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

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

Re: Undocketed 08-0000
CLEC Intrastate Access Charges

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

Dulaney L. O'Roark III

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Enclosure

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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--------

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**INDEX**

September 23, 2008

PROCEEDINGS

CMSR. GILLETT: Good morning, everybody, and welcome to the Department of Telecommunications and Cable's evidentiary hearing in Docket No. DTC 07-9, petition of Verizon - New England, Inc. et al. for investigation into the intrastate access rates of competitive local-exchange carriers. It is 10:05 a.m., Tuesday, September 23rd, 2008, and we are located at the Department's offices at Two South Station, in Boston, Massachusetts.

My name is Sharon Gillett, Commissioner of the Department, and I'd like to thank you on all for your participation in this important matter. I see we have quite the turnout today. It's the hearing of the month, clearly, so welcome everybody.

With me on the Bench are Lindsay DeRoche, the hearing officer I've assigned to this case; also from the Department's Legal Division is Kajal Chattopadhyay, deputy general counsel of the Department, and Christine Beckett, the Department's legal intern. Also joining us today are Michael Isenberg, director of the Competition Division, and his assistant director, Ben Dobbs, and Michael Mael



and Dinesh Gopalakrishnan, both analysts from the Competition Division.

With the introductions complete, I'll now turn the Bench over to my capable team. I look forward to reviewing the results of your thousands of pages of testimony.

MR. DeROCHE: Good morning, and thank you, Commissioner, for your opening remarks.

Before we begin, I'd like to go over some ground rules for this hearing. Hearings will begin at 10:00 a.m. every morning, and they will go until 5:00 o'clock. There will be a one-hour break for lunch, and at least two 15-minute breaks throughout the day as needed. Parties will not be allowed to present direct testimony unless it is to correct a factual error or to refresh the record due to changed circumstances. Each party to the case will be afforded an opportunity to cross-examine the witnesses, after which the sponsoring party will be given an opportunity to redirect.

The Department will enter all prefiled testimony, information requests, and responses to information requests into the evidentiary record at the end of these hearings. Information requests



will maintain the request number as the evidentiary exhibit number.

Confidential material: I will make a ruling on all motions for confidential treatment at the end of these hearings. During testimony, if we are about to discuss confidential material, I ask that counsel alert the Bench. We will then go onto a sealed record, and all parties who have not signed a confidentiality agreement will be asked to leave the room before we proceed. Once the confidential portion of a party's testimony is complete, we will go back to the public record before proceeding.

Testimony: As witnesses are called to testify, they will be sworn in and asked to state for the record their name, current position, and party on whose behalf they are offering testimony. As we have a court reporter present for this hearing, I ask that witnesses speak in a loud and clear manner. I also ask that parties speak one at a time and refrain from talking over one another, so that we can keep an orderly record for this proceeding.

Parties will be called to testify in the following order: Paul Vasington, on behalf of



Verizon; Ola Oyefusi and E. Christopher Nurse, on behalf of AT&T; Michael Pelcovits, on behalf of Comcast; John Dullaghan, on behalf of Richmond Telephone; and August Ankum, on behalf of the CLECs collectively.

I will now call on parties. If their counsel could identify themselves for the record. The Attorney General?

MR. REYES: Jesse Reyes, for the Massachusetts Attorney General.

MR. DeROCHE: AT&T?

MR. GRUBER: For AT&T, Jay Gruber.

MR. DeROCHE: Comcast Communications?

MS. O'DELL: For Comcast, Deanne O'Dell.

MR. DeROCHE: Level 3 Communications? One Communications?

MR. KRATHWOHL: Eric Krathwohl, of the law firm Rich May.

MS. FOLEY: Paula Foley, for One Communications.

MR. DeROCHE: PAETEC?

MR. MESSENGER: For PAETEC, John V. Messenger.

MR. DeROCHE: Qwest?

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



right now.
MR. DeROCHE: So everything on there is in the record?
MR. TENORE: Yes.
MR. DeROCHE: I will have the Department print up copies of that exhibit list as soon as it's available. Does anyone have any objections to accepting the revised exhibit list from RNK? Seeing none, I'll accept that into the record.
MR. FIPPHEN: Mr. Hearing Officer, does the Department plan to have oral argument on the Verizon motion to compel with respect to RNK's discovery responses?
MR. DeROCHE: We do not intend to have oral argument on the motion to compel during this hearing period. We do, however, expect to ask for a comment on the motion to compel as to whether or not the parties would be prejudiced by accepting it into the record after the hearing, in the event we rule in favor of the motion. I will make that solicitation to the parties at the conclusion of the hearings.
MR. KRATHWOHL: I have one other matter, Mr. Hearing Officer. Yesterday we filed the



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



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

MR. FIPPHEN: Mr. Hearing Officer, I have some direct examination so we could correct some mistakes.

MR. DeROCHE: Okay. Would you hold on one moment, please. Verizon, would you like to begin?

DIRECT EXAMINATION

BY MR. FIPPHEN:

Q. Mr. Vasington, was prefiled testimony bearing your name filed in this proceeding on behalf of Verizon?

A. Yes, it was.

Q. And was this testimony prepared by you or under your supervision?

A. Yes.

Q. And do you have any additions or corrections to make to this testimony?

A. I have two items of correction to make, but they're on confidential material.

Q. Can you identify what portion of your testimony that -- what pages in the testimony you're referring to?

A. Certainly. It's Page 14, on Line 10, and Page 16, on Line 14.



MR. FIPPHEN: Mr. Hearing Officer, so we don't slow down the hearing, I suggest that counsel who have signed the confidentiality agreement see Sonja Lartey at the break and they can get a copy of the corrections, if that's acceptable.

MR. DeROCHE: That's fine.

Q. Mr. Vasington, if the questions in the prefiled testimony were put to you today, would you adopt under oath the same answers as modified as your direct testimony in this proceeding?

A. Yes.

Q. Mr. Vasington, did you sponsor a number of discovery responses in this proceeding on behalf of Verizon?

A. Yes, I did.

Q. Do you have any corrections you'd like to make to those responses?

A. Yes, I have one. It is Verizon's response to Information Request DTC-VZ-1-5. In this response, the very first line, I said, "Please see the response to XO-VZ 1-14(a) and (b)." And that should be changed to XO-VZ-1-5(a) and E.

Q. Mr. Vasington, as modified, are your discovery responses true to the best of your



knowledge, information, and belief?

A. Yes.

MR. FIPPHEN: Mr. Hearing Officer, the witness is available for cross-examination.

MR. DeROCHE: Thank you very much. I think we're in agreement: Mr. Krathwohl, do you want to begin with the cross-examination?

MR. KRATHWOHL: Mr. Hearing Officer, I am prepared to begin. It was our thought that, perhaps as the Department recognized and established in the order of witnesses, there's an identity or significant similarity of interests among Verizon, AT&T, and Comcast; and just as those witnesses have been grouped at the beginning, it would be our suggestion that it would be most appropriate for the cross, if any, to proceed in that same order.

MR. DeROCHE: Does anyone have any other thoughts on the order of cross-examination? Is AT&T prepared to cross?

MR. GRUBER: Yes, Your Honor. I could begin with cross.

MR. DeROCHE: Why don't you begin.

CROSS-EXAMINATION

BY MR. GRUBER:



Q. Mr. Vasington, nice to see you today.

A. You, too.

Q. Mr. Vasington, did you hold any positions at this Department or its predecessor?

A. Yes.

Q. Could you explain to me what those were?

A. I was a staff analyst from 1990 through 1993. I was assistant director and then director of the Telecommunications Division from 1993 to 1996. Then I was appointed as a Commissioner in February of 1998 and then served as a Commissioner until May 2002, when I was appointed as the Chairman. And I was Chairman up until I left the Commission, in August 2003.

Q. Thank you, Mr. Vasington. Now if you could turn to your testimony on Page 5. There you describe the Department's regulation of rates for services provided by nondominant carriers; is that correct?

A. I start on that page, yes.

Q. Can you explain to the Bench and to us what the logic and theory is behind the Department regulating rates of nondominant carriers?

A. Certainly. It's actually fairly simple.

18

It's essentially the Department judged that for certain services offered by nondominant carriers, they should be treated as dominant carriers for the simple fact that the customers did not have a meaningful choice in the service provider.

Q. I notice that in your discussion, both leading up to that and later in your testimony, you refer to DPU 1731, 1985. Before we go on, perhaps you could tell us the significance of that and why you cited such an old case in your testimony.

A. Well, it's an old case, but it's an important case, and it's in many respects still operative, in my opinion. It was a case that was brought to the then-Department of Public Utilities after divestiture, when the Attorney General's office petitioned for a determination of whether the policy of the State should be to allow for intraLATA competition. The interLATA competition -- interstate interLATA competition was authorized by the Federal Government. The question was what should happen within the borders of the state.

And the DPU at the time decided that its policy goals for the industry were best served by promoting and relying on competitive markets, and it

19

established a framework of regulation based on the FCC's framework of regulation, where some carriers could be considered dominant carriers, other carriers could be considered nondominant carriers, and then particular services of either of those carriers could be considered either competitive or noncompetitive.

Q. And in your time at the Department, was this case something that you considered a guiding light or providing the Department some sort of guidance?

A. Yes, certainly, because that framework was and is still in effect for regulation, the framework of having dominant carriers and nondominant carriers, the ability to declare services to be sufficiently competitive.

Q. And did the Department offer a justification in its decision -- well, first of all, what was the result of that case? What did the Department find or hold?

A. The Department found that its policy goals -- and it enumerated its policy goals in that order -- were best served by relying on competitive markets instead of regulation, where markets were

20

feasible. "Feasible" is probably not the word they used, but that's my paraphrase.

Q. And after that time did matters arise at the Department that required the Department to actually implement that policy and determine where competition was feasible and where it wasn't and regulation was required?

A. Yes. Many cases implemented that framework.

Q. Could you give the Bench a couple of examples of how the Department implemented its policy?

A. Well, one example is what you just mentioned, the operator services and inmate calling, where carriers that were entering the market as nondominant carriers, the Department found them to be dominant in the provision of certain services because of the nature of the service -- as I mentioned, where customers cannot make a choice in service provider.

There were also cases involving services that were considered to be sufficiently competitive of otherwise dominant carriers; I'm thinking of Centrex, for example, as one of the earliest ones.

21

There was a petition by AT&T to be declared nondominant in the 1990 time frame. And there's been follow-on petitions on AT&T's status, ultimately resolved in declaring AT&T to be a nondominant carrier, whereas it had originally been named a dominant carrier. And then there's also been other cases involving petitions from Verizon and its predecessor companies -- Bell Atlantic, NYNEX, NET -- to declare services to be sufficiently competitive.

Q. So is it fair to say that the Department has, in determining whether rates should be regulated or not, has considered the competitiveness of the particular service?

A. Yes, primarily based on the nature of the service itself.

Q. And "the nature of the service" meaning whether the consumer of the service has a choice?

A. Yes, whether the service is structured in such a way that the consumer, the one that's paying the bill, has a choice in service provider.

Q. And why is that important?

A. Because if you don't have a choice in consumer -- in service provider, then you're at the mercy of that provider and have to pay whatever rates they are charging, as I mentioned in my testimony for switched access, but it was a similar circumstance for operator services and for inmate calling.

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

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

MR. DeROCHE: Richmond Telephone?

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

MR. DeROCHE: Thank you very much.

CROSS-EXAMINATION

BY MR. ADAMS:

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



this case?

A. Yes.

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

A. Yes, I do.

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

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

MR. ADAMS: No further questions.

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

MR. REYES: Yes.

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

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

CROSS-EXAMINATION

BY MR. KRATHWOHL:

Q. Good morning, Mr. Vasington.

A. Good morning.

Q. I take it today you are testifying as a



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

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

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

MR. DeROCHE: Thank you very much.

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

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

A. Yes.

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

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



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

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

A. No.

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

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

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

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

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

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

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

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

A. Yes.

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

A. Yes.



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

A. Carrier customers, yes.

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

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

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

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

Q. The latter.

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



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

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

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



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

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

MR. FIPPHEN: Is there a question?

MR. KRATHWOHL: That is a question.

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

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

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

Q. Are you suggesting that the Department is bound in any way to follow the FCC or any other state?

A. No.

Q. And would you agree that the Department must decide on the facts shown in these hearings as applicable to these carriers in Massachusetts, the circumstances prevalent in Massachusetts?

A. The Department has to act on the record that it creates in any investigation. The record that it creates is what it's producing here as part of the testimony, hearings, discovery.

Q. Are you familiar with the intercarrier compensation proceedings before the FCC currently outstanding?

A. Very generally.

Q. And are you aware that there's been statements made that, among other things, access reform will be addressed by the FCC within the next several months?

A. Yes and no. I know that the FCC has said in court filings that it will address the remand of ISP-, Internet-service-provider-, bound traffic by November 5th, and that at least one commissioner has said that he hoped they could



address the issue of intercarrier compensation more comprehensively at that time.

Q. Now, has Verizon filed any comments in that proceeding?

A. Yes.

Q. As relevant to access charges, could you give a brief summary of those comments?

A. We've filed many comments over the past few years in that proceeding, both as formal filings and as ex partes. I can't tell you what we've said in every single one of those filings and ex partes. I know our most recent filing was a recommendation for the FCC to establish a unitary reciprocal -- a unitary intercarrier compensation rate of .0007 for terminating traffic.

Q. And what would that apply to?

A. Well, since it's unitary, I believe it applies to all terminating traffic, whether it is switched access, reciprocal compensation, IP-bound traffic. Those are the ones that jump to mind. But I might be missing something. Oh, commercial mobile radio services, wireless.

Q. And would that suggestion that you made, or Verizon made, in those comments under Verizon's



suggestion be applicable to intrastate access charges?

A. Yes.

MR. KRATHWOHL: Would we be able to make a record request for the comments that Verizon filed that have just been in summary described by Mr. Vasington?

MR. DeROCHE: Any objection to that?

MR. FIPPHEN: Well, they're all public filings.

MR. KRATHWOHL: They are public filings. We could get them. If we were to obtain them, circulate them, we would have to then ask for official notice to be taken. Which way it comes into the record, I don't really care. It seemed to me that a record request would be the simplest way.

MR. DeROCHE: I agree. Could we make that Record Request No. 1.

MR. FIPPHEN: Could we get a clarification on the record request? Are we talking about the most recent one Mr. Vasington described, or all of the filings Verizon has made? Verizon has made a number of filings in that docket at the FCC.

MR. DeROCHE: I believe we're talking



about the most recent one; is that correct?

MR. KRATHWOHL: That was my intent, if the most recent one encompasses the position that Mr. Vasington has just described, that is what we're looking for.

MR. DeROCHE: And if I could just quickly recaption that as XO/One Communications Record Request 1.

(Record Request XO/One Communications 1.)

Q. Just going back to one of your previous statements, Mr. Vasington, relative to the statements out of the FCC as to what they might address in terms of the intercarrier compensation: Was the one commissioner that made the statement that you referenced, the plan to try to address the issues on a very broad brush, as opposed to the more isolated issue of ISP traffic -- was that single commissioner the chairman?

A. I think it was Chairman Martin, but I'm not positive on that. I read it in a secondary source.

Q. Thank you. Mr. Vasington, is there any current emergency involving imminent harm to consumers if the Department were not to act on Verizon's complaint immediately?

A. What do you mean by "emergency"?

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

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

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

MR. FIPPHEN: Objection. The counsel is arguing, as opposed to asking a question.

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

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

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



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

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

A. That's the statutory requirement, yes.

(Commissioner Gillette left the hearing room.)

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

A. All else equal, that's correct.

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

A. To the extent that there were carriers



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

Q. Would the answer to the question --

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

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



benefit to the end-use customers at that time?

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

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

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

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

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

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

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

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

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

MR. DeROCHE: Could you read the



question back, please.

(Question read.)

MR. FIPPHEN: Can you define "immediate"?

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

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

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

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



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

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

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

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

Q. And is that because of prohibition on deaveraging?

A. That could be one factor.

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



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

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

A. I'm not following you.

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

MR. FIPPHEN: I'm sorry, could you repeat the question?

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

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

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

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

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

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

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



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

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

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

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

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

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



whether it was --

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

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

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

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

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

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



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

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

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

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

Q. Yes.

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

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

MR. FIPPHEN: What do you mean by

"historical access charges"?
MR. KRATHWOHL: Say the access charges in 2003.
MR. FIPPHEN: For which carriers?
MR. KRATHWOHL: I'm referring generally, but I'd be happy if the witness could address the carriers that are present in this proceeding.
A. As part of this case I've reviewed what information was provided by CLECs in discovery. Off the top of my head, I don't recall what the time frame was that we were given.
Q. Would you accept that in many, if not most, cases those access charges for the CLECs were set by reference to what the Verizon charges were before the 01-31 orders?
A. No, I don't know what references, if any, the CLECs used when they set their rates. I haven't seen any -- I don't recall any testimony or evidence on that in this case.
Q. Is it your suggestion that CLECs should have voluntarily reduced their access charges at the time Verizon did?
A. No.
Q. But you have stated in your testimony --



you've used language such as CLECs were trying to exploit the market; is that correct?
MR. FIPPHEN: Can you refer to the specific reference in his testimony you're referring to?
Q. Just for example, on Page 17, there's language about collecting unreasonably high intrastate access rates?
A. What line are you looking at?
Q. I'm sorry. Line 1 of Page 17.
MR. FIPPHEN: I believe your question used the word "exploit." I'm asking you to point to testimony that you're examining the witness about.
MR. KRATHWOHL: We can take my question as relating to the language I just quoted.
A. The language is "permitting CLECs to collect unreasonably high interstate access rates provides those CLECs with a competitive advantage because they are able to recover disproportionately more of their costs from other carriers rather than from their own end users." CLECs are profit-maximizing entities, and if they have an opportunity to earn some additional revenue from an unreasonable charge absent a rule saying otherwise, I am not



surprised to find that they do it.
Q. And in fact, that's what MCI has done?
A. Yes -- MCI Metro.
Q. Yes. And would it be fair for me to conclude that the gist of the language that you just read and surrounding that language is that relative to what you've called a distortion of the market is your contention that Verizon is paying more to CLECs than it would if those access charges were reduced?
A. Assuming no change in minutes, yes, we are paying more with an unreasonable rate than we would be if the rate is reduced to a reasonable level.
Q. Now, on Pages 18 and 19 of your testimony you reference certain anticompetitive effects of the current level of charges; is that correct?
A. In my testimony I identify an incentive for certain anticompetitive effects as a result of unreasonably high access charges.
MR. KRATHWOHL: Could I just have that answer read back, please.
(Answer read.)
A. I'm sorry, and then I provided some



examples from other states.
Q. But you didn't provide any example of any such events in Massachusetts in your testimony; correct?
A. Not in my testimony. I did in response to discovery from the Department.
Q. And am I correct, that was a single example?
A. It was a single company. There were many examples.
Q. Going to the incentive: I assume that that incentive has been in place ever since Verizon reduced its own access charges; is that correct?
A. Certainly there's an incentive for additional usage. Whether the particular examples I cite here exist because there was some change in technology or market presence or demand for a particular service, I don't know for sure. But in and of itself, the incentive to have additional minutes on an unreasonable rate, yes, is there regardless.
Q. Now, in your testimony you also have made some ARPM calculations; is that correct?
A. Yes. That's average revenue per minute.

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

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

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

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

Q. Yes.

A. Yes.

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

A. Yes.

Q. Am I correct in assuming -- or viewing



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

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

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

MR. DeROCHE: Okay. Any objection to that?

MR. FIPPHEN: I have no objection.

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



more useful.

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

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

Q. Yes.

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

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



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

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

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

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

MR. FIPPHEN: Can you define "switching charges"?

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

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

MR. KRATHWOHL: Yes, the second printed page of Attachment XO-VZ-1-5(a).

MR. FIPPHEN: I don't believe this is a proprietary attachment, is it?

MR. KRATHWOHL: It doesn't seem to have a "proprietary" on the top of it.

MR. FIPPHEN: Is that the page you're referring to?

MR. KRATHWOHL: Yes, it is.

THE WITNESS: So am I safe in referring to this page?

MR. FIPPHEN: It's just the tariff page.

A. This page is showing common rate elements and then identifying both Verizon and other carriers and which rate elements they are billing -- to Verizon, at least.

Q. Right, and to come up with the average revenue per minute, I take it that you used these various charges and blended them in some fashion; is that correct?

A. I didn't blend them. We added together all of the charges from each CLEC to the various Verizon entities to come up with a total revenue amount that we were billed, divided it by the



minutes that we were billed, to get average revenue per minute. That's not what's being shown on this attachment, though, this Attachment 1-5(d), just to be clear.

Q. Would you agree that the costs of a particular carrier are an important consideration in setting their rates?

A. It's an important consideration in setting a rate or participating in a market. It is one significant factor, yes.

Q. I'm sorry, one significant factor?

A. Yes.

Q. And if a regulator were to allow a carrier recovery of only a level of rates that was below costs, is that what is known as confiscation?

MR. FIPPHEN: Objection. Calls for a legal conclusion.

MR. KRATHWOHL: And I'd ask for the witness to talk about it not as a matter of law but as a matter of how he as a regulator in the past would have dealt with such issues.

A. My understanding of the confiscation rule is that the total revenues -- under a claim of confiscation, the total revenues must be sufficient



to cover a return of the cost of capital.

Q. And is it your view that that concept should apply equally to ILECs and CLECs?

A. In the event that the regulator is setting the rate, yes.

MR. KRATHWOHL: I have no further questions at this time.

MR. DeROCHE: Thank you very much. I think we'll take a 15-minute break there. We'll return at 11:45.

(Recess taken.)

MR. DeROCHE: Back on the record. Mr. Krathwohl?

MR. KRATHWOHL: Thank you, Mr. Hearing Officer. During the break I conferred with Mr. Fipphen, who reminded me that in his examination he had asked Mr. Vasington whether he had prepared or had the responses to information requests prepared under his supervision and control, and that, I believe with the exception of one correction, they were all correct and essentially adopted. So I think that the questioning I had just to qualify, to sponsor the responses that we had identified that we wanted moved into the record, has been done. So if



the Bench is agreeable with that, I have no further questions.

MR. DeROCHE: That's fine with me.

MR. GRUBER: Mr. Hearing Officer, AT&T has the same issue. I did not ask Mr. Vasington to authenticate his responses or Verizon's responses to our information requests, the ones that I asked to be marked into the record. For the same reason as Mr. Krathwohl, I think we can assume, based on Mr. Fipphen, that all the responses of Verizon have been properly authenticated now. Is that fair?

MR. FIPPHEN: Yes, that's correct.

MR. DeROCHE: Very good. That's fine with us.

Moving on: PAETEC?

MR. MESSENGER: I just have a few questions.

CROSS-EXAMINATION

BY MR. MESSENGER:

Q. I'm John Messenger, representing PAETEC in this hearing. Good morning, Mr. Vasington.

A. Good morning.

Q. Just a couple of questions. During Mr. Krathwohl's cross-examination you had stated at one point that -- or answered a question that if the CLEC rates -- that if a benchmark were set as proposed by Verizon that a CLEC could charge no more than that --

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

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

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

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



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

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

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

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

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

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

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



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

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

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

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

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

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



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

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

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

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

A. Yes.

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

62

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

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

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

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

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

63

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

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

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

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

64

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

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

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

65

access?

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

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

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

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

Q. And where I was trying to go with that was, if for some reason a Commission-ordered reduction in CLEC access charges resulted in a diminishment of minutes terminating to CLECs, that would have an effect on the ultimate benefit to be realized by Verizon or its long-distance customers; isn't that correct?

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

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

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

A. The incentive for traffic-pumping, yes.

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



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

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

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

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



with in the past and has addressed in its orders.

So when you say is it reasonable, is it reasonable to assume that someone might still want to engage in that kind of business? That certainly seems reasonable, that somebody would want to do that. Is it a reasonable outcome or something that shouldn't be addressed in some form one way or another I think is a different question.

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

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

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



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

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

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

MR. DeROCHE: Thank you very much. RNK.

CROSS-EXAMINATION

BY MR. TENORE:

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

A. Good afternoon.

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

A. Help me out with "consulted."

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

A. Do you mean when I was not an employee

of Verizon, when I was working for consulting firms?
Q. Yes.
A. No.
Q. Have you ever been employed by a CLEC?
A. Here's where you're getting a little trickier, because I've made appearances on behalf of Verizon Access, in this case and in some other states, where, yes, I'm appearing on behalf of a CLEC.
Q. Thank you. Without getting into the actual average-revenue-per-minute calculation that you had, without identifying it, is that rate the same as the -- when you add up the elements in Verizon's intrastate switched-access tariff, or is it different?
MR. FIPPHEN: When you say "the rate," what are you referring to?
MR. TENORE: The ARPM.
MR. FIPPHEN: You're referring to the ARPM calculations, the revenue-per-minute revenue that's derived. That's not a rate. That's a number.
Q. That number, is that the same as the tariffed rate when you add up the elements for



Verizon's intrastate switched-access service?
A. You're talking about Verizon's average revenue per minute?
Q. Yes.
A. Is that equal to the access -- the tariffed rate?
Q. Yes.
A. It's a sum of the tariffed rates for usage-based rate elements. Take the revenues received from all of the rate elements that are usage-based identified in my testimony, divide them by the total minutes, and you get the average revenue per minute that Verizon receives for switched access.
We also calculated the average revenue per minute that we pay to CLECs. So I just want to clarify which one we're talking about.
Q. Sure. So, now, is Verizon's proposal that CLECs would be capped at the average revenue per minute or the total of all the rates in Verizon's tariff for switched access?
A. Neither. It's the total of the rate elements that the CLEC -- for the services that the CLEC provides. That is spelled out best in my



errata reply to DTC-VZ-1-14. "CLECs would ensure that the sum of their rate elements is no greater than the sum of the ILEC rate elements for the functions that the CLEC provides." That's how the FCC cap works, and that's what we're proposing here.
Q. So you're proposing something similar to the FCC's cap.
A. The exact same, yes.
Q. Thank you. Moving along to a different topic: Mr. Vasington, there had been some talk about the Department's rulings in 01-31. You're aware of the Department's rulings in 01-31; correct?
A. I've read them, yes.
Q. In that docket the Department allowed for an increase in the dial-tone residential rates of end users. Is that a true statement?
A. Yes.
Q. And was that approximately $2.44?
A. Approximately, though the number that was in the order was not the ultimate rate-increase amount. And it also depended on whether you had touch-tone service prior to that or not, because the touch-tone rate -- a separate charge for touch-tone service was eliminated.



Q. And is it fair to say that that increase was allowed to offset the approximately $51.9 million that Verizon was losing by reducing its rates?
A. Again, as I mentioned earlier, it was calculated to be equal to the revenue effect of going down to interstate rates, assuming historic billing determinants. Whether it was actually revenue-neutral in fact is a function of subsequent access minutes and lines.
Q. And to date, is Verizon still charging those surcharges?
A. They're not surcharges. They are part of the -- they are part of the charge for local dial tone. They are part of the dial-tone rate.
Q. Fair enough. Is Verizon still charging this?
A. Verizon is charging the rate that resulted from 01-31 for dial-tone lines, yes.
Q. And do you know approximately how much that is on a yearly basis for Verizon, those increases add up to, ballpark?
A. I can't even tell you. We've got a lot less lines now than we had before. The other thing

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

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

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

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

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

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



three years.

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

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

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

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



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

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

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

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

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

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



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

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

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

MR. FIPPHEN: How is that relevant?

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

THE WITNESS: Back what out?

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

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

78

the revenue effect of that rate increase.

MR. ISENBERG: It would just be the universe of basic-exchange customers, and that's a universe, obviously, that's changed over the years.

MR. DENNY-BROWN: I think that would be the point in getting the bundled customers, because the bundled customers I would imagine has grown exponentially in the last five years.

