answer,
 7 so I do want to go back to my last question. I'll
 8 break it down.

9 Now, do I understand your testimony
 10 today to be that CLECs are not making excess profits
 11 today in Massachusetts? Are you stating that?

12 MR. KRATHWOHL: Is that any CLECs, all
 13 CLECs?

14 MR. GRUBER: Any CLECs.

15 A. Can you refer me to a statement in my
 16 testimony?

17 Q. No, I'm just asking. I just want to see
 18 the limits of what you're stating.

19 A. I believe that if we look back over the
 20 last ten years, where we have seen CLECs, it's fair
 21 to say that a large number of them have gone out of
 22 business. The ones that are in business do not seem
 23 to be making much profit. If we look at the market
 24 share of CLECs, they have pretty much stagnated or

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1 are somewhat declining.
2 So, from those trends I infer that it's
3 no gravy train, neither nationwide nor in
4 Massachusetts.
5 Q. You didn't look at the financial books of
6 any CLEC in this case, did you?
7 A. Not for purposes of this proceeding; that's
8 correct.
9 Q. And you can't state, can you, that the
10 revenues that any one CLEC is making are not in
11 excess of normal profit?
12 A. Subject to my previous answer, I have not
13 looked at any specific numbers.
14 Q. So you can't rule out the possibility that,
15 say, Conversent at 5 cents a minute is not earning
16 excess profits? You can't rule that out, can you?
17 A. Actually, I happen to have proprietary
18 information about Conversent from past work with
19 Conversent. I can't divulge that information.
20 MR. DeROCHE: No, I don't think we want
21 you divulging proprietary information that is not
22 going to become part of the evidentiary record in
23 this case.
24 Q. I'll just ask it a different way: You

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1 didn't use, take advantage of any opportunity in
2 working for Conversent to review Conversent's books
3 for this case, did you?
4 A. That's correct.
5 Q. And you didn't take advantage to review the
6 books of any of the other CLECs that are sponsoring
7 you in this case, did you?
8 A. I have not done a profitability analysis of
9 my four clients; that's correct -- for purposes of
10 this proceeding.
11 Q. So you can't state, as you sit here today,
12 that the shareholders of those CLECs are not lining
13 their pockets with excess profits. You can't state
14 that on the basis of any empirical evidence, can
15 you?
16 A. Well, I've earlier explained why I deem
17 that to be highly unlikely, given national trends
18 for the last ten years and shrinking market shares,
19 et cetera, et cetera. If you ask me specifically
20 did I look at the financial statements of these
21 companies and whether they are "lining their
22 pockets," as I said earlier, I have not looked at
23 those financial statements.
24 Q. And did you ask your clients to see those

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1 financial statements?
2 A. No, I have not.
3 Q. You didn't consider it important in this
4 case?
5 A. No, I did not.
6 Q. What I'd like to do is return -- we were
7 having an interesting discussion on the dynamic that
8 takes place. I was trying to understand your
9 argument about how the dynamic is going to push down
10 access rates. And I think we were talking about the
11 possibility of a CLEC trying to raise its access
12 rates above, you know, some economic costs and earn
13 supernormal profits. I'm just returning us to our
14 discussion. So far you're with me?
15 A. Yes, I'm with you.
16 Q. We said that, if I understand you right,
17 that the threat of a Verizon or some other carrier
18 trying to acquire the retail customer is what's
19 going to set off lights and prevent a CLEC from
20 increasing its access rates. Is that roughly
21 correct?
22 A. Roughly -- among other things.
23 Q. I guess where I was getting confused is
24 that, in order to acquire that retail customer,

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1 since it's a competitive retail market, the best way
2 to acquire it -- in fact, as you yourself have
3 testified, as price-takers, the only way to acquire
4 it is pretty much to set your price at or below the
5 market price. Right?
6 A. In addition to tailoring the service to the
7 customer and a variety of those other things. But
8 surely price competition is an important component.
9 Q. It's certainly important. So as a carrier
10 paying your high -- "you" being the CLEC -- paying
11 your high access rates, my incentive is to try and
12 acquire your local-exchange customer, and in order
13 to do that, I've got to, you know, lower my retail
14 rates.
15 A. Among other things.
16 Q. Now, I can't understand why that doesn't
17 create an incentive for all carriers to reduce their
18 retail rates and, since their costs are not going
19 away, recover their costs from their access rates.
20 Why isn't that the incentive created by this model?
21 A. I think this goes back to an earlier
22 discussion we had this morning, and I hate to
23 regurgitate that, since I believe your question is
24 very much the same. I sort of have to.

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1 As I explained earlier, you're in a
2 multiproduct situation, where the considerations
3 about individual prices are made jointly with the
4 prices of all these other products that these
5 companies offer -- and they may offer 30, 40
6 different products, with a fair amount of shared and
7 common costs.

8 And so the notion somehow that there's
9 an easy solution of taking money from access and
10 funneling it into just a particular business
11 service, it has to pass through this much more
12 complex set of considerations. And what I indicated
13 earlier this morning is that one of the big
14 countervailing considerations is that the CLEC does
15 not want to raise a flag to the entire industry by
16 means of high access charges, that it's earning
17 exorbitant profits on access charges, because it's
18 raising a flag, and it's raising a flag to all
19 existing competitors, and it's raising a flag to
20 potential competitors who enter the industry. But
21 it basically says to the industry, to the market,
22 "Come and get me." Because these tariffs are
23 publicly available at the Commission, everybody
24 knows what these access charges are.

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1 Now, the retail prices, of course, and
2 the services that are being delivered, et cetera, et
3 cetera, are much more obscure. Verizon doesn't know
4 necessarily what services a One Communications
5 offers to its business customers, what great
6 relationships they may have with their business
7 customers.

8 So there's all those other
9 considerations. However, just simply raising your
10 access charges is just raising this huge red flag to
11 everybody: "Easy profits. Come and get me." That
12 is a market discipline. And I think it's a very
13 straightforward dynamic.

14 Now, I must also add to this, and I've
15 already said that this morning: I'm no marketing
16 genius, and if you ask me to spell out exactly how
17 it is that markets compete away profits, I say,
18 "Well" -- I mean, I can give you some ideas, as I
19 just have, and I have some understanding of it. But
20 the true marketing geniuses are out there doing it.

21 The key question is, what is it that
22 Verizon and AT&T maintain, what is the miraculous
23 barrier to entry that allows a CLEC to shield excess
24 profits? I have not seen any discussion of the

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1 barrier to entry that you have put forth. I am the
2 only one that is talking about the barrier to entry.
3 And it's a miracle to me why these companies that
4 always talk about competition, when it comes to big
5 profits that they assert for CLECs, why you don't
6 address the question head on: What is it that
7 allows them to maintain these what you call excess
8 profits? No argument has been put forth by you, and
9 it runs contrary to economic theory.

10 Q. Okay, I'm going to give you an argument.
11 You tell me what's wrong with it. That red flag
12 that you're talking about there, that says, "Come
13 and get me," it's a red flag, but who looks at and
14 responds to that red flag? I'll answer my own
15 question. This is part of what I'm proposing to
16 you, and you tell me what's wrong with it.

17 When the red flag goes up that this
18 customer is a profitable customer, it's a red flag
19 to acquire the customer. So the companies that are
20 going after that customer don't change their access
21 rates to acquire that customer, as is the usual
22 case; they change their retail rates -- because
23 we've agreed that's what the customer is responding
24 to. And the more they decrease their retail rates,

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1 because this is a competitive market, the greater
2 incentive there is to maintain high access rates,
3 because that's the only way they can do it.

4 Now, on top of that is the additional
5 problem that when a Verizon, for example, acquires
6 or seeks to acquire that customer and all the
7 revenues associated with it, it immediately applies
8 its own access rate, not the access rate of the
9 prior carrier. So it's not going to enjoy the extra
10 revenues that were there before.

11 Now, it's true, it's eliminated this
12 excess profit that it was having to pay, but it's
13 probably had to build in the cost of that
14 elimination into its operating costs.

15 So that's the way I see it. Tell me
16 what's wrong with that?

17 A. I believe this issue was addressed by the
18 FCC in the CLEC access reform order of 2001. I
19 think it's pretty much to the point here.

20 The FCC examined CLEC access charges,
21 and it noted some of the distortions. And I think
22 we can agree that there are certain price
23 distortions in the market -- which, as I've
24 discussed, stem in large part from the, at least on

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1 the entry side, the prohibition for IXCs to
2 deaverage their rates. That's the Section 254(g)
3 discussion. And because of that, IXCs can't send
4 the price signals that would otherwise elicit the
5 demand responses, so we're looking at the supply
6 responses.

7 So when the FCC was looking at the
8 supply side of the market -- and I jokingly said
9 earlier this morning what we have heard in the
10 testimony is the sound of one hand clapping. It's
11 only the demand side that has been analyzed by these
12 companies. But a market-dominance analysis looks at
13 demand side and the supply side. That's two hands,
14 and then you get a sound.

15 The FCC did that in the CLEC access
16 reform order, and it laid out two preconditions for
17 functioning access markets explicitly, two
18 conditions: an alliance between IXCs and ILECs --
19 that's one -- and the second one was IXC entry into
20 local markets.

21 And the dynamic that the FCC laid out in
22 its own order is that when these things happen, we
23 will see competition for the end user. It's a
24 supply response. Companies will begin to compete

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1 for the end user and the profits associated with the
2 end user.

3 So the empirical question before you now
4 is -- if you are inclined to turn to the FCC's
5 policy analysis, the empirical question is, have
6 those two conditions been met? And this is apropos
7 your discussion. Has there been an alliance between
8 IXCs and ILECs? Well, Verizon, of course, has
9 merged with MCI, so to the extent that the FCC had
10 concerns about an MCI being a captive IXC, so to
11 speak, MCI now has access to all the facilities of
12 Verizon. So that condition has been met; right?
13 Likewise, AT&T has merged with SBC; so again, to the
14 extent that the FCC had concerns about AT&T being a
15 captive IXC customer, again, they no longer are a
16 captive customer because now they have access to all
17 the knowledge, the know-how, the resources of SBC.

18 So this vertical integration that the
19 FCC was laying out as a precondition has been met in
20 spades. These companies are now fully positioned to
21 look at the market. If they feel that there are
22 access charges that are too high, they can step in
23 and approach these customers if they feel there are.

24 Now, is that profitable to them? Well,

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1 first, I've already discussed all the advantages
2 that a Verizon may have. They already have the
3 customer, it's their own long-distance customer, so
4 they know everything about that customer. To the
5 extent it's a business customer, they may in fact
6 already have their salespeople going in-house. They
7 have all the facilities, because it's the Verizon
8 loops that are being used. All that is in place.

9 Now, if Verizon feels that this
10 particular CLEC to which it's terminating that
11 traffic or from which it's originating the
12 traffic -- let's say a business customer, and let's
13 fill out your example: There's a business customer
14 with, you know, 20 lines going into a location, and
15 it's being funneled through Conversent, and AT&T is
16 originating and terminating the call to this
17 business customer, and there's a fair amount of
18 volume coming out of it. Let me just make that
19 example Verizon. And Verizon already has its
20 long-distance people in there. They have their own
21 business connections. They take these people out to
22 lunch. So they know everything about these
23 customers.

24 Now, the question is, at some point when

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1 Verizon feels that the underlying CLEC is charging
2 them too much for access charges -- they just feel
3 like it's exorbitant -- you tell your salespeople,
4 "The next time you have lunch with these people,
5 make them a deal. Take these people onto our own
6 network. Take the loop back. We have win-back
7 programs." You're familiar presumably with
8 Verizon's win-back programs. They're always very
9 aggressive programs. Verizon has pricing
10 flexibility for its business customers. You don't
11 really scrutinize what prices are being offered to
12 small business customers. Verizon can just go in
13 there, make a deal with the customer. The customer
14 migrates away from the CLEC with the high access
15 charges and now joins the Verizon family. Is that
16 in Verizon's interest? Verizon no longer has to pay
17 those access charges.

18 So it's up to Verizon to make its own
19 personal private economic cost/benefit analysis.
20 Now, if you ask me what considerations go into that
21 analysis, of course there are a multitude of
22 considerations. They will lose the CLEC as a UNE
23 customer, because the CLEC is purchasing loop and
24 collocation and all these other things from Verizon.

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1 So when Verizon looks at this and says, "Do I want
 2 to take these customers back? What do I gain? What
 3 do I lose," it's a complex analysis; but clearly,
 4 they can do so.

5 Now, secondly, we're all familiar in
 6 regulation with the dominant-firm/competitive-fringe
 7 model. Is it in the interest of Verizon to just
 8 gobble up all the customers in the industry? Well,
 9 the dominant firm/competitive fringe, that model
 10 says no, it's not in the interest of Verizon to do
 11 that, because for Verizon to be a profit-maximizing
 12 firm, it doesn't need to have the entire market,
 13 because it may cause the firm to begin to lower
 14 prices where it doesn't want to go. So it may be
 15 much better off leaving certain niche situations to
 16 the CLECs. It's a standard model. I think that's
 17 one of the other considerations that goes into this
 18 particular decision-making process.

19 The bottom line is, however, that the
 20 CLEC knows very well that Verizon, for example, is
 21 pervasive in the marketplace. They are so happy to
 22 have a niche in the marketplace. They have picked
 23 up certain customers that they can call their own.
 24 The last thing they want is to begin to raise access

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1 charges where, if Verizon gets really ticked off and
 2 says, "You know what, you're really costing me too
 3 much money" -- now, of course, the first response is
 4 to go to the regulator; but absent that
 5 consideration, if Verizon in the marketplace says,
 6 "You're costing me too much money," they can pick up
 7 these customers.

8 CLECs know that. They don't want to
 9 jeopardize the niches they have created for
 10 themselves. So they self-regulate, and that's
 11 exactly what happens in most competitive markets.
 12 To the extent that the customers in the market are
 13 contestable, which they are in this case, the market
 14 participants self-discipline.

15 The profit that is being earned by the
 16 CLECs are no different than any other profits. You
 17 can only say that they're excess profits if you
 18 point me to a barrier to entry, and you have showed
 19 me none.

20 Q. Let me, there's an old saying, follow the
 21 money. Let me take the exact example that you
 22 posed, of a business customer with 20 lines; Verizon
 23 as the guardian, ready to swoop in and take it over,
 24 and why don't their account teams meet with the

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1 customer for lunch one day and offer them a better
 2 deal. So that's the situation we're working with.

3 Now, because we're testing the theory
 4 that there can't be for any sustained period of time
 5 supernormal profits in the CLEC industry for access,
 6 we're going to assume that there are and see if they
 7 get competed away, under your scenario. So under my
 8 hypothetical, the same thing as yours, but the CLEC
 9 has supernormal profits in access.

10 In order to compete away that customer,
 11 Verizon -- it is the customer that's making the
 12 decision. The costs that the CLEC is imposing are
 13 not to the customer. So the customer looks at the
 14 retail price. Verizon says, "I want to be relieved
 15 of these excess profits," because that's what we've
 16 assumed, "generated by the CLEC, so I'm going to
 17 offer that retail customer a great deal." The
 18 retail customer takes that great deal. The CLEC
 19 loses it. What happened to the money?