THE WITNESS: The number of our bundled customers has increased, but there was no revenue effect from the rate increase from 01-31 from those bundled customers. So you can know that the number of those customers increased, but that says nothing about what I think it is you're looking for here.

MR. DENNY-BROWN: Aren't they replacing the 1FRs, the bundled?

THE WITNESS: I haven't seen the data to know -- you know, to see the changes in volumes for these various services.

MR. DeROCHE: I'm going to grant the record request, as RNK Record Request 1. That record request will include the last three years of revenue, as we decided, backing out those numbers, for just the basic-exchange numbers. We're not

79

going to include the bundled elements.

MR. FIPPHEN: You want the last three years of revenues for the basic-exchange customers, 1FR, 1MR?

MR. DeROCHE: Correct, as a result of the increase.

THE WITNESS: Just to be clear what we're talking about: We're going to take the 1FR and 1MR numbers for the last three years and multiply them by which rate -- the one that includes touch-tone or the one that doesn't include touch-tone, the rate increase?

MR. DeROCHE: It's the difference. Correct?

MR. ISENBERG: I'd say the rate that includes touch-tone.

THE WITNESS: The one for touch-tone customers?

MR. ISENBERG: Yes.

(Record Request RNK-1.)

MR. TENORE: Mr. Hearing Officer, is that going to be broken out by year, those figures?

MR. DeROCHE: Right, broken out by year for the last three years.

80

MR. TENORE: I'm going to hand things over to my co-counsel.

MR. DENNY-BROWN: Doug Denny-Brown, special counsel for RNK.

CROSS-EXAMINATION

BY MR. DENNY-BROWN:

Q. I'm going to follow up a little bit on what Eric Krathwohl had talked about earlier. He talked about the International Telecharge alternative operator services and whether or not those rates were cost-based, and you talked a little bit about them being derived via a general cost of service or whether they were service-specific cost-based rates.

My question is about the inmate calling, and the question is the same, in terms of whether or not those inmate-calling rates that you cite in your testimony, I think at Page 6, starting at Line 16, were cost-based, either service-specific or derived via a more pervasive cost-of-service proceeding.

A. I think it's the same cap, but I don't know for sure. I think that Verizon's and AT&T's operator-service rates were the caps that were used for inmate calling. It's a collect-call thing,

81

because the inmate calling, by Department of Corrections rules, had to be collect calls only -- that that was the cap, that it was the operator-service charge for collect calls.

I don't think that there is a tariffed service called inmate calling. If I'm correct in my suppositions, then my answer is the same, that because of the fact that operator-service rates were reduced as part of the rate rebalancing, that they were not initially based on cost-causation principles.

Q. So cost-of-service, a more general cost-of- service -- I mean, a more rate -- a more general cost-based proceeding than under traditional ratemaking --

MR. FIPPHEN: Could we get that question from the beginning?

Q. Were they established via a more general rate-of-return proceeding that looked at overall costs?

A. Yes, they were established as part of an overall cost-of-service revenue-requirement proceeding in which rate elements did not necessarily have anything to do with underlying costs. The purpose of that kind of analysis and investigation in a rate case is to make sure that the aggregate rates produce the aggregate revenue requirements.

Q. Moving on: At Page 7, Line 5, you talk about reciprocal compensation. Again, the same type of question there: The reciprocal compensation and the rate that came about, was that based on a service-specific cost-based manner?

A. It's actually element-specific. It was TELRIC.

Q. So in essence, it was Verizon's underlying costs with the elements for the reciprocal- compensation service, if you will?

A. No, it wasn't Verizon's costs. It was TELRIC.

Q. Moving on to Page 9 and your discussion of the FCC's access order, and Footnote 15 specifically. You reference the fact that CLECs can negotiate higher rates than the benchmark established by the FCC for interstate switched access?

A. Yes, they can negotiate them, but they cannot tariff them.



Q. In your experience working for Verizon -- and I don't know how much you do on the IXC side -- are you aware of any carrier attempting to do this?

A. That wouldn't be within my normal purview; so no, I don't know. I'm not saying it hasn't happened; I'm saying I don't know.

Q. I understand. It's outside your area of expertise.

Moving on: There's been a discussion about CLEC access charges. In your time at the Department and working at Verizon, are you generally aware of CLEC access charges and when they would increase those access charges?

A. In my time at the Department and in my time at Verizon?

Q. Right. You were at the Department and there were certain increases that came in, which may or may not reached your level, as Commissioner or Chairman. But certainly at Verizon, are you aware of various CLEC access-charge increases, and would they have made it to your attention?

A. The tariffs themselves would not have come to the Commission. That's not the process that



the Department used at the time.

I was aware of the issue of CLEC access charges because I was a Commissioner when the FCC proceeding was going on, so I was aware of what the FCC was doing.

Since I've been at Verizon, I've been aware of certain CLEC access-charge increases, and I've even filed testimony in opposition to one of them.

Q. How about in Massachusetts specifically?

A. I'm aware of one CLEC access-charge increase in particular in Massachusetts.

Q. And was that Level 3?

A. Strike that. Make that two.

(Laughter.)

A. One would be Level 3, one would be PAETEC.

Q. Concentrating on the Level 3 for a moment: Is that a switched-access increase that Verizon objected to with the Department?

A. Level 3, I believe we did.

Q. And when you objected and the Department looked at that increase, what was their ultimate decision?



A. I'd have to take it subject to check, but I believe Level 3 withdrew.

Q. And did the Department make any ruling with respect to cost support for their filing?

A. There was nothing to rule on if they withdrew. I don't remember if it got to a point where the Department suspended it or not. The Department has to vote to suspend a tariff. I don't know if that happened in this case, but it was my understanding that Level 3 withdrew, so there was never any ultimate finding.

MR. DENNY-BROWN: If I could, I'd like to have the Department's decision in the Level 3 switched-access tariff that eventually I think was withdrawn -- their decision brought into the record. We can do it through a record request, if it's easier --

MR. FIPPHEN: That's a Department decision. That's not a Verizon document.

MR. DENNY-BROWN: Can the Department supply that into the record?

MR. GRUBER: If I may be heard: Are we going to start having to introduce into the record Department decisions? Isn't that typically something we cite to and we're assumed -- it's the law here?

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

MR. FIPPHEN: You can cite to that, too.

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

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

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

MR. DENNY-BROWN: Point taken.

MR. DeROCHE: Are you withdrawing your request?

MR. DENNY-BROWN: I'm withdrawing my



request. Thank you.

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

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

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

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

Q. Yes, a significant number.

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

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

MR. FIPPHEN: I'm sorry, can you repeat



the question?

MR. DENNY-BROWN: Sure.

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

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

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

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

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

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

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

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



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

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

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

Q. That's all I'm looking for. Thank you.

At that point in time was this rate deemed to be reasonable as a properly tariffed access rate?

MR. FIPPHEN: Can you read that question back for me.

(Question read.)

MR. FIPPHEN: Deemed by who? The Department?

MR. DENNY-BROWN: The Department.

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

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

MR. TENORE: Thank you, Mr. Vasington.
MR. DeROCHE: The Attorney General?
CROSS-EXAMINATION
BY MR. REYES:
Q. On Page 6 of your testimony you referred to the International Telecharge case and stated that the appropriate method of determining -- I'm paraphrasing. You say that the appropriate method of finding whether rates are just and reasonable would be based on traditional ratemaking principles. That's on Line 9.
A. Right. I said that the Department set a cap, had a benchmark of the dominant-carrier rates, because those rates had been found to be just and reasonable based on traditional ratemaking principles, which happened to be the mechanism the Department used at the time for setting dominant-carrier rates.
Q. Would it be fair to say that the Department has available to it a number of ratemaking principles for determining just and reasonable rates?
A. Yes.
Q. When you say that the CLECs rates are



unreasonable, in what sense are you calling them unreasonable? Is it based on this methodology for setting a benchmark or some other cost-based methodology?
A. Well, at the risk of repeating my whole testimony, it's based on a lot of different factors. It's based on the nature of the service itself, which the FCC and other regulators have concluded provides the carrier with market power. That is then manifested very directly in rate levels that are, as I mentioned, sometimes 15 times higher than the rate that the Department has deemed to be just and reasonable in this state, and also demonstrated by the incentives it provides for abuses like traffic-pumping.
So I've identified in my testimony all the various reasons why we believe those rates to be not just and reasonable.
Q. So in essence, you argue that the rates are unreasonable because there is market power, an incentive to exert market power, and in fact the rates are several times higher than Verizon's rates.
A. Not several times; I mean, sometimes 15 times higher. And there's a wide variation in CLEC



rates for what is ultimately in essence a commodity service. That alone I think is indicative of the ability for market power.
Q. Is it fair to say that your argument doesn't require an analysis of CLECs' actual costs?
A. Yes, that's correct. The benchmark is the rate that the Department has deemed to be just and reasonable. If a CLEC wants to challenge that presumption, it can show that its costs justify something different, which is exactly what the Department said in the-operation operator-services circumstances. The Department didn't look at CLECs' -- they weren't called CLECs then; they called them OCCs, other common carriers -- rates. They said, "If you want to show that your costs justify something different, you're always welcome to do that."
Q. So in reviewing the CLECs' current filed rates, you would argue that requiring them to meet a benchmark rate -- strike that. You would argue to the Department that in reviewing whether a CLEC's filed rates are just and reasonable, the Department may simply set a rate without determining whether those rates do not represent the CLEC's marginal



cost of providing these services?
A. Yes, except as I testified earlier, the Department would not be setting the rates. The Department is setting a cap, and the CLECs would then be establishing their rates under that cap -- which, by the way, is exactly what they do right now in the Commonwealth for their interstate rates. So if a call crosses the state boundary, this is exactly what they do already for that. We'd just be asking them to do that same exercise for the rates that -- for the calls that don't cross the state boundaries.
Q. Is there any particular rate element that Verizon or that you, in your opinion, are arguing is unreasonable?
A. No, we identified some rate elements just as for-examples in the testimony. It's really the overall dollar amount that matters in this, which is why the way this cap works and the way the FCC does it, it doesn't say you can't charge this rate element or that rate element. It says your composite rate has to be below -- and for the services you're actually providing. For example, if a CLEC is not providing tandem switching but is

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

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

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

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

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



end users over time.

A. Yes.

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

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

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

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



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

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

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

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

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



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

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

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

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

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

Q. A composite revenue --

A. No. It's the rate. Of rather than try to say it again and say it incorrectly: "Under the proposed requirement, CLECs would ensure that the sum of their rate elements is no greater than the sum of the ILEC rate elements for the functions that the CLEC provides."

Q. If that level is set -- strike that. Do you contend that capping those rates to Verizon's -- strike that. Do you contend that establishing an average-revenue-per-minute benchmark at Verizon's level would increase total social welfare?

A. I'm just going to correct the first part of that: We don't propose to set the cap at Verizon's average revenue per minute. We propose to set the cap at the composite of Verizon's rate elements. Would that policy, adopted by the Department, increase total social welfare? Yes.

Q. If that level is in fact an inefficient level, meaning -- strike that. If setting that benchmark doesn't lead CLECs to set their rates approaching their marginal costs, and in fact sets their rates lower than their marginal costs, would that be inefficient?

A. It would certainly be inefficient for the CLEC, but they have a remedy under the proposed rule, and that's to demonstrate that their costs justify a rate that is higher.

MR. REYES: I have no further questions.



MR. DeROCHE: Thank you very much. Why don't we take this opportunity to break for lunch.

(Recess for lunch.)

MR. DeROCHE: Good afternoon. We'll come back to order. I believe we have Mr. Vasington still on the stand, and it is the Department's turn to ask some questions. We'll turn to Michael Isenberg, the director of the Competition Division.

EXAMINATION

BY MR. ISENBERG:

Q. Good afternoon, Mr. Vasington.

A. Good afternoon.

Q. There has been testimony this morning about various Department cases where we have in the past used Verizon's rates as a proxy for wholesale rates. A couple of cases that were cited were 94-185 and 01-20.

I'm wondering if you're familiar with our decision in DTE 00-54? It was an arbitration between Verizon and Sprint in which the Department addressed an interconnection rates issue. And if you're not, I can refer you to copies of the order.

A. I'm a little panicky, because the 00 number suggests that I should be familiar with it,



but off the top of my head, I'm not.

Q. I think your name is on the order. The first one is the final order in the case, and the 00-54A decision is a decision on reconsideration. I've highlighted the pages where we talk about the issue. If you need a moment to review that, please do.

A. On the pages that you've flagged?

Q. Yes.

A. And what issue is being highlighted?

Q. An issue where the Department was asked to determine whether Sprint was required to set its interconnection rates at Verizon's rates unless it could not provide cost information to show that it could charge higher rates.

A. Okay.

(Pause.)

A. Okay, I've read the flagged sections.

Q. In your opinion, would that decision be similar to the other cases that you've cited, where the Department has found that Verizon's rates -- or that carriers that have market power are required to use Verizon's rates absent a showing of higher costs?



A. Yes, it's very similar. The situation is one where the Department has to judge rates to be just and reasonable of a carrier that is otherwise not regulated and, like the situations with operator services and inmate calling, gave the carrier the option of benchmarking to the regulated carrier's rates, the ILEC's rates, or providing cost justification to support a different rate.

Q. Thank you. A follow-up question to that one: With respect to now the three cases we've identified -- 94-185, 01-20, and 00-54 -- those were all established either after or right around the time of the passage of the Telecom Act. I'd like to know -- and I hope I'm not treading in the area of seeking a legal opinion here. I'm wondering if you're aware of any Federal law that required or at least played a significant part in the outcome of those decisions that would not in this case, the case of switched-access rates, apply; or, in your opinion, were those cases primarily based on the Department's view of what the appropriate public policy should be?

A. In the task of setting reciprocal-compensation rates and in arbitrating an interconnection agreement, the Department is in effect implementing Federal law, in accordance with both the statute and the FCC's implementing requirement. So, from that perspective, that's always a guiding principle in implementing those kind of decisions. I recognize there's some citation in this order, this 00-54 order, to independent authority under state law to assess whether common-carrier rates are just and reasonable.

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

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



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

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

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



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

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

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



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

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

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

A. My understanding of what happened in 01-31 was that the rate structure in interstate and intrastate weren't exactly the same. So for the same types of reasons why we did an ARPM analysis in this case, you couldn't just plug in the interstate rates into intrastate and say, okay, those are the new rate levels. The proposal that the company made in that case to implement roughly comparable intrastate rates to interstate rates was not to adopt directly the exact rate elements and exact rate-element levels in the interstate tariff, but to do it in a way that it is roughly comparable to the interstate tariff amount.

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

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

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



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

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

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

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



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

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

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

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

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



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

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

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

A. That's correct.

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

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

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

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

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



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

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

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



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

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

A. That's correct.

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

A. And between CLECs.

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

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



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

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

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

Q. Okay. Thank you. Getting back to the calculation of average revenue per minute that various CLECs and Verizon performed: You had stated -- I believe it might have been in a discovery response -- that the approach used dollar amounts billed by CLECs to Verizon for access multiplied by minutes of use.

A. Divided by minutes of use.

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

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



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

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

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

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

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



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

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

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

MR. ISENBERG: We may.

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

(Discussion off the record.)

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

(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 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.

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?

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.



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.

So I think with those two factors, they had that other alternative available to them.

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?

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.

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



obtain the necessary resources to pursue that type of case.

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.

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?

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.



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 --

Q. They are.

A. -- and Sentinel Trade, if they're still around, even --

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.

Q. That entire second paragraph?

A. Yes. Again, it was just because that's what was in the FCC's rule.

Q. This is more of a clarification: This is Verizon's response to XO-VZ-2-11.

A. Okay.

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 case." Could you identify those prior instances, please?

A. The operator services, inmate calling, reciprocal compensation. Those are the three that I identified in my testimony.

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?

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.

Q. But it still could be a different rate than their general tariffed rate?

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



that should be allowed in principle.

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.

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?

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.

But is that tangible? That's always the



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.

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.

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?

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



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.

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.

Q. Are you speaking primarily long-term?

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.

So, no, it's an immediate problem, and I think there would be an immediate improvement if you were to adopt this proposal.

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.

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.

Shouldn't the Department take into account in its deliberations on this question the impact of Verizon's proposal on individual carriers?

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.

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



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.

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



other states.

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.

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.

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?

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



others who are just collecting revenues that they don't deserve, in which case they just forgo those revenues.

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.

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.

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 that this is a regulatory issue. You know, the time has come for that to be corrected.

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?

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.

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



there's anything in the record that would justify or suggest that a transition is needed.

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?

A. Not off the top of my head, but I think we produced the order.

Wait a minute, DTC-VZ-1-4 I think gives a little more detail on what California did.

Q. Thank you for pointing that out.

A. You're welcome.

Q. Did Verizon give any consideration to applying its proposal to originating-access rates, and if not, why not?

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



that they're actually providing.

Q. Your composite includes originating?

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.

FURTHER EXAMINATION

BY MR. DeROCHE:

Q. I have just a quick follow-up, going back to the traffic-pumping: If the composite charges separately for originating and terminating --

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.

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?

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



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.

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.

FURTHER EXAMINATION

BY MR. ISENBERG:

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?

A. Yes, he's wrong; I'm right; the other witnesses who agreed with me are also right.

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 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. FIPPHEN: Starting, carrying over to



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.



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



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,

166

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

167

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

168

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

169

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

170

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

171

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

172

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:

173

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. FIPPHEN: Five.

Q. Paetec.

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

MR. FIPPHEN: 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. FIPPHEN: 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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VOLUME 2, PAGES 175-430

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--------

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**INDEX**

**EXAMINATIONS**







**RECORD REQUESTS**



**CONFIDENTIAL PORTIONS** - None

September 24, 2008 10:02 a.m.

P R O C E E D I N G S

MR. DeROCHE: We'll come to order. Good morning, and welcome to the second day of the hearings in Department of Telecommunications Case DTC 07-9. We'll pick up today where we left off yesterday, with the testimony of Verizon's witness, Paul Vasington.

The Department was questioning Mr. Vasington, and we'll continue from that point.

PAUL VASINGTON, Previously Sworn

EXAMINATION

BY MR. ISENBERG:

Q. Good morning, Mr. Vasington.

A. Good morning.

Q. A follow-up from the questioning of yesterday. In any of Verizon's prefiled testimony or responses to information requests, has Verizon done a calculation of what its composite rate would be under its proposal?

A. I don't think so, but I just want to check 1-5. I identified the rate elements that we'd be talking about in my testimony, and we have a sheet that lists the tariffed price for those rate



elements. But I don't know if it was added up.

I have what is Page 2 for me, in the attachment to 1-5, which includes tariffs and has a proprietary designation on the top of the page.

Counsel has confirmed for me that I can use these numbers, because it's just publicly available tariff information. So if you have the same page I'm looking at, comparative rates, Mass.

Q. We don't have that yet.

A. Similar information is the Attachment (d), so if that's easier to locate, that's the same -- at least for Verizon; I haven't checked for the other carriers. (d) was not a proprietary attachment.

Q. I have got it in front of me. Thank you.

A. Now, I have to take subject to check whether that's actually the composite. But you see that there's an estimated composite rate for originating and estimated composite rate for terminating. For Massachusetts Verizon intrastate that would be the same because we have the same rate for terminating as we do for originating.

However, I would note that the operation of the composite cap is such that the CLEC would only be allowed to charge the sum of the rate



elements that it's actually providing. So if you look under tandem switched transport on this list, you have a rate, a per-minute rate for tandem switching. I don't know if there are any CLECs that actually have tandem switches for intrastate switched access. So they wouldn't have a charge for tandem switching if they don't have a tandem switch.

So I don't know what the composite cap would be for any individual CLEC. But building up from the rate elements in this manner would show you what the cap would be for originating and what the cap would be for the terminating, and I will check to see if this is actually what the cap is.

Q. So just for purposes of clarifying the record: On Attachment XO-VZ-1-5(d) -- I assume this is probably the first page of that attachment.

A. I think that's the only page of that attachment.

Q. What you were discussing was the first column.

A. Yes, Verizon-DTE-Mass.-15.

Q. And there are four rate elements that make up the composite rate for both originating peak and terminating peak; is that correct?



A. Right, separately for originating, separately for terminating.

Q. But for purposes of the record, Verizon would not be charging the sum of originating peak and terminating peak, it would just be charging one --

A. Well, a minute of use would be one or the other. It wouldn't be both. If it's both, it's on your own network.

Q. Under your proposal would you expect -- or would you have CLECs providing composite rates for both originating and terminating?

A. Yes, because, remember, the operation of the cap is such that you are capped for the services that you are providing for that call. So on the call you're not providing both originating and terminating, you're providing one or the other.

It just so happens that the cap in Massachusetts should be the same for both, because we don't have a different rate for originating than we do for terminating.

So, for example, I will check to see if this number is the actual composite cap. But you've got a number of .0048. If you take out the .001 for tandem switching, which I don't believe CLECs are providing, you're now at .0038, which just for comparison purposes is in the ballpark of the ARPM. I think we had a question yesterday, how do the two compare to each other.

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

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

(Record Request DTC-3.)

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

Q. That's right.

EXAMINATION

BY MR. CHATTOPADHYAY:

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



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

A. For Massachusetts?

Q. For Massachusetts, correct.

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

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

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

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

A. That's correct, yes.

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

A. Operation of a chat room by a business?

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



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

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

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

Q. Thank you.

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

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



approaches to CLEC access rates.

A. Yes.

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

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

Q. Correct.

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

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

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

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

Q. Thank you.

A. You're welcome.

EXAMINATION

BY MR. MAEL:

Q. I have a follow-up. You reference in your testimony on Page 11 that Illinois in fact has instituted a cap or some limit on access, whereas on Page 87 of Mr. Ankum's testimony, representing the CLECs, he indicated that in fact Illinois decided not to hold a hearing into CLEC access rates. Could you explain what seems to be the divergence there?

A. Illinois -- the two times that I'm aware of that the issue has come to the commission's attention through arbitration, the commission has adopted a CLEC access-charge cap. I believe the two carriers were IDT and AT&T in those circumstances. Illinois does not have a rule of general applicability such as we're proposing for Massachusetts here.

I'm aware that the Illinois staff had a workshop in the past several months -- I don't know the exact date -- where they were discussing CLECs' access charges. I'm not sure if they were discussing other issues as well; I don't know the scope of that.

As far as I know, there's been no further action in Illinois after that. So I don't know that there's been a determination in this Illinois not to act. As far as I know, there just



hasn't been any further activity after that staff workshop. But as I said, the two times I'm aware of that the issue has come to the Commission's attention they have in fact capped CLEC access charges.

Q. You're saying on a case-specific basis they've done it twice.

A. That's correct.

Q. Are you aware of any states that have opened proceedings into CLEC access that have not found a determination of either a cap or some alternative means of regulating?

A. No.

Q. Thank you.

MR. DeROCHE: I think that concludes the Department's questioning. Do any of the other parties have any supplemental questions they'd like to ask?

MR. MESSENGER: PAETEC does.

MR. FIPPHEN: Mr. Hearing Officer, these parties have had an opportunity to cross-examine Mr. Vasington before. We're perplexed about why we're going around again.

MR. DeROCHE: I think after all the



testimony has been heard, there have been some additional questions that have come up. So I'd like to offer one last opportunity before we offer Verizon a chance to redirect.

MR. FIPPHEN: On the understanding that the cross-examination is limited to topics that were addressed on the other parties' cross-examination, not another opportunity to look at things they thought of last night that they now want to ask.

MR. ISENBERG: It would be confined strictly to the Department's cross-examination.

MR. DeROCHE: PAETEC?

MR. MESSENGER: I just have a few questions.

MR. KRATHWOHL: XO and One will have some questions, too.

MR. DeROCHE: Sure.

FURTHER CROSS-EXAMINATION

BY MR. MESSENGER:

Q. Good morning, Mr. Vasington, again.

A. Good morning.

Q. Yesterday afternoon you were cross-examined by Mr. Gopalakrishnan of the Department particularly with regard to the fact that Verizon's proposal



excluded fixed-rate access elements and compared only Verizon's usage-sensitive access elements to those of CLECs. Do you recall that?

A. Yes. I just want to be clear. I'm saying those of CLECs. Those usage-rate elements of CLECs.

Q. Yes. And you seemed to indicate that you felt that this was an apples-to-apples comparison and was easier to do. Is that the main reason?

A. No, it's consistent with the FCC rule, in my understanding, and it's an apples-to-apples comparison. I don't remember if I said it was easy to do, but it's what makes sense on a per-minute calculation, when minutes are the denominator.

Q. And I believe the portion of your testimony this deals with is on Page 14, Footnote 36.

A. Correct.

Q. You mention two flat-rate access elements in that footnote, those being direct trunked transport and entrance facilities. Are there other flat-rate access elements as well? Dedicated tandem trunk port, for example?

A. Well, the footnote says "e.g.," so it's a for-example, not all-inclusive. So there may be. If you can bear with me, I think I have some information on that in the attachment to 1-5. It might take me a little while to go through it.

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

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

MR. FIPPHEN: For what company?

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

A. Prior to 1997?

Q. Yes.

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

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

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

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



directly connect with Verizon's network?

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

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

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

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

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

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

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

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



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

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

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

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

MR. MESSENGER: Thank you.

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

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



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

A. Yes.

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

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

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

A. Well, again, I don't know how the rate elements themselves are applied and operate for a particular call. I assume that whatever service is being provided that corresponds to a rate element, that rate element is applied and that service is used.
Q. And those rate elements are designed with the network of the incumbent local-exchange carrier in mind; is that correct?
A. Our rate elements for our access tariff are based on our network design, yes.
Q. Now, if an IXC wants to be able to originate or terminate calls to a CLEC's end users in a wide area and it connects directly to the CLEC's switch, is it fair to say that the CLEC might cover the same wide area using a different network structure, and in particular without the array of end offices that Verizon might have in a similar situation?
A. I'm not familiar with CLEC network design; but I assume that whatever service it is CLECs are providing, they have a rate element to cover that service, similar to Verizon's.
Q. In particular, do you know if either the



FCC or the Department's access rate structure has a rate element to cover the transport between the CLEC's switch and either a collo cage or a serving wire center of the ILEC?
A. I don't know.
Q. Do you think it's appropriate for the Department in addressing the issue of CLEC access charges to take into account that they may have different network structures in providing originating and terminating access than Verizon does?
A. I think that's encompassed in the FCC uses and that we're proposing to mirror here. It simply says composite rates for the services that you provide based on the ILEC's rate elements. You already do this calculation for interstate calls. Again, I don't think this is anything new. You've been doing it for seven years, and I assume that the Department would ask you to do the same thing that you do for interstate for intrastate.
Q. Would it be appropriate for the Department to treat access service simply as the function of originating and terminating long-distance calls, whether provided by a CLEC or an ILEC?



A. I don't understand the question.
Q. In comparing a CLEC's access charges to an ILEC's access charges, would it be appropriate simply to consider that the same function is being performed, regardless of differences in network structure?
A. I believe that that is what is being done through the FCC rule which we're proposing to mirror here.
MR. MESSENGER: Thank you. I have no further questions.
MR. ADAMS: Richmond has a few questions it would like to ask. I didn't realize there were other people in line.
MR. TENORE: RNK would, too.
MR. DeROCHE: Mr. Krathwohl, XO and One?
CROSS-EXAMINATION
BY MR. KRATHWOHL:
Q. Mr. Vasington, good morning.
A. Good morning.
Q. On your Bench cross yesterday you noted a growing problem of unreasonable CLEC access charges; is that correct? Do you recall that?
A. Yes.