20 The problem here is that Verizon, in
 21 order to buy off that customer, had to internalize
 22 the excess profits that had been made by the CLEC
 23 and as a result has to recover the cost of those
 24 excess profits from its other customers. So the net

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1 effect in your example is that we've got excess
 2 profits, and they've been imposed upon the consumers
 3 of Massachusetts, and the lucky business customer
 4 has got a great deal.

5 Now, what's wrong with that?

6 A. There's a number of components to that;
 7 right? Now, first let me give you an example. I
 8 think we're all suffering under high hotel rates
 9 right now in Boston. You may not have noticed that,
 10 since obviously you don't have to sit in a hotel to
 11 attend this hearing, but I pay roughly \$460 a night
 12 for Doubletree. I love the cookies, but \$460 is a
 13 bit steep.

14 My colleagues here are experiencing
 15 rates that are even higher, and we're all moaning
 16 and groaning under this. So we made a little scheme
 17 and said, well, this time, of course -- and that's
 18 the problem with the short-run analysis that leads
 19 you to conclusions of market power -- you need to do
 20 a longer-run analysis and ask yourself are there
 21 supply-and-demand responses?

22 Well, we said, in the longer run, next
 23 time we come back here, and if these rates are that
 24 exorbitant, I'm not going to tie myself into like a

<p style="text-align: center;">524</p> <p>1 four-day reservation and pay \$2,000. We're going to 2 go to a somewhat neighboring community, where the 3 rates are, let's say, \$100, or \$150, and we're going 4 to take a cab. So we're going to be driving in. 5 Now, you may not want to pay \$50 for a 6 cab to do that, but if I can save myself not having 7 to pay \$400, I would gladly shell out \$50 for a cab 8 ride, even though that seems exorbitant, too, but 9 I'm still better off. 10 What I'm illustrating here is that 11 self-provisioning is a supply response, and 12 self-provisioning will put pressure on the market. 13 Now, back to your example, more apropos: 14 If Verizon feels, again, that a particular CLEC is 15 charging exorbitant access charges, at some point 16 Verizon will just simply say, as I explained 17 earlier, "The heck with that CLEC. I'm going to do 18 it myself, because I'm tired of paying these huge 19 sums of money," the way that we are tired of paying 20 400, 500 dollars for a hotel rate. "We're going to 21 do it ourselves." That's what Verizon will say. 22 Now, it avoids those CLEC access 23 charges. The CLEC knows that possibility, and 24 therefore the CLEC won't let it come to that</p>	<p style="text-align: center;">526</p> <p>1 you those and those and those things." So Verizon 2 can put a competitive package together and migrate 3 the customer. In doing so, it avoids the high 4 access charges. 5 To the noninvolved customers that you 6 were referring to, the ratepayers of Massachusetts, 7 do they carry some subsidy burden? The answer there 8 is no. All of that can be done without involving 9 the revenues and costs for those noninvolved 10 ratepayers, as you refer to them. 11 So no, there is no subsidy involved at 12 all; and yes, CLECs have a strong incentive to 13 self-discipline. 14 Now, the kicker here is, of course -- I 15 can hear you thinking -- this is, of course, not 16 true for all of the CLEC customers. There will be 17 small business customers, one or two lines, where 18 Verizon may never come except when they order pizza. 19 So this whole dynamic, I can hear you think, doesn't 20 really apply to the small customer. But that 21 doesn't really matter, because, as I said earlier, 22 as long as the guardians are active, as long as the 23 CLEC is required to charge the same access charges 24 to every IXC everywhere -- not the same access</p>
<p style="text-align: center;">525</p> <p>1 situation. They preemptively self-discipline. 2 Now, there's a second component to your 3 question, and I think you begin to suggest somehow 4 that this is at the expense of the Massachusetts 5 ratepayers, and let me address that point. When 6 Verizon offers or begins to -- 7 Let me put it a different way: When 8 Verizon migrates the customer from the CLEC to its 9 own network, which is avoiding the access charges 10 that were previously paid to the CLEC, none of the 11 other customers are impacted by that. That's what 12 you call basically a revenue-neutral migration. At 13 least it could be constructed as a revenue-neutral 14 migration. 15 Now, I've already indicated that Verizon 16 has a number of ways in which it can approach that 17 customer. It's more than just price. Verizon can 18 offer to be more responsive than the CLEC, or 19 Verizon may say, "These are the local services that 20 you're getting from your CLEC; but you know what? 21 You're doing that over my network. They don't have 22 trunk loop facilities. They're using my collocation 23 space. And guess what? I got this new fancy 24 feature: If you migrate to my services, I can offer</p>	<p style="text-align: center;">527</p> <p>1 charge as Verizon -- but as long as the CLEC is 2 required to charge the same access charges 3 associated with a big customer and to Verizon as it 4 does to, you know, a small business customer with 5 two lines that is served by some small IXC, the 6 market is disciplined by the presence of the big 7 customer, the ability of Verizon to step in, take 8 away that customer, and by the natural inclination 9 of the CLEC to self-discipline. 10 So all of it nicely falls into line. 11 Markets do work. The CLEC industry was supposed to 12 be competitive under the Act. I think the 13 Commission should think very hard to do this kind of 14 like cross-trend, where increasingly we're 15 deregulating Verizon and increasingly looking at 16 CLECs as if somehow they are the culprits. It's 17 putting the regulatory regime topsy-turvy. 18 Q. I'm going to focus on your answer there, 19 and what I heard in your answer to the problem that 20 I identified was that -- just so we stay on the same 21 page, the problem I identified was that under my 22 assumption there were excess profits that the CLEC 23 was earning, and that in order to get that customer 24 away and avoid having to pay the CLEC's excess</p>

1 profits, the IXC or competitor has to take the
2 present value of those excess profits and basically
3 bribe away the retail customer -- and "bribe" is a
4 legal bribe, an appropriate bribe -- the retail
5 customer.

6 Your response was, "Maybe they won't
7 compete on price. Maybe they'll do something else."
8 But I didn't hear a principled reason why there
9 isn't a transfer of the cost of this excess profit
10 back to the acquiring carrier, which then must
11 recover it in its rates. I didn't hear a response
12 to that. Is there not one?

13 A. I think I gave one, because that goes to
14 the question of how are the ratepayers of
15 Massachusetts impacted by what the Commission will
16 be ruling here; right? And the Commission has
17 before it two alternative proposals. One is as you
18 in your hypothetical sketched out that situation,
19 and my response that the market takes care of this.
20 And I will come to the question of the subsidy issue
21 that you're raising there.

22 And the alternative is to cap, under
23 your proposal, the CLEC rates at Verizon's level;
24 right? And there the notion is somehow that when

1 you cap those CLEC rates, you do take tens of
2 millions of dollars away from the CLECs in
3 Massachusetts and you give it to the large IXCs,
4 where the money flows to San Antonio and New York.
5 You do that analysis. How does that benefit
6 ratepayers in Massachusetts? How does Verizon's
7 proposal pay off under a public-interest finding for
8 the ratepayers of Massachusetts? And you're
9 contrasting that with our proposal of letting CLECs
10 self-discipline.

11 Now, under your proposal, I see no
12 benefits to the ratepayers of Massachusetts, and I
13 see a negative impact because your regulatory regime
14 is predicated on a competitive marketplace, to which
15 CLECs are integral. If you take tens of millions of
16 dollars out of the CLECs' hide, you will undermine
17 that predicate for your regulatory
18 pricing-flexibility regime and fundamentally harm
19 Massachusetts ratepayers.

20 Now, is there a subsidy flow under the
21 scenario that you sketched out? First of all, as
22 you said, Verizon will be avoiding the access
23 charges that it's paying to the CLEC. It's avoiding
24 those access charges. So it's a cost that's not

1 incurred. Those dollars are not leaving the Verizon
2 pocket.

3 How is that impacting Verizon's
4 residential customers, for example?

5 Q. Do you want me to answer your question?

6 A. Let me answer the question, and I will say
7 it does not. The dollars were flowing out of
8 Verizon's pocket, millions of dollars a year -- of
9 course, which is a lot to CLECs. It may not be a
10 lot to Verizon, but that's not the issue. But we
11 know it's millions of dollars. We're talking about
12 a large-size or medium-size business customer, that
13 could be a substantial amount of excess payments
14 that Verizon used to make to the CLEC, up to the
15 point where it gets fed up.

16 So those dollars that Verizon used to
17 pay out it no longer pays out. Now, if Verizon made
18 no gesture to the customer, it was able to migrate
19 the customer to its own network with a wink and a
20 nod, the residential ratepayers would be better
21 off -- right? -- because somehow Verizon's costs
22 have been reduced, and somehow that could flow
23 through in some trickle-down theory -- which is a
24 variation of your other trickle-down theory in the

1 long-distance market; right? -- it could flow
2 through to the residential ratepayers. It would
3 make them better off to the extent it did.

4 But those monies that are avoided can be
5 used to attract the customer. As long as Verizon
6 doesn't pay more to that customer than it's avoiding
7 in the access charges, everybody else is being kept
8 whole or completely unaffected -- except for one
9 thing: It creates competition in the marketplace
10 for business customers, and as such, the general
11 marketplace for business customers benefits, it
12 makes for a vibrant industry. Of course there's
13 this interplay between various prices, but it makes
14 for a rich caldron in which things bubble up. Why
15 would you want to squelch that by price regulation?

16 Q. Let's deal with your situation. I think
17 you hit the nail right on the head.

18 A. My caldron?

19 Q. Just before that you said, "How does it
20 hurt other ratepayers? Verizon will use the money
21 that it avoids paying extortionate rates to attract
22 the retail customer." And that is precisely my
23 point.

24 A. That's only one example.

1 Q. As the result of -- you can tell me what's
2 wrong with this. But as a result of having done
3 that, it's now incurred those costs that have to be
4 recovered from ratepayers. That's the reason why it
5 does hurt other ratepayers. What's wrong with that?

6 A. You say it has incurred those costs. We've
7 got to separate the costs that are involved; right?
8 There's the money that Verizon pays out in access
9 charges. If it can avoid those access charges --
10 and again, it's analogous to the hotel situation.

11 If we can get a hotel, hopefully a Doubletree,
12 because these cookies are tempting, the next time we
13 can get a Doubletree in the suburbs and pay \$150 a
14 night and then pay \$50 for a cab and commute into
15 the city, I can avoid paying 400 or 500 dollars for
16 the hotel.

17 Now, you can say, "Oh, but that's \$50
18 that you're paying for the cab that must now be
19 subsidized by QSI or other clients." No, the \$50 is
20 not being subsidized by anybody else. I'm avoiding
21 \$400 per night for a hotel. Out of those savings I
22 can easily pay my taxi fare. Nobody else is being
23 affected by that. Everybody else is being kept
24 equally well off.

1 In fact, to the extent I'm avoiding \$400
2 and only have to pay \$50 for a cab fare and, let's
3 say, \$150 for a hotel -- that's \$200 -- I've got
4 \$200 extra to play with.

5 Now, to the extent I want to gift it as
6 a freebie for a lunch for other clients, there's no
7 subsidy going on. Others benefit, too. Likewise,
8 when you avoid the access charges that you pay to
9 CLECs and you save yourself a bundle of money, you
10 can spread that around, you can be generous -- if
11 you want to, but that's up to you. Actually it's up
12 to Mr. Fipphen in this example; we're talking about
13 Verizon.

14 Q. I think it's one of the situations, Dr.
15 Ankum, where we've got, you know, the little ball
16 under three pebbles and the fellow's moving it
17 around and wants you to figure out -- not pebble;
18 shell game. We've got to figure out where the
19 little ball is under the shell. The problem is that
20 if we assume in your example -- for example, the
21 hotels --

22 Let's assume for a moment that there's a
23 monopoly in the city and hotels are charging \$1,000
24 a night for a hotel and that there's excess profits

1 in that. Now, you come into the city and you want a
2 hotel and you're not prepared to pay \$1,000, and so
3 you go out into the suburbs and you find a hotel.
4 You're prepared to go a long way out to avoid that.
5 The fact is that you're going to incur -- you're
6 going to end up paying more because there was a
7 monopoly on hotel rooms than you would have paid.
8 In other words, the cost still gets imposed upon
9 you. You might find a way to mitigate it, but the
10 cost still gets imposed upon you, and therefore it
11 has to be recovered from other people.

12 This is the problem. You've got to
13 follow the pebble under the shell.

14 A. Good; let's follow the pebble. You say you
15 have to go very far out, so that's your addition to
16 my example. And building out your hypothetical:
17 I've earlier provided simple numbers, so I don't
18 know where the shell is and the ball that you're
19 seeing, because I gave very simple numbers of \$400,
20 \$500 for a hotel room, us finding a hotel room in
21 the suburbs for \$150, \$50 for a taxi. There's \$200
22 that I have to play with. Now, I don't know where
23 that is a pebble and a shell. That seems to be
24 fairly straightforward math. I'm saying that

1 because there's \$200 to play with, nobody else has
2 to subsidize this supply response, this self-
3 provisioning.

4 Now, given that you're quibbling with my
5 example -- you say, "You may have to go so far out
6 that it becomes no longer feasible to do so." I
7 understand that's kind of what your suggestion is,
8 that you have to travel so far that even though
9 you're paying \$50 for a cab; I mean, it's
10 cumbersome, and that involves a cost.

11 Well, okay. The response there is that
12 within that construct I think the Commission has to
13 appreciate how uniquely positioned Verizon is to
14 compete for that customer. It would be as if
15 somehow we all owned the Doubletree downtown for
16 which I'm paying \$500. The Doubletree has leased
17 from us the building, because that's exactly what
18 the situation is, of course. The CLECs are leasing
19 the loops from Verizon, and then Verizon is the
20 long-distance customer of the CLEC for its
21 long-distance traffic, and so it terminates over,
22 let's say, One Communications' network for
23 long-distance traffic, but One Communications uses
24 the Verizon loop.

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1 So it's analogous to us owning the
 2 hotel, Doubletree leasing the hotel from us, and
 3 leasing it where we can on a monthly basis take
 4 every room back, because that's what a win-back
 5 program is, of course, in telecom. Most customers
 6 pay on a monthly basis, and when you win back a
 7 customer within a month, you can roll them over to
 8 your own network.

9 So we would have -- we would own the
 10 building, and instead of having to go all the way
 11 out to the suburbs, if we feel like, "Well, they're
 12 charging us every time we go to Boston, they're
 13 charging us 400 or 500 dollars for a hotel. You
 14 know what? It's our building, for heaven's sake.
 15 Let's just kind of pick up a few rooms for
 16 ourselves. Yes, Doubletree won't pay us the lease
 17 rate, but those are our rooms now, and I'm avoiding
 18 paying 400 or 500 dollars."

19 So to appreciate how well Verizon is
 20 situated to compete -- they own the network; they
 21 have building access; they know who the customer is;
 22 they've got white pages in which they can publish
 23 the customer's numbers; all of the traditional
 24 barriers to entry which the 1996 Act addressed --

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1 none of those barriers to entry apply to Verizon.
 2 Verizon is fully equipped and set up to compete for
 3 those customers, as if somehow we owned the
 4 Doubletree building and at a snap of a finger could
 5 take its hotel rooms back.