Q. Is that in your perception a growing problem because MCI is now a part of Verizon, or are you asserting that CLECs are generally increasing their access charges?
A. I don't think I made a causation link. It's a large and growing expense for Verizon, and so it's made it onto the radar screen of people who are charged with looking at large and growing expenses.
Q. Are you asserting that CLECs are generally increasing their access charges?
A. In Massachusetts?
Q. Yes.
A. The rate elements themselves or the amount billed to Verizon?
Q. The rate elements.
A. No -- other than the two instances that we talked about yesterday.
Q. Thank you. Today, in the Bench cross, you referenced that excessive charges result from the CLECs' abuse of their market power in the case of switched access; is that correct?
A. In the case of traffic-pumping, is what we were discussing when I said that.
Q. So in the cases where there's no traffic-

200

pumping, is it your view that whatever the charges are aren't a reflection of the market power you assert that the CLECs have?

A. No, that's not true. In my testimony, throughout my testimony, I discuss the magnitude of the difference between Verizon's just and reasonable rate and the rates that the CLECs are charging, as an indicator of their market power.

Q. So, if they have market power and they are profit-maximizing entities, as I think you also noted, wouldn't it stand to reason that they would actually be charging much higher access charges?

A. I suppose conscience kicks in at some point.

No, it doesn't stand to reason, because I believe that CLECs set their rates at a level that they believe they can maximize their revenue without otherwise creating scrutiny on the level of those charges. I think if they came in with a $100-per-minute access rate, even though we'd have to pay it, it would certainly not pass the straight-face test at any regulatory agency.

So no, I don't think that it's unlimited. I think that there is some attempt to

201

maximize their revenues through abuse of the market-power position, but not at a level that would cause this type of proceeding to occur.

Q. Now, yesterday I believe you testified on recross about arbitrage situations and suggested that, or at least I inferred that, CLECs that might have a high percentage of their revenues coming from switched access were not, quote, "real phone companies." Is that generally a correct statement?

A. No. When I made that statement, I was referring specifically to a traffic-pumping scheme.

Q. But you have testified in that general discussion about CLECs having a relatively high percentage of their total revenues coming from switched-access payments by other carriers; is that correct?

A. I don't recall saying that. My testimony discusses recovering a disproportionate percentage of costs from carrier customers. I don't think I made any reference to share of total revenues coming from switched access. It just so happens the Department now has some evidence, which is proprietary, so I can't go into it here -- but has evidence in response to VZ-1-12, CLECs' response to

202

VZ-1-12, which tells the Department something about the percentage of intrastate total revenues that's coming from switched access.

Q. So just following up on that point: Is it your assumption that that percentage for CLECs is higher than that same percentage would have been for Verizon pre-01-31?

A. I haven't made any assumption on that.

Q. Would you expect that it is?

A. I don't know if it is or it isn't.

Q. One more question: Going to the response to XO-VZ-1-5, which is proprietary, but I think my question -- I'm guessing the answer is not going to be proprietary. I guess if it gets there, Mr. Fipphen or Vasington can so note. It might be more than one question, but not many. On the second part of this attachment --

MR. FIPPHEN: Excuse me, Mr. Krathwohl. There are several parts to this attachment.

MR. KRATHWOHL: Attachment (a).

A. Can you give me a heading indicator or something?

Q. The heading indicator would be 2007 Massachusetts Intrastate Switched Access Usage Paid

203

by Verizon Telecom.

A. Okay. I'm there.

Q. On the far right, there's a column for comments.

A. Right.

Q. Some of the comments indicate there that --

MR. KRATHWOHL: Let me just confer with counsel for one minute, please.

Q. In three places there's a comment that says VZ has already asked redacted to lower their rates per ICA.

MR. FIPPHEN: Three or two?

MR. KRATHWOHL: I see three.

MR. FIPPHEN: I'm sorry; you're right.

A. Yes.

Q. Could you just explain what that means.

A. ICA is interconnection agreement. I think it's self-explanatory, and my knowledge goes no deeper than what it says in the comment.

Q. Okay. On the last page of Attachment 1-5(a) --

A. Okay.

Q. -- there's a reference in the second line that states, "From Mozilla report."

A. Yes.
Q. Could you tell us what the Mozilla report is?
MR. FIPPHEN: Objection. Mr. Hearing Officer, this is the problem that I have with the whole subject of recross. Just because the Bench asked questions about a particular exhibit doesn't sort of open the entire exhibit up. The Bench did not ask specific questions about every line in the document, which shouldn't therefore entitle -- the fact that the Bench asked questions about this exhibit shouldn't entitle Mr. Krathwohl to ask any questions he previously didn't think of about this exhibit. He had an opportunity to ask.
I don't have a problem with Mr. Vasington answering this question, but this is the problem that we have with recross, that it opens it all up and we could be here until Friday. I think we need to limit it to a specific question that the Bench asked of Mr. Vasington and limit it accordingly.
MR. KRATHWOHL: That's actually my last question, for what it's worth.
MR. DeROCHE: The Bench did in fact go



through that exhibit and ask several detailed questions about explanations of the different columns. So I'm going to allow this question. And I understand that's your last?
MR. KRATHWOHL: It is.
A. Can you repeat the question?
Q. I was just looking for an explanation of what the Mozilla report is.
A. John Mozilla is in Verizon Partner Solutions, and my understanding is that he produces a report that is then often used to calculate Verizon ARPMs.
Q. Thank you.
MR. DeROCHE: Mr. Tenore?
MR. TENORE: Thank you, Mr. Hearing Officer.

CROSS-EXAMINATION

BY MR. TENORE:
Q. Good morning, Mr. Vasington.
A. Good morning.
Q. I just have a few quick follow-ups.
Is it fair to say that you had testified in response to questions from the Bench that essentially Verizon is at the mercy of CLEC access



rates, and hence the reason why this proceeding needed to be opened up?
A. I think I even used that term in my prefiled testimony.
Q. I believe so as well. Thank you. Are you aware of any instances where Verizon has argued that, via its interconnection agreement with a CLEC, that the access rates are capped at Verizon's?
A. Yes.
Q. Do you know, is there a docket involving that in Massachusetts?
A. There was. I don't know the docket number. The parties were Verizon and Richmond Networks. I don't know if there was another party in there.
Q. So is it fair to say that one way that Verizon could lower CLEC access rates would be through a negotiated interconnection agreement?
A. If two parties agree to pay lower rates, then, yes, that is one way; but it requires two to tango in that situation. In that particular situation you're talking about, the Department ruled against us.
Q. Thank you, Mr. Vasington.
MR. TENORE: I have no further



questions.
MR. DeROCHE: Mr. Adams, Richmond?
MR. ADAMS: Thank you.

CROSS-EXAMINATION

BY MR. ADAMS:
Q. Mr. Vasington, I would like to examine just a few of your comments in response to questions asked by Mr. Isenberg.
A. Okay.
Q. If I recall correctly, you testified that rates charged by rural incumbents -- I think you mentioned Taconic, Richmond Tel., and maybe someone else -- that Verizon was not seeking to have those rates changed?
A. That's correct.
Q. And you also testified that Verizon would not object to the rural exemption as long as rates were set at the NECA rate?
A. What I said was Verizon would not object to the rural exemption as it's used in the Federal CLEC cap, which just so happens to be the highest rate band for local switching in the NECA access tariff -- NECA, National Exchange Carrier Association.

Q. Are you aware whether Richmond proposed using the NECA rate as the cap in this proceeding or another rate?
A. I'd have to go back and look at the testimony.
Q. Would you accept subject to check that we propose using the Richmond Telephone rate as the cap?
A. I have the testimony open here, so if you could point me to it.
I think I've found it, but I have Page 8 of Mr. Dullaghan's testimony, on Line 12 says, "If the Department decides to adopt some sort of rate cap for CLECs, it should provide in the rule a rural exemption along the lines of that contained in the Federal rule."
Q. Yes, and on down at the bottom of Page 8 there's a question that begins at Line 18, "Why should Richmond Telephone's rates be used"?
A. Right, but that sentence started, "At a minimum." I thought you were proposing the FCC's rural exemption rule, which is tied to the NECA rate, but you're saying that at a minimum you should get to charge access rates.



Now, I suppose -- Mr. Isenberg asked me yesterday about why we included that second paragraph in our proposed rule, which referred to a blended rate of the different ILECs in the state. I don't know if Richmond Tel. is using a blended rate -- well, no, because you don't compete in your own service territory. Richmond Networks doesn't compete in Richmond Tel.'s service territory; you only compete in other people's service territories. So I guess the blended rate wouldn't work there.
But my assumption here was that you were proposing to adopt the Federal rule.
Q. So was your intent in your testimony to reject outright the notion that the cap could be set at Richmond Tel.'s rate, or was it just that you were assuming the suggestion was to use the NECA rate?
A. I was assuming the suggestion was to use the Federal rule, which would be the NECA rate. I don't know how the NECA rate compares to the Richmond Tel. rate.
Q. One other brief thing: I believe you also suggested that the use of interstate rates for intrastate services was acceptable; is that correct?



I believe it was part of the discussion of mirroring interstate and intrastate rates. There was a discussion of the case from 2000, I believe.
A. I think what I said was that the Department decided in 01-31 that the interstate access rate was an appropriate benchmark for the intrastate access rate for Verizon. I also indicated that the CLECs already operate under a cap for their interstate rates, and having the same cap for their intrastate rates was not only acceptable but was actually what we're proposing.
Q. It would be the same thing that Verizon now operates under; is that correct?
A. Essentially, yes.
Q. Historically has it been the case that intrastate rates for access have been higher than interstate rates?
A. In every state or in this state?
Q. In this state.
A. No. Prior to the CALLS proposal, we actually had lower intrastate switched-access rates here than interstate -- at least for Verizon. I'm sorry; I should specify. Verizon's intrastate access rates were lower than its interstate access



rates.
Q. And then after calls, the interstate rate became higher or lower?
A. The interstate rate became lower, and that was then remedied by the Department in 01-31.
MR. ADAMS: No further questions.
MR. DeROCHE: Any other parties that wish to recross on the Department's questioning?
Seeing none, Mr. Fipphen, would you like to redirect?
MR. FIPPHEN: Could I have a moment to confer with the witness?
MR. DeROCHE: Certainly. Why don't we take a five-minute break.
(Recess taken.)
MR. DeROCHE: We'll go back on the record. Mr. Fipphen, Verizon's redirect?
MR. FIPPHEN: Yes. We have one question for Mr. Vasington.

REDIRECT EXAMINATION

BY MR. FIPPHEN:

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

212

A. Yes.

Q. Would you care to elaborate on that?

A. Yes. I hope that I was clear today on how the composite rate works for an originating minute and a terminating minute, because I'm not sure I was clear on that yesterday in response to questioning from the hearing officer on that.

A minute is either a terminating minute or an originating minute, and there's a cap for each. It just so happens to be that the cap would be the same for intrastate Verizon - Mass. because the local switching rate is the same whether it's an originating or terminating minute.

But I think that I confused the matter by suggesting that they were additive, essentially that the originating and the terminating would add up to the composite cap. The way I described it this morning I hope was clear on that; but I just wanted to clear up any confusion that the record might have on that matter.

MR. ISENBERG: It was.

THE WITNESS: Thank you.

MR. FIPPHEN: That's all we have, Mr. Hearing Officer.

213

MR. DeROCHE: Mr. Vasington, thank you very much for your testimony.

THE WITNESS: Thank you.

MR. DeROCHE: AT&T, would you like to call your witnesses?

OLA OYEFUSI and E. CHRISTOPHER NURSE, Sworn

EXAMINATION

BY MR. GRUBER:

Q. Dr. Oyefusi, can you please state your name for the record.

A. [OYEFUSI] Ola Oyefusi.

Q. Could you explain to the Bench your position with AT&T and your responsibilities?

A. [OYEFUSI] I'm a manager at AT&T, at the AT&T national access management organization. I'm responsible for all access matters.

Q. And your education, sir?

A. [OYEFUSI] I'm an economist. I have a Ph.D. degree from George Mason University.

Q. And you've testified before in regulatory proceedings, have you?

A. [OYEFUSI] Yes, I have.

Q. And you provided that list in response to an information request, I think?

214

A. [OYEFUSI] Yes, I did.

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

A. [NURSE] My name is E. Christopher Nurse. I'm the vice-president of regulatory and external affairs for AT&T's Atlantic region, which stretches from Virginia to Maine.

Q. And your responsibilities?

A. [NURSE] I'm responsible for state legislative and regulatory matters, including in particular initiatives for intercarrier compensation and access charges.

Q. You've testified before in Massachusetts, I believe; is that correct?

A. [NURSE] Yes, I have.

Q. And in other proceedings as well.

A. [NURSE] Yes.

Q. And a list of those is provided in response to an information request, I believe?

A. [NURSE] Yes. A clarification: The testimony said the list was attached, and apparently in the clerical assembly it didn't get attached. And then one of the parties asked us for a data

215

request, and we supplied the attachment in the data request and circulated to the parties.

Q. Gentlemen, you have before you a document entitled Panel Testimony of Dr. Ola Oyefusi and E. Christopher Nurse on Behalf of AT&T Corp. Do you see that?

A. [OYEFUSI] Yes.

A. [NURSE] Yes.

Q. It's dated August 20th, 2008. Did the two of you jointly collaborate to develop this testimony?

A. [OYEFUSI] Yes, we did.

A. [NURSE] Yes, we did.

Q. Also, AT&T has submitted a number of responses to information requests. Did the two of you collaborate to respond to those information requests?

A. [OYEFUSI] Yes, we did.

A. [NURSE] Yes, we did.

Q. AT&T has marked several of those information requests, to be admitted as exhibits in this proceeding. It's on an exhibit list that was submitted on September 19th. Can I ask you, are those information-request responses as well as all

216

the others that have been provided, those are true and accurate to the best of your belief? Or do you have any corrections in them?
A. [NURSE] Maybe I'll just start with two small corrections. That would be DTC-AT&T-1-5. On that response, in the first paragraph, it's pretty obvious there's a typo there in the middle of the paragraph, where it says "December 17, 2008." Obviously that date hasn't occurred yet. That's December 17th, 2007.
And the second typo is in CLEC-AT&T-1-4. The original response read, "No, CLECs have sponsored." Obviously that should say, "No, CLECs have not sponsored."
A. [OYEFUSI] The next one is CLEC-AT&T-1-20.
MR. GRUBER: That's a proprietary response to information requests. We don't intend to disclose any proprietary information in this proceeding at this moment.
A. [OYEFUSI] While reviewing this response yesterday, we discovered that the minutes of use listed on that attachment may not be correct, and we have not been able to verify those numbers as of this morning. So we have questions about the

217

minutes of use. We are not standing behind the calculation of that number, the minutes of use on that attachment.
Q. Dr. Oyefusi, that minutes of use was used in the ARPM calculation that is also provided on that page?
A. [OYEFUSI] That is correct.
Q. So you have the same problem with that?
A. [OYEFUSI] Yes, I have the same problem with that.
MR. MESSENGER: I missed the reference to which response the witness was referring to.
WITNESS OYEFUSI: It was CLEC-AT&T-1-20, and I believe the question was 1-2, part (d), and there's an attachment on there.
A. [NURSE] Just for clarification, I think it's actually the supplemental proprietary response.
MR. GRUBER: We're working, Mr. Hearing Officer, on trying to figure out what the problem was on those MOUs and get the corrected response in as soon as possible.
A. [NURSE] We think the revenue number is good, but the toll conversation minutes looks substantially off, and the ARPM calculation there is

218

the division of one by the other, so it would also be off, because it's a derivative.
Q. So with the first two information requests corrected and the third one excluded for the moment, are all the rest of the information requests and responses true and accurate, to the best of your belief?
A. [OYEFUSI] Yes.
A. [NURSE] Yes, they are.
Q. And is the testimony we identified earlier true and accurate, to the best of your belief?
A. [OYEFUSI] Yes, it is.
A. [NURSE] Yes, it is.
MR. GRUBER: Examination is concluded, and the witnesses are available for cross.
MR. DeROCHE: Thank you very much. Mr. Fipphen, for Verizon?
MR. FIPPHEN: We have no cross-examination.
MR. DeROCHE: Comcast?
MS. O'DELL: Yes, we have a few questions.
MR. DeROCHE: Please proceed.
CROSS-EXAMINATION

219

BY MS. O'DELL:
Q. Good morning, gentlemen. My name is Deanne O'Dell, counsel to Comcast in this proceeding.
A. [OYEFUSI] Good morning.
A. [NURSE] Good morning.
Q. Is AT&T a CLEC in Massachusetts?
A. [NURSE] Yes.
Q. Can you explain how it's a CLEC, the nature of the business?
A. [NURSE] AT&T is a CLEC, or basically two CLECs, in Massachusetts. The AT&T side, what was AT&T Com. of New England, provided primarily UNE-P service, or formerly UNE-P service, and it also provided local service to long-distance -- major long-distance customers with whom it had -- big PBX customers with whom it had special-access connections. And then it layered on top of those long-distance services when those customers were subtending 4E tandem switches, it grafted onto that a local service, AT&T Digital Link, ADL, service. So we have facilities-based connections to some very large business customers, some big-box stores you might know; and then the UNE-P customers, which were typically small-business customers, residential

customers.

On the TCG side, TCG in the late '90s, before the merger, and then it was merged into AT&T, built TCG Boston, originally starting in the downtown Boston core with fiber connections from customers to IXC POPs, points of presence, and then connected more buildings downtown, and then grew that network all the way up into New Hampshire and all the way down into Rhode Island. We use that to serve primarily business customers on network. And then we have collocations, and so we go to collocations, and then we serve customers who subtend those collocations as well. We haul them all back onto our network.

MR. ISENBERG: Excuse me. Just to clarify one point: "TCG" refers to Teleport Communications Group?

WITNESS NURSE: Yes.

MR. ISENBERG: Thank you.

Q. Have you reviewed the testimony submitted by Dr. Ankum in this proceeding?

A. [NURSE] Yes, I have.

Q. Do you recall his description of CLEC network architecture?



A. [NURSE] Yes, because it reminded me of the TCG network. A lot of that description, although a lot of it not, I agreed with. It is very similar to the TCG network -- much fewer switches. As described, fiber-optic connections from that switch out to customer premises or out to collocations.

Q. So it reminded you of TCG architecture in the sense that it's the same? That's what is described in that testimony?

A. [NURSE] Yeah, I would say it was materially a description of the TCG network.

Q. Would you take the position that, as a similar network architecture, that it's less efficient than Verizon's network?

A. [NURSE] No. I read that, and I thought it was just absurd. I mean, the notion that TCG built a network that was less efficient than Verizon's network and then went out to compete for business customers like Fidelity and Merrill Lynch and very large customers on the basis that we built a less efficient network and we were going to somehow enter the market, be less efficient, and take customers away from Verizon, was just ridiculous.

Q. Could you describe for us how in your



opinion the network is not less efficient than Verizon's?

A. [NURSE] Well, there are advantages and disadvantages of being a new entrant and building a new network, like TCG did. Dr. Ankum points out some of the ones -- some of the things he points out are true and relevant. Some of the things he points out are true and not relevant.

But on the other side, there were a lot of pluses. A lot of the -- I mean, Verizon is a union shop. A lot of the CLECs are not union shops, so they tend to have lower wages, and they tend to have more job flexibility, and they tend to have lower benefits and lower legacy costs, because there aren't many retirees from a CLEC. There aren't the big pension costs and that sort of thing.

So they have more flexibility. They got to choose -- when you're a new entrant, you got to choose which part of the market you wanted to serve and which you didn't. So you might serve just business customers or you might serve just the central business district. You might serve just business customers who have high data and high volume, to get an economy of scale. So you got to



focus where you want to go.

You didn't have anything backwards-compatible that you had to deal with. You didn't have all sorts of old software systems and when you started a new service you had to make sure that the OSS would provision and bill and repair and all those sorts of things. So you had a clean slate, and you didn't have to deal with those sorts of problems.

You could pick whatever architecture you wanted to. You could do the newest fiber optics. You could do the newest switching. You didn't have big embedded bases that you had just started. Switches might last -- you know, you see depreciation schedules of 15 years or something like that for a switch. So if you bought a switch five years ago, you've got ten more years to go, but it might be a less efficient model, because packet switching came out now. So if you're a CLEC today you might start out with more efficient packet switching. If you started five or ten years ago, that could be a disadvantage.

So by being the newest guy, you necessarily have the forward-looking technology. If you remember, the bang on TELRIC studies was that incumbents couldn't achieve the efficiencies in a TELRIC type of network because, you know, they had an embedded network and they couldn't convert to a forward-looking network.

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

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



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

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

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

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

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

A. [NURSE] Yes.

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



Verizon's access rates.

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

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

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

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

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



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

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

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

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

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

MR. DeROCHE: I'm not sure I follow you with "free ranging supplemental rebuttal." The CLECs will be given the same opportunity to rebut that Verizon and AT&T and Comcast are afforded.

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

MR. DeROCHE: Please proceed.

MS. O'DELL: Thank you.

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

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

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



that.

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

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

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



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

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

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

A. [NURSE] Yes.

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

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



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

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

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

it a better way.
Q. Do you have any experience or knowledge that bears directly on the issue of efficiently provisioned CLEC capacity?
A. [NURSE] Yeah. Actually, it's with AT&T Broadband, when AT&T owned the cable company and was providing cable telephony service. That was cable-switched -- circuit-switched cable telephony, and most cable telephony now has migrated to packet-switched cable telephony, because it's more efficient and lower cost.
But when AT&T Broadband split off from AT&T, what's now Comcast circuit switching was provided by TCG. So Comcast could have then gone out and bought circuit switches on their own to provide their own circuit switching, their own circuit switching to themselves.
They didn't do that. My understanding from the press reports about their post-separation strategy was they wanted to go to packet switching, which they anticipated at that time would be available substantially cheaper about two years down the road. So they didn't want to sink a lot of money into circuit switches and then, you know, have



to abandon them to buy cheaper packet switches.
So they leased back circuit-switching capacity from TCG, and that contract actually just wound up three or four months ago. I saw the thing come across my desk on that. And so that seemed like an efficient way to, if you needed to buy some capacity -- and they happened to need it sort of for a short period of time, a couple of years, short in the life of a switch -- they went out and they contracted for that capacity.
I've seen other instances where other carriers will buy switching capacity from another one. They'll buy a piece of a switch if they don't need a whole switch. If you don't need a whole switch, you shouldn't buy a whole switch. If you only need a part or you only need it for a while, you're going to enter a market, you need some capacity for two years, then when you grow bigger you'll do your own -- that's your classic kind of lease/buy analysis. I've seen that sort of switch leasing multiple times.
MS. O'DELL: That's all I have. Thank you.
MR. DeROCHE: Mr. Adams, Richmond?



CROSS-EXAMINATION
BY MR. ADAMS:
Q. John Adams, on behalf of Richmond. Good morning, gentlemen.
A. [OYEFUSI] Good morning.
A. [NURSE] Good morning.
Q. My questions will be short and few. I just want to refer you to Page 19 of your testimony. There's a question and answer that begins on Line 3 and continues on through Line 15.
A. [NURSE] Yes.
Q. Is it accurate to say that essentially you are suggesting that the Department adopt a rate-cap rule that parallels the FCC's rule?
A. [OYEFUSI] That is correct.
A. [NURSE] Yes, and in fairness, that should include the rural exemption.
Q. It should include the rural exemption.
A. [NURSE] Yes.
Q. So AT&T doesn't oppose adoption of that.
A. [NURSE] Yeah. I guess kind of what that means, as I read the rural exemption, part of the idea is that when you build out from Richmond Telephone into Verizon areas out in western Mass.



Verizon has an averaged local rate and presumably high costs in the rural areas, low costs in the urban areas, and they're geographically cross-subsidizing. So it wouldn't be possible, or it would be difficult, for you to compete against a subsidized cost, geographically subsidized cost.
So the FCC rural exemption kind of fudges that by letting you charge a higher access rate to make up for the fact that Verizon's retail rate is, if you will, "too low" in that rural area, and that kind of evens out the scale.
That application of the rule I think would be fair. So if there was a carve-out for Richmond that let them compete -- if you recall, serve as a real CLEC, real, normal local customers in western Mass., that would be normal.
I would be nervous -- I would want to see some protection against a call-pumping cap. If your call volumes went up by 100-fold, I wouldn't want to see that kind of volume at, you know, the NECA rate, because I don't think that's what the rule -- it's not a call-pumping exemption, it's a rural exemption.
So I think if we could get to something

that has a volume cap, like 200 or 300 percent of last year's volume for you, I think that would give you enough room to grow your local-competition business but would preclude Richmond Telephone's CLEC from morphing into a call-pumping operation. And so if you want to be a rural CLEC, I think that would give you room to do that. If you want to be a call-pumping operation, I would be against that.

Q. Can you guarantee a 200 to 300 percent increase under the cap?

(Laughter.)

A. [NURSE] And that was the intention, was to try to come up with a number that said I don't want to get in the way of your business. How fast can your business grow? 20, 30, 40 percent a year? It's hard to grow a business really fast. You know, you just kind of outgrow the management ability to morph.

And so I want to get the cap up high enough that it has no possibility of interfering with, you know, sort of genuine CLEC competitive operations but that protects me, because I've been on the short end of some of these call-pumping ones where, you know, tens of millions of dollars end up



going to these guys.

So I've been working to try to get to a compromise, because my objective is not to beat up the rural CLECs, but I have to get some protection against the call-pumping scheme. The problem is -- I don't think it's your intention -- but with the 800 numbers for these call-pumping schemes, you can repoint that 800 number on the database to terminate anywhere. So, you know, you could set up a call-pumping scheme in Richmond Telephone this afternoon. It literally doesn't take any more than a database change to do that. I don't think that's your intention. I don't have any information about that. But that's why I would want a cap that would protect us from that.

Q. To be clear, though, you're not asserting that Richmond is engaged in any sort of call-pumping?

A. [NURSE] No.

Q. Were you in the room to hear my exchange this morning with Mr. Vasington?

A. [NURSE] Yes.

Q. Do you recall the discussion I had with him about setting the cap at Richmond Telephone's access



rate, as opposed to the NECA rate?

A. [NURSE] And what is the NECA rate?

Q. The FCC --

A. [NURSE] What number is the NECA rate?

Q. Well, I'm sorry, I can't testify, being the attorney. And honestly, I don't know that off the top of my head.

A. [NURSE] My recollection is the NECA rate is something in a couple of pennies. It's been going up. I know I just looked at this in New York. I'm going to say I think the NECA rate is like 3 cents, 2 cents, that kind of thing. So substantially higher than Verizon's but substantially lower than the Richmond rate, which was in your testimony at 7 cents and a bit.

Q. We will have some testimony on that later. But you've referred to the NECA rate at around 3 cents. Is that calculated in the same fashion that Mr. Vasington was calculating the Verizon rate?

A. [NURSE] No. The NECA rate comes out at like -- it comes out of the NECA -- that comes out of a whole different mechanism.

MR. GRUBER: Mr. Nurse, just speak up for the stenographer.



A. [NURSE] The NECA rate comes out of the NECA pool. That's a pool of carriers that submit costs to the FCC annually. So they determine a rate that all the carriers that are adopting the NECA tariff are supposed to charge until the following year. So they do that every -- maybe June every year, and the rate would be effective in July.

Q. Let me ask the question this way: Verizon calculated a composite rate based on its rate elements.

A. [NURSE] Right.

Q. Your reference to the NECA rate at somewhere around 3 cents per minute, is that the same sort of summation of those rate elements?

A. [NURSE] And I'm not sure that that -- I'd have to go back and look at the NECA rate, because it may have -- I forget, is there a common-carrier line in the NECA rate?

A. [OYEFUSI] Yes, some of them are. Some of them have, they still have the common-carrier line.

Now, I believe what he's referring to is the -- you're talking about the different rate structure in the NECA tariff, and then you're trying to determine the composite rate, a composite NECA.