6 If Doubletree knew that we could do
 7 that, it would not be charging \$400, because it
 8 would know that we can just take these rooms. And
 9 if, moreover, the Doubletree were required, as CLECs
 10 are, to charge everybody the same price for a room,
 11 everybody, then the very fact that we could take
 12 over those rooms would discipline the Doubletree and
 13 keep the prices in alignment.

14 So the very fact that Verizon can come
 15 in and almost at Will take over customers where it
 16 is fed up with paying access charges, that very
 17 possibility disciplines the CLECs.

18 Now, there's, of course, questions like
 19 why are the access charges higher than Verizon? But
 20 you're not asking me about that, and we discussed
 21 that this morning. But that's a different
 22 discussion, and it goes back to the multiproduct
 23 environment and the higher costs of the CLEC,
 24 because at Verizon's access charges the CLECs simply

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1 can't stay in business, and so they have no choice
 2 but to find the money -- to set prices for access
 3 that are commensurate with their costs.

4 Nobody in the United States economy
 5 should be forced, forced, to sell its products below
 6 cost, unless you give them an option to scale back
 7 their operations, and I have not seen any discussion
 8 of that in Verizon's or AT&T's testimony. It's
 9 like, "You shall sell this to me even though I know
 10 it's below cost, and I give you no option as to how
 11 much you sell me. No, you must do it." I think any
 12 person in this room should be very, very concerned
 13 about the government telling a private company that
 14 it must sell certain amounts of services without
 15 adequate compensation and without the possibility to
 16 withdraw or scale back its operations. That's a
 17 different discussion, but I think it's the flip side
 18 of this.

19 Q. I don't think the government is proposing
 20 that a CLEC has to provide a service. If it's not
 21 economic, the CLEC is entitled to withdraw its
 22 capital and provide another service; isn't that
 23 correct?

24 A. Good. I was hoping you'd ask me that. I

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1 think this goes to the heart of the question of
 2 whether Verizon's access charges can serve as a
 3 proxy for a competitive marketplace's prices. And
 4 to your question: In a competitive marketplace,
 5 competitive companies, they have a choice: They can
 6 either enter the market, and if they feel that rates
 7 are compensatory, they can do so; or, if they feel
 8 that a rate is not compensatory, they can scale back
 9 their operations.

10 Now, the CLECs don't have that option
 11 here. They are obligated. When an IXC comes to
 12 them and terminates or originates long-distance
 13 traffic, the CLEC has no choice. It cannot block
 14 that traffic. It must offer its services, and it
 15 must accommodate that traffic. That's very
 16 different from a competitive market.

17 The FCC addresses that in the CALLS
 18 order. Let me refer you specifically to Paragraphs
 19 17, 175, and 181. What the FCC talks about there is
 20 that when access charges are no longer compensatory,
 21 they will be confiscatory. Now, of course, that
 22 applies to the regulated rates of the ILECs. The
 23 FCC says, "When I set your access rates and if I
 24 don't allow those rates to be compensatory, well,

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1 then, it's confiscation, and you're protected
 2 against that under the Constitution." In fact, one
 3 of those paragraphs that I referred you to discusses
 4 that explicitly.

5 Now, the CLECs are not regulated, so at
 6 this point they can do what they want, the
 7 self-disciplining. But if you are going to be
 8 setting rates for the CLECs and you force them to
 9 accommodate IXC traffic, you'd better make sure that
 10 those rates are compensatory, because otherwise
 11 you're doing something that I as an economist would
 12 say is confiscatory.

13 Q. Are you aware, Dr. Ankum, that Verizon's
 14 proposal permits CLECs who believe that their costs
 15 are higher than the proposed rate to demonstrate
 16 such? Are you aware of that?

17 A. Good. And there has been --

18 Q. You are aware of that?

19 A. Yes, I am, and there was some discussion of
 20 that with the other witnesses. And I think that's a
 21 very important point to note.

22 Now also, when you read the testimony of
 23 your witnesses, Verizon, AT&T, and Comcast, they
 24 make passing references to cost demonstrations.

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1 But, of course, the crux of the matter is, are rates
 2 just and reasonable? You either rely on market
 3 forces -- and I suggest that you do, because I've
 4 sketched out why you think access markets work just
 5 fine.

6 But if you don't rely on market forces,
 7 I recommend that you stick with the existing
 8 paradigm that has ruled public-utility regulation
 9 for the last 100 years, which is that where it
 10 concerns wholesale services and where it concerns
 11 services where the regulator regulates the prices,
 12 rates are set based on company-specific cost
 13 considerations -- as evidenced by the fact that all
 14 companies charge different rates for UNE loops. If
 15 you look at Verizon and SBC across their states,
 16 these things are all over the place. The same goes
 17 for, they still offer unbundled local switching as
 18 part of UNEs; they're all over the place.

19 If you look at, let's take switched
 20 access, which is before us. It's a wholesale
 21 service. I've presented data in my testimony. I've
 22 presented Verizon's switched-access rates. They
 23 vary hugely across the country. I just came back
 24 from South Dakota. The access charges there for

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1 Qwest, the CLECs, and the rural LECs are all in the
 2 neighborhood of 6 to 12 cents a minute. Let me
 3 guarantee you, those rates will never go down as low
 4 as Verizon's rates in either Massachusetts or in New
 5 York, where the cost structure is very different.
 6 Wholesale rates, be it for switched access, for
 7 unbundled UNEs -- or unbundled network elements --
 8 the paradigm is that wholesale rates are set based
 9 on company-specific network architectures, network-
 10 specific costs. That is what regulators always do.

11 And if you are going to be setting
 12 regulated rates and if you are going to be using
 13 benchmarks, then you must consider those company-
 14 specific circumstances and benchmark the CLECs
 15 against comparably situated companies and not
 16 against a company whose rates, first of all, as they
 17 have admitted themselves, stand in no relationship
 18 to their costs, and a company that in any event
 19 looks very different from the CLECs.

20 The rates that Verizon charges for
 21 access are arbitrary in the sense that they come out
 22 of a long regulatory process, with jurisdictional
 23 separations, which may be viewed as a large
 24 sausage-maker with two spouts at the bottom. One

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1 spout is interstate; the other spout is intrastate
 2 costs.

3 Q. Excuse me, Dr. Ankum. I don't mean to
 4 interrupt, but I just want to keep us on track in
 5 the interests of time. Do you want to finish your
 6 answer?

7 A. In one sentence, almost. Is that okay?

8 Q. Okay.

9 A. These rates are not a meaningful proxy for
 10 CLECs. They are arbitrary -- not capricious, but
 11 arbitrary -- for Verizon. If you apply them to
 12 CLECs, those rates are arbitrary and capricious.

13 Q. I have in mind to go somewhere else, but I
 14 just wanted to close this issue, because I had asked
 15 you, or I was trying to ask you, whether an
 16 opportunity for a CLEC to establish higher costs and
 17 get that rate, why that doesn't satisfy your
 18 concern. And let me add: The advantage of that
 19 would be that if the CLEC happened to have
 20 particularly low costs, it doesn't have to set its
 21 rates at that low cost. It gets the advantage of
 22 having the Verizon rate.

23 A. Let me answer that briefly.

24 Q. I don't understand what's wrong with that.

1 A. Let me answer that briefly. Verizon has
2 presented its proposal, the "simple" solution. Let
3 me paraphrase, but I've forgotten who originally
4 said this, but it's a little witticism: For every
5 complex problem is a simple solution that is wrong.
6 I've pointed out why this simple solution is wrong.
7 But more importantly, what you hear now
8 is that it's not really a simple solution at all,
9 because for this to work, Verizon and AT&T had to
10 create a safety valve, which is that CLECs somehow
11 must not prove up their costs -- of course, a
12 horrifying thought. It's supposed to be a
13 competitive industry. You're supposed to move away
14 from regulation and all these regulatory costs and
15 expenses associated with that.
16 So the notion now is somehow that CLECs
17 have to construct cost studies and incur all those
18 expenses and then come to you guys and say, "Here
19 are my cost studies," and now you have to start
20 looking at all these cost studies? I don't
21 understand how that is a simple solution at all.
22 What I would say is, the simple solution
23 is what the Commission has right before it, which is
24 to say, "Let me look at these access charges. Now,

1 I've heard Dr. Ankum, and he says that the CLECs
2 self-discipline. Well, there's something to that
3 argument, but I'm not entirely convinced." At that
4 point you can just look at the access charges. You
5 don't have to do a draconian rule and apply it to
6 all CLECs, with all the harm thereof. You can
7 simply look at these access charges and say, "Well,
8 some of them I don't really trust. They're
9 outliers. Let me talk to that company." You can
10 use moral suasion.
11 There's also a complaint process that
12 AT&T and Verizon and others can use. If they feel
13 access charges are unreasonable -- I've already said
14 they can compete for them, but if they don't want
15 to, they can use the complaint process. That I
16 think generates far less work, is far more efficient
17 than the Verizon proposal, which says -- given that
18 it's calling for CLECs to come in with cost studies,
19 which are really complex; I don't think that's a
20 simple policy at all. I think that is draconian,
21 especially since CLECs have never been required to
22 have these studies. They don't have them on file.
23 They must be created from scratch.
24 MR. DeROCHE: Mr. Gruber, before you

1 move on to another section, we're going to have to
2 take a break for lunch. Why don't we take an hour.
3 We will come back at 2:10.
4 (Recess taken.)
5 MR. DeROCHE: We'll go back on the
6 record. Mr. Gruber, your witness?
7 MR. GRUBER: Thank you, Mr. DeRoche.
8 Q. Dr. Ankum, just as a preface, I told
9 Mr. DeRoche that I would do everything in my power
10 to finish within 30 minutes; and so if you could
11 help me on that, to the extent you can, that would
12 be great. I just have a few questions left.
13 Unfortunately, though, I need to return
14 to one of the examples we were using, which is your
15 example of the hotel room. What were the range of
16 rates that you were seeing?
17 A. I think I'm paying something like \$460, and
18 somebody else, one of my clients, I think, is paying
19 something over \$500.
20 Q. Let me ask you: Did you have a choice?
21 Could you have stayed at a hotel in the suburbs?
22 A. Could I have stayed in the suburbs? Yes.
23 Q. See, that was easy. Now, we were talking
24 before about vigorous competition -- this is just

1 intended to be an introductory statement, not
2 something to argue about -- vigorous competition for
3 retail customers pushing rates down. In general
4 that's what we were talking about; right?
5 A. Yes, we talked about it extensively, and I
6 note that we have lost most of our audience.
7 Q. And in fact, we've seen the price to some
8 local-exchange customers of CLECs going so far down
9 that they're negative; isn't that correct? And by
10 that I mean, we've seen examples of CLECs sharing
11 their -- paying certain local-exchange users to
12 become their customer. Isn't that correct?
13 A. Well, you're assuming some facts that I
14 think, as a lawyer would say, are not in evidence.
15 But if you can help me out with what you're
16 referring to.
17 Q. Well, there have been --
18 A. Maybe there are; if you can help me.
19 Q. There have been some traffic-pumping
20 schemes or, shall we say, alleged traffic-pumping
21 schemes that have been pointed out by both Verizon
22 and AT&T. I was referring to those. They were the
23 subject of some cross-examination.
24 A. If you can clarify for me: How does that

1 relate to rates being below cost?

2 Q. Well, I'm postulating -- let's just assume
3 for a moment, if you don't think it's all in
4 evidence. The issue that I'm trying to get at is:
5 If a CLEC agrees to share access revenues with an
6 end user, in order to encourage that end user to
7 sign up with it, would you think that's a good or a
8 bad thing?

9 A. Is that a good or a bad thing?

10 Q. Is that an example of vigorous competition
11 that we want to promote, or is that detrimental to
12 the social good?

13 A. To be honest, I have not seen evidence of
14 that. I don't discuss this in my testimony. My
15 understanding of this proceeding was that it was
16 pertaining really to a mirroring of the FCC's
17 benchmarking policies, and I have not investigated
18 at all arrangements that you're talking about.

19 Q. Well, I'm asking as a hypothetical. As an
20 economist studying the situation, is it good or bad
21 competition from a public-policy and economic-
22 efficiency point of view for CLECs to compete so
23 vigorously for the retail customer that they're
24 willing to actually pay the retail customer to

1 become their customer? Is that a sign of socially
2 beneficial competition?

3 A. I would have to see the specifics of those
4 situations. As I said, I have not examined that. I
5 haven't filed testimony on it. I think it's
6 dependent on the specifics.

7 Q. Why don't we just consider: You're
8 familiar with the concept of traffic-pumping, aren't
9 you?

10 MR. MESSENGER: Objection. Can we get
11 that term defined? It's been tossed around a lot in
12 these hearings.

13 Q. Have you been in the hearings?

14 A. Yes.

15 Q. Do you as an expert in telecommunications
16 have a sense of what traffic-pumping is?

17 MR. MESSENGER: I'm not sure there was a
18 ruling on my objection.

19 MR. DeROCHE: You asked for a definition
20 of traffic-pumping to be given. I think if you
21 could provide a definition in this case. I
22 understand the term is rather nebulous, but in this
23 specific example, if you could provide a definition,
24 I think that would be helpful.

1 THE WITNESS: By traffic-pumping I mean
2 a local-exchange carrier setting its terminating
3 access rates significantly above costs and then
4 encouraging or soliciting end-user customers that
5 produce a lot of terminating traffic to become their
6 end user. That's what I mean.

7 MR. DeROCHE: Thank you.

8 A. Is there a question pending?

9 Q. My question is: You're familiar with
10 traffic-pumping, as a general matter; right?

11 A. Well, you just provided me with the
12 definition.

13 Q. Have you never heard of traffic-pumping
14 before?

15 A. The term --

16 Q. Excuse me, have you ever heard --

17 A. Yes, I've heard the term, of course. As
18 the judge correctly noticed, the way at least that
19 term is being used, it's generally somewhat nebulous
20 and in various contexts. So I think it's good to
21 have a common definition. I think you just gave
22 one.

23 Have I heard of your definition, after
24 you've provided it to me? The answer is yes.

1 Q. And do you think traffic-pumping is an
2 example of beneficial competition?

3 A. As I said earlier, I think it depends on
4 the specific circumstances. I'll give an example --

5 Q. Let me give you two different examples. In
6 one case the end user that gets paid a share of the
7 excess revenues is a porn site, and in another case
8 it's a customer-care calling center. Now, does it
9 matter which one it is, as to whether you think it's
10 a good or bad example of competition?

11 A. Well, are those examples, or are they
12 hypotheticals?

13 Q. I can't testify, so they're my
14 hypotheticals. You were asking me to make it more
15 concrete.

16 A. I asked you for examples, because I said
17 earlier it depends on the specific circumstances,
18 and I wanted to expand a little bit. But you said,
19 "Let me give you an example," and I think you gave
20 me a hypothetical.

21 Within the context of the
22 hypothetical -- well, it's very difficult -- it's
23 difficult to make an assessment about whether this
24 is in the public interest or not. I'm not speaking

1 about the quality of the customer care.
2 I don't know where to go with your
3 hypothetical.

4 Q. I guess what I'm trying to understand is --

5 A. Hypotheticals tend to flow out going
6 nowhere.

7 Q. Whether as an economist and public-
8 policy -- adviser on public-policy matters you
9 believe that a system or regime that encourages
10 traffic-pumping is a positive one that you would
11 recommend to have implemented by state public
12 service commissions.

13 A. Well, let me say this: I think various
14 witnesses have testified to this, that when CLECs
15 enter the market, they tend to have underutilized
16 facilities.

17 Q. Can I just ask you to answer the question
18 and then you can explain?

19 MR. KRATHWOHL: If he can answer the
20 question.

21 A. I'm explaining --

22 MR. DeROCHE: That's a legitimate point.
23 If you are able to answer the question, I would
24 appreciate it if you answered it in the order that

1 counsel has asked.

2 THE WITNESS: Yes, Your Honor.

3 A. The public-interest question hinges on a
4 number of considerations, and one of the
5 considerations is the extent to which CLECs are
6 allowed to stimulate traffic on the networks. As I
7 said, one of the problems that CLECs experience as
8 market entrants is that they have underutilized
9 facilities. They have a ramp-up stage, and the
10 whole objective is to get more traffic on the
11 network so they can achieve the economies of scale
12 that everybody is talking about. The only way to do
13 that is to stimulate traffic.

14 Now, when you ask me is traffic
15 stimulation a good or a bad thing, I say generally
16 it's a good thing, for two reasons: first, it
17 allows the CLEC to grow the amount of traffic on its
18 network, to enjoy the economies of scale that come
19 with that. On the public-interest side,
20 telecommunications is generally recognized as a good
21 thing. The more we have it, the more we have of it,
22 the better it is.

23 So based on those two considerations, I
24 say, generally speaking, traffic stimulation is a

1 good thing.

2 Q. So you're in favor of implementing a regime
3 that permits and indeed provides incentives for
4 traffic-pumping; correct?

5 MR. KRATHWOHL: I think that's asked and
6 answered. We're trying to ask -- Mr. Gruber is
7 trying to ask questions with an underlying economic
8 theory where he's using some very loaded terms, and
9 I think that Dr. Ankum has tried to give a
10 thoughtful response to the policy and the economic
11 issues and trying to leave aside the loaded example
12 of perhaps one CLEC in Massachusetts for what
13 fraction of a percent of traffic might be involve.

14 Those are not the issues. In fact,
15 Verizon's own witness said this is not a traffic-
16 pumping case. We're trying to talk about what the
17 costs are, what they ought to be, what the rates
18 are, what they ought to be. Certainly I haven't
19 objected to Mr. Gruber asking the economic question,
20 but when we get into trying to put Dr. Ankum on the
21 horns of a dilemma of talking about, well, there's
22 an economic premise, but if you apply that to what
23 might be a fraction of a percent of a situation and
24 that may be a societally disfavored use, whether or

1 not it's supported by the First Amendment, you know,
2 it becomes something that is very difficult to
3 answer without misleading the record.

4 MR. GRUBER: May I be heard, Mr. Hearing
5 Officer?

6 MR. DeROCHE: Yes.

7 MR. GRUBER: This term "traffic-pumping"
8 has been used repeatedly in this proceeding. It is
9 used and defined by the FCC. I defined it for
10 purposes of my question. My question was a simple
11 one: Does Dr. Ankum recommend to the Department
12 that it implement a program or permit a program to
13 continue that encourages traffic-pumping. It's a
14 very simple question, that's a yes or no.

15 MR. KRATHWOHL: And Dr. Ankum testified
16 in just the previous moments that traffic
17 stimulation is generally something that is a good
18 thing.

19 MR. GRUBER: And by doing so, very
20 neatly avoided answering my question.

21 MR. DeROCHE: Is your objection to the
22 term "traffic-pumping" being used in the question,
23 or is your objection to the question in general?

24 MR. KRATHWOHL: I think that the

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1 economic question of traffic stimulation was a
2 reasonable question, and it was answered. I think
3 then to ask again, with now a loaded connotation
4 label, is either asked and answered or I object to
5 it on form.

6 MR. GRUBER: Let me explain. There's a
7 difference between stimulation and traffic-pumping.
8 Stimulation is a general notion of going out and
9 promoting a service and increasing traffic.
10 Traffic-pumping is sharing access revenues with your
11 retail customer. That's traffic-pumping. So I
12 didn't ask about stimulation; I asked about
13 traffic-pumping. Dr. Ankum has not answered it.

14 MR. KRATHWOHL: Of course, we have no
15 evidence on this record that there is any payment to
16 customers.

17 MR. DeROCHE: I agree with you.
18 However, I don't believe that the term "traffic-
19 pumping" has been established with a negative
20 connotation. As you've pointed out yourself, that
21 matter is up for some debate. So I don't see that
22 there's the stigma attached to it that you're
23 concerned about.

24 I do take that there is a difference, a

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1 legitimate difference, between traffic-pumping and
2 traffic stimulation. So I'm going to allow the
3 question to stand, and I'm going to ask the witness
4 to answer it.

5 THE WITNESS: May I have the question
6 read back, so I'm sure I'm answering the right
7 question?

8 MR. DeROCHE: Yes.
9 (Question read.)

10 A. No, I don't agree. I don't think it's that
11 the regime that I'm advocating promotes or
12 encourages traffic-pumping. I think the critical
13 question, of course, is --

14 Q. That's the only question I asked you. In
15 the interests of time, I think we'd better move on.

16 A. Fair enough.

17 Q. Am I understanding your testimony
18 correctly, Dr. Ankum, that you are essentially
19 warning the Department that a cap on access rates
20 may put some CLECs out of business? Is that fair?
21 Again, sometimes I don't know -- I thought we
22 wouldn't argue about this, but I never know.

23 A. I'm not sure that I used that language. If
24 I have, could you refer me to it? If you want me to

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1 take it in the general spirit of the question, I can
2 answer that.

3 Q. Yes.

4 A. I believe that Richmond -- I may be wrong,
5 but I believe that Richmond stated in its testimony
6 that it may be withdrawing from the market.

7 I have not generally testified that it
8 would drive CLECs out of business. What I have said
9 is that when you take tens of millions of dollars
10 out of the business industry, that necessarily means
11 that CLECs will be impaired, their ability to build
12 out their networks and to compete, and therefore
13 CLEC competition will be less vibrant.

14 Q. Dr. Ankum, have you looked at the states in
15 which a cap on CLEC intrastate access rates was
16 imposed to determine --

17 Let me ask you this: You haven't
18 presented in your testimony, anyplace that I could
19 find, an evaluation of whether a cap on intrastate
20 access rates in other states has had the effect of
21 impairing CLECs, have you? That's not in your
22 testimony?

23 MR. KRATHWOHL: Can we have a definition
24 of the cap? I believe that even AT&T's own exhibits

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1 or their witnesses have acknowledged that there's at
2 least a reasonable range in what the different
3 states have done.

4 MR. GRUBER: I don't think that's
5 necessary to go into for my question. I'll make it
6 broadly.

7 Q. Did you present in your testimony any
8 empirical analysis showing the impact of any
9 regulatory restriction on intrastate access rates?

10 A. No. I have not. I have not shown --

11 Q. And I'll represent to you that if you --
12 and if you turn to the Exhibit A to Dr. Oyefusi and
13 Mr. Nurse's testimony, AT&T has presented a long
14 list of states that have implemented some form of
15 restriction on CLEC access rates. On that list --
16 and you can verify it if you like -- Maine has had a
17 cap since 2003. Now, have you asked any of your
18 CLEC clients whether that's presented a problem to
19 them?

20 First of all, you're aware that One
21 Communications operates in Maine; right?

22 A. Subject to check, I will accept that.

23 Q. And did you investigate whether Maine's cap
24 has had any effect on One Communications?

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1 A. No, I have not.

2 Q. And I'll represent to you that Maryland has

3 a cap that's codified in its regulations. Now,

4 you're aware that One Communications, XO, and PAETEC

5 operate in Maryland; right?

6 A. Subject to check, I'm willing to accept

7 that.

8 Q. And have you done any analysis to see

9 whether that cap has affected the operations of XO,

10 One Communications, and PAETEC?

11 A. No, I have not.

12 Q. And you were aware, if you were to look at

13 the exhibit, that New Hampshire also has a cap

14 codified in its regulations, and I'll represent to

15 you that One Communications and PAETEC operate in

16 that state. I take it that you've not even asked

17 them whether that cap has had an effect on their

18 operations?

19 A. I have not asked them.

20 Q. And likewise for Virginia: It implemented

21 a cap a year ago. I'll represent to you that XO and

22 PAETEC operate in Virginia. Have you done any

23 analysis of the impact of that cap on XO and PAETEC?

24 A. No, I haven't.

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1 Q. Should the Department -- you'll be happy to

2 know I'm getting right to the end. Should the

3 Department approve or permit an existing system --

4 I'm sorry, any system that would allow CLECs to

5 recover imprudently incurred costs?

6 A. Could you define those for me, imprudently

7 incurred costs?

8 Q. You have some general background in

9 regulatory economics, don't you?

10 A. Yes. I can fill it in for you, if you

11 want.

12 Q. Yes, why don't you tell me what you think

13 imprudently incurred costs are.

14 A. I can answer it, just generally describe

15 the cost issue, without going over the words.

16 Q. Let's get focused on the question, and then

17 we'll elaborate, so we don't lose track of what

18 we're talking about.

19 MR. KRATHWOHL: Can I interject for a

20 second: Could you speak up, please?

21 THE WITNESS: Yes.

22 Q. Do we need to define "imprudently incurred

23 costs," or would you like to define it?

24 A. Well, the "imprudent" generally refers to

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1 costs that within an examination of a rate case --

2 say with an electric utility, since they are the

3 ones typically still subject to rate-based

4 regulation -- that during a rate case there will be

5 an examination of the company's accounting cost.

6 And the point is raised are certain investments and

7 the costs prudently made and incurred? That then

8 translates sometimes into prudence reviews by

9 commissions.

10 And if a cost is prudently incurred --

11 and it's a tricky analysis, because it oftentimes

12 involves looking back in time and saying, for

13 example, when a utility invested in a nuclear power

14 plant ten years ago, was that a prudent decision;

15 and then even if, right now, looking back, it may

16 not be a prudent investment, with the benefit of

17 hindsight, that's not the standard. You go back ten

18 years and you ask yourself as a regulator, was it --

19 given the set of information available to the

20 utility ten years ago, was it a prudent thing to do?

21 So there's a complex analysis.

22 Q. I'm satisfied, Dr. Ankum, with that

23 definition. And with that definition, would you

24 recommend to the Department that it approve a system

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1 or regime that permits CLECs to recover imprudent

2 costs?

3 A. I'm not in favor of price regulation for

4 CLECs, and so I would recommend you leave it up to

5 the marketplace.

6 Q. But that wasn't my question.

7 A. I believe it was.

8 Q. We're disagreeing here on what the

9 marketplace produces, so I want to get that off the

10 table. I'm just saying, assume the marketplace is

11 not producing what you believe it is. Do you

12 recommend that the Department put in place a system

13 that permits CLECs to recover imprudent costs?

14 A. I'm with your assumption that the

15 marketplace is not functioning.

16 Q. Is not doing it.

17 A. At which point -- and the Commission still

18 can go different directions. But one of the things

19 that the Commission could do if the market truly is

20 dysfunctional is to price-regulate. And as I

21 testified this morning, the longstanding tradition

22 in public-utility regulation is to set prices

23 based -- prices for wholesale products, to set

24 prices for wholesale products based on company-

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1 specific considerations.
2 Now, what is involved in those
3 considerations? The FCC has never spoken clearly to
4 how to set or what cost standard to use for switched
5 access.
6 Q. Wait a minute. I just wanted to stick to
7 your -- to the question. Did I understand you --
8 Tell me if this is wrong, but I think I
9 understand you to be saying that if the market is
10 not working, then the form of regulation that we use
11 should not permit CLECs to recover imprudent costs.
12 Is that a fair position for you?
13 A. I was going to go and say no standard has
14 yet been established. Now, if you ask me what cost
15 foundation should the Commission use to set CLEC
16 rates -- because the first thing I say is, then, I
17 don't think they should. But if they are going to,
18 what cost standards should they use? I think that
19 is --
20 Q. Doctor.
21 A. -- the answer there -- you're asking me
22 about the cost standard, should the cost standard
23 allow for certain investments and certain costs,
24 not --

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1 Q. Dr. Ankum, I'm only asking you, using your
2 definition of "imprudence," should we have a
3 system -- would you recommend to the Department that
4 we have a system under which CLECs can recover
5 imprudent costs without review?
6 MR. KRATHWOHL: I guess I'd have to ask
7 for -- it sounds like a simple question, but it's
8 not. The assumption in there is that there are
9 imprudent costs, but the only way costs can be
10 determined whether they're imprudent is in the grand
11 regulation scheme that Dr. Ankum is trying to get to
12 explain, that a regulator has deemed that some
13 market participant has acted imprudently.
14 So we have that built into the question
15 here, but without a recognition that there is going
16 to be a determination whether or not there was
17 imprudence.
18 MR. GRUBER: We'll bypass all this.
19 Q. Dr. Ankum, you're asking the Department not
20 to change the current arrangement for setting CLEC
21 access rates; correct?
22 A. To keep the regime in place, but perhaps to
23 more proactively use the rules that are in place and
24 the capabilities that the Department has in terms of

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1 using more or less suasion, perhaps more actively
2 scrutinizing the access charges to see if they're
3 outliers. But other than that, yes.
4 Q. And just to be clear, there is no evidence
5 in this case that's been presented by anybody as to
6 the actual costs, their prudence or not, of any CLEC
7 in Massachusetts. We haven't examined a single
8 financial book in this case. Is that correct?
9 A. We have not examined a single book. You're
10 correct.
11 MR. GRUBER: No further questions,
12 you'll be happy to hear.
13 MR. DeROCHE: Thank you. The Attorney
14 General? I understand you have questions?
15 MR. REYES: Just a few. No
16 hypotheticals.
17 MR. DeROCHE: And Dr. Ankum, I'm going
18 to ask again that you try and keep your answers
19 succinct and direct to the questions that are asked.
20 THE WITNESS: Yes, Your Honor.
21 CROSS-EXAMINATION
22 BY MR. REYES:
23 Q. I'm going to your testimony about the
24 economic pressure -- the competitive pressure that

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1 you say is imposed on the pricing of switched
2 access. Is it fair to say that the source of this
3 pressure is the potential loss of revenue that could
4 come from predatory pricing should a CLEC price its
5 rates for switched access at a sufficiently high
6 rate? Predatory pricing in the retail markets, that
7 is.
8 A. I haven't focused on the predation part.
9 Q. Let's not use that word, but pricing --
10 let's not use "predation." That's a bit loaded.
11 Let's say pricing retail services below marginal
12 cost in order to gain customers from a CLEC that's
13 overpricing its switched-access services.
14 A. That may happen. I believe that Verizon
15 has a sufficient degree of pricing flexibility, but
16 I'm not sure where it can engage in what we can call
17 predation. So I don't see that that is necessarily
18 a problem.
19 Q. Can you tell us at what level a CLEC can
20 price its switched-access services above marginal
21 cost before that pressure to limit that cost
22 applies?
23 A. I can't quantify that for you.
24 Q. Do you recall yesterday there was testimony