So what you do then is to, you have to have the demand for that particular carrier that is submitting a tariff trying to meet the cap, and you use that demand using the NECA rate components to determine a weighted average. Your composite rate is nothing but a weighted average of all those different components, because the volume of traffic going through the tandem is different from the volume of traffic going through the end office. So to get a composite rate, you have to use the demand for that component and then develop a weighted average. That's what it is.

Q. So just to be clear, the 3 cents a minute does not necessarily reflect an apples-to-apples comparison with the way Verizon calculated its composite rate?

A. [NURSE] It probably doesn't. I'd have to go back and check the NECA structure. I think, given Richmond Tel.'s scale, you know, you could probably end up just settling on a number, you know, a rate not to exceed X. You don't have to make it too complex for the volume of traffic that's going on. That could probably be an easy way to carve it out in the order.



A. [OYEFUSI] Just to be clear, the 3 cents a minute that Mr. Nurse mentioned is not supposed to mean that that is the rate that we're saying you should cap your rate by. The 3 cents a minute is an approximation that somebody in the office may have calculated when doing some rate comparison, to be able to say, okay, NECA is about 3 cents.

So when you're doing your compliance filing, you have to actually go through -- just like the carriers go to the FCC every year and submit a rate schedule and determine this is the average rate for that carrier. So that is the process that has to happen when you try to apply any rule that the Department comes up with here.

Q. I think we'll be finished with that, then. Thank you.

EXAMINATION

BY MR. ISENBERG:

Q. I'd just like to ask a clarifying question: Are you saying that the compliance filing that Richmond would have to submit to the Department would be for purposes of determining the rural exemption rate?

A. If you adopt a cap, if you decide to cap



CLEC access rates, and you adopt a rural exemption as part of that proposal, as part of that ruling, the ceiling for the components on that rural exemption will be different from the ceiling for the non-rural carriers. So one set of carriers will be complying with the Verizon ceiling, and the other set of carriers that meets the rural exemption that you set up would be complying with the NECA -- if NECA is your benchmark.

A. [NURSE] You basically could do a de minimis exception for Richmond. They're so far west, they're so small; I don't think you need the complexity that we talked about of calculating those composite caps for the carriers, you know, sort of in the Boston end of the state, with the high traffic. It's probably just not worth the administrative headache for the volume in minutes.

So if you said, you know, the cap is, you know, X cents, that makes the compliance very straightforward. If their rate is below X, they're good.

Q. Is there some guidance in the FCC's rules as to how to calculate a rural exemption rate?

A. [NURSE] Yes, because the -- you could look



for Richmond Tel.'s CLEC interstate access rate because their interstate access rate is capped at the NECA, I think it's Band 8 rate. So their CLEC today has a tariff in place that complies with the FCC rule on the interstate side. If you wanted to bring that same rule in, you essentially, you know, could just cut and paste interstate to intrastate.

I think actually that's probably the most -- that's administratively the simplest way to do it for all the carriers. All these carriers have an interstate rate and rate structure on the interstate side that is capped at Verizon's interstate rate. And Verizon's intrastate rate is equal to Verizon's interstate rate. So if you want to cap the CLECs at Verizon's intrastate rate, that's the same thing as capping the CLECs at Verizon's interstate rate or the CLECs' interstate rate.

So to make life easy on the administrative side, you could just tell the CLECs, "You have to have the same rate and rate structure on your CLEC intrastate tariff as you do on your CLEC interstate tariff." And then it's just a stare-and-compare on the two tariff pages, and as

244

long as they were in compliance at the FCC, they'd be in compliance here.

Q. And we would do the same thing for Richmond and the rural exemption?

A. [NURSE] Right.

Q. Thank you.

MR. DeROCHE: Why don't we take 15 minutes. We'll come back at noon, and we'll go to 1:00 o'clock. We'll have lunch then until 2:00.

(Recess taken.)

MR. DeROCHE: We'll go back on the record. Mr. Krathwohl?

MR. KRATHWOHL: Thank you.

CROSS-EXAMINATION

BY MR. KRATHWOHL:

Q. Good afternoon, Dr. Oyefusi and Mr. Nurse.

At Page 6 of your joint testimony, you note that AT&T serves a shrinking base of small business customers. Is that a function of a change in marketing plans?

A. [NURSE] The observation there is that we serve a shrinking base of consumer and small business customers formerly served through the UNE-P arrangement. When the UNE-P arrangement was taken

245

away and then it got to be a commercially contracted service, it wasn't at a TELRIC price. And as the price has gone up, we've had to raise our prices as our costs have gone up, and that drives customers away, both consumer and business customers.

Q. Also on Page 6 you reference adverse consequences to the public, I believe.

A. [NURSE] What line are you referring to?

Q. Actually, Line 22.

A. [NURSE] Yes.

Q. Can you identify a very specific, tangible adverse consequence to the public, or are you just talking about general economic theory?

A. [NURSE] No, the high access rates -- in particular, call-pumping is one of the clearest ones -- you know, our filing which we filed here is that that's nationwide sucking hundreds of millions of dollars into call-pumping schemes and that that's obviously money that's getting diverted that would otherwise be going into broadband or other network buildouts, providing customers either with new services or with lower prices. So it's bad for -- it drives up costs, and it drives up -- and it slows down investment, slows down innovation.

246

It also is sort of an unfair type of competition, because when a new entrant comes in who has a high cost but presents a lower price because their other costs go into these access rates that we're talking about, that distortion is unfair. I mean, if Verizon's local --

Well, make it real simple: If there were no access and Verizon's local cost, local rate was $25, a CLEC came in and your rate was $27 for exactly the same service, if you went to a customer and said, "How would you like to pay me more for nothing more," he'd say, "Get out of here. I'm not going to pay you $2 more for nothing more." But if you came in in a world that had access and your costs were 27 and you said, "How about if I charge you 23," you'd say, "Oh, that looks good: $2 less." Where did the other $4 go? You pushed that onto access because the access customers can't say no.

That's unfair, because that's unfair to the other competitors, other CLECs and the ILEC. And our proposition is that you should present your products and your product offering and your value proposition and your prices to customers who can say yes or no. And if you have an attractive product

247

and a value proposition, customers will say yes. And if your product is not valuable, if it's not worth what you charge for it, customers will and should be able to say no.

Q. On Page 13 of your testimony there are references to CLECs increasing access rates; is that correct?

A. [NURSE] Are you talking Line 6?

Q. Yes, I see it at Line 6, Line 11.

A. [NURSE] Yes. Line 6 is talking about originating access rate.

Q. And on Line 11 you're talking about no adverse consequences from raising access rates. Would that apply to originating or terminating?

MR. GRUBER: Just for the record, the statement is no adverse consequences from raising access rates for the CLEC. I just want to make sure the record is clear that that's what was said.

MR. KRATHWOHL: Yes.

A. [NURSE] Right, that for the CLEC there's no adverse consequence for raising access rates as high as it can. I think your point's a fair one, that primarily this is getting at terminating access rate in particular.

Q. Now, are you suggesting that the CLECs have been raising their access rates?
A. [NURSE] They are high. I have seen some filings to increase some, and we've opposed some, like from Level 3 here and in other states.
Q. And in Massachusetts are you aware of any efforts to raise access rates other than the two that Mr. Vasington testified about yesterday?
A. [NURSE] No.
Q. On Lines 6 and 16 on that page you are referencing originating access rates. Is that correct? Or do you mean terminating access rates?
A. [NURSE] It's true for originating -- it's true for originating access rates. It's also true for terminating access rates. Generally, most of the problem with high access rates is more so on the terminating end than on the originating end in particular. The situations as we described in testimony are a little bit different. The terminating end is especially bad. The originating end is a little less bad.
Q. Are AT&T's terminating access rates the same as Verizon's?
A. [NURSE] AT&T, if you will, has two access



rates in Massachusetts. We have rates for AT&T Com., traditional AT&T, and for TCG. And no, both of them are about in the middle of the pack of CLEC access rates. They're around 3 cents, which we cite in testimony. And that's way higher than I think it should be in a good policy outcome, but that's kind of in the middle of the market of crazy CLEC access rates, and we've volunteered that we'd be happy to take those rates down to the Verizon rates when the other CLEC rates go down, but we're not going to unilaterally disarm. I mean, that would be crazy.
Q. But you're testifying that your current access rates are, quote, "crazy CLEC access rates"?
A. [NURSE] All those access rates are too high, yeah.
Q. So, likewise, I assume that your language talking about abusing market power, exploiting the market, extraordinarily high levels of access charges also apply to your employer?
A. [NURSE] Yes. That's why we'd like to see them brought down, because that would be fair, and then everybody would be on a level playing field. You can't unilaterally disarm and have AT&T walk away from millions of dollars of revenue and then



compete against other companies that are at 5 cents or 6 cents and could go higher. So we think the right thing to do is to take that part of the equation away for all the carriers and then all the carriers can collect their revenue from their data services or from their local rates, present those rates to the customers, and get them, and then we won't have this bad stuff going on.
Q. On Pages 14 and 15 you talk about harm to the customers.
A. [NURSE] Yes.
Q. And what you would hope comes out of this proceeding is a benefit to end-use customers; is that correct?
A. [NURSE] Yes.
Q. So, then, is it your testimony that AT&T will reduce its charges to end-use customers once intrastate switched-access charges are reduced?
A. [NURSE] AT&T's been reducing its toll rates before access rates went down for years and will continue to do so, and we have to, because one of our primary competitors is wireless call termination, and their access rate is near zero, and thus their toll rates are, you know, "free nights



and weekends." So the toll competition that we face is, customers could pick up their home phone, make that long-distance call on Saturday, or they could reach in their pocket and make it on their cell phone for free. So we face somebody who has a price floor of near zero and an incremental usage rate of near zero, and that is enormous pressure, and so our toll price is going down all the time and will have to continue when these access rates go down.
Q. So if AT&T realizes a $10 million annual benefit from reduction of switched-access rates in Massachusetts, will that same amount then be immediately flowed through to AT&T's customers in Massachusetts?
A. [NURSE] No, I would think --
A. [OYEFUSI] When you say 10 million, are you just talking hypothetically?
Q. Yes.
A. [NURSE] No, I would think the increase would be more. The numbers I've been looking at around the country is that our toll prices are falling faster than access prices are falling, that we're getting squeezed to be more efficient, that access is a higher proportion of our toll prices

than it was. And that's because we're competing in an unfair way against wireless carriers who have a near-zero access rate and a very, very low toll price.

Q. And what I'm getting at is, will there be an immediate pass-through of any reduction in charges?

A. [OYEFUSI] In the toll market, carriers compete in different ways. It could be in the form of different plans that they offer to customers, and every time a customer takes a low-cost plan, that customer technically is getting a rate reduction. Even though the carrier may not come to the Department and tariff that "I'm dropping my rate from 10 cents a minute to 5 cents a minute or to 6 cents a minute," but the fact that the customer is taking the plan that the carrier offers as a result of competition or in response to competition from other carriers that do not pay access charges. And that is something that happens constantly. It's not something that is scheduled for a certain time of the year, that is supposed to happen maybe every 1st of the month or every three months. It is a dynamic process that carriers in the toll market respond to



as a result of the competition that we've been facing for several years now.

So your question is asking whether we will come and post a tariff that will say that we'll drop our rate? I wouldn't see how that is practical, because of the way we'll be competing. We don't file plans, pretty much. Which rate that you want to see went down? We may not know which rate went down by how much when we have a bundle of different services.

But what we've done over the years is to study the revenue that we actually collected from those toll customers that they pay to us after we pay the access, and what we've seen, including here in Massachusetts, is that the revenue that the toll customers pay to AT&T has been going down steadily.

Q. So to the extent that you already have these plans in place, an end-use customer can go out and he's going to get a benefit, he or she is going to get a benefit now whether or not the switched-access rates are reduced here; is that correct?

A. [OYEFUSI] Well, you're assuming that that plan is going to be stagnant. Like I said,



competition in the toll market is a dynamic process. We don't know what plan AT&T is going to offer next month. We don't know what plan AT&T will offer after the Department issues a ruling, if it happens to be a rate reduction.

But what I'm explaining to you is that when -- if you think about access, access that we pay to your clients is an input to our offering of toll service to the end user. So if the cost of our input goes down, it gives us a better opportunity to compete and maybe far better product offerings to the customers.

Q. Now, earlier you indicated, or I believe Mr. Nurse indicated, that due to various regulatory changes, some of the AT&T offerings, there had to be price increases, and that led to driving customers away. Is that correct?

A. [NURSE] Yes. Those are local offerings.

Q. On Page 18, you're suggesting, starting at Line 15, essentially that CLECs should recover greater costs, if they have greater costs, from their customers by raising their rates to their end-use customers; is that correct?

A. [OYEFUSI] That's what the testimony says.



A. [NURSE] Yes. And the FCC regime here says if on the interstate side a carrier has a rate higher than the incumbent, if you want to try to get that rate, you have to go negotiate with the IXC, and you have to tell him, "This is the access I offer, and this is the price that I want to charge, and it's 20 percent higher than Verizon," and you have to negotiate with them and they have to agree to pay a higher price. So you'd have to have my quality is better or my coverage is better. You'd have to have some reason to motivate them to agree to a higher price.

So under the FCC rule, the key here is, if you want a higher price, because you have -- well, for whatever reason -- it could be because you have higher costs, just because you want a higher price -- you have to go to the end user, in this case, the carrier customer, and say, "I want a higher price from you, and here's the reason," and you agree or you don't agree. If the IXC says no and you can't reach a deal, then you're capped at the ILEC rate.

What we're saying here is the same thing, that if the access rates went down and those revenues went away from the CLECs, those CLECs would have to go to their local customers or their data customers, and they would have to say, you know -- well, I don't know where their costs and where their rates are. But to the extent that they need higher rates or they want to try to get higher rates, they have to go to their customers, ask them for a higher rate, tell their customers why they think they ought to get a higher rate, and if their customers think it's worth paying them more, they will, and if they won't, the CLEC will have to adjust his costs, if costs is the driver, or the CLEC will have to accept a lower margin, or the CLEC will lose the customer because the customer won't pay a higher rate.

But that's excellent. That's a competitive outcome of customer choice and winnowing out the weak. That's exactly what you want to do. You don't want to encourage high-cost producers. You want to encourage low-cost producers.

A. [OYEFUSI] And if you note, there we were citing the FCC CLEC access reform order. That is the seventh report and order.

If you really go through what the FCC was doing here in that order, the FCC was trying to



impose, mimic the type of discipline that a competitive market will impose on any carrier. And the FCC is saying that if you claim that your cost is greater than your competitor's, you can either try to recover that cost from the customer that you have, and that actually making the choice -- because in this particular case the customer that you tried to charge was not the customer that selected your client. Somebody else selected your client, and you're trying to charge another person, another entity, to pay the cost of the action taken by that individual.

So the FCC is saying that if you now make the costs that are related to the person that selected you and you present your case that "My costs are higher, so you have to pay me higher than my competitor," and the person says no, the second time, you know that for you to continue to keep those customers, you will have to figure out a way to be more efficient than your status quo, so that you can reduce your costs and be able to keep that customer.

These are decisions that companies make in any market, regardless of what type of product



they make. When they try to enter a market, they do their own business plan. They figure out what is the current price in that market. They look at their own costs. Nobody else knows their costs. They know their costs, and they know how much they're going to pay for their raw materials. They figure all of that out. They hire all the experts that they need. And once they determine the costs, they look at the market: Can that price in the current market cover the costs that I'm trying to -- that I will qualify under?

And all of those decisions must be made before companies enter that market. They don't just come into the market, set up shop, and say, "Gee, I can't cover my costs." It doesn't happen that way in the competitive market.

The type of discipline that you see in the competitive market is not by accident. It is because in that market, when you present your price to the person that is making the decision, you don't ask somebody -- you don't let somebody make a decision to buy something and ask somebody else to pay for it. It doesn't happen.

That is the disconnect we have in this



type of process, because the person making the choice did not see the price signal. They didn't see your full price.

Q. And I take it as new entrants continue in business, they will either drive down their costs, presumably through, for example, putting more customers on a switch, or ultimately, if they can't drive down their costs, then they'll go out of business; correct?

A. [OYEFUSI] Like I said, these are decisions that companies make every day in any market.

Q. I'm sorry, this really is a yes-or-no question.

WITNESS OYEFUSI: Repeat the question.

MR. KRATHWOHL: Could you read it back, please.

(Question read.)

A. [OYEFUSI] Yes, if they can't drive down their costs, yes, they won't -- and the current price cannot support that cost, they will have to go out of business.

A. [NURSE] And that question assumes that the cost of the CLECs is just below the price, and there's no evidence of what the CLECs' costs are.

So it isn't necessarily the case that the CLEC is charging 7 cents -- it isn't necessarily the case, for example, the CLEC with the very highest access rate in Massachusetts is the CLEC with the very highest cost, most inefficiency, so that if he had to lower his access rate, he would be at his costs.

There's no evidence of what the CLECs' costs are. So it could be just that the CLECs' costs are plenty low enough now to charge the Verizon rates and if they had to lower their access rates they might leave their retail rates alone and just take a smaller margin. There's no evidence. But if you suppose in your question implicitly cost was just below price and price came down, you'd have to lower costs to survive in the long run, yes.

Q. And your last comment about what CLEC costs are is really purely speculative, isn't it?

A. [NURSE] No, I'm saying that there's no evidence in the case here as to what the CLEC costs are. There's no CLEC cost study.

Q. Right. So you have no knowledge that CLEC costs might be sufficiently low that they could lower the costs without having significant financial distress.



A. [NURSE] I have no knowledge and there's no evidence in the case of what the CLECs' costs are.

MR. KRATHWOHL: I have no further questions.

MR. DeROCHE: Mr. Messenger, PAETEC?

MR. MESSENGER: Thank you. I do have a few.

CROSS-EXAMINATION

BY MR. MESSENGER:

Q. Good afternoon, gentlemen.

A. [OYEFUSI] Good afternoon.

Q. I'm John Messenger, representing PAETEC.

There was a little bit of discussion of the so-called flow-through of the benefits of cost reductions that might result from the adoption of Verizon's proposal, but I'm not sure you were asked directly: Would AT&T oppose a Department plan to require that such cost reductions be flowed through to Massachusetts long-distance ratepayers, as opposed to somewhere else?

A. [NURSE] Well, we would -- more broadly, we would oppose, because it's unnecessary, a regulatory requirement to lower toll rates. I think Mr. Vasington testified yesterday, for example, that



there are other cost increases that go on as you take the current toll rates and say, okay, I need to see the toll rates 10 million lower. If you were doing a traditional rate case, you might say, you're paying $4 a gallon for gas and health insurance went up really high and so you have a cost increase and the rates might have gone up rather than down or they might have gone up a little bit. So it would be the difference in the rate.

But at bottom, it would be unnecessary -- we would oppose it as a policy matter because it's unnecessary. The Department has found, and I think it's indisputable, that the toll market is extremely competitive, and in a competitive market lower costs flow through to lower prices. That's beyond question.

So its unnecessary, and I think there is -- unless you're going to do rate-of-return cases on every IXC in the state, it's impossible to really effectively go through and design a mechanism and to then enforce it.

Q. Is it your position, then, that the Department should in effect trust market forces to cause any cost reductions to trickle down, so to



speak, to Massachusetts ratepayers, as opposed to going to ratepayers in other jurisdictions or investors or other services?

A. [NURSE] No. It's not a speculative or hypothetical prospective construct. It's an empirical historical experience. Toll rates have been going down, down, down for decades as access rates have been going down, down, down. And that's the ticket.

The Department has limited resources, and they need to apply those resources, you know, to their highest uses. And since the Department has found that the toll market is competitive, it isn't necessary to go and police toll prices to make sure that costs are there. The Department didn't go in when gas prices went up and say, "We're going to regulate toll prices now to make sure that toll prices aren't going up more than they should because gas prices are going up." They said, "The toll market is competitive, a competitive market. Prices move towards costs, and lower costs flow through to lower prices."

The Commission does have a lot of work to do in implementing, you know, a compliance section on the access, and the access is not a competitive market, so that's where the regulatory resources should be applied.

Q. Thanks you. There was some talk of your statement on Page 13 that for a CLEC there are no --

A. [NURSE] Excuse me. Let me get there.

Q. -- for a CLEC there are no adverse consequences from raising access rates as high as it can. Why do you suppose, then, that AT&T and other CLECs aren't charging, for example, 7 cents, like Richmond Telephone, rather than the 3 cents that you described as the ballpark for AT&T's current rates?

A. [NURSE] The question is two parts, so I'll answer in two parts as to AT&T versus the other CLECs. AT&T has no problem lowering its access rate, which is too high here, when all the other CLECs simultaneously lower them, and then we'll adjust to whatever that means. That's not a problem.

Around the country AT&T has been aggressively trying to reform access rates in the interstate and intrastate jurisdictions, and that's typically involved rate rebalancing, similar to what Verizon did here in Massachusetts. So AT&T, you



know, is not going to be increasing access rates because it would be inconsistent with our position and our policy nationally that access rates should be moving towards costs.

As a business person, you know, I would say if this case doesn't lower access rates, if somebody asked my business advice, I'd say, "Yeah, go up to 20 cents, 25 cents. Why not? You'd be a fool not to." AT&T I don't think can do that credibly because of our policy at the FCC and other states that access should go down and subsidies should be explicit and not implicit.

As to the other CLECs, their rates are somewhat random. When I look at them, I see some of them that are low, I see some of them that are high. It's not my sense that there's a cost correlation, because the variation is so huge -- you know, 15 to 1. I don't think that that's cost-driven. I think that some of the CLECs filed them nationally. I think some of the CLECs, you know, were a little more sort of astute about the local environment and figured out that they could get away with it here if they're not really reviewed. And I think that they are fairly high, and they're probably -- you know,



when you start getting the 7-cent rate, that kind of thing, I think they're probably as high as a lot of them think they could get away with without attracting too much scrutiny.

Q. My question to AT&T was not so much directed at what you would do in the event the Department acts in this case but your statement about the effective market forces on CLEC access charges. There apparently is some constraint operating even prior to the petition being filed, and I'm trying to get at what you think that might be.

A. [NURSE] I don't think CLECs can charge a million dollars a minute, because I think if you got to, you know, a conscience-shocking rate, the Department would act. And so I think the gamesmanship if you're a CLEC is, "How high can I get it up without getting too much attention?" You know, given that some of them are 15 times higher than Verizon, you don't see a competitive market where one commodity supplier gets a 15-to-1 price differential.

A. [OYEFUSI] I suppose your question is trying to test the logic as to whether it is more



acceptable to be somewhere in the middle than to go to the extreme of this spectrum. I don't think that is really one of the matters -- the section that you are quoting in that system, really.

What we are saying here, we are trying to answer a question, why don't we leave it to the market? What we are trying to test here, or what we are trying to explain here, is that there is no incentive for the customer that is making the choice to say no. So if the access -- if we have to make the decision, we won't pick your client. As the customer -- every customer in the market, looking at the same product from two providers, is going to pick the one that charges the lowest rate. That is just basic economics.

Q. I'm not asking you to repeat your entire testimony, but simply answer the question.

A. [OYEFUSI] I'm just -- because you're --

Q. Picking up off Mr. Nurse's answer for a moment: Is it fair to say, then, that the mere fact that the Department of Telecommunications and Cable exists and has jurisdiction over these rates exercises some constraint on a CLEC's behavior?

A. [NURSE] Not -- well, not in a particularly meaningful way. I mean, I would say that a 15-to-1 differential is a breakdown. I mean, that's not -- if you're looking to see a market being competitive for a commodity product, you wouldn't have that kind of really high rate differential.

I mean the same way under rate of return, when the regulatory commission brought a carrier in for overearnings, by the time you brought the carrier in for overearnings, if you will, the regulatory process kind of had broken down, because the carrier had already overearned. I think we're kind of in that same situation.

But the competitive market is not a constraint on our rate or our rate wouldn't be five, six times as high as Verizon's.

Q. There was some talk earlier --

MR. ISENBERG: Pardon me, I'd just like -- not to disturb your flow, Mr. Messenger.

MR. MESSENGER: Please do.

MR. ISENBERG: I'd like to follow up on one question.

Mr. Nurse, isn't it true, though, that in terms of constraints, the question of what kind of constraint the Department puts on access rates,



that the Department does have the ability either on its own motion or based on a tariff protest to suspend a tariff?

WITNESS NURSE: Yes.

MR. ISENBERG: And investigate its reasonableness.

WITNESS NURSE: Yes, which we think they should exercise here now to push the CLEC rates down to the Verizon rates. I'm just saying that the pragmatic experience has been that CLEC filings are pragmatically automatic. The Commission retains jurisdiction over them. I think this is a case where the Commission should exercise the jurisdiction to push them down.

It really should be -- the key, I think, is that if you push the access revenue down for the CLECs, they can do whatever they need to do on the retail side. If they're competitive, they can collect from the competitive market their competitive costs, and if they can't recover in the competitive market their competitive costs, then they're not competitors, they're losers.

You know, competition means there are winners and losers. There's the faster guy in the



race and the slowest guy in the race. Not everybody is the winner.

Q. Getting back to possible constraints of a pragmatic nature on CLEC rates, though: You've mentioned that AT&T would be crazy not to charge 20 cents a minute, and yet it charges 3 cents, and I believe one reason you gave was that AT&T has taken certain policy positions in other jurisdictions and it doesn't want to be too out of line with those positions. Is that fair?

A. [NURSE] Yeah, I said as -- from a businessman's perspective, you'd be walking away from the revenue. So if you looked and you saw the highest CLEC rate in the state, if you were another CLEC, you would figure, "That's kind of a safe harbor. I could probably goose my rate up to there or maybe minus a little bit, and I probably wouldn't get attention, because I'd be in the range." If somebody objected, you'd say, "My rate -- I wouldn't be the highest guy, I would be the second-highest guy."

So that's a very reasonable sort of regulatory gamesmanship that could go on. But AT&T has committed and admitted that our rate's too high



and that we'll lower it and that we'll suck it up. I think Verizon had the same thing about their MCI affiliate, has sort of a similar pedigree. So that would be a good thing.

And then all those carriers will have the regulated rate in the access market, where competition doesn't work well, and they can recover their costs in the competitive market to the best of their ability.

Q. Is it fair to say that the ease or difficulty of collecting the access charges from interexchange carriers might be another possible constraint on a CLEC from charging, say, 20 cents a minute, as opposed to 3 cents?