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1 referring to potential regulatory pressure that
2 would place some boundary on the pricing for that
3 service?
4 A. Yes, generally.
5 Q. Is the competitive pricing pressure that
6 you're testifying exists, would that force the price
7 to be lower than what that regulatory price -- let
8 me start over.
9 In your view, is that regulatory
10 pressure sufficient to limit the prices of switched
11 access, absent the competitive pressure that you're
12 testifying to?
13 A. I think the strength comes from the
14 combination of market forces and, you know,
15 regulatory oversight and applying moral suasion.
16 But would regulation by itself be sufficient absent
17 competition? I don't know. It depends on how
18 proactive the regulator's going to be. But I would
19 think you would need a very proactive regulator if
20 there were no market dynamics to back them up.
21 So let me say, I don't think that just a
22 distant regulatory oversight would be sufficient
23 absent market forces.
24 Q. Let me ask the other question: Would the

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1 market forces that you're claiming exist that would
2 limit prices of that service be sufficient to
3 control the price absent regulatory oversight?
4 A. I think so, but fortunately, we do have a
5 regulatory agency, and I think the combination of
6 the two is yet better than just market forces; but I
7 believe markets by themselves would do a fine job
8 for CLECs.
9 Q. Is that competitive pressure sufficient to
10 drive the rates for switched-access services down to
11 marginal costs in the long run?
12 A. No, nor do I think that that would be
13 desirable. I can explain if you want me to.
14 Q. I'm not sure I need an explanation. I
15 won't ask it, but if your counsel wants to ask it,
16 that's up to him.
17 You testified earlier that competitors
18 need to compete on price or they can compete by
19 providing ancillary services like better customer
20 service. Is that a fair characterization of your
21 testimony?
22 A. And/or, yes.
23 Q. Is it possible for a carrier to maintain --
24 So if it's "or," is it possible for a

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1 carrier to maintain retail prices that are higher
2 than its competitors, based on those additional
3 services?
4 A. Yes.
5 Q. Now, if the marginal cost that each carrier
6 is paying for switched access to other carriers goes
7 down because of a cap, can carriers maintain higher
8 prices -- or maintain their existing prices without
9 passing through those costs, or cost savings?
10 A. They almost certainly will maintain their
11 current toll rates. That's what you're asking me
12 about; right?
13 Q. Right.
14 A. I would think that the cost savings that
15 Verizon and AT&T and others may experience will flow
16 to San Antonio and New York. And there may be a
17 trickle-down effect possibly, but unlikely, I
18 believe, in the form of toll rates.
19 Q. Do CLECs have that similar capability, to
20 shift those cost savings to end users who are not in
21 Massachusetts?
22 A. And the cost savings you're referring to
23 are which?
24 Q. The reduction in marginal costs due to a

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1 cap in switched-access services.
2 A. And how does that translate into cost
3 savings for the CLEC?
4 Q. Would you agree that CLECs are also paying
5 these switched-access services when their customers
6 have to call another CLEC, or a customer on another
7 CLEC?
8 A. So you're referring to the cost savings
9 that a CLEC may experience when it's terminating and
10 originating calls on another CLEC.
11 Q. Yes.
12 A. There will be some cost savings for the
13 CLEC; but, of course, the vast majority of calls
14 that a CLEC terminates will be on the RBOCs. Very
15 few of those calls go to other CLECs. So the cost
16 savings for the CLEC that it experiences are
17 minuscule, but its loss in revenues, because of lost
18 access charges that it now can't charge, are going
19 to be very substantial. So on balance the CLEC will
20 lose a lot of money.
21 Q. What effect will that have on end-user
22 rates? If that question is answerable.
23 A. Well, the dynamics -- it will make
24 competition in Massachusetts less vibrant because

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1 CLECs will be impaired in their ability to compete,
 2 which may undermine the regulatory regime in
 3 Massachusetts, which is predicated on a vibrant CLEC
 4 community. And to the extent that Verizon has
 5 pricing flexibility for business services, for
 6 example, it has received that pricing flexibility in
 7 large part because there are competitors out there.
 8 With its competitors less vibrant and healthy,
 9 Verizon may use that to its advantage and slightly
 10 nudge up its business rates, so ratepayers in
 11 Massachusetts will be harmed.

12 MR. REYES: No further questions.

13 MR. DeROCHE: Thank you. Ms. O'Dell,
 14 Comcast?

15 MS. O'DELL: Thank you. Hopefully I
 16 just have a few.

CROSS-EXAMINATION

17 BY MS. O'DELL:

18 Q. Good afternoon, Dr. Ankum. I'm Deanne
 19 O'Dell, on behalf of Comcast.

20 A. Good afternoon.

21 Q. Just a few questions for you. This morning
 22 you stated that CLECs are at a cost disadvantage
 23 because they don't get the benefit of switched
 24

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1 discounts that Verizon does. Do you recall that?
 2 A. Yes.

3 Q. Shouldn't this mean that the end-user
 4 retail rates for all services that use the CLEC's
 5 switch services should be higher?

6 A. No. There are many components that go into
 7 pricing retail services -- and considerations.

8 Q. So, then, the only place for a CLEC to
 9 recover the cost of these higher switches is through
 10 terminating interstate switched-access rates?

11 A. No.

12 Q. Could they refer them through the local
 13 terminating rates?

14 A. Those costs will generally be covered in a
 15 multitude of ways. As I explained, the CLECs are,
 16 like most telecom firms, are multiproduct firms. To
 17 the extent that the switch is used in the provision
 18 of a large number of services, the cost-recovery of
 19 that switch is spread out over those services.

20 Q. Is it spread out through the retail
 21 end-user services, or is it spread out through other
 22 intercarrier compensation charges?

23 A. All of them.

24 Q. So as you sit here today, you cannot

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1 definitively state that any cost savings a CLEC
 2 receives -- I'm sorry, a cost increase a CLEC has or
 3 additional costs over Verizon is passed through to
 4 the retail end-user customer? Excuse me. There's
 5 not a direct correlation between a higher cost on
 6 a -- a higher-cost direct correlation to higher
 7 retail rates?

8 A. Well, there is an indirect correlation or
 9 an indirect relationship. The costs of the CLEC,
 10 including the switch costs, where I believe you're
 11 focusing, dictates where and when the CLEC can
 12 compete, so it determines the footprint of the CLEC.
 13 And so in that sense it impacts rates and ratepayers
 14 in their retail rates.

15 Q. But you would not expect to see higher-
 16 than-Verizon retail rates, for the reasons you had
 17 discussed earlier, about being a price-taker?

18 A. Yes, in addition to the discussions we had
 19 about ancillary services, customer-service compacts,
 20 higher reliability, offering a better lunch -- the
 21 whole panoply of techniques and skills and things
 22 that CLEC salespeople use.

23 Q. On Page 58 of your testimony, Lines 15
 24 through 18?

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1 MR. KRATHWOHL: Could I ask the witness
 2 to try to speak up a little bit more, too, please.

3 THE WITNESS: Yes.

4 A. Which lines?

5 Q. Page 58, Lines 15 through 18.

6 A. Yes.

7 Q. You make a statement there that switched-
 8 access rates are in general intended to help the
 9 underlying carrier recover the traffic-sensitive
 10 costs it incurs in accommodating the long-distance
 11 traffic of other carriers. Is that accurate?

12 A. Yes.

13 Q. Would you agree that the basic function of
 14 the switch is the same for local telephone calls as
 15 it is for long-distance telephone calls?

16 A. They're generated off the same switch, but
 17 it may draw on different functionalities in the
 18 switch.

19 Q. Does it matter if the call that comes in is
 20 a local telephone call or an intrastate telephone
 21 call or an interstate telephone call? Does the
 22 switch care?

23 A. Well, to give an example, a local call that
 24 is on net -- inter-switch and will come in on the

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1 switch and will go right back out to, let's say, a
2 neighbor of the CLEC customer, served by the same
3 CLEC -- it would be a local call. It would be an
4 inter-switch call that uses different
5 functionalities than, let's say, an interstate long-
6 distance call, which comes in on one side of the
7 switch and passes through the switch and calls
8 through some different trunk ports --

9 Q. But the call termination is the same,
10 regardless of what the call is. It moves the call
11 from one end of the switch to the other end of the
12 switch?

13 A. It passes through the switch, in somewhat
14 different ways. But, I mean, it is the same switch,
15 even though, as I said, there may be different
16 functionalities that are activated.

17 Q. I'd like to refer you to Comcast-1-13.

18 A. Yes.

19 Q. In this response to Comcast's interrogatory
20 request, you made a statement there regarding
21 unbundled local switching. I quote your answer
22 there, that "Unbundled local switching encompasses
23 only the use of the switch itself, whereas switched
24 access includes not only local switching but

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1 transport, traffic aggregation, and other features."
2 Do you see that?

3 A. If you'd give me a second.
4 Yes.

5 Q. So we can agree that the use of the switch
6 is the same. It's an equal component in unbundled
7 local switching as it is in switched access?
8 Understanding that switched access in your opinion
9 includes other things that need to happen.

10 A. There's a certain component of the switch
11 that is used in both services.

12 Q. Would you agree with the statement that
13 ILECs -- this is a quote -- that "ILECs do not incur
14 additional costs when the switch is being used.
15 Usage, as a matter of economic principle, should not
16 be a cost driver in switch cost studies"?

17 A. Switch cost studies, and I presume in the
18 context of unbundled network elements?

19 Q. Yes; for purposes of that statement, yes.

20 A. If the express purpose of the purchaser of
21 the elements is it must buy the entire capacity of
22 the switch and that's associated with the switch
23 port, the answer is yes. If the purchaser
24 explicitly wants to purchase the product on a per-

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1 minute-of-use basis, then it can be done on a per-
2 minute-of-use basis.

3 The analogy I've made is that if I
4 travel a lot and I want to have use of a computer, I
5 can go to a Kinko's and lease a computer on a per-
6 minute-of-use basis. If I want a computer for my
7 office, I go to the computer store next door to
8 Kinko's and buy the computer. In the first instance
9 I get the capacity and I get the whole computer, and
10 if I want that, that should be available to me. If,
11 on the other hand, I want a computer on a minute-of-
12 use basis, the way that IXC's want switched access,
13 on a minute-of-use basis, it should be made
14 available on a minute-of-use basis.

15 So it's customer demand that drives how
16 the price should be set there.

17 Q. When you're referring to purchaser, you're
18 referring to the telephone company in this
19 situation, the IXC that wants to use that other
20 telephone company's switch; correct?

21 A. Yes.

22 Q. In terms of the purchase of the switch
23 itself, though, whether it's an ILEC or a CLEC that
24 has to purchase the switch, is that switch purchased

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1 on a traffic-sensitive-use basis?

2 A. The switch is generally purchased on a
3 capacity basis.

4 Q. Capacity is something different from
5 traffic-sensitive; correct?

6 A. It depends on how the switch is engineered.
7 That's one thing.

8 Secondly, it depends on what terms the
9 company -- the company being the telephone
10 company -- has negotiated with the vendor.

11 Q. The company that has purchased the switch?

12 A. No, in this case the underlying ILEC that
13 is negotiating with a switch vendor like Nortel,
14 Lucent, Siemens.

15 The RBOCs have traditionally, over the
16 last ten years, purchased those switches on a
17 capacity basis, mostly based on the number of ports
18 that the switch can accommodate. But that is wholly
19 contingent on the specific desires, again, of the
20 RBOC, or this could be a CLEC. They may want to
21 purchase a switch on a usage basis. Vendors have
22 accommodated both.

23 Q. So what I understand you to be saying is,
24 there's different types of switches. There's a

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1 switch that a telephone company could purchase, that
 2 is capacity-based, but it's not usage-limited.
 3 There's another type of switch that a telephone
 4 company could buy that's simply on a per-usage
 5 basis. Is that accurate?
 6 A. Actually, the switch is the same, but the
 7 contract will be different.
 8 Q. Okay, so it's the same piece of equipment.
 9 A. Yes, like I can lease a car, and I can
 10 lease it based on how many miles I drive or I can
 11 lease a car with a flat rate for the day. If I get
 12 the flat rate, I buy the whole capacity of the car
 13 for one day, so to speak. Or I can say, "I know I'm
 14 not going to be driving that much, so I'd rather
 15 have a mileage charge." Now, the car-lease industry
 16 has gravitated to a flat rate, by and large, but you
 17 get the principle.
 18 Q. For purposes of this case here, are the
 19 switched-access rates per-usage-based for, let's say
 20 all of the CLECs in this case?
 21 A. Yes, I believe that's generally -- the
 22 switched-access uses that we're discussing are per-
 23 minute-of-use charges. However, yesterday there was
 24 an extensive discussion about the tandem trunk ports

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1 that some IXCs use and purchase, Verizon tandems and
 2 AT&T tandems, and there was some discussion about
 3 whether those flat- rated elements have been or have
 4 not been appropriately accounted for in the revenue-
 5 per-minute calculation.
 6 MR. DeROCHE: If we can stick to the
 7 switches.
 8 A. So the tandem port is the switch, and to
 9 the extent that it's dedicated, IXCs can also buy
 10 access on a dedicated basis.
 11 Q. Taking the advice of the hearing officer,
 12 I'll just wrap this up. So the bottom line is, a
 13 switch is basically purchased on a capacity basis.
 14 Switched access, interstate access charges are on a
 15 per-minute-of-use basis, the charge that carriers --
 16 IXCs are required to pay.
 17 A. Different permutations are possible; but
 18 generally, particularly in an RBOC setting, that's
 19 true, yes.
 20 MS. O'DELL: That's all I have. Thank
 21 you.
 22 MR. DeROCHE: Mr. Fipphen, Verizon?
 23 CROSS-EXAMINATION
 24 BY MR. FIPPEN:

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1 Q. Good afternoon, Dr. Ankum.
 2 A. Good afternoon, Mr. Fipphen.
 3 Q. Would you please refer to Page 45 of your
 4 prefiled testimony.
 5 A. Yes.
 6 Q. Specifically, I'd like you to look at Lines
 7 9 through 11. You testify there, and I'll read it
 8 and ask you to confirm that's what it says, "As a
 9 result, capping CLEC access rates at levels charged
 10 by Verizon will likely result in CLECs offering
 11 switched-access services at prices below their costs
 12 of production." Did I read that correctly?
 13 A. Yes.
 14 Q. Let's take that sentence, and let's focus
 15 on the words "CLEC access rates." You're referring
 16 there, I take it, to intrastate switched-access
 17 rates in Massachusetts; is that correct?
 18 A. Yes.
 19 Q. And when you refer to Verizon, I take it
 20 that you are referring to Verizon - Massachusetts,
 21 the ILEC here in Massachusetts?
 22 A. Yes.
 23 Q. And when you're referring to CLECs offering
 24 switched-access services, are you referring to all

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1 CLECs generally, or are you referring to just your
 2 four clients on behalf of who you are appearing
 3 today or some other subset of CLECs?
 4 A. It's a general statement; i.e., beyond the
 5 four clients, and qualified by the phrase "will
 6 likely."
 7 Q. Let's focus on the last three words of that
 8 sentence. You talk about their costs of production.
 9 Am I correct?
 10 A. (Nodding.)
 11 Q. You have not presented any evidence, to the
 12 best of my knowledge, in this testimony about CLEC
 13 costs of production in Massachusetts, have you?
 14 A. I have not specific to Massachusetts, but
 15 I've provided lengthy discussions about CLEC costs.
 16 I believe we talked about that this morning.
 17 Q. But no Massachusetts-specific data?
 18 A. I think that's correct.
 19 Q. Now, I'd like you to turn to Page 61 of
 20 your prefiled rebuttal testimony.
 21 A. Yes.
 22 Q. And specifically Lines 14 through 15. Have
 23 you reviewed that, those two lines?
 24 A. Just a second.