A. [NURSE] No, I think it works the other way around. The problem is the ease of tariffing the rate and compelling the CLEC to pay, and I think that there's, you know -- I'm not the lawyer, and they'll do it on a brief. But there are some filed rate-doctrine cases that if the CLEC rate is filed in the tariff, it's the rate, and you can't challenge the rate retroactively as being unreasonable. And if he provided you the service at the tariffed rate and you don't like the price,

tough luck. You can go and protest about the rate prospectively, but not retroactively.
Q. Is it AT&T's policy, as an interexchange carrier, always to pay any CLEC's tariffed rate without regard to any views of reasonableness or rate level?
A. [NURSE] Well, the question is kind of compound. But to back it out: AT&T as an IXC protests and objects to high access rates through a number of vehicles -- sometimes regulatory filings, I think sometimes lawsuits against the call pumpers, I think sometimes in business negotiations with various carriers.
So, yes, we're a big company, and we try as hard as we can, and even as big as we are and as hard as we try, we have not been able to get access rates reformed to a reasonable level across the company. And if we can't do it, it's even more difficult for smaller carriers to do it.
Q. Speaking of business negotiations, there's been some discussion about the theoretical possibility under the FCC benchmark that a CLEC could charge on a negotiated basis a rate that was even higher than the maximum level allowed under



tariff. Are you aware of having agreed with any CLEC in the country to pay a higher than benchmark rate for interstate switched access?
A. [NURSE] I don't believe AT&T or any IXC has agreed to pay a higher price.
Q. Are you aware of AT&T using or attempting to use its size and market power to negotiate a rate that was lower than the benchmark rate, either on the intrastate or interstate side?
A. [NURSE] I can't accept the premise in your question that AT&T as an IXC has market power.
Q. All right, let's delete that phrase from the sentence.
A. [NURSE] Although I admit that AT&T as a CLEC has market power over its access customers, which is why we have a 3-cent rate.
Q. Well, I'm trying to get to why you have a 3-cent rate in light of your testimony that there are no constraints whatsoever, and we've addressed several aspects. You've talked about business negotiations. Is it true, regardless of any characterizations of market power, that -- is it the case that AT&T has attempted or succeeded at negotiating lower-than-standard tariffed rates with



any CLECs around the country?
A. [NURSE] Yes.
Q. How do you square that with your characterization of the filed-rate doctrine as requiring in effect full and complete and timely payment of all tariffed charges?
A. [NURSE] Because that's what the filed-rate doctrine says. But it doesn't mean that if you went to a carrier that you couldn't come to a meeting of the minds as to why.
It could be rational for a carrier who had a very high access rate and who feared a challenge to that high access rate to, you know, settle for a half a loaf is better than none. If the carrier had a high access rate, feared a commission challenge and review of that rate, they might agree to contract for a reduction in that rate. That's a rational business decision that a CLEC could make. They'd look at the cost of litigation, the risks of the adverse outcome, the certainty of a different business arrangement. They could see that as a rational outcome.
But there's a lot of CLECs and a lot of ILECs, and it's very inefficient to try to go to



just thousands and thousands of folks all around the country --
It's not an efficient or rational way to do it. You have to renew them when they happen, and it's particularly crazy for every IXC to have to go to every CLEC and every ILEC and do that. I mean, there's, what, 10,000 ILECs. You do the combinations and permutations; the tens of thousands or hundreds of thousands of contracts it would take to do that by contract is just, the transaction costs would be huge.
And we differ from Verizon in that. I don't think that contracts is the way to do it. It's a pretty inefficient way, and it's pretty ineffective. It's only partially effective.
Q. It's easier to use the regulators than to negotiate contracts?
A. [NURSE] Well, because you mentioned contracts, it gets to what the problem is as to why a contract doesn't work. In a general contract or bargain negotiation, you have offer, acceptance, and consideration, in my lay understanding. And the ticket is, you have a willing buyer and a willing seller, and if you agree on a price point, you'll

have a transaction, and if you don't, you won't.

The problem here is that it's a -- it's a trilateral relationship when you buy local service. You really almost have two parts of it: You have the local service and the access service, and you have a price for local and you have a price for access. The IXC is forced to pay the access rate, but the IXC didn't agree that they wanted to, you know, be -- you know, buying that access rate. That access rate came tied or bundled with the local service.

So you've got the local-service customer saying, "I like that local rate. It's low, I'll take that." And he doesn't know or really care what the access rate is. And it's that trilateral arrangement that's dysfunctional.

MR. MESSENGER: Mr. Hearing Officer, I'm trying to be patient, but I have the feeling Mr. Nurse is giving lengthy, digressing answers to what are in effect simple questions. In the interests of time, if nothing else, if we could sort of stick to the question, that would help.

Q. Let's move on to the difference between originating and terminating access. I believe you



stated during your earlier cross that terminating was more of a problem than originating.

A. [NURSE] Yes.

Q. Do you recall that?

A. [NURSE] Yes.

Q. What are some of the constraints on the originating switched-access side that might not exist on the terminating side?

A. [NURSE] Well, on the originating side, you could tend to have a lot of traffic originating from one source, and you could kind of backwards-chase that to see it, and then you could, you know, try to do something about that.

With the terminating access, once you're the IXC and the customer dials the number, you have to complete the call. You don't really have any control. If you have a local customer and you provide them a bundle of local and long distance, you know where the customer is, you can control the originating side. There's a lot of, you know -- I mean, that's kind of a big lift.

On the terminating side, if you're an IXC, wherever the customer dials the call, you have to complete the call, and whatever the rate is,



basically, you have to pay the rate.

So the terminating one tends to be quite dispersed, and it's very difficult to control. I mean, in Massachusetts -- if you wanted to make it simple, you could say in Massachusetts your strategy might be to compete only in the Verizon area, but if you're an IXC, you have to -- even though you don't have any originating customers in Richmond Telephone, you would still have to terminate calls into Richmond Telephone. So as an IXC you kind of can't get away from it on the terminating side. You could avoid Richmond's originating access in Massachusetts by not offering service, maybe -- intrastate service, by not offering it in Richmond Telephone.

Q. Is it fair to say, then that the Department could have some beneficial effect merely by constraining CLECs not to charge more for terminating switched access than they do for originating switched access?

A. [NURSE] No, because it could be a dollar a minute for originating and a dollar a minute for terminating. So that doesn't provide any relief.

Q. Although that's not the case today under



the free operation of market forces.

A. [NURSE] Well, I don't agree that there's free-market operation on access. But equalizing a high rate at a high rate doesn't make the rates right, it makes them the same.

Q. My last line of questioning relates to access-charge elements and their rate structures. I'm not sure which one of you is the best suited; but if you're equally familiar, you can take it as a toss-up.

Are you familiar with the access-charge structures that ILECs such as Verizon use?

A. [OYEFUSI] Yes, generally.

Q. In supporting Verizon's petition, does AT&T support the notion that fixed-rate elements should be removed from the equation and the comparison should be between the usage-sensitive access elements of the CLEC versus the usage- sensitive access elements of an ILEC?

MR. GRUBER: Objection. Let's get specific about fixed-rate, flat-rate, so we can know what the question relates to.

MR. MESSENGER: If there's a difference, I meant flat rates.

MR. GRUBER: Whichever you said, if you meant flat rate, let's be specific.

Q. Let's back up a bit. Is it true that some usage elements are usage-sensitive and some are flat-rate?

A. [NURSE] Yes.

A. [OYEFUSI] There are some access rates in the tariff that are priced on a per-minute basis. There are other access rates that are priced on a monthly basis. You can buy a trunk, a trunk, like a dedicated trunk, and you agree to pay a certain amount, dollar amount, per month for that. And whether or not you use it or you -- whether you put zero traffic on it or you put one million minutes a month on it, whatever you use, that's what you pay per month.

Q. So some charges are per-minute charges, and some charges are monthly recurring charges, let's call them.

A. [OYEFUSI] That's correct.

Q. Is it true that in terms of physical network elements, some of those items might be the same? In other words, a trunk, one type of trunk might be charged on a per-minute basis and another



trunk might be charged on a monthly recurring basis or flat-rate basis?

A. [OYEFUSI] When you say one type of trunk, you have to be specific.

Q. Let's assume a T-1 trunk between an IXC's network and Verizon's network.

A. [OYEFUSI] And if the IXC is buying that T-1 as a dedicated trunk that nobody else is using and it's just that IXC that is using it, the IXC will have made sure, I believe, that it is going to carry enough traffic to that customer on a monthly basis to be able to justify paying that dedicated fee.

Is that what you're asking?

Q. Yes, so far. I'm trying to get there. In other words, for a given trunk or, for example, a port on a tandem switch, it might be charged on a per-minute usage-sensitive basis or might be charged on a flat monthly recurring basis based on whether that particular physical element is dedicated to a particular IXC or not; is that correct?

A. [OYEFUSI] If it is dedicated, it's not going to be priced on a per-minute basis.

A. [NURSE] Yes.



Q. Cell phone toll prices, it's dedicated, it will be charged flat; and if it's shared or common, it will be charged on a per-minute basis.

A. [OYEFUSI] Yes.

Q. Let's look at Verizon's access network. IXCs can connect to Verizon's network either through an tandem access switch or through a particular end office. Is that true?

A. [OYEFUSI] Yes.

Q. And in any case, the IXC, the trunk connecting the IXC's network is going to be dedicated to that IXC and therefore charged on a flat-rate basis. Is that your understanding?

A. [OYEFUSI] Well, if the -- like I said, if the IXC decides to buy the trunk -- I mean, there is some traffic that will not go through the dedicated trunk. So let's separate this.

Q. Can you give an example, by the way? Because that's what I was getting to.

A. [OYEFUSI] Example of what?

Q. Traffic that would not go through a dedicated trunk.

A. [NURSE] Common.

A. [OYEFUSI] It would just be somebody



dialing from a home that is not a big user, doesn't really generate a lot of volume. I would not see why an IXC will put a dedicated trunk to somebody's house. Probably the person will make 200 minutes of calls a month, and I wouldn't see how 200 minutes of calls would justify putting a dedicated trunk to somebody's home.

MR. ISENBERG: But for a large customer that needs a dedicated trunk, all of their traffic is going to travel over that dedicated facility; correct?

WITNESS OYEFUSI: That is correct. And the IXC will have had the traffic portion of that customer and will have known that there is a need for that dedicated trunk before it agrees to put that dedicated trunk to that customer's location.

A. [NURSE] Just for clarification: Your point is about the dedicated and the common-usage shared trunks that multiple carriers use. That arrangement could happen from an end office to a customer premises, which the Bench was asking, or it can happen between an end office and a tandem. Also, they're not necessarily mutually exclusive. The carrier may have dedicated and then may use some

common or may use dedicated and common for overflow.
Q. And if AT&T as an interexchange carrier wants to exchange access traffic with a CLEC, it could either directly connect to the CLEC's switch or it could go through a Verizon Access tandem; is that correct?
A. [OYEFUSI] That is correct.
A. [NURSE] Well, there can be limitations on it. Yes, you can directly connect, and then depending on ICAs, sometimes they limit how much traffic you can indirectly connect -- but that's local traffic -- but how much you can indirectly connect through Verizon. Sometimes they compel you after a certain volume, after a T-1 or two T-1's, they compel you to shift that traffic to the other carrier directly.
Q. And if an IXC is connecting to a CLEC through the Verizon Access tandem, then the trunks between the CLEC's switch and the Verizon tandem would be common with respect to IXC traffic, wouldn't they?
A. [NURSE] Not necessarily. We could connect directly to the dedicated trunk, to the Verizon tandem, and then the Verizon tandem to the CLEC is



whatever it is.
Q. Which is what, common or shared?
A. [NURSE] Well, it would be -- it wouldn't be dedicated to AT&T at that point, I wouldn't think, because at that Verizon tandem Verizon would be taking traffic in from multiple carriers, and then Verizon would be mixing that traffic together. And so once you go from the Verizon tandem to the CLEC tandem, you know, to me, my traffic is then mixed in common with Sprint and other people's. You, the CLEC, might look at that and say that's a dedicated Verizon trunk and all that traffic is Verizon's.
MR. ISENBERG: Is it all just access traffic? Is there any local traffic?
WITNESS NURSE: That's where it gets untidy, is that often you have combined traffic, where you mix intrastate toll, interstate toll, and sometimes even local traffic on the same trunk, and then you have to have factors or other methods to differentiate the one time from the other; and that's the great advantage of having a common rate for your interstate access and your intrastate access. When you have the traffic commingled, you



don't have to worry about any gaming, that someone's misrepresenting what flavor traffic that is to try to get the higher rate for basically otherwise indistinguishable traffic.
Q. The only point I'm trying to make is this: Verizon's revenues that it receives from interexchange carriers for switched-access service consists of revenues from usage-sensitive elements and revenues from monthly recurring or flat-rate elements. Is that right?
A. [NURSE] Yes.
A. [OYEFUSI] And they are priced different. They are priced separately in the tariff, because they are not considered as the same product in Verizon's tariff.
Q. By the way, in asking this question, I'm not talking about a dedicated line all the way to an end-user customer, which would be special access, but only focusing on switched access. Some of Verizon's elements are dedicated -- are flat-rate and some are usage-sensitive. Is that right?
A. [NURSE] Yes.
Q. And that's based on whether those -- the pieces of the network to which those elements apply



are dedicated to a particular IXC or shared in common among multiple IXCs. Is that right?
A. [NURSE] Yes.
Q. By the way, isn't it true that certain of those charges were formerly usage-sensitive before the FCC reformed access in 1997 and now they're dedicated? In other words, the same piece of technology could be structured as a usage-sensitive element or not, depending on how the access rules are written?
A. [OYEFUSI] Well, the FCC went through several changes over the years, and the movement has been to get away as much as possible from usage-sensitive pricing if the cost did not occur on that basis. So what you're saying, yeah, it reflects what the FCC might have done over the years, and that continues.
Q. Under the former structure, in other words, something called tandem switched transport was usage-sensitive, and then the FCC reformed access and broke it into several elements, some of which are now flat-rate or monthly recurring elements; is that correct?
A. [NURSE] Right. Part of their reform has

been to align a rate design so that flat-rated costs have flat-rated prices and usage-sensitive costs have usage-sensitive prices.

Different carriers have different structures on the interstate side, the intrastate side. But the reality is that PAETEC today has an interstate access tariff that is compliant with the FCC rule for parity with the Verizon rate, and all these issues that need to be addressed have been addressed in that FCC regime. The Commission doesn't have to resolve these questions in order to implement parity with the FCC rule. The FCC has already equilibrated Verizon's interstate access rate and PAETEC's interstate access rate, and the Commission can import the benefit of that regime into Massachusetts. And these other questions are interesting, but they're not a bar to importing that solution here.

Q. Is it your understanding that the FCC's CLEC benchmark for interstate switched access only includes and only looks at the ILEC's usage-sensitive elements and doesn't look at the total cost of switched access?

A. [NURSE] It includes what it includes.



There are some elements that are per-cost, like database lookups, that are on a per-call basis. It doesn't include every aspect of access. But it doesn't need to. It's a reasonable solution that's been in place for seven years. Substantially I think we calculated for us it would take 85 percent of our access revenues away. So it is -- in one of the data responses. So it's a substantial reduction.

And yeah, there are little parts -- you could quibble, you know, on some piece parts or the other, 15 percent or whatever. But if you implemented the FCC regime, our calculations, it would take 84, 85 percent of our access revenue away, and that is substantial progress.

MR. MESSENGER: Mr. Hearing Examiner, I did have another question or two, but I know we've gone beyond --

MR. DeROCHE: If you're ready to wrap shortly, we'll go on. If you've got something substantial more to go, we'll take a break.

MR. MESSENGER: The questions are short.

MR. DeROCHE: Why don't we try and finish up. Mr. Nurse, if you could try and keep



your answers as brief as possible.

MR. MESSENGER: On further reflection, I think I'm finished.

MR. DeROCHE: Thank you very much. We'll break there. We will come back at five minutes after 2:00.

(Recess for lunch.)

MR. DeROCHE: We'll go back on the record. I believe it's RNK. Mr. Tenore, do you have any questions for these witnesses?

MR. TENORE: Yes. Thank you.

CROSS-EXAMINATION

BY MR. TENORE:

Q. Good afternoon, gentlemen.

A. [NURSE] Good afternoon.

A. [OYEFUSI] Good afternoon.

Q. Just a couple of quick questions here. Are you aware -- just getting back to the line of questioning that Mr. Messenger had about flowing through savings to end users: Are you aware of any jurisdictions where there was a reduction in, let's say, ILEC rates and the commission had required the IXCs to flow it through to end users in that state?

A. [NURSE] There have been some -- I don't



have the list, but I know from experience there have been some efforts to do it. I don't think it ever really works as a comprehensive showing.

Q. On Page 14, Line 3 of your prefiled testimony you talk about unfettered increases to CLEC access-charge rates.

A. [NURSE] Yes.

Q. Outside of the two that we've already discussed in Massachusetts, being Level 3 and PAETEC, are you aware of any CLEC access-charge increases since 2002?

A. [NURSE] I haven't done a study since 2002. I was aware of the two other ones. But the issue there is increases and the level that they're at.

Q. That brings me to my next line of questioning here. In response to RNK-1-1, you replied that TCG has not raised its interstate switched-access rates since 1997.

A. [NURSE] This is Parts C and D?

Q. Yes.

A. [NURSE] Yes.

Q. And approximately, those rates are within the 3-cent-a-minute range?

A. [NURSE] Yes, round number.

292

Q. Were you here yesterday for Mr. Vasington's testimony, when he indicated that Verizon's pre-01-31 rate, prior to the reduction in Verizon's access rates, was around 3 1/2 cents a minute, 3.8 cents a minute?

A. [NURSE] I was here. I don't recall specifically what he said the rate was.

Q. Are you aware of what Verizon's rate was at that time?

A. [NURSE] You know, not to the decimal place. But I'll take it subject to check that it was around 3 cents.

MR. GRUBER: If I could just make clear for the record that the average revenue per minute for AT&T and TCG is stated right on the document.

MR. TENORE: Yes, I understand. I was actually looking at the tariffed rates rather than the average revenue per minute.

A. [NURSE] Right.

Q. Are you aware of what the average CLEC rate in Massachusetts is?

A. [NURSE] What kind of average?

Q. Average of the composite switched-access rates?

293

A. [NURSE] Do you mean like a weighted average by volume of the CLECs?

Q. Just a rote average?

A. [NURSE] You mean a straight average of the tariff rates?

Q. Yes.

A. [OYEFUSI] We, I believe in response to some data requests, we attempted to do a comparison. I believe it was CLEC-1-15. We can look at it.

This was just an attempt to have some form of comparison. I believe, according to this chart, for the ones that we selected, it was like .3, .4 cents.

It's about .4 cents, based on just a few CLECs that we're able to see the tariffs.

Q. I thought you said 3.4 cents.

A. [OYEFUSI] No, about 0.4 cents.

Q. So that is approximately around where Verizon's rate may have been prior to 01-31, assuming, of course, subject to check, that the rate was about 3.6, 3.8 cents per minutes; correct?

A. [OYEFUSI] Well, I don't remember what Verizon's rate was before the change. But subject to check, I will accept that.

294

Q. Just a clarification: That was 4 cents per minute?

A. No. That was four tenths of a cent per minute.

I'm sorry.

MR. GRUBER: Just so that I know, let's just make clear what rate we're talking about.

MR. TENORE: The switched-access rates.

MR. GRUBER: Of?

MR. TENORE: The average switched-access rates of CLECs in Massachusetts right now.

A. [OYEFUSI] Let me correct the record: This chart that we submitted as a response to CLEC-1-15 does not calculate the average. It calculates the average for each CLEC, and it shows Verizon's rate as four tenths of a cent.

So you can do an average on this chart, to get an average on this chart. I thought we already calculated the average, but we did not.

So it's just the average that is shown here --

Q. It looks like there's a decimal problem in there.

MR. DENNY-BROWN: It is about 4 cents, but it does say four tenths.

295

A. [NURSE] The numbers are small. If you go to the CLEC Average line on the left and you run across, that line has no dollar values until you get to the three percentages in the right-hand column.

Q. Okay, yes.

A. [NURSE] So there's no CLEC average rate calculated here.

Q. Okay.

A. [OYEFUSI] And all that line is doing is saying that on average the total CLECs on this chart are on average about 487 percent above Verizon.

Q. If you could make a guess, just a ballpark, based on those rates for CLECs in that column of terminating, what would you say the guesstimate rate would be for an average?

A. [OYEFUSI] You can multiply Verizon's average on here and increase it by 487 percent. I don't have a calculator.

A. [NURSE] Five times higher.

A. [OYEFUSI] Yes, five times higher than Verizon, about.

A. [NURSE] And that's the 487 percent in the far right-hand column under Blended on the CLEC

Average row.
MR. DENNY-BROWN: And is that weighted?
WITNESS NURSE: No, that's the rote average you asked for.
MR. TENORE: I'm going to hand it over to my co-counsel for follow-up.
EXAMINATION
BY MR. DENNY-BROWN:
Q. A quick question about summer of 2007 and the Level 3 petition. Are you familiar with Level 3's initial petition to raise its access rate in Massachusetts?
A. [NURSE] I believe so. Is this their 8YY tariff?
Q. Yes, including their switched-access rate. They included their switched-access rate in Massachusetts.
A. [NURSE] I was on a campaign against Level 3's 8YY tariff across the country, and so that's how I'm thinking. Without seeing the document, I don't remember all the particulars in it, but it was a substantial increase, which we opposed.
MR. ISENBERG: If I might jump in. Is that the one that's referenced or is an attachment



to RNK-AT&T-1-4?
MR. DENNY-BROWN: It depends, because there were two. There was an initial one and the subsequent filing. The initial one is the one I'm talking about, which I think is in the summer of 2007.
Q. Level 3 was attempting to file a switched-access tariff increase up to MCI's rate at the time, which I think was about 4.2 cents per minute or something. Does that sound familiar?
A. [NURSE] That's outrageous. I remember that Level 3 filed some tariffs to increase rates, but I don't remember the exact details about that rate increase at this time.
Q. Do you know if AT&T intervened in that case or was involved?
A. [OYEFUSI] You're talking about two cases now.
Q. Just that first one, where they attempted to meet MCI's rates.
A. [OYEFUSI] I don't know exactly which one we intervened. I remember that we filed -- I remember that we intervened in one of them, in one Level 3 rate-increase request.



Q. Are you aware of how the DTC ruled on that first attempt by Level 3 to increase their rates, or how that was resolved?
MR. GRUBER: Can you restate the question, please?
MR. DENNY-BROWN: Sure.
Q. Are you aware of how that first attempt by Level 3 at the DTC was resolved?
A. [OYEFUSI] I don't remember, but I know that it did not go into effect.
A. [NURSE] That's the second filing.
A. [OYEFUSI] I remember, whichever one that I remember that we intervened did not go into effect.
A. [NURSE] And apparently we intervened on November 7th.
Q. To be clear, though, I think that was the second filing.
MR. ISENBERG: Just for the record, is there any way to more specifically identify each of these filings?
MR. DENNY-BROWN: I don't have that information with me at this time.
MR. ISENBERG: Either by date or by proposed tariff number?



MR. DENNY-BROWN: It's the same case that Paul Vasington and I were discussing yesterday -- we can get it -- which is Level 3's initial petition to increase their rate in Massachusetts.
MR. GRUBER: Just to cut the time down: I don't believe there's anything in our papers that references that, so the witnesses are not going to have known from the preparation of our case about that. Now, I don't know what they know, but they won't know from the preparation of the case, and there won't be anything in our papers on it.
MR. DENNY-BROWN: Other than that it did go into effect.
MR. GRUBER: Frankly, I'm not sure which filing they thought went into effect, the record was so confused.
MR. DENNY-BROWN: Why don't we do this: RNK will submit --
I think we made a stipulation yesterday, actually, to have -- we'll include both filings in our brief. We'll cite to both of them, so it will be clear in terms of what happened and which was when and all that stuff.

MR. GRUBER: So there's no question for the witnesses?

MR. DENNY-BROWN: No question. I will retract the question. I have no further questions.

MR. DeROCHE: Mr. Reyes, the Attorney General?

CROSS-EXAMINATION

BY MR. REYES:

Q. You testified earlier today that you think that CLECs' switched-access rates that are higher than Verizon's composite switched-access rates are too high. Do you recall this?

A. [NURSE] Yes.

Q. Do you believe them to be too high because they are priced above the long-run incremental costs of providing switched-access services?

A. [NURSE] I think they are above long-run incremental costs. I think they're too high in part because they vary too much, and I think that they're too high because they generate too much money from customers who can't say no.

Q. Is there a level that's above that long-run incremental cost where you believe the rate becomes unreasonable?



A. [NURSE] Yes. I'm thinking of the costs being somewhere in the less than -- comfortably less than a half a cent a minute. And so when you get rates that get to be multiples of cost, that is a problem. I mean, you know, when you're 100, 200, 300, 400, 500 percent higher, that seems like an unreasonable rate.

And it wouldn't be unreasonable for the retail rate per se. I mean, if a carrier's cost of providing local service was $10 a month and he went to a customer and said, "I want to charge $50" and the customer said okay, to me that wouldn't be unreasonable, because if it was unreasonable, the customer wouldn't buy it.

But on the access side I'm very concerned that I don't want to see the rates, you know, more than sort of the half-a-cent neighborhood because we don't have any ability to walk away.

Q. Is there an objective measure where you would say half a cent is an appropriate level before you would determine it unreasonable?

A. [NURSE] I'm looking at it for the TCG rate now. To go to the Verizon rate, I think it would take out 84 or 85 percent of the revenues we collect



in access. So in a reasonableness way I'm saying, if we take 85 percent out, there's not much rate left that isn't, you know, closely related to cost; and at that point the rate is pretty close to cost. So if cost was a quarter of a cent and the rate was a half a cent, that's still a rate that's twice cost but not a rate that's 15 times cost.

So when you get down into the, you know, the half-cent range, plus or minus, I think that's a reasonable rate.

Q. And by "costs" do you mean the long-run incremental cost?

A. [NURSE] Yes.

Q. Do you believe that entry by new entrants into the terminating switched-access market is possible?

A. [NURSE] I'm sorry, say it again?

Q. Let me just rephrase that. Do you believe that anyone -- that entry into the provision of terminating switched-access is possible?

A. [NURSE] Well, yes -- sort of yes and no. And yes, anybody can start being an access provider. Anybody can come in, become a CLEC, and they'll be providing access to certain end users.



But once a CLEC becomes the end user's customer, at that point what was a competitive market that might have 100 different potential suppliers -- once that customer picks a carrier for their local service, that customer's access, terminating access service becomes a monopoly service.

I don't want to get into the economics and tread on their territory. But essentially, each customer's terminating access, you know, on each day is a separate market. If a carrier has -- you know, if an end user has Verizon today and I have to terminate a call to that end user today, I have to pay Verizon's rate today. And whether there's one more or 100 more CLECs who might be able to take that customer from Verizon tomorrow, that doesn't help me today. I have to pay today whatever Verizon's rate is. So I'm captive to the current CLEC of each customer at the current time.

Q. When a competitor competes for that end-user customer, isn't it true that they're not competing on the basis of terminating switched-access service rates?

A. [NURSE] Yes. When customers -- it's the trilateral arrangement we were talking about earlier. When carriers compete for end-user customers, they quote them end-user local-service rates, and they don't tell them if customers don't ask, "Well, how much is your access rate?" If your access rate is a tenth of a cent or 10 cents, end users don't know and they don't care, because they don't see what difference that distinction makes. They see what's the local rate.

And that's the problem: Those customers pick the local-service provider, and they essentially compel the IXC to pick that local-service provider, too.

A. [OYEFUSI] The end user would not know what is the access. They won't know what it is. They won't know how it relates to their end-user service in any way unless there's a way to tell them that that access is actually affecting how much you pay for your call. They don't have that information.

Q. Given that the end user isn't observing the cost of terminating switched access, doesn't it make more sense to price that service based on cost of service rather than a long-run incremental cost?

A. [NURSE] Well, in a cost of service -- kind



of like some sort of rate case and then some sort of rate design and allocation of costs. But I would say no, because you can't really take a guy and say that we're going to have like a rate of return -- sort of like a rate-of-return/competitive hybrid.

The problem with the high access rates is that there's no pressure to lower those rates, because the customers who pay those rates don't choose that provider, and the customers who pay the local rate do choose the provider.

The effect would be, if you lowered the CLEC access rates to the Verizon rate, is they would shift whatever costs -- you know, they would have to respond, and whatever revenue they lost, they would look to their data services, they'd look to their local services, they'd look to their other services from those customers and other customers to collect those costs. And that would force them to present all their costs to their customers and present all their products to those customers. And those customers could look and say, "Is this product worth this price?" That's a good outcome. If they have a good product at a fair price, they'll sell a lot, and if they don't, they won't, and they shouldn't.



So that's better.

And then the long-distance market will all be competing with that level playing field of everybody paying the same access rate, and so that makes the long-distance market work better, because you've got a level playing field on the price floor and so you can get better competition on the retail rate, and it makes the local market work better because those costs are being presented to customers who can say no. And it makes the competition more fair amongst the CLECs as well.

So I don't see a downside so it, you know, other than some customers who might be paying rates that are too low now, because they're cross-subsidized, would instead see what the real costs are, or at least see what the real price is that their CLEC wants for it.

Q. You testified earlier that AT&T faces competition from wireless services.

A. [NURSE] AT&T's long-distance services face competition from the long-distance service-provider wireless carriers.

Q. So they're currently under -- toll services by AT&T as well as other providers are similarly



subject to those competitive pressures; correct?

A. [NURSE] Other toll providers -- say like Sprint -- would be under the same sort of pressure because their long-distance service would be competing against wireless "free nights and weekends" type service from wireless carriers.

Q. Are those toll services perfect substitutes for the wireless services?

A. [NURSE] To look at the -- keeping on the long-distance part and not the basic part --

Q. Let me back up, then. AT&T provides bundles of services; is that correct?

A. [NURSE] Yes.

Q. And other providers provide bundles of different services; would you agree with that?

A. Yes.

Q. And those bundles are different from the services that wireless providers provide. Is that correct?

A. [NURSE] Yes.

Q. Are those services substitutes for each other?

A. [NURSE] That's a pretty big, complicated question, that would take days to answer.

Q. You can answer yes or no.
A. [NURSE] It's not a yes-or-no question. It's like a thesis.
Q. I asked you if they were substitutes.
A. [OYEFUSI] The bundles, the packages?
A. [NURSE] There's some substitution. The degree with which, you know, all those different services compared to all the different ones are substitutable for each other is a complex question.
As to the long-distance component, long-distance wire-line service is relatively a close substitute with the long distance on your wireless service, recognizing that everybody with a cell phone knows that often the clarity of the connection on a wireless phone and the reliability is not as good as it is on your wire-line phone, but often the price differential is so great that I make my long-distance calls on my wireless phone because it's free. I work for the phone company. But, you know, I understand free is good.
Q. So are you testifying, then, that they're not perfect substitutes?
A. [OYEFUSI] The group that determines whether a service or a bundle of services are



perfect substitutes or somewhat substitutes are the customers. And when you look at the record over the years, we have seen customers shifting their services from one provider to another provider.
So in that customer's perspective, that particular service satisfies that customer's needs, and that's why we've been losing. So a minute is a minute is a minute. It doesn't matter whether it is carried on wireless technology or it is carried on wire-line technology, according to that customer. If the customer selects that wireless, somehow that customer has determined that the wireless service satisfies his or her needs, core needs, and that is the person that is making the payment, and there is no need to really get into whether or not it is perfect or imperfect. That customer has determined that it is okay for its need and is making the move.
A. [NURSE] Right. A quick metric is that the FCC data looked at the average number of toll minutes per access line is falling over time. So that means either people are making fewer long-distance calls than they used to or they're making their long-distance calls somewhere else, and the wireless data is that obviously people are



making long-distance calls on their cell phone that they used to make on their home phone, on their wire-line phone.
Q. All other things equal, if a customer on the margin is choosing between using one of those services versus another, would an incremental change in price of the bundle of services for, say, AT&T's toll services have the same effect as the same incremental change in price as for a wireless provider, provider's services?
MR. GRUBER: I'm sorry, I just don't understand the question. But if the witness understands --
MR. REYES: I may have mangled the direction I was going with that.
A. [OYEFUSI] Please repeat the question.
Q. Would an incremental change in the price of AT&T's bundle of services for toll services have an effect on the number of minutes used by a customer -- have the same effect on the number of minutes used by that customer as the same incremental change in price in a wireless provider's price and minutes used by that customer?
A. [NURSE] It's kind of odd, because I think



the way you can say it, the incremental cost of long distance for a lot of the long-distance calling people do on their wireless phone is zero, you know, under free nights and weekends. It's hard to get into an elasticity and say if you had a 5 percent change in a price that was zero what would it be, because the price would be the same.
But I think your point is, if I look on the weekend, I can call my mom for free on my long-distance phone or I can call my mom for 5 cents a minute on my wire-line phone. Yes, I choose to call my mom on my wireless phone because, you know, I talk for an hour and I could talk for an hour. Zero is cheaper than $3. Although they're not perfect substitutes, when the price differential is big enough, it forces people to choose -- the price differential, not the cost differential -- chooses people -- drives people to choose the one or the other because of the price. And because access is cheap for wireless carriers and expensive for wire-line carriers, it tends to drive what would be kind of irrational economic behavior, because people are responding to the prices rather than the costs.
Q. So if price for switched access is capped,

in your opinion, is there sufficient competition from wireless to force CLECs to flow through any cost savings they may attain through that cap?

MR. GRUBER: I think you mean an IXC.

MR. REYES: IXC. Sorry.

A. [OYEFUSI] Yes, I believe there is enough competition for toll service to force the IXCs to respond to that competitive pressure.

And what usually keeps most companies in line is the threat that they will lose that customer if they do not respond to their competitor's price. So that goes to -- this whole issue that we've been dealing with, it goes to one thing: It is the customers that decide. If the customer pays the price, the customer usually makes the right decision -- unless they are deceived in any way, that they didn't really get the right information to make their decision.

A. [NURSE] But to your question about do cheap wireless calls discipline CLEC access rates, do they discipline IXC toll rates: Cheap wireless long-distance rates pressure IXCs to bring prices down, so that is dragging prices down over time, and that's -- and traffic is shifting to wireless,



perhaps uneconomically to some degree, perhaps to get the benefits of mobility to some degree.

But the mobility competition for long distance is dragging IXC prices down. It doesn't have the same effect on dragging CLEC access rates down, and the problem is the CLEC access rates, access rates in general, are an input, and so they're a price floor limiting the rate at which IXCs can bring their rates down and squeezing their margin as the prices come down relative to the access cost.

So it has some -- there is some benefit from CLECs' substitutability on the long-distance part of mobility, but it's not enough to make it right, doesn't make it efficient. It's better than nothing, but it's not good enough.

Q. Is it possible for IXCs to maintain their current rates even if switched-access rates were capped?

A. [NURSE] Capped at what?

Q. Let me say that again. Is it possible for IXCs to maintain their current toll rates if CLEC access rates are capped at Verizon's switched-access rate, or composite switched-access rate?



A. [NURSE] No, because I think that CLEC rates are being dragged down inevitably. And so if --

MR. GRUBER: I think you mean IXC rates.

A. [NURSE] I'm sorry, IXC rates are being dragged down. And so if the access price floor goes down and you have competition amongst the IXCs for toll and you have -- including Verizon, and you have competition from wireless long distance, that's all to the good, and with that large number of competitors, that's going to drag the price of toll down. And so that would be a good thing.

So you want to get that cost floor down so you can keep pushing the price down, because if you took, for example, the access pricing and brought it right up to whatever the average cost of toll was today, IXCs wouldn't be able to bring their toll prices down at all, and the only way customers could get a lower price would be to go to wireless. Even if wireless's costs might be higher or it might not be the most efficient, it would be the regulatory treatment that wireless carriers get cheap call termination and IXCs have relatively expensive call termination.



And if you get down to the Verizon rate, relative to some of the rates we saw today, that are, you know, five times higher on average -- if you get that rate down, that doesn't make it perfect, but it makes it substantially better, it makes it very materially better. For us, it would mean our access revenues would go down 85 percent.

So it's not a perfect solution. It's not a perfect world. But it would very much move in the right benefit -- in the right direction, and consumers would benefit from that.

Q. Are you able to state today that for every dollar saved through the cap of switched-access rates, a dollar would flow through in the long run to toll rates or other competitive services?

A. [NURSE] I think more than a dollar. When we look at access as a percentage of our toll rate, access increases as a percentage of our toll rate over time because we're forced to be a more efficient toll provider over time.

I actually would like -- if the Department would prohibit toll rates from going down any more than access rates go down, that would be some welcome relief, but I don't think that's the direction that they want to go. Toll rates are going down for decades and will continue to do so.

A. [OYEFUSI] Even if the Department decides to stop toll from going down, which I don't think is going to happen -- because toll service is a competitive service. And theoretically, even if there's a rule that says toll rates should not go down below where they are today, what are you going to do with the wireless services? Customers will go to wireless. So you can't stop that customer from selecting the cheaper wireless service.

Q. Do you believe that Verizon's rates are priced at the long-run incremental cost of providing switched-access services?

A. [NURSE] No. I think they're priced above the long-run incremental cost of access. But I think in the scheme of things, in the scope of things, relative to the CLEC access rates we're looking at, that are five times the Verizon rate -- you know, the Verizon rate might be twice their cost. So if you got down to the Verizon rate, that might cut the CLEC rates 80 percent on average, if they're five times the Verizon rate. That would move you, in the relative scale -- you'd move 80



percent of the way to the Verizon rate, where the Verizon rate is relatively close.

I mean, I think -- I was thinking about it as far as like dollars per line. If you said a Verizon customer had 100 minutes of interstate access use a month and the Verizon rate was, say, a half cent, for easy math, that's 50 cents a month. So if you're talking five times that, you're talking $2.50.

So if you moved from $2.50 a line to 50 cents a line, you took care of, you know, 80 percent of the issue. Some part of the 50 cents is cost. So if you give them, you know, 25 cents for cost or something like that, 30 cents for cost, 35 cents for cost, there's not much left between their access revenues and their access costs.

Q. Do you believe that Verizon's switched-access rates are reasonable?

A. [NURSE] Yes.

Q. Given that those rates are higher than the long-run incremental cost of that service, why do you think that's reasonable?

A. [NURSE] I think in a pragmatic sense, the difference isn't much, and certainly by the relative



measures of the access world, we're talking about problems that are 1500 percent. You know, if you're talking about a rate that's, you know, a fraction of a penny above cost, that's sort of good enough for jazz.

Q. So you're testifying there's a range of reasonableness?

A. [NURSE] Yes, reasonableness is always a range. I forget what the Verizon average minutes of use is. I think the FCC data was 43 minutes. But if Verizon is generating something like 50 cents, say, for example, a line, that rate can't be more than 50 cents above costs, if their costs were zero. You know, if their cost is somewhere in the middle, you're talking about being within a few pennies a customer a month of perfect, sort of economically perfect. So that's pretty good, when we're talking about rates that are off by, you know, an order of magnitude or 12 to 1 or 15 to 1.

So that would be good enough to go, and that's an administratively easy, judiciously economic thing to do. You can get there by mirroring the FCC regime.

Q. What's the basis for your opinion that the



long-run incremental cost of switched-access service is lower than Verizon's current rate?

A. [NURSE] Well, the FCC essentially said that Verizon and all carriers have to terminate calls from wireless carriers at reciprocal comp, and the network cost, the network functionality, to terminate a minute is the same whether you're terminating an interstate --

The FCC set up for wireless carriers that they can terminate at the reciprocal-compensation rate, which is, you know, like 7/100 of a cent a minute, near zero. And the network functionality of terminating a minute is the same whether that minute is an international minute, an interstate minute, an interstate/intraLATA minute, an intrastate/interLATA minute, a local minute, a wire-line minute, a wireless minute, a CLEC-to-ILEC minute. A minute is a minute. The costs are the same.

And so that rate is compensatory, and that's what your TELRIC studies would say it was, by that measure, if you like TELRIC. And this rate is many times higher than that. If you're at 7/10 of a cent instead of 7/100 of a cent, you know, that's an order of magnitude higher.

So I think Verizon's rate is reasonably set above their cost, comfortably above cost. And given that, you know, you're down to something that's generating pennies a line a month, I don't think there's much head room, much benefit for trying to knock Verizon's rate down much more, you know, on a limited basis. We and Verizon have said the simplest thing to do would be to set terminating rates for all flavors of traffic -- VOIP, wire line, wireless -- set it all at reciprocal comp and then let, you know -- then resolve everything else by adjusting USF or local rates or whatever. That would be, you know, one comprehensive swoop across all different businesses and industries and jurisdictions. I'm not holding my breath for that to happen.

Q. Are you testifying today that that is a reasonable solution for the Department to implement, should it find that the current rates are unreasonable?

A. [NURSE] No, I'm not recommending that. I mean, I'm not denying that AT&T and Verizon filed with the FCC for a unified termination rate for all



flavors of traffic, VOIP and wire-line, wireless. But our recommendation is, if they took the CLEC rates and capped them at the Verizon rate, everybody would be on a level playing field, and that would be a substantial improvement from where we are. That would take care of well more than 80 or 85, 90 percent of the problem, and that would be -- and very easily do so. And that would be good.

And if you went beyond the FCC rate, then you would lose the benefits of parity, of mirroring the rates.

We were talking earlier about mixing traffic of two different jurisdictional flavors on the same trunk. If they're both at the same rate, it doesn't matter. If someone misreports their percentage interstate use, it doesn't matter if they're both priced the same. They can report it at zero or 100 or 50/50. It's going to be the number of minutes times a rate that's the same.

So there's a lot of audit, administration, contract, enforcement benefits from having the rates the same. So there are disadvantages of getting the intrastate rate lower than the interstate rate.



MR. REYES: I have no further questions.

MR. DeROCHE: Thank you very much. Just to be clear: Is counsel for Level 3 here? No.

How about counsel for Qwest? No.

And counsel for Sprint?

MR. ARON: Sprint's counsel is here. We don't have any cross-examination.

MR. DeROCHE: Thank you.

EXAMINATION

BY MR. CHATTOPADHYAY:

Q. Good afternoon.

A. [OYEFUSI] Good afternoon.

Q. I am looking at Exhibit (a) to the prefiled testimony that you submitted in this matter, Page 1. This is a chart of what other states have done in addressing CLEC switched-access rates. Correct?

A. [OYEFUSI] Yes.

Q. Are you familiar with other states' actions that are summarized in this chart?

A. [NURSE] Yes, some more than others.

A. [OYEFUSI] Familiar with some of them, but not all of them.

Q. Is it fair to say that some states have adopted an approach that is different than what



Verizon and AT&T are proposing here in this proceeding?

A. [OYEFUSI] That is correct.

A. [NURSE] I mean, that includes that reform in some states as implemented has not gone as far as Verizon. Some states haven't implemented any reform at all.

Q. I'm going to direct your attention to California in particular. Is that a state that you have knowledge of the proceeding that has taken place there?

A. [OYEFUSI] Yes, I'm familiar with the order that was issued in that case.

Q. And what was their approach to dealing with this issue?

A. [OYEFUSI] They decided to go with the ILEC cost, I believe, 10 percent.

Q. Is there any explanation that they have given in terms of how they arrived at that 10 percent figure?

A. [OYEFUSI] I believe that was a proposal by one of the parties. I'm not exactly sure at this point. But I think that was a proposal by one of the parties. But it wasn't -- I don't think it was linked to any particular calculation.

A. [NURSE] I do know, because I worked on part of the case, that it was controversial because the cap, the rate was higher than some of the CLECs were then charging; and when the cap was implemented, they stepped it down, and some carriers boosted their rate up to the new cap, which was kind of backwards.

I mean, if you're trying to make progress, trying to move these rates toward cost, trying to move these rates down -- it was certainly not anticipated by AT&T, that initiated the case, that the rates -- you know, that the commission order would drive rates up. But some of the CLECs said, "Hey, the cap says 2 1/2 cents. I'm going up." And we filed a protest that that was not what it meant; that if your rate was above 2 1/2 you were supposed to come down, not that you could go up to it.

The commission said no, it's a cap, and you can go up to the cap even if you're below the cap. And then the AT&T affiliate, TCG in California, then actually raise its rate up to the cap because we were below the cap. That's not an



ideal policy outcome, but, you know, we didn't foresee that outcome in the case. We objected to that interpretation of the order. Once they said those were the rules of engagement, we weren't going to unilaterally disengage and keep our rate lower while our competitors raised it.

So it's not a model outcome. It had some -- from my perspective, it had some sort of poor outcomes in its implementation.

Q. Let me ask you this: Throughout your testimony, and I believe throughout Mr. Vasington's testimony as well, there's been mention of the fact that CLEC rates span a wide variety of rates, up to, I think it was, 1500 percent above the Verizon rate.

A. [NURSE] Right.

Q. Given that scenario, is the 10 percent cap that California has implemented, is that something that would address some of the concerns that you as AT&T have in this case?

A. [NURSE] No, I think it was kind of a political compromise, in the sense that CLECs were making the same type of complaints, arguments they are here: "If I have to show my costs to my customers, my customers won't pay my costs, and I'll



be out of business." The commission took pity on them and said, "All right, we'll give you 10 percent more." I mean, 10 percent of 2 1/2, they gave them a quarter of a cent.

So, you know, I don't think it's a good model of an outcome. I wouldn't recommend adopting it. I think politically it's a small enough delta that, you know, it let the CLECs -- you know, it let the commission do something for the CLECs but not do much for them. So in the process of, you know, handing out a little bit to all the parties in a political context, I think that's what the 10 percent represents.

But certainly you're looking at, you know, CLECs here who have rates that, you know, are a nickel higher or, you know, 1500 percent, as you said.

A. [OYEFUSI] And if you compare 1500 percent to 10 percent, 10 percent is better.

A. [NURSE] Although I would say one disadvantage of 10 percent on the Verizon rate, if you're at sort of .6 and you'd otherwise be at sort of .66, that small little delta doesn't generate much revenue, but it opens up a whole administrative



headache, because you don't have parity on the two rates, and you have joint-use trunks that you have to keep track of different traffic types whose price would only differ by a pretty small amount.

I don't think the extra bit of that revenue, that 6/100 of a cent, would be worth the administrative headache; and it would make it more difficult for the Department here to set up compliance for the CLEC compliance, because if you mirror the Verizon rate, you could have them Xerox their Federal tariff and file it here at the Department. If you put a 10 percent delta on, then you have to have another mechanism for how and where you put that 10 percent on. I just don't think that's worth the administrative efficiency and the transaction costs for 6/100 of a percent.

Q. Thank you. Just following up a question from the Attorney General: My understanding was that you agreed that there is a range of reasonable of the rate that can be set for CLEC access rates.

A. [NURSE] For all rates, reasonableness is always a range.

Q. So it's not that the Verizon rate is the only rate that would be just and reasonable.

A. [NURSE] Right. Reasonableness is a judgmental range, not a particular point.

Q. I want to direct your attention to your response to DTC-AT&T-1-1.

A. [NURSE] Yes.

Q. This is a question that deals with the relationship between cost of providing access service and the rate at which that cost -- that access rates are capped. Is that fair to say?

A. [NURSE] Yes.

Q. And I believe in your response you say that you don't think a CLEC's cost of providing access is relevant to determination of what a reasonable charge for switched access would be. Is that fair?

A. [NURSE] Yes. A competitor's costs are irrelevant in a competitive market. A competitive market sets a price, and competitors are price-takers -- for a homogeneous product, to make it simpler.

In a competitive market, the market determines the price. A new entrant meets that price, because no customer would pay more for a commodity from one provider than another, regardless of what his costs of production were, as long as the



other providers could provide all the market quantity.

So, I mean, you wouldn't pay $15 for an Exxon station on one side of the street and $4 on the other. You'd say no way, it's the same thing, I'm going across the street.

So in a competitive market, competitors do not set their price based on their costs, they set their price based on their market price, and then they manage their costs to get under the market price.

Q. Are you saying that cost is then unrelated to the inquiry?

A. [NURSE] Yes, that the market price is the market price. If a CLEC's cost -- if a CLEC came and entered the market today and his cost of providing access was $5 a minute, that would be irrelevant. I don't think you can say, "Well, this guy is really super, super inefficient. We're going to give him a really super, super high rate."

Regulation is supposed to emulate competition and provide reasonable outcomes. That's an unreasonable outcome. The CLEC has to come in, and if he's a competitor, he has to meet the



competitive challenge, he has to meet the competitive market price. That's why we say push the costs that they're getting today out of the access market into the local market. They can present those costs in the competitive market, and if they're competitive, they can recover those costs, and if they can't recover those costs, it's because they're not competitive. They say they're competitors. If you're a competitor, you shouldn't be afraid to compete, but you can compete against customers who can say no. Competing against customers who are captive is cowardly.

Q. Following up on your response: Should the Department be considering the impact that any change in the current rate structure would have on competing carriers? Is that a relevant factor to be considered by the Department, the impact of any change in the current rate structure that we implement?

A. [NURSE] It's a factor that you would have to consider. I think the question goes to the weight to which you would assign the factor. You'd have to consider all the things that change, and then you'd have to assign weights, if any, to them.



If the case is that today CLECs are charging too low for some retail services, below their cost, say, because they're charging too high, if you will, for access rates, and if you push their access rates and revenue down to the Verizon level and that caused them to raise their local rate, that might be viewed as adverse, but I think that's positive, because that means the prices would reflect the cost, and it would mean, if that's the case, that someone who is uncompetitive but is masquerading as competitive, because they're cross-subsidizing from access to local, would then be revealed, not as a new-entrant efficient competitor, but as a new-entrant inefficient competitor. At that point they would be forced to become competitive or they would be forced to exit, either one of which are better societal outcomes. You don't want to attract higher-cost providers and displace lower-cost providers. You want to go the other way around. You want to reward the good and penalize the bad.

That doesn't mean that there isn't some pain to somebody, that some customer won't pay some higher rate for some service. But you're fixing a distortion, and that's a positive thing.

Q. You're saying that result would, to borrow a phrase from yesterday, would increase or improve consumer welfare?

A. [NURSE] Yes, definitely. If you take -- you know, if you take the total cost of production, the rate times the number of customers, and you started with Verizon having all the customers, if CLECs came in and they took 10 percent of the market and they were 10 percent more efficient than Verizon, total telecommunications costs would go down by 1 percent overall. Society would be better off. That was the point of introducing competition.

If the CLECs come in and their costs are higher, then the total costs for the state, for the community of all the people and business in the state, goes up. If there's no other offsetting change, no improvement in quality or whatever, that's a net drag for society, for the state.

That doesn't mean that there won't be necessarily some individual who's better off in that distortion. Total costs went up. Society was worse off. That doesn't mean there isn't some individual who got some benefit under the deal.



But certainly consumers as a whole are worse off if you develop a system that allows high-cost providers to displace low-cost providers, everything else being equal.

Q. So even if end-user rates were to go up as a result of capping access rates, you're saying that the benefits to competition trump or outweigh any increase in end-user rates that may result because of that?

A. [NURSE] Yes, in the long run -- I mean, I don't know that the CLECs would have to raise their rates. We don't know what their costs are. There's no evidence. I don't know that they wouldn't absorb it. I don't know that they wouldn't, you know, spread it over data services rather than local services, interstate services over intrastate services. I don't know that two of them wouldn't merge together and become more efficient. All kinds of things could happen.

But it is possible, and I don't think it's really a bar, if they had to raise their rate for a local customer who was getting a price that was below cost today because the Commission or the Department moved costs from the access market to the



local market -- although that would be bad for that particular customer, you know, immediately, overall customers would immediately be better off than -- from the efficiency second-order effects they'd be better off still.

A. [OYEFUSI] And in case there's a concern for the end user, the end user will only have to endure that price increase up to the point where the end user has no alternative provider that can offer that same service at a lower price.

A. [NURSE] Right. If RNK had to raise their price $5 and they were then above Verizon or above Comcast or above AT&T, those customers would flee to the other providers, which would temper RNK's ability to raise that price. That's what competition is. You can't raise your price above the market price in a competitive market.

Q. Thank you. Now, if the Department were to lower rates and/or grant Verizon's proposal here and cap CLEC rates at the Verizon rate, what would your position be on implementing some sort of a transition period to implement such rate changes?

A. [NURSE] Shorter is better. They've operated under this regime on the interstate side



for seven years, so they're very familiar with what it means and how it works. You know, the sooner the transition happens, the better. I mean, I think it would take something like 90 days to do the administrative part of it.

I can see a case -- you know, what if you had contract customers that you were locked in on? I think usually most -- most business contracts would have a change-of-law provision that would reopen those contracts, or the Commission could provide -- the Department could provide a fresh look if they had those.

But generally, you want the market to quickly reflect changes in cost in the changes in price, so I think you want a short transition. I think you want a transition in terms of some number of months.

Q. So it's AT&T's position that some transition period would be appropriate in that kind of circumstance?

A. [NURSE] Yeah, I think you would need three months, just administratively, you know, maybe six months. But I don't think the transition should be in terms of years.

Q. We may have touched on this, but I'll ask it and see if the response is the same as the one that's already been offered. If the Department were to adopt the Verizon proposal, what tangible benefit would the Massachusetts consumer, telecommunications consumer see?

A. [NURSE] Well, they would see lower toll rates, which they've been seeing and they'll continue to see. That's a pretty direct one, because the price floor for toll will come down.

To the extent that CLECs were inefficient and it's going to drive resources to a more efficient engagement, that's a benefit. If CLECs' business hypothetically were propped up only by high access rates and otherwise were not viable, that's not where we want to have resources attracted. That's an uneconomic, inefficient undertaking. So when you increase the efficiency of that local market, that long-distance market, the data-services market, you're going to drive the resources to a better engagement if they're currently inefficiently engaged.

But they'll see lower toll rates. They're going to be a better-functioning



local-exchange market. There may be local-exchange carriers now, if they don't engage in this access cross-subsidy, who can't compete because they're not doing it. So those guys are being harmed, and their customers are being harmed, and all the benefit from their competition is being denied.

So I see it as being better on the local side and better on the long-distance side. The only downside is some customers may -- who have prices that might be below cost may see price increases. But those are business customers who have alternatives for their service. The business market is very competitive, and so I don't see those customers as facing a price increase that they can't escape, and I think that will temper the price increase that they would be looking at, because you don't raise the price of the guy who can get away, you raise the price of a guy like an IXC who can't.

Q. Why in your opinion would only business customers see increases in rates and not residential customers as well?

A. [NURSE] I think of the CLECs as -- facilities-based CLECs as predominantly serving business customers. It wouldn't necessarily be



exclusively business customers. I mean, if Verizon's, you know, price with basic and some features is $25 and RNK or somebody wanted to raise the price above that, a residential customer would snap his service over to -- you know, back to Verizon or over to Comcast in a heartbeat.

So to the extent that the CLEC serves some residential customers, they could theoretically face some service (sic). But residential service is pretty simple. It's not like you have to install a T-1 line to the customer prem. before, and you don't have to do the conversions.

Residential service is relatively straightforward, and I think almost without exception every single residential customer in the state has Verizon facilities to the premise, and then a large portion of them have Comcast or other cable telephony facilities. And so given that there's two facilities-based providers for most customers ready to step in right away, it's going to be difficult to raise residential prices.

Q. Thank you. Now, in DTC-AT&T-1-5 -- this is a question pertaining to alleged traffic-pumping in Massachusetts. You provide a response to that



question.

A. [OYEFUSI] Yes.

Q. Does your response include all information available to AT&T regarding alleged traffic-pumping activity in Massachusetts?

A. [OYEFUSI] Yes, as of the time that we prepared this data response. Yes, that was the information we had. And in fact, I think the response also indicated that we had just observed this trend, the spike on the minutes. The provider was not shown here.

But we observed the trend in some particular lines, and the investigation continues on a daily basis to find out what is going on with that line and why the sudden spike.

But as of the time that we prepared this, this was the information that we had for Massachusetts.

Q. Thank you.

MR. CHATTOPADHYAY: I'm just going to remind the parties that they have a continuing duty to update responses to information requests with new information as that information becomes available. And to the extent that there is additional information in response to DTC-AT&T-1-5, that obligation also holds.

MR. GRUBER: We'll follow up.

MR. CHATTOPADHYAY: Assuming that that information is entered into the record.

EXAMINATION

BY MR. ISENBERG:

Q. Just one question, gentlemen: What are your views of the market-power analysis in Dr. Ankum's testimony? And is it necessary for the Department to undertake that analysis in order to find that CLECs had market power, are dominant, and/or are monopoly providers of switched-access service?