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1 Yes.

2 Q. We're talking about -- the topic is

3 customer density; correct?

4 A. Yes.

5 Q. And you state here, "I'm not aware of

6 available data that would allow a Massachusetts-

7 specific analysis in this regard." Did I read that

8 correctly?

9 A. Yes.

10 Q. Can you tell me, Dr. Ankum, whether you

11 asked your four clients in this proceeding whether

12 they would be willing to provide any Massachusetts

13 line-count density information?

14 A. I have not.

15 Q. Now I'd like you to turn to your response

16 to Comcast-1-9.

17 A. I may be there. If you can read me the

18 question, I can confirm.

19 Q. It's the interrogatory directed to the

20 joint CLECs by Comcast-1-9.

21 A. I believe I'm there.

22 Q. You're with me. Okay. And I believe the

23 last -- in words or substance, the last line of your

24 response is that CLECs lack the ability to mark up

585

1 retail rates for internal cost considerations. Is

2 that what you said?

3 A. Yes.

4 Q. Can you tell me, Dr. Ankum, whether CLECs

5 have the ability to mark up switched-access rates

6 for internal cost considerations?

7 A. That goes to the discussions that I had

8 this morning with the AT&T attorney, and my general

9 notion there is that they don't because markets are

10 functioning.

11 Q. Dr. Ankum, I believe that you testified

12 earlier today that CLECs have an incentive to

13 discipline their own rates in order to preserve

14 their market niches that they've set up for

15 themselves. Is that correct?

16 A. Yes, generally.

17 Q. Now, hypothetically, if a CLEC were to have

18 rates that are priced above the rates that Verizon -

19 Massachusetts currently has and hypothetically were

20 to raise those rates by 100 percent, would you

21 consider that rate increase to be an exercise of

22 self-discipline?

23 A. It could be, it could not be. In any

24 market, there's always opportunistic behavior,

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1 meaning a company may seek to set a price that the

2 market can bear and then time will tell whether that

3 was an error or not. That's Point 1.

4 On the other side of that coin, the

5 company might have been setting its prices too low

6 and may have decided to raise its prices. Absent

7 cost information and more details about the

8 specifics, I can't make a judgment about whether

9 that is an aberration or not.

10 Q. Dr. Ankum, have you done any analysis to

11 compare CLEC access rates in Massachusetts with the

12 lines-per-switch information for CLECs in

13 Massachusetts?

14 A. No, I have not.

15 Q. Dr. Ankum, I'd like you to take a look at

16 Page 86 of your prefiled testimony.

17 A. Yes.

18 Q. Actually, beginning over on Page 85, I

19 believe you're talking about -- the topic here

20 generally is formal market-power analyses; is that

21 correct?

22 A. Yes.

23 Q. Now, over on Page 86 you make a reference

24 to market-power analyses that were done by both the

587

1 FCC and the Department. Do you see that?

2 A. The Department of Justice, yes.

3 Q. Dr. Ankum, I'd like to walk you through a

4 hypothetical telephone call. Let's make the calling

5 party a residential customer in Pittsfield,

6 Massachusetts, who is a local-exchange customer of

7 Verizon. Okay? Are you with me?

8 A. Yes.

9 Q. And that customer is presubscribed to AT&T

10 for long-distance service. Okay?

11 A. Yes.

12 Q. Now let's make the called party a small

13 business customer located here in the City of Boston

14 who is a local-exchange customer of One

15 Communications. Okay?

16 A. Yes.

17 Q. Now, you're generally familiar with how

18 telecommunications traffic is routed through

19 telecommunications networks, are you not?

20 A. Yes.

21 Q. Am I correct that once the calling party

22 dials the telephone call, the call will first be

23 routed by the local Verizon switch to AT&T over

24 switched-access facilities? Is that correct?

588

1 A. Yes.

2 Q. So now the AT&T network has the call;

3 right?

4 A. Yes.

5 Q. And it must somehow get that call to the

6 called party here in Boston; correct?

7 A. Yes.

8 Q. So am I correct that the AT&T network must

9 do a database dip to determine which carrier to hand

10 that call off to?

11 A. Yes, generally.

12 Q. And am I correct that that database dip

13 will return to the AT&T network that that called

14 party is a local-exchange customer of One

15 Communications? Correct?

16 A. Yes.

17 Q. So AT&T will have to send that call to the

18 One Communications switch serving the called party;

19 correct?

20 A. Yes.

21 Q. Now, can you tell me how in my hypothetical

22 that AT&T can get that call to the called party

23 without going through the One Communications switch?

24 A. The moment a call is made, there is a

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1 short-run analysis. As in all short-run analyses,

2 there is no instantaneous alternative unless it's

3 beforehand provided for. So there is no alternative

4 in the flash moment that the call is being made.

5 Q. So the AT&T network for that call has no

6 choice; correct?

7 A. For that call, at the moment that the call

8 is made, there is no choice.

9 Q. Thank you, Dr. Ankum. That's all I have.

10 MR. DeROCHE: Thank you very much.

11 (Recess taken.)

12 MR. DeROCHE: We'll go back on the

13 record. We'll begin with Mr. Gopalakrishnan.

14 EXAMINATION

15 BY MR. GOPALAKRISHNAN:

16 Q. Verizon's residential rates are regulated;

17 hence, they may not be able to compete for

18 residential customers on the basis of price. So is

19 it fair to conclude that CLECs have market power as

20 far as terminating switched access for residential

21 customers is concerned?

22 A. I would say no. Again, it goes to the

23 importance of defining the market correctly. While

24 what you're saying is not necessarily -- some of the

590

1 dynamics with respect to the residential markets may

2 not be entirely untrue or it may be completely true,

3 my testimony this morning has been that as long as

4 the CLEC has to set switched access for all

5 customers the same, the guardians of the market --

6 Take Verizon. If they control where the

7 CLECs' or the bulk of the CLECs' revenues come from,

8 which is the small business, medium-sized business

9 customers, the excess charges for residential

10 ratepayers will come down commensurately, and so the

11 residential market gets the protection from the

12 business market.

13 And so if you do the appropriate market-

14 dominance analysis, you cannot conclude that the

15 CLEC has market power, because the market consists

16 of these many components and is brought generally

17 down.

18 Q. Looking at other CLECs who do not have the

19 same advantages of Verizon, if they are to compete

20 for the customers of a CLEC which is charging high

21 switched-access rates -- so in that environment

22 where one CLEC cannot compete with another for their

23 customers, which you said was the supply-side

24 mechanism to keep prices low -- in that environment,

591

1 would it be good policy to set switched-access rates

2 between CLECs on a reciprocal basis?

3 A. Well, your premise is that the CLECs won't

4 be able to compete for each other's customers.

5 Q. Because you made a case that Verizon has

6 significant advantages which enhance their ability

7 to compete and CLECs don't have such advantages. So

8 the fact that they cannot compete with each other,

9 is it a justification to set policy that switched-

10 access rates between CLECs should be on a reciprocal

11 basis?

12 A. It's an interesting question that I haven't

13 really considered. But off the top of my head, I

14 think actually having worked for TCG, a CLEC, and

15 having worked with CLECs, CLECs oftentimes do

16 compete for each other's customers, and they do have

17 at times difficulties overcoming certain barriers to

18 entry. But by and large what you find is that when

19 you have medium-sized or small business customers in

20 particular areas in the city, there typically is a

21 number of CLECs that are competing with each other

22 for those customers, in addition to competing with

23 the ILEC.

24 So I don't think that the premise for

1 your question, the assumption that CLECs are unable
2 to compete for each other's customers -- I don't
3 think that's borne out by looking at what's actually
4 happening in the CLEC industry. I think there's a
5 large degree of overlap of these areas where they
6 actually do compete.

7 So, to answer your question, I don't
8 think that that is -- the reciprocal access charges
9 between CLECs, I don't think that that is necessary.

10 Q. Looking at the very wide spread of access
11 rates between CLECs, do you think all of them are
12 competitive? It cannot be that such a wide range of
13 switched-access rates, that all of them are
14 competitively set. So are some competitive and some
15 not competitive? Can we make a conclusion of that
16 kind?

17 A. I think that what the variation among
18 access charges -- what that signifies, as I state in
19 my testimony, is not really market power. If you
20 look at access charges across the country, they do
21 vary hugely from company to company. It is the
22 norm. So that's Point 1.

23 Now, why is it the norm that access
24 charges vary hugely from company to company? The

1 reason there is that access is not a commodity, so
2 you don't expect the access charge to gravitate
3 toward a common price level. It doesn't
4 empirically, when you look, and theoretically it
5 shouldn't, either.

6 Why not? Because different companies
7 offer access, even though we use the generic
8 phrase -- but they offer access services over
9 different architectures in very different ways, in
10 very different circumstances. Whether it's, say, an
11 ILEC in South Dakota or a CLEC in Boston or Verizon,
12 all of them do it in different ways. All of them
13 provide this wholesale service in a unique fashion.

14 Now, they have no choice. They must
15 accommodate the IXC for access, so they must provide
16 it, but they all have chosen different
17 architectures, and each architecture has its own
18 costs. And therefore you would expect to see,
19 because it's not a commodity, you expect to see huge
20 variations in costs, and that's exactly what we do
21 see, not just among CLECs, but across the country.
22 And I've provided Verizon's own access charges
23 across the country, and they vary hugely, too.

24 Q. Thank you.

MR. DeROCHE: Mr. Mael?

EXAMINATION

BY MR. MAEL:

Q. I have a couple of additional questions.

Both the Verizon and AT&T witnesses have testified
that of the jurisdictions that have had proceedings
regarding capped CLEC access rates, all have
determined that some form of a cap or alternative
regulation was necessary. In your response to
Department Interrogatory M-CLEC-1-12, you've
indicated that you believe those jurisdictions have
generally erred in their findings, many of them
employing, as you said, very limited economic
analysis in reaching their conclusions.

Could you as briefly as possible provide
more detail on why these findings were somewhat
erroneous?

A. I think -- we've had extensive discussions
of, you know, the Department of Justice and Federal
Trade Commission's horizon-merger guidelines and how
you need to take into account demand and supply
considerations, but most importantly you need to
allow for a certain period of time for demand and
supply responses to play out in the marketplace.

And the Department of Justice and the Federal Trade
Commission typically allow for, when they examine
prices and the question of whether a price signifies
market power, they look over a period of a year to
two years.

Now, what typically has been presented
to commissions as evidence of market power is a very
short-run analysis. As in the example this
afternoon with Mr. Fipphen, the example of the call
that traverses the network from Verizon to AT&T to a
CLEC, at that moment does AT&T have an option? No,
of course it doesn't. But that is no demonstration
of market power, because it's a flash cut, and what
the Department of Justice has recognized and what
I've argued, virtually every provider in the world
can be shown to have market power if you shrink the
time horizon.

When I'm on a cross-Atlantic flight,
which I frequently am, if American Airlines wanted
to, it could charge me a large price for my dinner
out of nowhere, and it could charge me for bathroom
access out of nowhere. At that moment I would have
no choice. The short-run analysis would indicate
that the airline would have market power. But, of

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1 course, a longer-run analysis quickly indicates that
2 that is not true, because if you take a longer-run
3 analysis, then all of a sudden the market begins to
4 function. The market says, oh, if American Airlines
5 does these tricks, then the demand response is I no
6 longer fly American Airlines, and the other airlines
7 would take advantage of that aberrant behavior, so
8 you'd have a demand-and-supply response.

9 Long story short: Most commissions have
10 used, falsely, the analysis that is being offered by
11 Verizon and AT&T, who are the main instigators of
12 many of these proceedings -- they have used the
13 short-run analysis. It has an intuitive appeal, but
14 it's also wrong. It's like two people on a parking
15 lot arguing whether the Earth is flat and saying
16 intuitively, yes, the parking lot is flat, therefore
17 the Earth is flat. Of course, that's wrong. And
18 this analysis that's being offered to you and other
19 commissions is just not consistent with the merger
20 guidelines.

21 Q. On Page 83 of your testimony you quote from
22 the FCC order, CLEC access reform order, I believe.
23 And you emphasize where it says, "We decline to
24 conclude in this order that CLEC access rates across

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1 the board are unreasonable." You felt that's the
2 most important element of that quote. Further on in
3 the quote it says, "Nevertheless, there is ample
4 evidence that the combination of the market's
5 failure to constrain CLEC access rates, our
6 geographic rate averaging rules for IXCs, the
7 absence of effective limits on CLEC rates, and the
8 tariff system create an arbitrage opportunity for
9 CLECs to charge unreasonable access rates. Thus, we
10 conclude that some action is necessary to prevent
11 CLECs from exploiting the market power in the rates
12 that they tariff for switched-access services."

13 Could you comment on that conclusion?
14 A. Yes. We had some discussion of that this
15 morning. It's important to realize that the
16 commission, the FCC, analyzed the market in 2001,
17 and I indicated that the FCC laid out two
18 conditions, two preconditions, for functioning
19 access markets: alliances between IXCs and ILECs,
20 and IXC entry into markets. And it said, "If these
21 things were to happen, then switched-access markets
22 would be competitive." Then the FCC said, "However,
23 we thought it would happen, but it hasn't happened
24 yet, and because it hasn't happened yet, IXCs don't

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1 have the alliance with the ILECs. Because of that,
2 there are certain distortions, and therefore we're
3 going to impose this, not permanent, but a
4 transitional mechanism, and we'll see how the market
5 plays out."

6 So what we have found is that
7 subsequently we have seen the megamergers. The
8 conditions the FCC set have in fact been met now.
9 The IXCs and the ILECs have aligned themselves. And
10 what does that do? It means that the IXC now can
11 use the ILEC facilities -- in other words, the
12 supply response that the FCC was looking for that in
13 2001 would have been absent because the barriers to
14 entry -- MCI and AT&T had had great difficulties
15 getting into local markets.

16 So the entire story I was telling this
17 morning about how the IXC could compete away or
18 somebody could compete away the customer that's
19 associated with excessive profits, that whole story
20 didn't necessarily apply in 2001.

21 At this point Verizon is fully
22 integrated. MCI and Verizon are the same. And so
23 they can go to that customer and compete it away.
24 So, in other words, the conditions the

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1 FCC laid out in 2001 have now been met. So that's
2 my comment on that quote. That's why I think that
3 the FCC's order is just no longer relevant.

4 Q. If the conditions have been met -- and
5 we're not talking met yesterday; may have been met a
6 few years ago -- why is it that we're seeing this
7 great variation in access rates, particularly
8 between the ILECs and the CLECs?