A. [OYEFUSI] Well, you have two questions there. My view about the five different steps that Dr. Ankum says we need to go through to determine whether or not there is market power: I don't define market power that way. I believe that, like I said in previous responses, that the person that determines who wins in a free market is the customer. Every carrier -- or every company comes into a market to win the customer over. Whether or not there is market power or whether or not one



carrier has 10 percent or 2 percent, where you have a captive audience, where you have a captive customer in the particular instance that we're discussing, it doesn't matter whether that is the only customer that that carrier has. The customer does not have the opportunity to say no, and that is what really determines the market power.

I know the DOJ used the guidelines and suggested that you do the guidelines and determine all the tests that you determine from the index. I don't believe that that is really necessary to resolve this case, especially when we are not really asking you to determine the price for each CLEC. We are asking you --

This is pretty much requesting a rule change. Under the existing rule, there are some things that we mentioned are causing the market not to react the way the market should really react. That is all we're trying to fix. If you change the rule, it will fix those imperfections, and there is incentive to behave properly by each operator that's in the market.

Q. So in your view, we can determine that CLECs have a monopoly for switched-access service --



A. [OYEFUSI] Yes.

Q. -- without conducting the analysis that Dr. Ankum has suggested, including looking at demand and supply elasticities, market share, and also the merger guidelines?

A. [OYEFUSI] I believe you can do that. You will not be doing anything wrong if you do that.

A. [NURSE] All that stuff is really irrelevant. You know, the problem is, when we get a call to go to terminate to that customer, the CLEC -- certainly the LEC serving that customer is the monopoly provider of access to that customer, and the number of other providers is irrelevant to us. If there were no other providers or 100 other providers -- if 100 providers had a price of free, there's no competitive benefit to me at that time for that customer. I can't switch and say, "Oh, I want CLEC B to terminate this call to Mrs. Smith." I'm stuck with CLEC A terminating the call.

And that's why, you know, the issue that you might look at if you were merging steel suppliers together -- you know, is there going to be less competition when people go out to bid for steel -- that's relevant in that kind of market.



But this structure, the access market has a bizarre structure, with this trilateral arrangement and carriers being compelled to carry calls. You don't usually have someone compelled to buy in most markets -- car companies are compelled to buy steel from U.S. Steel or something like that.

So I just don't think that it really applies. And all those things that you had to do really just get in the way of the Department doing what the FCC did seven years ago. Seven years is a long time to wait.

Q. Any other observations on Dr. Ankum's testimony?

A. [OYEFUSI] Well, I noticed that he made several assertions about the costs of the CLECs are higher because they do not have economies of scale relative to Verizon. We still don't know what the costs are.

What I've said earlier was that these are the decisions that companies make prior to entry into the market, when they determine what it's going to cost to provide something in the market, and they weigh that against the price they're going to be able to charge. If it pays to enter, they will enter.

But in this particular case, there is no incentive to keep their price within the market cap.

A. [NURSE] I mean, my observations first would be, the testimony was very long, and my recommendation would be not to assign any weight to its merit based on its length, because there is none.

It's really 20 pages of testimony spread out over 100 pages, and there's just a lot of sort of rambling discussion that doesn't really go to the point. The discussion about irrelevant points, complaining about how the FCC set the regime and they weren't in the negotiations and then they had a comment period but they did or they didn't comment -- all this is almost dicta. It doesn't really go to the issue.

There's no evidence in there. There's no cost study for the CLECs. The CLECs' access rates vary hugely, but there's no investigation of did you look at why some of your clients have low access rates and why some of your clients have hugely higher access rates? Is that based on their hugely higher profit margin? Is that based on



hugely different cost structures? There's no there there.

When I read the testimony, I was struck by it kept saying "Well, it's likely that this" and "It's likely that that" and "It's likely that this." So I searched the testimony for how many times it said "likely," and I forget the number exactly, but something like 28 times. It struck me that there aren't hard factual assertions in there because there aren't any hard facts in there. I think Mr. Vasington said there wasn't any evidence there.

That's really the problem. It's sort of a canned piece of testimony that just sort of has these general descriptions and sort of based on anybody's experience at QSI. They can kind of generally say, "This is the way we observe things."

It's not what I would look for. I'm doing access cases in other states, and I see cost studies, I see hard evidence, I see, you know, a factual discovery to support these things.

It just doesn't match that a number of states have gone to parity and they have CLECs. I live in Maryland. Maryland's a parity state. All the CLECs didn't leave Maryland. And yet his



premise is that they're inefficient, they have these high costs, and they can't get them on a competitive market, and so they have to get them out of the uncompetitive access market -- but that doesn't hold up.

So there's a lot of cases where there's conjecture or sort of theoretical projections, where instead there could have been empirical evidence that would have had more weight. If there was a correlation analysis that when CLECs -- every state where CLECs went to parity all the CLECs were driven out of business, that would have a lot of weight. You'd say, "Wow, there seems to be a connection here." But there's none of that. It's projections.

So, you know, some of it's good. Some of it's true. Some of it's relevant, some of it's not. But I would just, you know, sort of read it with that eye: Is this really relevant? So what? How does it work in the interstate jurisdiction? How does it work in the other states?

Q. Thank you.

MR. DeROCHE: Bearing in mind that recross will be limited to evidence presented during the Department's questioning of the witnesses, can I



just get a quick show of hands how many parties intend to recross?

MR. MESSENGER: PAETEC has none.

MR. DeROCHE: Very good.

Would you like to do redirect before we take a break?

MR. GRUBER: May I have one minute?

MR. DeROCHE: Sure.

MR. GRUBER: I'm pleased to say, Mr. Hearing Officer, no redirect.

MR. DeROCHE: Very good.

EXAMINATION

BY MR. MAEL:

Q. Given your experience in other states, have you come across any jurisdictions where in fact they have had a proceeding investigating the access rates and have in fact not come to some kind of regulatory solution?

A. [OYEFUSI] You're asking if it is still pending or --

Q. One that has come to a decision which did not cap access rates or some alternative means of regulating.

A. [OYEFUSI] No, I don't know of any.

Q. Is that true for both of you?
A. [NURSE] If I can give sort of a short answer, and it's really the long answer. But I understand the access arrangement in Florida is generally described kind of as a cabal. There was legislation. Orders were reversed, and things were done that are being redone. I don't have the whole history. But I understand that Florida is kind of a mess.
A. [OYEFUSI] Wait a minute. Florida just had a workshop, and we filed comments in Florida, so nothing has happened in Florida. In fact, it wasn't a docketed case yet. It was just Florida asking parties to comment on whether or not staff should recommend to the commission in Florida that they should open up a case. So there was no access, CLEC access case on CLEC access rates.
Q. A follow-up to Mr. Chattopadhyay's question: With regard to states, when we talked about possibly, if the cap was instituted over a period of time rather than to flash-cut immediately, similar to California -- and I believe the FCC's order also was over a period of three years?
A. [OYEFUSI] Yes.



Q. And California was over a period of two years?
A. [NURSE] Two, maybe two steps.
A. [OYEFUSI] Well, California was a flash cut, but it happened in steps. It's like immediately they set a cap, a capped actual rate, and then about a year later the rate goes down a little bit, and another year then it goes to 10 percent above --
Q. What I was trying to get at, that it did not immediately go to the cap; rather, in both cases it went in stages.
A. [OYEFUSI] Well, the California case, really it was a cap. It was just like the cap was stepping down. It was capped right away at a certain number, and the cap was stepping down until it gets to 10 percent above the ILEC.
Q. And you believe that's not efficient?
A. [NURSE] I don't think -- I think you want competitive markets to reflect competitive conditions sooner rather than later. You've got an administrative sort of time lag in the front end to put it in, but I think you want to do it relatively quickly.



I know I worked on the case in Virginia, and they did it on a flash cut. A number of states have done it on a flash cut. I haven't seen any evidence that states that did it right away ended up worse off than states that took a longer time to do it.
Q. I think the concern is more CLECs who have more of their revenue share tied up in access versus others, the effect on them.
A. [NURSE] You shouldn't care in that sense. I mean, if a competitor is inefficient and he is getting a big, uneconomic subsidy and he can't compete, if it's a fair race, why would you want to kill him off in two years instead of killing him off sooner? I mean, if he's inefficient and he's not competitive, why would you want to drag it out?
Q. Thank you.
MR. DeROCHE: Keeping in mind there was some new testimony, can I poll the parties: Is there any recross? No. Any redirect?
MR. GRUBER: No.
MR. DeROCHE: Let's take ten minutes. We'll come back at 3:45.
(Recess taken.)



MICHAEL D. PELCOVITS, Sworn
DIRECT EXAMINATION
BY MS. O'DELL:
Q. Please state your name and business address.
A. Michael D. Pelcovits, 1155 Connecticut Avenue Northwest, Washington, D.C. 20036.
Q. And on whose behalf are you testifying here today?
A. I'm testifying on behalf of Comcast.
Q. Have you sponsored prefiled testimony in this matter on behalf of Comcast?
A. Yes.
Q. Was it prepared by you or under your supervision and direction?
A. Yes.
Q. Do you have any additions or corrections you wish to make to this testimony?
A. No.
Q. Is your testimony true and correct, to the best of your information, knowledge, and belief?
A. Yes.
Q. And if I asked you the questions set forth in the testimony today, would your answers be the

same?

A. Yes.

Q. Did you also sponsor discovery responses on behalf of Comcast in this proceeding?

A. I did.

Q. Are the answers that you provided to those discovery requests true and accurate, to the best of your knowledge?

A. Yes.

Q. And if those same questions were asked of you here today, would your answers be the same?

A. Yes.

MS. O'DELL: Our witness is available for cross-examination.

MR. DeROCHE: Thank you very much. Mr. Fipphen?

MR. FIPPHEN: I have no questions for Dr. Pelcovits.

MR. DeROCHE: Thank you very much. Mr. Gruber?

MR. GRUBER: I do, but I only have one question.

CROSS-EXAMINATION

BY MR. GRUBER:



Q. Good afternoon, Dr. Pelcovits.

A. Good afternoon, Mr. Gruber.

Q. Dr. Pelcovits, I want you to explain to us, why aren't access prices that are set at CLEC costs, why aren't they necessarily just and reasonable? Speaking from the point of view of an economist and public-policy analyst and recognizing that "just and reasonable" is also a statutory term.

A. I will just begin by taking your assumption, which is that CLEC costs are higher. If they are higher, then the question becomes is it good policy to have those reflected in higher call-termination rates. My answer to that is no, that that would be inconsistent with what you would see in a fully competitive market environment.

And particularly here you're in a situation where I think it's been said quite a lot the customer making the choice of carrier -- namely, the customer subscribing to a CLEC -- is not being affected by those high termination rates, so there is no market control over those high termination rates.

What this simply does is, it leads to significant distortions in the market, a number of



different ways, which I've discussed in my testimony. There's really no benefit to this type of regime, where the CLECs are allowed to charge rates -- even if they reflect their costs -- but to charge rates that could not be supported if there were indeed some market check, some competition that was controlling those rates, someone who could say, "No, I don't want to buy it at that price."

That's the simple thing that's missing, and with that missing, there's no market control to make sure those rates are reasonable.

MR. GRUBER: I promised only one question. I'll leave it at that.

MR. DeROCHE: Thanks very much.

Mr. Adams, Richmond?

CROSS-EXAMINATION

BY MR. ADAMS:

Q. Good afternoon.

A. Good afternoon, Mr. Adams.

Q. You've probably guessed my question before I ask. Somehow, I think I might know what your answer might be before I ask, but to get it in the record: Would Comcast oppose or support the idea of a rural exemption for rural CLECs?



A. At this point Comcast has not taken a position on this issue.

Q. So you neither oppose nor support it.

A. I neither oppose nor support it.

Q. Thank you.

MR. DeROCHE: Mr. Krathwohl?

CROSS-EXAMINATION

BY MR. KRATHWOHL:

Q. Good afternoon, Dr. Pelcovits. My name is Eric Krathwohl. I'm here on behalf of One Communications and XO Communications.

A. Good afternoon to you.

Q. On Page 5, going to Page 6 -- I guess really on Page 6 -- you state that ILECs have the ability and the incentive to raise price and degrade quality of interconnection to competitors. Do you have any examples of Verizon doing that?

A. I want to make sure I'm at the right line here.

Q. I was looking at Line 14. I'm sorry.

A. I don't have examples specific to Massachusetts, but I believe that the dominance of the ILECs is pretty clear throughout the country, and they have acted on this dominance in how they've set above-cost access rates with respect to a number of the different access rates.

And in terms of the quality, I think the most pressing question and issue that I'm aware of is some of the concerns of some of the competitors, in terms of making sure that they could exchange packet-switched traffic under the same conditions as they exchange the circuit-switched traffic.

But here I'm just talking about the general overall powerful incentive of the carrier with a very large market share when it's involved in interconnection issues with other competitors.

Q. And going to that general statement, I guess picking up on one of the statements from your immediately preceding witnesses, talking about a fair race: Do you call it a fair race between the ILECs and competitors?

A. I think you'll need to be a little more specific. It's kind of a decathlon, so we need to specify which race.

In terms of the overall -- I think I want to answer and try to get right to the point of how this relates to interconnection. I think as I said already, the issue of interconnection is very



possibly one of the most important issues left for regulatory telecommunications agencies to deal with, and that is because even if a competitor can get into the market -- it doesn't face any other barriers to entry, it can get out there, it can get capital, it can build facilities, it can reach customers -- it still needs to interconnect.

And it is a problem in trying to provide a telecommunications service if you cannot interconnect. You need to be able to have your customers talk to other carriers' customers.

So in that sense, if you're a small carrier in the market and there is someone who is very big, they have far less need for you than you have for them, the "you" being the CLEC. I think this is a well-established point in economics and in telecommunications, that this is an area where you need to have regulation, to make sure that the terms and conditions governing interconnection are fair and reasonable.

Q. And one of the areas that competitors would need the ILEC, for example, might that be in transporting of their calls?

A. Specifically if you're talking about



transport, in terms of transport for purposes of terminating a call -- essentially, this is under the general rubric of tandem transport? Is that what you have in mind?

Q. Sure.

A. Yes, there's still an ILEC dominance in the overall local transport market with respect to routing and aggregating of traffic of tandems and with respect to some of the, what's known as the special-access market. So, yes, there is a dominance of the ILEC in those markets.

Q. The special-access market being special-access services?

A. Different special-access services, yes, yes.

Q. Are you familiar with the docket in Massachusetts 01-34?

A. No.

Q. But when you talk about special-access services, is that one of the situations that you see that ILECs have imposed high prices that are perhaps above what their costs would justify or, if there weren't a market-power situation, that a competitive market would lead to?



A. It would lead to lower rates. Yes, I believe that the special-access market, which is principally an interstate market, that the ILECs have very, very high rates of return. They have, I would say, set higher rates where they have engaged in the least competition, and they have engaged in various actions to limit the customers' ability to switch business to the CLECs, by tying customers into various type of volume discount plans that make it very expensive for the customer to shift a little bit of his volume to a competitor.

Q. On Page 8 of your testimony, I guess the carryover answer, you talk about the options or maybe lack of options for originating carriers to address perceived excesses in terminating access charges. Is that correct?

A. Yes.

Q. And at least theoretically, isn't there one more option, that those carriers could charge more for a call to a high-cost terminating carrier's customer?

A. I think I did talk about that. That's on Page 8. Maybe I didn't.

Well, yes, theoretically the potential

effect in the market, assuming no regulatory impediment to doing it, is to charge a higher rate to the caller to place a call to a customer served by a CLEC that has high terminating access rates. That's theoretically possible. I have absolutely no knowledge or understanding --

Let me put it this way: I have not seen anything that would lead me to believe it's practical to do that, because you would need to be able to actually identify the CLEC serving the called party on a sort of instantaneous basis and let the customer know that. And given that there's number portability and you can't associate a number with a carrier on a sort of ongoing basis, I think it's almost -- I can't see how to do it. I mean, from my knowledge of billing and telecommunications and what I've seen, I've never seen anything on that detailed a basis.

Q. Have you seen the information provided in this case where there's been extensive tracking down by various carriers, certain numbers that show up as having been called?

A. I have seen the response to a Verizon discovery request that I believe Mr. Vasington spoke



about this morning in relationship to this issue of traffic-pumping. If that's what you're referring to, yes, I have seen it.

Q. And in fact, just within the last hour we looked at the same sort of exhibit, I believe, from AT&T, didn't we?

A. You probably caught me snoozing. I don't recall that.

Q. I think also on Page 8, is it fair to say that you're expressing I guess at least a theoretical concern that CLECs with high terminating access rates will be able to unfairly attract more customers than they otherwise would be able to? Is that correct? Perhaps on Lines 17 and 18.

A. Yes, I think that specifically is addressing the market dynamic which could lead to customers being attracted to the CLECs with excessive terminating access charges because those high terminating access rates would give the CLEC the ability to set lower subscription or originating rates.

Q. Have you ever studied the relationship between higher-terminating-access-charge CLECs and their ability to obtain customers?



A. I have not seen that, and in fact the response of the CLECs in this proceeding is that they're constrained by competition in how they set prices to their customers. I think it would be difficult to actually do an empirical study to figure that out.

But with respect to an obvious effect of this, there are certainly carriers that attract customers that have disproportionately large amounts of terminating traffic, and that's evident from some of the discovery material, some of it confidential, which reflects carriers with very large percentages of their revenues from access charges.

Q. And in the scheme of thing even in the universe of CLECs, would those carriers with the highest ratios that you've just referenced, would those be the smaller or the larger carriers?

A. I must say, I have not looked and compared the numbers, one CLEC to another, and I think we start to slip into proprietary issues.

Q. I'm just looking for a general answer.

A. I don't know if I can say that.

Q. That's fine. Turning to Page 9 of your testimony: Do I infer correctly from your testimony



that if there were not toll-call price averaging, that the concern of excessive CLEC terminating access charges could be solved by the market?

A. I don't think so because, as I said earlier, I don't think it's practical to set --

Ultimately you need to have the calling party's carrier be able to associate the calling to these high-terminating-access charge CLECs with the rates the customer is paying. And unless there's a way to set up the billing system and some sort of a call-interrupt system or something to be able to reflect that in the price, the problem remains.

I mean, the problem -- the terminating-access problem here is not something that just came from nowhere. It's essentially a regulatory-created problem, so it needs a regulatory-created answer. The regulatory problem is the obligation to terminate, and the problem is there's an obligation without a price, and essentially it's half of a solution. I cannot see that it would make sense to create the problem with this halfway thing and then expect carriers to come up with complicated billing systems to get around the distortion that that obligation has created.

Q. Continuing through your testimony and a couple of pages in: In Footnote 7 you reference the different elements of access charges, and you note that transport-related charges seem to be much less of a concern for you. Is that correct?

A. Yes.

Q. Are transport charges usage -- priced on the basis of usage?

A. Some of them are. And some of them are not.

Q. And to the extent that carriers' costs are a relevant consideration in determining -- in a regulator determining what their charges should be, should there be consideration of elements that are -- the cost of which does not vary on the basis of usage?

A. I don't think I understand that question.

Q. I don't blame you. First of all, would you agree that there should be some consideration of a carrier's costs in determining what charges they should be allowed by regulators to impose on customers?

A. In most circumstances, yes. With respect to terminating access, no. I think that, as I said



in response to Mr. Gruber's question, if a carrier has higher costs, I think it's very inefficient for it to recover those higher costs from customers that don't have a choice of whether or not to use that particular carrier. I think that just simply leads to very inefficient choices and allocation of resources in the market.

And with respect to cost and price setting in general in the market, well, generally it's the ILECs that are regulated when it comes to setting rates, and those are at least supposedly related to some analysis of costs.

Q. And in the context that a regulator is looking at costs, should they consider only costs of elements that vary by usage?

A. Well, it depends what rate they're looking at. If I start with your assumption or with your essentially hypothetical here that a regulator should be looking at costs in determining whether a rate is acceptable or not, it should try to look at costs in relationship to the way in which the charges are imposed, and hopefully those should track. Namely, a usage-sensitive cost should track into a usage-sensitive rate; a non-usage-sensitive



cost should hopefully track into a non-usage-sensitive rate.

Q. Now going to the case of terminating access, and you just referenced back to your answer to Mr. Gruber, and you were talking about terminating switched access, where the -- I guess the originating carrier doesn't have a choice about using that service: The lack of that choice is why you see a problem with the level of the switched-access charges; correct?

A. It's why I see there's a need to regulate switched-access charges. In other words --

I'll go back to what I said earlier, because I think it's very important and I think it's not been focused on to this point, which is that it's not that there's a fundamental market failure in the sense that you have CLECs and they suddenly have acquired market power from somewhere and can overcharge for terminating access. The problem is because every other carrier has a mandate, an obligation to terminate traffic on those CLECs.

Once you give an obligation or requirement, you have to set a price, because otherwise it's really -- you know, it's really just



sort of a half a loaf. It's just not the whole thing.

So I think it's very important to keep that in mind, keep that front and center.

Q. And that terminating access consists of both switching and transport elements; is that correct?

A. Yes, in the sense that switched access does have rates for both transport and switching. I think the, what I'll call the terminating-access-monopoly problem with respect to the CLECs I think is, as far as I am aware, an issue only with respect to switching, because certainly Verizon can get its traffic to the CLEC using its own facilities. So once the traffic arrives at the switch, the only charge that I'd really be concerned about is the charge to get it from wherever the handoff is through the switch.

Q. Doesn't it still have to go to the end user, then?

A. That's not switching, that's termination, and that's not transport, either.

Q. On Page 11 of your testimony you referred to the HAI study.

A. Yes.
Q. Can you briefly state how that study determined the cost of call termination?
A. The HAI study has a switching module, is what it's called, and it sizes the switch based on the number of lines in the ILEC's central office, and then it generates the capital costs for the switch and the associated investments. And then it has other calculations to derive essentially an annual expense from this capital cost.
And then it takes that annual expense for the capital cost and has to do a separation between non-traffic-sensitive and traffic-sensitive. And then it divides the non-traffic-sensitive by the number of lines and the traffic-sensitive by the number of minutes.
Q. And to come up with the resulting cost of call termination, what carriers' costs were used in that study?
A. Well, all of my friends at Verizon would beat me up if I tried to say anything other than it was a hypothetical network. That's what they've always said.
It is. It's an engineering economic



model. Namely, it is not looking at the actual expenditures of the ILECs on switches; it's looking at the engineering needs and the cost of the switch. And it's obviously sized and engineered for whatever ILEC you're doing the study for -- although it's a pretty generic model.
So it's tailored -- and particularly in this case the one I've cited is tailored -- for that particular ILEC in that particular situation. The inherent model, as I said, is not derived from the ILEC's actual costs; hence the name "hypothetical."
Q. But it's done in the context of an ILEC network design as opposed to a CLEC network design?
A. I would say it's more done in the context of a particular mix of lines, trunks, and usage, and it's pretty flexible in that sense. As I said, it's engineered to meet the demand on the switch.
The basic connection between HAI and the ILECs -- and this stuff has been going on for 15 years or so, that I've been doing it. The sort of crafting of the HAI model to fit the ILECs, 99 percent of that effort is the loop costs. The switching cost is almost a separate module. It's put in there. It fits the demand and some of the



other characteristics of the ILEC. But any carrier that uses a switch in a similar way is going to, at least in the model, generate reasonably similar costs.
Q. So what you've just said was that the switching costs would be generally similar for whatever carrier it was, but is it fair to say that the capital costs for a switch would be much lower for a larger, higher, better-rated, better-credit-rated entity than otherwise?
A. I think that's certainly historically been true, that bigger ILECs get bigger discounts, although all the information on switched discounts is proprietary and kind of guarded with armed Brinks guards.
I don't know how true that is now and in the last couple of years with respect to circuit switches, because it's become the old technology and there's not much demand for them. Rumor is you can buy them on eBay.
So I think at that point it's not really a volume-discount type of transaction; it's, you know, get rid of this for whatever price we can.
So actually, I think that I would say,



if you really looked into it, this number is way too high, given the surplus of these switches.
Q. You also referred to a West Virginia survey of local switching charges; is that correct?
A. I don't think it's done under the auspices of West Virginia. It's just Billy Jack Gregg, who is well-known in the NARUC world. And this is simply a survey of rates that he has collected and maintained up until probably the date that the discovery request was propounded on me, because when I did it, I found it on the website, and when you did it, you couldn't find it and I couldn't either at that point. So someone pulled it down, but I had records of it.
Anyway, a digression. Sorry.
Q. But the data that you were referring to that is on Page 12 and referenced in Footnote 10 was updated in 2004?
A. Yes, that's correct.
Q. And again, is that ILEC rates that is being referred to?
A. That's right. Those are ILEC UNE rates.
Q. On Page 15 you assert three benefits would result from forcing down CLECs' intrastate access

charges. The first would be to reduce traffic-pumping. Is that correct?

A. Yes.

Q. To the extent that some of the exhibits that we saw relating to, quote, "traffic-pumping," quite a number of the calls were actually interstate. Would that get you to question whether the lower rates will have that effect?

A. I would think that it would still have the effect that I talked about. It's simply the intrastate access charges of the CLECs are much higher than their interstate rates. It's hard for me to draw from one set of tables about calling, but there's certainly a lot of intrastate calling that appears to be traffic-pumping. It appears to be concentrated on whatever they call them, adult chat lines, purveyors of porn or whatever.

There's clearly right now -- if you think about what's going on and what I'm talking about in this testimony, the high call terminating rates are more than anything else a subsidy for people that want to be on chat lines. It's not so much a subsidy to the CLECs; it's a subsidy to porn. And if it's public policy to continue that subsidy,



fine. But that's a subsidy where, you know, Millie Smith in Bedford is paying more to call her sister across state and her son is being subsidized in his time spent on adult chat rooms.

It's a catch line, but it's true. If you think of the economics of this, it's a subsidy to call termination, and who seems to be using the call terminations the most but these chat lines.

Q. Of course, there are other end uses that have been discussed as being traffic-pumping that perhaps may not be so stigmatized; isn't that correct?

A. Yes, I naturally chose the most stigmatized example. But there are other cases. I know you can now get free conference calling. So in that case it's not --

Wait a second. To the extent that, let's say, Lehman Brothers uses conference calling for free due to high terminating access rates and again Millie Smith is paying for that, that's probably even more stigmatized than porn at this point.

Q. One of your other benefits that you reference is a right realignment. Does that mean



that there is going to be a reduction in the price to end users?

A. Yes.

Did I catch you unaware with a short answer?

Q. Is that based on the sort of testimony that we've heard earlier from AT&T, saying that ultimately cost goes down and somehow, some way, we'll filter that into a pricing scheme at some point in time?

A. I think I could put it better.

Q. Maybe if you could just try a yes or no to that one.

A. Well, if all the loaded parts of that question and having to adopt everything Mr. Nurse said on that, I'd say I can't give a yes or no.

Q. I don't blame you.

A. If you want me to answer the question in general about whether there's a pass-through that will occur in the market, I'd be happy to do that.

Q. Do you think there would be a one-for-one pass-through?

A. Pretty much so, in the sense that in a competitive market, with highly elastic supply,



changes in marginal costs do get flowed through just about dollar for dollar -- if you believe it's a competitive market. If it's not a competitive market, no, then it's a lot more complicated answer. Some gets passed through. It's actually sometimes more than in a competitive market.

Q. And one of your other benefits was that there would be a financial benefit to companies with lower access charges, so I'm assuming not only your client but Verizon would be one of those. Is that correct?

A. Could you refer me to a place in the testimony, please?

Q. Let's see if I can do that. I guess that would be on Page 16, Lines 8 through 10. You're specifically referencing there allowing Comcast to compete more fairly. But would that then also mean that Verizon would be competing more fairly?

A. Yes. I think it makes the market less distorted. Competition is fairer. I think you used the term "financial benefit." I would not agree that this is primarily a financial windfall for any company or a financial loss for any company. I think this is a realignment of prices with costs, which is, I think, an important objective in this industry. We've had too many distorted prices for too long, and this is one that just sticks out there, and I think it makes a lot of sense for everyone to bring it in line with costs.