9 A. Well, for a number of reasons. As I said
10 earlier, access is a wholesale service, and as a
11 wholesale service, it's not a commodity. It's not
12 like a can of Coke or a soda. You know, sodas are
13 sold across the country roughly for the same amount
14 of money, because it's a commodity.

15 Now, if you look at switched access, you
16 can't find almost two companies that offer switched
17 access at the same rate. In fact, if you look at
18 Verizon's own access charges, they vary from New
19 York to Boston to wherever they operate. You find
20 hugely differing access charges. That is true for
21 virtually all wholesale services.

22 Wholesale services are just not
23 commodities, and you wouldn't them to come out at
24 some uniform level, where cans of sodas, as

1 commodities, come out. It couldn't, because each
2 company has a different cost.
3 It would be like expecting that all cars
4 in the United States would be sold for the same
5 price. Obviously, they're not a commodity. A top-
6 of-the-line Mercedes will sell for a very different
7 price than a Honda Prelude. Why? Because it's not
8 a commodity. Not all markets create a homogeneous
9 product and a commodity price.

10 Q. Unlike the Mercedes and Honda Prelude
11 example, is in fact the access -- it's no different
12 regardless of who provides it to you.

13 A. Oh, it's very different, it's hugely
14 different. When a call gets terminated in South
15 Dakota to an ILEC that serves a very sparsely
16 populated area, with very long loops and long
17 transport links and a largely underutilized switch,
18 the cost to the ILEC in South Dakota is tremendously
19 different than when a call is terminated to a
20 Verizon office in Manhattan, where they have a huge
21 switch that is fully loaded, with very short
22 transport links, with all the efficiencies of
23 economies of scale.

24 These two calls, which are called access

1 calls, could not be more different, and it will
2 never be that the costs of production for these
3 calls are going to be the same; and unless
4 regulators force these down, with all the harm
5 thereof, access prices for these radically different
6 products will just never be the same, because the
7 costs are not the same.

8 Q. I was more referencing intrastate calls in
9 Massachusetts as an example. So if a customer in
10 Worcester were to call two clients in Boston, one
11 who was terminating to a CLEC and one terminating to
12 Verizon, is there a difference in the access
13 function in that case?

14 A. And the answer there is yes. I gave the
15 example of New York City and South Dakota. But it
16 matters not the names of the geographic locations.
17 What matters is the underlying architecture.

18 So let's now take that South Dakota
19 switch and loop and customer density and place it
20 side by side in Boston with a Verizon switch and
21 customer density. It's the argument I've made in my
22 testimony: When the call terminates to the CLEC, as
23 opposed to Verizon, it gets terminated over an
24 entirely different architecture, and it terminates

1 on a customer base that is relatively sparse. I've
2 had an entire discussion in my testimony about
3 customer densities and how the CLEC customer density
4 falls somewhere in between the rural ILECs and
5 Verizon. And lo and behold, you find that the
6 access charges of the CLECs fall somewhere between
7 rural ILECs and Verizon.

8 MR. DeROCHE: I think we've answered the
9 question, haven't we?

10 MR. MAEL: Just one more try, to make
11 sure.

12 Q. From the end-user perspective --

13 MR. DeROCHE: If I can clarify a little
14 bit: I think you've asked is there a difference
15 between switched-access service, and I think what's
16 been answered is that there is a difference, it
17 depends on which IXC is providing the service, which
18 switch is providing the service and which loops
19 they're connected to.

20 THE WITNESS: Which ILEC, CLEC 1 versus
21 CLEC 2. If the architecture is different, the costs
22 are different.

23 Q. One last question: In the witness from
24 Verizon's original testimony, he pointed to a number

1 of states where there have been proceedings on
2 capping access rates. He pointed to Illinois. You
3 in your testimony indicated that you in fact know,
4 having participated in a workshop, that there has in
5 fact not been a proceeding in Illinois -- to which
6 the witness from Verizon indicated that perhaps
7 there hasn't been an overall proceeding, but there
8 have been case-by-case bases.

9 A. Actually, there was a proceeding. We had a
10 workshop, and I redacted the testimony. Mr. Starkey
11 personally participated in the workshop, and I did
12 not personally participate, even though I worked
13 with the clients.

14 This is what transpired. We had the
15 workshop --

16 Q. I'm sorry, I didn't mean to get onto that
17 train. I was just going to say that there have been
18 earlier in the decade a couple of different cases in
19 Illinois that were handled on a particular-CLEC
20 basis, as opposed to an overall investigation.

21 A. Yes, I believe so.

22 Q. What is your opinion about handling
23 complaints on an individual basis versus an overall?

24 A. I think that will be administratively

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1 easier to do than imposing a cap across the board,
 2 which will basically force the CLECs' hand and to
 3 come in here with cost studies, all of them, in
 4 which case we will always be swamped with looking at
 5 those studies.

6 If the Commission just funnels all this
 7 through either a complaint process or just
 8 individually looks at CLECs where they may have
 9 concerns, I think it can be done possibly even
 10 inside of the context of contested hearings, and the
 11 Commission can sit down with the CLEC and say,
 12 "Explain to me, why are your rates the way they
 13 are?" So I think on an individual basis is far
 14 preferable --to examine CLEC rates on an
 15 individual-case basis is far more preferable than
 16 the draconian, across-the-board cut.

17 Q. Thank you very much.

18 EXAMINATION

19 BY MR. DeROCHE:

20 Q. I have a couple of questions, that I hope
 21 will be quick.

22 You've indicated that there are certain
 23 guardians to the market and that Verizon is
 24 perfectly situated to be one of these guardians.

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1 A. Yes.

2 Q. And you've said or implied that if Verizon
 3 believed there were excess profits being made in the
 4 access market, that one of the first steps they
 5 would do is come to a regulatory body, like
 6 ourselves, before beginning to aggressively compete
 7 and take the most attractive customers away from the
 8 CLECs.

9 We now see today that Verizon is before
 10 us. It would appear that your prediction is coming
 11 true, that there are excess profits being made and
 12 that the market has not self-regulated. Are we at
 13 the point where, if this Commission chooses to do
 14 nothing, Verizon will begin aggressively taking
 15 customers away from CLECs, and from a public-benefit
 16 point of view, is that something that the Commission
 17 could be concerned about?

18 A. There were a number of steps in there. I
 19 didn't mean to say that Verizon would at the
 20 exclusion of competing come to the Commission. I
 21 believe Verizon is competing, and I believe that the
 22 CLECs are self-disciplining.

23 However, Verizon can take a huge bite
 24 out of the apple by simply, at relatively low cost,

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1 rolling out a rate proposal, which they have -- in
 2 which case their switched-access expenses go down
 3 tremendously. It's a simple cost-benefit analysis;
 4 right? How much does a legal proceeding costs. How
 5 much do I stand to gain in switched-access-revenue
 6 savings? And I can guarantee you that the switched-
 7 access-revenue savings greatly outweigh the cost of
 8 this regulatory proceeding, and thus the likelihood
 9 of succeeding with the Department.

10 So Verizon and AT&T clearly have an
 11 incentive to just play the regulatory game -- not at
 12 the exclusion of competing in the marketplace, but
 13 in addition to, because it's an easy alternative.
 14 Why not?

15 Now, is that something that, as you
 16 said, if the Commission doesn't act and Verizon and
 17 others therefore will have an increased incentive to
 18 compete, is that in the public interest? And my
 19 answer is, wasn't that the very objective of the
 20 1996 Act? Isn't that precisely what we want? What
 21 is bad about Verizon competing for the CLEC
 22 customers? I think that would be a wonderful thing,
 23 or is a wonderful thing, and the more we have of it,
 24 the better it is.

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1 Q. You had also testified that one of the ways
 2 Verizon could compete is to take the dollar value of
 3 the access charges that they are being charged and
 4 make a cost-benefit analysis and determine that they
 5 could use those dollars to in turn lower their
 6 retail offerings and use those lowered retail
 7 incentives to compete with CLECs.

8 A. Generally, yes.

9 Q. Do you believe that that would be a very
 10 successful campaign?

11 A. I think that is probably what Verizon
 12 already is doing, selectively. I think Verizon's
 13 competitive actions -- their win-back programs, et
 14 cetera, et cetera -- are guided not by the objective
 15 to gain 100 percent of the market, but to maintain
 16 the market share that the company feels is
 17 maximizing its profits.

18 Q. To take the big fish.

19 A. To take not just the big fish, but to
 20 maintain a solid foothold in, let's say, the Boston
 21 market. It may be willing to forfeit -- I believe
 22 right now the CLEC market share in Massachusetts is,
 23 according to the FCC report, 23 percent. Verizon
 24 may be perfectly comfortable with that percentage

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1 going to competitors as long as it can maintain the
2 rest of them.

3 Q. If I were to say to you that I believe that
4 the purpose of the '96 Act was not so much to allow
5 Verizon to compete but to allow others to compete
6 with Verizon, would you agree with that statement?

7 A. Not really.

8 Q. Would you agree that the purpose of the '96
9 Act, then, was to increase competition generally?

10 A. Yes, between --

11 Of course, at the time there weren't
12 that many participants. But to open markets up to
13 competition so that the incumbent would have to act
14 like a competitive company, with all the benefits
15 thereof.

16 There is no particular benefit to just
17 having a bunch of CLECs out there that just compete
18 and the big guy, that has still 70 or 80 percent of
19 the market, being insulated from the competitive
20 pressure. In fact, the very objective of the
21 instigating competition is to induce Verizon to
22 behave like a competitive company, with all the
23 benefits thereof, to offer all competitive services.

24 I worked in Texas, and it was very

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1 dismaying to see that AT&T deliberately did not want
2 to offer ISDN services when it was technically able
3 to. That behavior was recognized by regulators, and
4 regulators said, "The only way to nudge these big
5 guys is to make them compete."

6 So I would say the objective is equally
7 to have CLECs and ILECs compete.

8 MR. DeROCHE: I have nothing further.

9 EXAMINATION

10 BY MR. ISENBERG:

11 Q. Dr. Ankum, has any evidence specific to the
12 CLECs in this case been presented on their network
13 architecture, economies of scale, or facilities
14 utilization?

15 A. Not specifically with the clients that I
16 represent.

17 Q. Were your client CLECs permitted in this
18 case to offer their own cost data on switched
19 access?

20 A. Are they permitted?

21 Q. Were they permitted.

22 A. To be honest, I don't know.

23 MR. KRATHWOHL: Frankly, Mr. Hearing
24 Officer, I would think that would sort of go to a

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1 scoping issue. Certainly the CLECs did make the
2 argument that, hey, this is a complaint by Verizon.
3 It really constitutes an effort --

4 MR. ISENBERG: Let me cut you off there.

5 I don't believe it goes to a scoping issue. It's a
6 straightforward question. If the witness can't
7 answer it, I'll take that as a record request.

8 A. I don't know.

9 MR. DeROCHE: We'll issue it as Record
10 Request DTC-5.

11 (Record Request DTC-5.)

12 Q. As a follow-up to that: If the Department
13 has not been presented with any specific cost data
14 from your client CLECs, how can the Department
15 determine that Verizon's rate cap would not recover
16 those CLECs' costs?

17 A. It's inherently, of course, an empirical
18 question, and all I can offer you is the theoretical
19 arguments I've rolled out. If you find those
20 unpersuasive, and if that's the question where
21 you're focusing, then I suppose at some point there
22 needs to be a more detailed discussion about costs
23 in some form or another. I don't know what the
24 Commission provides for there.

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1 Q. Thank you. With Mr. Mael you had some
2 discussion about alternatives to Verizon's rate cap.
3 Let me follow up on that. Assuming that the
4 Department determines that a cap on CLEC access
5 rates is necessary but that Verizon's rates are not
6 the appropriate benchmark, then whose rates would be
7 more appropriate as a benchmark?

8 A. In general terms, I would say comparably
9 situated companies. Let me not say which are
10 comparably situated companies. I think we may want
11 to look at companies that have comparable customer
12 densities, comparable architectures possibly. I
13 think the Commission may want to further investigate
14 that, because it's not -- I can't readily point
15 toward specific companies. But, as I said, I can
16 allude to the principle.

17 Q. Would any of those comparable companies be
18 any of the CLECs that participated in this case?

19 A. Generally, since they represent, you know,
20 some significant CLECs in Massachusetts, you clearly
21 do want to look at their -- how they are situated.
22 I can't tell you exactly how you would construct a
23 benchmark just out of one of those companies. I
24 think one has to put a little bit of thought into

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1 how to do that without running afoul of the
2 tautology. You don't want to benchmark a company
3 against itself, because that defeats the purpose of
4 a benchmark.

5 So I don't think that this is
6 necessarily a trivial exercise, and I think we
7 probably want to stick our heads together and think
8 about it a little bit. I think it's very doable,
9 but I don't have a ready answer for you.

10 Q. Yesterday Dr. Pelcovits testified about an
11 alternative benchmark, capping CLEC rates at
12 Verizon's rates. Are you familiar with that
13 testimony, or were you familiar with it?

14 A. I recall him proposing something; but to be
15 honest, I've forgotten exactly what it is. If you
16 could please refresh my -- a little bit more detail.

17 Q. I believe his suggestion was that access
18 rates be benchmarked against retail rates.

19 A. To be honest, I somewhat -- I understood
20 him to say, but I may be wrong --

21 Well, let me not go out on a limb and
22 try to restate his proposal. We can give you a
23 written -- if I may, since I would have to review
24 what he said, because at this point I don't think

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1 that I caught everything that he said, unless
2 somebody else can provide that to me and I can give
3 you an answer now. But I hate to speculate.

4 MR. DeROCHE: We'll make that DTC Record
5 Request 6.
6 (Record Request DTC-6.)

7 Q. Following up on that, and also following up
8 on Mr. Mael's question: Can you think of other more
9 appropriate mechanisms, benchmarks perhaps, that
10 could be used to cap CLEC rates and that would be
11 administratively workable and relatively simple to
12 implement?

13 A. I think I've already made some suggestions
14 about the complaint process and moral suasion.
15 Those are my primary recommendations -- and that
16 moral suasion involves perhaps asking CLECs to
17 explain their access charges in terms of coming in
18 with more of a presentation about their network, et
19 cetera, et cetera.

20 Let's say if those rates were to fall
21 out of some range, you may look at the CLECs
22 collectively and say, "They're all sitting in a
23 grouping, but we have some outliers," and that would
24 pique your interest. That could be a way to

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1 approach it. I don't have a ready benchmark for
2 you, as I said.

3 Q. What about an average of a broad spectrum
4 of CLECs on a national basis?

5 A. It's an interesting thought. I'm not sure
6 necessarily that -- where that would fall out
7 conceptually, if it would give you a comparison
8 between generally comparably situated companies. I
9 think it's really an interesting idea. People would
10 have to look at where that may come out. I think
11 it's an idea that, as I said, would be interesting
12 to examine.

13 Q. That's all I have. Thank you.

14 A. Thank you, sir.

15 MR. DeROCHE: Does any party wish to
16 re-cross-examine?

17 MR. FIPPEN: I have a few questions.

18 MR. DeROCHE: Mr. Fipphen.

19 FURTHER CROSS-EXAMINATION

20 BY MR. FIPPEN:

21 Q. Good afternoon again, Dr. Ankum. Dr.
22 Ankum, I believe in response to questions from the
23 Department regarding variations in switched-access
24 rates around the country, I believe I thought I

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1 heard you testify that the explanation for variation
2 in rates has to do with differences in cost. Is
3 that correct?

4 A. In addition to the regulatory regimes that
5 take into account those costs. But there are
6 differences in costs, and they tend to align with
7 the differences in rates, yes.

8 Q. I thought I heard you state in response to
9 questions from the Department that the primary, if
10 not the sole, driver of the differences in rates
11 were due to different costs which you said were
12 driven by different network architectures. Did I
13 misunderstand your testimony?

14 A. I might have overstated that. I think that
15 cost considerations or net differences in network
16 architectures and the associated costs, when you
17 look at switched-access rates and where those rates
18 are high -- and I talked about South Dakota, which
19 demonstrably has high costs -- and lo and behold you
20 find high access rates, and in Boston Verizon is
21 more efficiently situated and has lower access
22 rates, there is definitely a correlation.

23 Now, we've also discussed, of course,
24 that there's a regulatory process that heavily

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1 influences these rates. And so I didn't mean to
 2 overstate the case.

3 There's a correlation between cost and
 4 access rates, but it's obviously not the sole
 5 determinant.

6 Q. How do you know there's a correlation?
 7 A. Well, I've worked in a large number of
 8 states. I have looked at -- I have worked for the
 9 Texas commission, for example, and we did studies
 10 there, and we examined the costs of some 50 ILECs,
 11 ranging from the big guys to the very small rural
 12 companies, and the access charges that were being
 13 charged. There's a clear correlation. I think it's
 14 generally acknowledged in the industry that the
 15 small rural companies tend to have higher access
 16 charges than the big urban ILECs. I don't think
 17 it's a controversial observation.

18 Q. And you've presented on Page 43 of your
 19 testimony a study on Verizon's access rates around
 20 the Verizon footprint; correct?
 21 A. Yes.

22 Q. Now, did you make any attempt to correlate
 23 the different rates that you populated this chart
 24 with with any evidence that you might have regarding

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1 costs?
 2 A. Not for purposes of this presentation on
 3 this page here.

4 MR. KRATHWOHL: I'm not sure if Mr.
 5 Fipphen is going to keep going along this line, but
 6 I'm not sure if I recall the Bench cross going into
 7 this particular area.

8 MR. DeROCHE: I'm sorry, could you
 9 repeat what Mr. Fipphen's question was.

10 MR. KRATHWOHL: It's only relevant if
 11 Mr. Fipphen is going to continue.

12 MR. FIPPHEN: I have one more question
 13 for Dr. Ankum on this topic, because it did appear
 14 from his response to the Department that there was
 15 an inconsistency with his prefiled testimony and his
 16 response to the Department. I think I'm entitled to
 17 probe that a little bit, and I have one more
 18 question.

19 MR. DeROCHE: We'll allow the one
 20 question.

21 Q. Dr. Ankum, I refer you to Page 41 of your
 22 prefiled testimony, Line 19.

23 A. Yes, I'm there.

24 Q. You just testified, I thought, that there

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1 were variations explainable by costs and by
 2 regulatory considerations. Is that correct?
 3 A. Yes.

4 Q. And would you please explain to me why your
 5 testimony at the bottom of Page 41 is not consistent
 6 with what you said earlier?
 7 A. Are you referring to Line 19?
 8 Q. Yes.

9 A. If I may start at the beginning of the
 10 paragraph, to place it slightly in context, and it's
 11 only a short paragraph. "An examination of
 12 Verizon's interstate switched-access rates shows
 13 that there's an enormous degree of variation from
 14 company to company and state to state. This degree
 15 of variation is at odds with any notion that
 16 Verizon's switched-access rates are reasonable
 17 surrogates of proxies for a competitive market.
 18 There is no uniformity. In fact, there is a
 19 hodgepodge, reflecting the non-cost-based
 20 considerations involved in setting Verizon's
 21 switched-access rates." And I suppose that you're
 22 focusing on that last parenthetical.

23 Q. That's correct.

24 A. As I discussed earlier and as I just said

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1 in response to you, there's a correlation between
 2 costs and rates if you look across the country and
 3 across companies. We also discussed earlier that
 4 the manner in which access charges have been set
 5 went first through separations proceedings that,
 6 while not devoid of costs, since they obviously take
 7 company costs, involved a whole bunch of other, non-
 8 cost considerations, like universal service.

9 Those distortions are in there, so I
 10 surely don't want to say that access charges are
 11 reflective of economic cost. My point here is that
 12 they don't serve as good proxies for CLECs because
 13 there is no uniformity. There's, in fact, huge
 14 variation.

15 Q. Dr. Ankum, I believe that you also in
 16 response to questions from the Department suggested
 17 that an easier manner for the Verizons and AT&Ts of
 18 the world to deal with the problem of high CLEC
 19 access rates would be to file individual complaints
 20 with the Department. Is that correct?
 21 A. I suggested that companies can use the
 22 complaint process, yes.

23 Q. Let's play it out for a minute. If Verizon
 24 were to take a look at the number of carriers that

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1 are charging rates that in its opinion are too high,
2 that would require some number of complaints to be
3 filed with the Department. Two, three, four, five,
4 six, seven; who knows? Correct?

5 A. Possibly. It depends on how they fall out.

6 Q. And so from the Department's perspective,
7 do you think the Department would prefer to address
8 this issue on a generic basis, with one set of
9 hearings and one set of rates, or they would rather
10 do seven cases, with seven prehearing conferences
11 and seven briefs and seven set days of hearings?
12 What do you think would be administratively easier
13 for the Department?

14 A. I'm not sure what the Department would
15 prefer, but I don't think that if you bring one
16 complaint case and a CLEC is able to prove up its
17 costs adequately, either through filing a cost study
18 or through other persuasive evidence, that you
19 necessarily have an incentive to go to the next
20 complaint case and yet another one.

21 I believe that a pattern may emerge.
22 The Department will very quickly get up on the
23 learning curve and be able to see or better
24 understand, perhaps, through those complaints and

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1 looking at CLECs what may be reasonable and what may
2 not be reasonable. And I think the scenario you
3 sketch of six, seven, eight complaint cases I think
4 are unlikely to transpire.

5 Q. But only unlikely if Verizon were to file
6 them at different times. If we were to file them at
7 the same time, those benefits would not happen,
8 would they?

9 A. You're infinitely more creative there than
10 I can possibly envision.

11 Q. One more question, Dr. Ankum: You also
12 testified that another means possibly by which rate
13 issues could be dealt with was by the Department
14 using its moral suasion to try to persuade a carrier
15 to lower its rates. Did I hear you correctly?

16 A. In general, yes.

17 Q. In your experience, Dr. Ankum, over the
18 many years you've been in the industry, are you
19 aware of any significant rate reductions that have
20 ever occurred in this state or any other state by a
21 regulator sitting down and asking a regulated
22 company to "Please lower your rates"?

23 A. Yes. When I worked for the Texas
24 commission myself, that was standard fare. Before a

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1 company would make a formal filing, they would come
2 in and sit down with staff and say, "Well, here is
3 our new service. These are the rates that we're
4 proposing. Do you think that will fly?" I think
5 that is what the commissions routinely do. They
6 routinely sit down with company representatives and
7 get some sense of what may fly and what may not fly.
8 I think that's part and parcel of regulating the
9 industry.

10 Q. Thank you, Dr. Ankum. That's all I have.

11 MR. ISENBERG: Maybe Mr. Fipphen was
12 thinking about his experience with regulators and
13 Verizon.

14 (Laughter.)

15 MR. FIPPHEN: Touche, Mr. Isenberg.

16 MR. DeROCHE: Ms. O'Dell?

17 MS. O'DELL: Thank you. I have a quick
18 follow-up question.

19 FURTHER CROSS-EXAMINATION

20 BY MS. O'DELL:

21 Q. You were having a discussion with Mr.
22 Isenberg regarding, if the Department were not
23 interested or didn't agree to benchmark to Verizon's
24 rate, would there be some other alternative that you

623

1 might consider. The question I have for you is:
2 What would you think about benchmarking it to that
3 CLEC's current originating access charge? So, for
4 example, XO's terminating access charge would be
5 benchmarked to its current originating access
6 charge. What do you think of that as a possibility?

7 A. I think that originating and terminating
8 access -- I believe I've answered that in discovery
9 requests -- that the costs of the two are somewhat
10 comparable. I think that I don't necessarily want
11 to go to the place where you say let's just flash-
12 cut and force the CLECs to make them the same. But
13 I would say among the panoply of options that we
14 rolled out -- the benchmarks, the moral suasion, the
15 complaint process -- the Commission can ask the CLEC
16 to explain why its terminating access is different
17 than originating access. I think it will be a fair
18 question.

19 Q. But I think I heard you say as a general
20 principle, this would be reflective of that specific
21 CLEC's costs, as opposed to, you know, your position
22 that Verizon's costs are not the same as the CLEC
23 costs?

24 A. I think there's information in there. I

1 don't want to say that any specific access charge
2 necessarily reflects the costs of a CLEC. I don't
3 think that I've testified to that. But clearly
4 there is information in those access charges, and I
5 think it's worthwhile to look at them.

6 Q. Thank you.

7 MR. DeROCHE: Mr. Gruber?

8 MR. GRUBER: I have one follow-up
9 question in response to some questions from the
10 Bench.

11 FURTHER CROSS-EXAMINATION

12 BY MR. GRUBER:

13 Q. Dr. Ankum, I think I'm referring to the
14 same give-and-take that Mr. Fipphen was. I believe
15 you testified in response to questions from the
16 Bench that the variation in CLEC access rates that
17 we see around the country are in large part driven
18 by their network architectures and other cost
19 considerations; is that correct?

20 A. Correlated with.

21 Q. And you're familiar, of course, with
22 PAETEC's May 6th, 2008 tariff filing, are you not?

23 A. I know that there was such a filing, but
24 I'm not familiar with the filing.

1 Q. Well, will you take subject to check that
2 PAETEC made such a filing and increased its access
3 rates by approximately 100 percent for per-minute
4 switching and trunk ports?

5 A. Subject to check, I would accept that.

6 Q. And was that cost increase corresponding to
7 increases in those costs by 100 percent?

8 A. I don't know that. I have not looked at
9 PAETEC's costs, nor have I looked at the tariff.

10 Q. Is that consistent with your position that
11 access rates are being driven to cost?

12 A. It's not inconsistent, and I refer to what
13 I call opportunistic behavior, and I don't mean that
14 pejoratively, the way it's used in common
15 parlance -- but where companies attempt to set a
16 price, and it remains to be seen whether price is
17 sustainable. It doesn't invalidate what I'm
18 saying -- it neither invalidates nor supports my
19 contentions. It's no more than one company behaving
20 in a certain way.

21 Q. Have you observed or even attempted to
22 observe any price decreases in the access market in
23 the last year in Massachusetts?

24 MR. KRATHWOHL: Was that the subject of

1 the Bench cross?

2 MR. GRUBER: Yes. We were talking about
3 access prices and their relationships to costs, and
4 costs don't change very much in a year. I'm trying
5 to understand how much costs have to do with access-
6 price increases or decreases.

7 MR. DeROCHE: I'll allow it.

8 A. I'm not aware of any, but that doesn't mean
9 there weren't any. I'm just not aware of them.

10 MR. GRUBER: No further questions.

11 MR. DeROCHE: Thank you. Any other
12 parties?

13 Mr. Krathwohl, do you wish to redirect?

14 MR. KRATHWOHL: We might have one or two
15 questions. If I could just have a couple of minutes
16 here.

17 MR. DeROCHE: Sure. Why don't we take a
18 ten-minute break.

19 (Recess taken.)

20 MR. DeROCHE: We'll go back on the
21 record. I understand that there is no redirect
22 required, so I will declare that portion of this
23 hearing closed.

24 I would like to move on to some

1 procedural matters on the record, just before we let
2 everybody go. The witness is excused. Thank you
3 very much for your patience this afternoon.

4 THE WITNESS: Likewise.

5 MR. DeROCHE: The first order of
6 business: I promised rulings on the motions for
7 confidential treatment. I'd just like to get those
8 on the record.

9 The following motions for confidential
10 treatment have been granted: The motion on behalf
11 of Richmond Communication dated September 11, 2007
12 has been granted.

13 The motion for confidential treatment on
14 behalf of AT&T Corp. and its affiliates dated
15 September 23rd, 2008 has been granted.

16 The motion for confidential treatment on
17 behalf on AT&T CORP. and its affiliates dated
18 September 18, 2008, has been granted.

19 The motion for confidential treatment on
20 behalf of One Communications dated September 11,
21 2008, has been granted.

22 The motion for confidential treatment of
23 One Communications dated September 27th, 2008, has
24 been granted.

1 The motion for confidential treatment of
2 RNK, Inc. dated September 18, 2008, has been
3 granted.

4 The motion for confidential treatment of
5 RNK, Inc. dated September 11th, 2008, has been
6 granted.

7 The motion for confidential treatment of
8 PAETEC Communications dated September 11th, 2008,
9 has been granted.

10 The motion for confidential treatment of
11 Verizon - New England dated July 7, 2008, has been
12 granted.

13 The motion for confidential treatment of
14 Verizon - New England dated August 1, 2008, has been
15 granted.

16 And the motion for confidential
17 treatment of XO Communications dated September 11,
18 2008, has been granted.

19 Before this hearing began, I indicated
20 to all the parties that all discovery documents
21 would be entered into the evidentiary record by
22 Department motion at the end of these hearings. I
23 propose that the Department renumber all exhibits by
24 a uniform Department number, which will give

1 entered into the record. I'd like the parties'
2 comments on that in five business days from
3 tomorrow.

4 Are there any other matters that this
5 panel needs to address before we adjourn these
6 hearings? Hearing none, I declare these hearings
7 closed. Thank you very much.

8 (4:39 p.m.)
9

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11
12
13 **REPORTER'S CERTIFICATE**

14 I, Alan H. Brock, the officer before
15 whom the foregoing proceedings were taken, do
16 certify that this transcript is a true record of the
17 proceedings on September 25, 2008.
18

19
20 _____
21 Alan H. Brock, RDR, CRR
22
23
24

1 individual Department numbers to prefiled testimony
2 and maintain discovery-response numbers for all
3 discovery responses. Is there any objection to this
4 method?

5 Seeing none, I enter all discovery
6 responses and all prefiled testimony into the
7 evidentiary record of this hearing. The Department
8 will circulate a detailed exhibit list, including
9 exhibit numbers, to all the parties in the next
10 business day.

11 I'm going to set a deadline to respond
12 to all record requests issued at these hearings for
13 five business days from tomorrow.

14 I have one final procedural matter:
15 There is still a pending motion to compel from
16 Verizon, seeking to compel RNK to produce further
17 discovery requests. The Department has not yet
18 ruled on this motion. We anticipate ruling on this
19 motion shortly. But I would like to solicit comment
20 from the parties that, in the event we grant the
21 motion and compel RNK to provide further evidence,
22 we would like comments on how that evidence should
23 be entered into the record and whether any of the
24 parties would be prejudiced by that evidence being

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