Q. Of course, we are talking about a transfer of dollars essentially from the carriers with the higher-cost access charges to other carriers; is that correct?

A. We're talking about a change in an intercarrier rate going forward. I don't think anyone is talking about reaching back.

So the financial effects on the companies are, at least in the long run, if you have competition in the market, are really not the major effect of changing the price. Yes, there are periods until you reach a new equilibrium where companies, some might be a little better off, some might be worse off. But the main effect here -- and I think it would be a mistake to have the Department think this is primarily a question of who wins and who loses among the companies. It's primarily an issue of getting the prices proper and also, as I said earlier, finishing the job which you start with



when you impose an obligation to terminate traffic without price.

Q. And in your summary am I correct in taking it that your suggestion is that the correct solution would be imposition of a bill-and-keep regime?

A. Nationwide, that would be a correct regime. I'm not recommending that in Massachusetts at this time.

Q. So there's really a more global problem here that's involved?

A. There is a global problem of interconnection pricing; yes, there is. And it will require ultimately a global solution. I have no idea when we're going to get there. There's plenty of people trying to claim it's going to happen very soon, but, you know, I wouldn't bet on that. And until you get that, you'd have to try to tackle problems one at a time, and this is one of them.

Q. Am I correct in thinking that you have in fact -- strike that.

In your testimony you state that you worked for MCI for approximately four years?

A. One four, 14.

Q. I'm sorry.



A. If we include the unfortunate period after WorldCom acquired it, yes.

Q. I stand corrected. And during that time period you were a vice-president and chief economist; is that correct?

A. Yes.

Q. And was part of your duties to be responsible for filings that were made at various regulatory agencies?

A. I don't think -- I tried to take as little responsibility as possible. I mean, essentially it's true. I was sort of -- the best way I put it, I was like head of an in-house consulting firm, and I would provide technical economic and policy advice to the whole public-policy department and advocate. But I don't think I ever filed or was directly involved in any tariff filings.

Q. And would you have generally been in agreement with positions taken in those regulatory filings, economic and otherwise?

A. Not in all cases. There's times when my advice was ignored.

Q. Well, let me cut to the chase: In the FCC's third report and order, at Paragraph 80, the



FCC states, and I quote -- and I'll provide you a copy of this to look at.

MS. O'DELL: Can you tell us the docket, at least?

MR. KRATHWOHL: FCC 99-238.

MS. O'DELL: Is that an intercarrier compensation docket?

MR. KRATHWOHL: I believe so, but I may be able to get a more definitive statement shortly.

Q. Let me take one step backwards first. Are you familiar with a Dr. Mark Bryant?

A. Yes.

Q. And did he work for you and with you at MCI?

A. Yes.

MR. KRATHWOHL: If I didn't say in terms of identifying it that it was UNE remand order, I meant to.

Q. Anyway, going to that order, at Paragraph 80 there's a reference to a declaration of Dr. Bryant. If I could show you that paragraph and ask that you read the sentence starting where I've marked it, and then just tell me if you would agree with that statement, I'd appreciate it.

380

MS. O'DELL: You said Paragraph 80; correct?

MR. KRATHWOHL: Yes, eight zero.

A. I can't say. This is not a well-crafted footnote. I can't really follow the way it's putting this. I don't know the whole context.

Q. Well, you have had an opportunity to read that paragraph. If I could just read the sentence: Quote, "Because the per-customer costs decrease as the number of subscribers served by the carrier increases, a carrier must acquire a sufficient customer base if it is to recover substantial costs associated with deploying its facilities." Is that an accurate recitation of what you see before you?

MS. O'DELL: Do we have a date on this order, when it was released?

MR. KRATHWOHL: Sometime in the middle of 1999.

MS. O'DELL: Would you have been with MCI at the time?

THE WITNESS: I would have.

A. To try to speed things along: As I said, I don't know where this fits into the overall discussion here. I don't find the reference to Dr.

381

Bryant's declaration very informative. There are too many variables here.

I would agree that as a general matter there are economies of scale in various parts of the local telecommunications network. I think the cost of switching reaches those -- or I should say achieves those economies of scale relatively quickly. You don't need very large market share to use a switch efficiently.

Q. One more question: A couple questions ago we talked about potential flow-through of reduction in access charges, should that result from this proceeding. I think that you indicated a degree of confidence that there would be a flow-through like that. Do you have that same level of confidence that that would be a flow-through to Massachusetts end-use customers?

A. Yes, to the extent that there is a change in the marginal cost of providing toll service to Massachusetts customers, the competitive market will drive those savings through in the rates charged to Massachusetts customers. That's sort of part of the basic structure of looking at this as a competitive market.

382

MR. KRATHWOHL: I have no further questions.

MR. DeROCHE: Thank you very much.

Q. Thank you, Doctor.

A. You're welcome.

MR. DeROCHE: Mr. Messenger?

MR. MESSENGER: No questions.

MR. DeROCHE: RNK, Mr. Tenore?

MR. TENORE: I have a few.

CROSS-EXAMINATION

BY MR. TENORE:

Q. Good afternoon, Doctor. My name is Mike Tenore. I represent RNK. And my co-counsel, Doug Denny-Brown, is also here; he may be asking a couple of questions.

Are you aware of what Comcast's composite switched-access rate prior to 2002 was?

A. No.

Q. In 2002 are you aware if Comcast lowered its rate to Verizon's switched-access rates?

A. As I say, I don't recall. I might have been informed at one point, but I don't recall the history of Comcast's rates.

MR. TENORE: Mr. Hearing Officer, could

383

I have a record request on that?

MR. DeROCHE: A record request on the history --

MR. TENORE: Comcast's switched-access rates, what they were prior to 2002 and then when they were reduced to Verizon's switched-access level.

MS. O'DELL: I believe these would be publicly available in Comcast's tariffs.

MR. TENORE: The current tariff we might be able to get, but the previous one I'm not sure. Comcast might be the easiest person to get at it.

MR. DeROCHE: What years are you looking for?

MR. TENORE: I'm just looking for the rate prior to their most recent reduction.

MR. DeROCHE: So the single rate prior to their most recent reduction.

MR. TENORE: Yes.

MS. O'DELL: Okay.

MR. TENORE: Thank you.

MR. DeROCHE: I'm going to enter that in as RNK Record Request 1.

(Record Request RNK-1.)

Q. Moving along, trying to get us out of here by 5:00: Let me refer you to Page 14 of your prefiled testimony, Lines 16 through 18.
A. Yes.
Q. You characterize Verizon's rate as a generous upper bound for CLECs. Is that generousness in regards to Verizon's costs?
A. It is generous relative to what I have seen in cost studies, the results of which I think, as I discussed earlier, should be broadly applicable, in the sense that the cost of switching on a per-minute basis is very, very low, if not zero, on an incremental basis. So I believe it is generous both with respect to Verizon and with respect to the CLECs.
Q. But you know of no particular knowledge as to the costs of any particular CLEC in this proceeding?
A. None has been provided, and I know there is reference to a study that I tried to get that was not provided. So, no, I have not seen the CLECs' studies. I do know that at least some CLECs use DMS-500s, and those switches are very similar in architecture to ILEC switches. As I said, based on



my experience in looking at costing models and time spent with telecom engineers, I would see no reason why the CLECs' costs of switching should be higher than the ILECs'.
Q. That was a long "no."
A. I wanted to make sure the record was clear.
Q. Moving along to Page 16, Lines 3 and 4: This is where you state a second benefit will be the reduction of call-termination costs. Would this necessarily make, for example, Comcast's bundled-service offerings more profitable?
A. Not necessarily. I think that in a competitive market the prices are driven to cost; so to the extent cost goes down, the prices should go down and overall profits should remain about the same.
Q. In the short term?
A. No, I think that's more of a longer term. In the short term it's hard to say. Could Comcast possibly get higher profits? It's possible. I don't think it's easy to try to figure out every single thing that happens in the short run.
Q. Thank you, Doctor. I'll hand it over to my co-counsel.



CROSS-EXAMINATION
BY MR. DENNY-BROWN:
Q. My name is Doug Denny-Brown, and I'm with RNK. I have a few quick questions.
In your testimony you have referred a number of times to the fact that Comcast didn't really have an option, it's a sort of captive customer, if you will, when paying CLEC intrastate access rates. Is this accurate?
A. That's pretty much accurate. I made the statement, I think, with respect to all originating carriers.
Q. Are you aware of whether Comcast has ever refused to pay an intrastate access charge on the basis that the rate was too high?
A. I'm not aware of that. I know there are numerous access disputes, and throughout this industry there have been forever. That doesn't mean there's not a market-power problem.
Q. Would this normally be within your knowledge base?
A. Well, no, it would not be within my knowledge base what disputes or billing disagreements Comcast has entered into. But from my



experience in the industry I am very well aware that disputes over various intercarrier charges have been -- there has been a tremendous number of them over the years. It's part of the industry.
Q. And that would be an option available to Comcast if it chose to go that path?
A. I guess I'd have to understand the question a little better, in terms of what particular action you are saying Comcast would pursue in addition or on top of participating in this proceeding.
Q. Right. So maybe with an individual CLEC, if Comcast felt the rate was unreasonable, Comcast would have the ability to dispute that rate with that individual CLEC.
A. Well my understanding is that ultimately that would come in front of some decision-making body.
Q. It could.
A. Well, it's fine to dispute, but if you dispute and the other party to the transaction says, "Pay up," it goes in front of someone.
Q. Right, lacking resolution, it goes to an adjudicating body like the DTC.
A. So we're here. I concede, yes, it is

possible that instead of sitting here on a case brought by Verizon, we could be here on a case brought by Comcast. This seems to be a little more efficient.
Q. Are you aware that Comcast has ever been proactive in attempting to negotiate lower intrastate access rates with CLECs?
A. I don't know specifically. I do know that Comcast does engage in numerous negotiations with numerous carriers over a wide range of rates. So I would say I don't know specifically, but I'm not surprised if there are negotiations on these issues.
Q. And further, does Comcast have any arrangement with AT&T to consult on their behalf in terms of -- to the extent you are permitted to say, of course -- to consult on their behalf in terms of challenging various intercarrier compensation rates?
A. I want to make sure I heard the question right. You said consult on their behalf?
Q. Right -- for example, to challenge rates with other carriers on their behalf.
A. I'm not sure what you mean, but I wouldn't know even if there was any sort of arrangement between the two carriers.


Q. Or as I'm reminded, is AT&T still a billing agent of some sort for Comcast?
A. I don't know.
Q. That's the end of that line of questioning. Earlier Mr. Tenore asked you about Comcast lowering its access rate potentially in and about 2003 from -- and I would suggest that that rate was lowered approximately from Verizon's then rate of somewhere in the ballpark of 3.5 cents per minute to their current rate -- again, for sake of argument -- down to about half a penny a minute. Are you aware whether this resulted in Comcast charging higher rates to its end-user customers?
A. I would start by saying I don't know the history of the Comcast access charges, and I don't know the history of Comcast's retail rates, so I can't say.
Q. Fair enough. My last line of questioning: Earlier --
MS. O'DELL: I'd just like to make a clarification: You made an assumption regarding the previous rate of Comcast. I think you said 3.5 cents. That's not been established in the record.
MR. DENNY-BROWN: I understand that.


That was just a ballpark I threw out, which may or may not be true.
Q. Earlier we heard you state that CLECs should not be able to recover their costs associated with interstate access charges to the extent they exceed Verizon's. Is that a fair and accurate statement or summation of your statement?
A. I think the way I put it is, if the CLECs have higher costs than Verizon, I would recommend against allowing them to set higher rates and thereby passing on those higher costs to other carriers' ratepayers.
Q. Even if they had higher costs?
A. That's my position: even if they had higher costs, yes.
Q. Do you believe that there is a competitive market for interstate access charges in Massachusetts?
A. I guess we'll have to break that down. First of all, you said interstate.
Q. Intra. If I said inter, that was a mistake.
A. So is there a competitive market for intrastate access charges in Massachusetts? There


is, I would say, not really even a market when it comes to terminating access charges. A market would imply that there is some choice -- or "substitutability" is probably a better word -- between terminating my traffic on RNK versus XO; that you can't go to the store and, you know, choose Brand A rather than Brand B. So that's not a market.
I think there is a market for terminating access on RNK.
Q. How so?
A. It's a market because the customer will transact business with RNK to get the traffic terminated on RNK. There's a market. There's one supplier. That supplier is RNK. There is no substitute for that.
Q. Looking at some of the underpinnings for intrastate access charges: Is it true that intrastate access charges, instead of having an economic basis, are grounded more in law and regulatory proceedings, such that a carrier can recover their costs?
A. I was with you until the last part of the question. I think, yes, intrastate access charges

are the result of a regulatory process, a very long history of regulatory rate-setting, that has generally set those rates above cost and brought them closer to cost over time, but they're still above cost.

Why they are is -- I think we could take a long time to talk about that. But there are many, many factors that go into the determination of regulated rates.

Q. But isn't it true that the purpose for those four tariffs -- I'm sorry, for intrastate access tariffs is to allow the carrier to recover its costs directly and then charge the rest of the market on a nondiscriminatory basis, so to treat everyone the same?

A. Well, I'd agree that they're there to treat everyone the same. That's the nature of a tariff, that it's establishing a generally available rate. And the purpose of the regulation of the rate is principally to prevent overpricing of that particular service.

As I think I also added, yes, there's some relationship in a broad sense in rate-setting to costs of the regulated company, but it's a very



complicated relationship, and individual rates are by and large not set exactly at cost. They are set for many services above cost, and other rates are either not regulated or there's some possibility that rates are set below costs.

Q. But the statutory underpinnings of these intrastate tariffed access rates are regulatory and legal in nature and not economic.

A. I think the statutory underpinnings by their very nature, since they're statutory, are legal. There are economics that inform the decision-making process. But economists don't rule the world, and probably that's a good idea, but they certainly don't even run the rate-making world.

Q. And a final question, I think you'll be happy to hear: Would you agree that CLECs are required to terminate any traffic that comes to them from other carriers?

A. Yes.

Q. That's all I have.

MR. DeROCHE: Thank you very much. I recognize it's five minutes after 5:00. I would like to try to finish up with Comcast's witness today, if we could. Why don't we take a five-minute



break, and we'll come back and continue with the Department's questions.

(Recess taken.)

MR. DeROCHE: I thank everybody for bearing with us. I believe we've got about 25, 30 minutes of questions left, so we'll try and wrap this up before 6:00 o'clock.

Why don't we go on the record. Before we begin questioning, there's just a small matter on AT&T's record request.

MR. GRUBER: Yes, Mr. Hearing Officer. As we discussed, and we just want to get it on the public record: I asked a record request yesterday, to be provided with seven CLEC average-revenue-per-minute numbers that are included on the attachment to Mr. Vasington's testimony. That's already been submitted and is in the Department's files now. Those numbers are available to the Department.

They were not provided to AT&T because in Verizon's view it's proprietary information of the seven CLECs. I've spoken to the CLECs' counsel, Mr. Krathwohl, and he's agreed that we can treat those proprietary responses as being subject to our nondisclosure agreement, so that the record-request



response could be made available to AT&T.

Is that a fair statement?

MR. KRATHWOHL: Yes.

MR. GRUBER: And I might note that AT&T has already provided its response to that question to all the other parties, in response to an information request.

MR. DeROCHE: Very good. Thank you very much.

MR. FIPPHEN: Just so we're clear, Mr. Krathwohl represents two of the companies. I just want to get on the record, before I give it to Mr. Gruber, that RNK and PAETEC consent to the same agreement.

MR. MESSENGER: Yes, we do.

MR. TENORE: Sure.

MR. DeROCHE: Good. Thank you very much. Mr. Reyes?

EXAMINATION

BY MR. REYES:

Q. On Page 14 of your testimony, Lines 16 through 17, you testified that Verizon's intrastate access charges are well above incremental cost. By "incremental" do you mean long-run incremental cost?

A. I do.
Q. Further down, Lines 18 and 19, you state that ideally Verizon's intrastate access charges should be reduced to economic cost. And by "economic cost" are you also referring to long-run incremental cost?
A. I am.
Q. Is it reasonable for intrastate access charges to be set well above incremental cost?
A. It's inefficient. The term "reasonable" doesn't have an economic meaning. But it is inefficient, and it creates a loss in economic welfare.
Q. If a rate is inefficient, are you saying that it doesn't necessarily mean that a rate is unreasonable?
A. Well, I try to avoid that word, because I know it's used in the legal language. As I said, I'm an economist, and I don't want to try to interpret the law.
As an economic matter, as I said -- I would just repeat what I said: Something that is that far above long-run incremental cost will not lead to reasonable levels of economic efficiency.



Q. So is there any economic basis for setting access charges, intrastate access charges above incremental costs?
A. I don't believe so. I think, more broadly, I believe intercarrier compensation rates of any sort should be set no higher than long-run incremental cost.
Q. In your opinion, what is the long-run incremental cost of switched-access service?
A. Well, there are several different rate elements and components of switched-access service. Are you referring to just switching or --
Q. Why don't we start with Verizon's proposed composite switched-access-rate proposal.
A. Well, there I would distinguish that there are switching-related rates and transport-related rates. Switching rates are, I believe, in the range of three tenths of a cent. The HAI model that I quoted in my testimony has a cost of 3/100 of a cent.
Q. Do you agree with that model's results?
A. Yes. I think the model results are right; and as I said also, I think there's a reasonable case to be made that the switch is not sensitive to



the amount of usage, which would say that call termination should be priced at zero. But I think --
There's a lot still to be considered as to whether it's better to set a rate at long-run incremental cost or do bill-and-keep, which is essentially setting it at zero. But either way, I think this study for what has been -- I think Mr. Nurse talked about the rates that their companies have been putting in their filings on intercarrier compensation, what the FCC has used, which is this triple-zero seven, which is $.0007, which is, you know, 7/100 of a cent. Again, those are numbers you see out there.
I'd say by and large, cost studies that I have seen over the last several years have never shown rates above a tenth of a cent for switching.
Q. So on Page 11 of your testimony, where you cite the HAI study, Lines 6 through 8, do you believe that the incremental cost of call termination is zero?
A. I've not made up my mind on that issue. I really -- I don't know. I could say that it's no higher than approximately 3/100 of a cent. But is



it completely and totally not at all usage-sensitive? That's a difficult question. I think it is very possibly slightly marginal, but I don't know.
Q. So is it fair to say that you today have no opinion as to the cost of call termination?
A. Yes, my opinion is that it's no higher than 3/100 of a cent. Where it is between zero and 3/100 of a cent I have at this point no firm opinion.
Q. You stated earlier that the obligation to terminate calls is a regulatory creation. If that's the case -- is that fair?
A. Yes. I don't know if "creation" or "obligation." That's probably a better word.
Q. If that's the case, why is it appropriate to set the price of that service to long-run incremental cost? Where there is no market?
A. Whether there's a market or not, there's an effect of setting a particular rate. And as I said, if this is a regulatory obligation, then I believe it's also a regulatory obligation to set a rate, and set a rate at a level that does not distort the market. A rate at long-run incremental cost will provide the most efficient price signals in the

market.

The other problem is that if you have nonreciprocal rates, that, too, sort of adds a layer of distortion and complexity in the market, where you tend to, you know, benefit certain carriers over others.

No. 1, they should be reciprocal, in my opinion; and No. 2, as low as possible, getting down there to 3/100 of a cent, and I wouldn't lose sleep if it was zero.

Q. One last question: You testified earlier that if you believe that the market's competitive, that any reduction in the marginal costs would be passed through one for one. Is that a fair assessment of your testimony?

A. Yes.

Q. Do you believe that the markets are competitive such that a marginal-cost reduction would be passed through to retail rates for toll services in Massachusetts on a one-for-one basis?

A. Yes, I have not studied the Massachusetts toll market specifically, but based on my knowledge of the industry as a whole, I would say that the competition should be intense and effective enough



to result in a pass-through of cost reduction.

Q. Are there any factors that would make -- sorry about the follow-up on this. Are there any factors relevant to the Massachusetts market that would make the operation of that market any different from the national markets that you've just described?

A. No. If there were to be some odd exception, it might, you know --

Well, I'm trying to think even where you would have an exception to what I just said. There seems -- even from learning about it more from just sitting on this case, Massachusetts seems to have very active competitors, and it seems like competition is working.

Q. Thank you.

MR. DeROCHE: Mr. Isenberg?

EXAMINATION

BY MR. ISENBERG:

Q. Good evening, Mr. Pelcovits. Why should non-traffic-sensitive costs not be included in the calculation of terminating access rates?

A. I'd say the first reason is that it ultimately will reduce usage of the telephone



network. The higher your usage rates are, the less the usage. And by setting rates above the costs that are imposed by the usage, you are discouraging usage that people want to make and they're willing to pay what it costs to actually generate and create and handle that usage.

Q. And then I take it your opinion is that those costs should be recovered from a local-exchange carrier's end users?

A. Yes. I would say that, if you were to go as far as a bill-and-keep regime, then all costs are going to be recovered from the retail carrier's customers. If we have a terminating rate set at long-run incremental cost, then that usage-sensitive cost is being recovered ultimately from the calling party.

Q. What type of analysis should the Department employ if it is to find that CLECs have a monopoly or have market power on terminating access?

A. I think it has the evidence it needs from what's been presented to it in this case. This is not an analysis or a judgment that I think requires the type of data and empirical analysis and statistical analysis that you would do, let's say,



in an antitrust case, where you're trying to, for example, decide whether a merger of, you know, Coke and Pepsi would be an anticompetitive merger and trying to figure out are there other soft drinks that are substitutes for them or will people substitute water. That's the typical type of antitrust analysis, where you hopefully would have a lot of data and a lot of analysis.

I think here the economic framework of this issue is very straightforward. It's been presented, I think, very clearly in the testimonies here. I'll go back to what I said earlier -- and I don't think it really goes beyond this -- which is when my carrier has to terminate a call on someone else's carrier, do they have a choice of who to put that call onto? Is there any substitutability? If you want to terminate a call on a customer served by RNK, there is no substitutability, and that's a transaction which takes place, it's required under regulation that it has to occur, the call has to be completed. And if you have that situation, I think it's very clear what's been set up and what the problem is, and I don't know what other analytical tools would shed any more light on it.

The other thing is that the data that's here that's very useful is indeed the very significant range in prices for call termination across the industry: ten times rates, fifteen times rates. I think that's also very, very powerful evidence that there's no real market discipline on these rates.

Putting aside the question of whether they even are representative of the costs of the different carriers and that a carrier with a rate fifteen times higher than Verizon's has costs that are fifteen times higher and a carrier with five times the rate of Verizon's has a cost five times higher -- putting all that aside, which I think just makes the whole thing even more suspect, I think the fact that you have rates with such huge disparities means that these are not substitutes for each other.

You don't see in a market, in any sort of well-defined market, that huge range of prices. It would be like saying -- I hate to do analogies. That just occurred to me because I went to the Red Sox last night. It's kind of like trying to say that tickets to go to a Little League game are substitutes for tickets to the Red Sox games. No.



They're obviously not in the same market. They're both baseball, but they are far from being in any way, shape, or form substitutes.

Q. Is there any reason to believe that the cost of terminating an interstate call is different than terminating an intrastate call?

A. No, absolutely none. The actual function of the switch is exactly the same regardless of where the call originated.

Q. Do you believe that CLECs, or at least some CLECs -- and I think Mr. Nurse touched on this point a little bit -- have economies of scale or scope?

A. I think if the question is have they disadvantages because they have not reached certain scale: I don't know for sure with respect to all of their network and all of their services, but I believe that with respect to switching there are certainly, from what I've seen in the discovery, there are -- that I recall, CLECs have multiple switches serving the Commonwealth. So they've already reached the point where one switch has achieved its scale economy, and it's time to buy another one. So I'd say that scale economy in switching is not a disadvantage of the CLECs.



Q. What about other components that would make a terminating access service?

A. Well, with respect to transport -- in other words, getting the call from, let's say, Comcast to One Communications, I think both Comcast and One Communications are not at the level of having sufficient network or sufficient demand for that piece of transport to equal the scale economies and historic advantages of Verizon. So I think in the transport part of the business the scale economies are still with Verizon.

When it comes to the loop network -- in other words, I would divide the calls in general into make a call, you get from the customer to the switch -- I'll call that a loop; and then you've got to get through the switch -- that's switching; and then there's transport to get you to some other switch.

On the loop, that depends a lot on what type of customer you're serving, what type of traffic they have. But as a general matter, I would say that most --

Let me restate that. Again, in that area Verizon still has some significant advantages



or dominance over all of its competitors, and that's manifest in what I think I talked about earlier, special access, which is simply a loop, but with more capacity. And with respect to that market, I don't believe that Verizon has an equal in terms of the ability to serve all customers very efficiently and take advantage of all the network and scale economies.

Q. Is it even relevant in your view, in terms of your analysis of whether the Department should adopt Verizon's proposal, that it look at any existing disadvantages that CLECs may have with respect to economies of scale or scope?

A. I don't think it's relevant. I think it's sort of -- you're getting -- you can get yourself sort of ensnared in an endless process to try to figure out the cost structure of every company that comes in front of you in the telecommunications industry. It's enough to try to deal with Verizon. Frankly, costing and looking at network costs is by and large a very complex, difficult process.

And there are so many different ways to look at it that I think that since we're dealing with one specific issue -- we're not talking about regulating CLECs, and in fact, I don't think the Department should be regulating them or subsidizing them or doing anything with respect to the CLECs other than making sure that they can interconnect with other carriers, and in particular Verizon, and that that interconnection does not disadvantage the CLECs.

This case is really not about harming the CLECs; it's about completing the job of giving them the advantage of mandated interconnection. If you sort of think of a benchmark of what would happen in a competitive world: If this market was structured in such a way that you could really have competition and there was no bargaining disadvantage with respect to interconnection -- suppose there were 50 carriers, each with 2 percent of the market. You wouldn't need to regulate interconnection, because in that case the negotiations would almost certainly work out very well, and you would not need to mandate it, nor would you need to set the price.

So really what we have is a result of Verizon's dominance, and as a result of Verizon's dominance, you have to, properly so, require Verizon to interconnect with the CLECs. But, as I said, if



you require them to interconnect and don't set a price, it's not the whole package, it's just partway there.

Q. Is it true that Verizon's interstate terminating access rates are not cost-based?

A. I'm not, you know, very familiar with the whole history of how those rates were set. I've read about what's been said about them. And what I would say is that they are the result of a regulatory history. They are mirroring interstate rates, as far as I understand it. And I don't believe interstate rates are cost-based. They are regulation-determined rates. And they are, I think as recognized by Verizon in its FCC filings and many other pieces of supporting evidence, they are above cost.

Q. Are you familiar with the data that the FCC relied on when it determined Verizon's interstate rates?

A. Yes. The FCC set these rates as a result primarily of the CALLS plan that was submitted to it by the carriers. I was personally part of the group that was working on CALLS, until my employer pulled us out of the coalition, in part because we didn't



think they were really paying attention enough to costs and they were basically moving money from one rate to another. So they were really set based on a recovery of historic levels of cost rather than set based on a going-forward analysis of what the costs of these particular functions of the network were.

Q. I'm not quite sure from your answer specifically the types of data that the FCC looked at. Could you help me out a little?

A. Sure. The FCC looked at data from -- back a second.

In setting these particular rates or the regulations that govern these rates, the FCC was looking primarily not at the costs of the ILECs but rather the pot of revenue that they were recovering from interstate ratepayers and was looking at ways to move money from one rate-collection mechanism to another, under the general belief and knowledge that traffic-sensitive rates should be very, very low. And up until that time, traffic-sensitive rates were much higher.

So the effort during the CALLS process was simply to find a way to shift revenue recovery from traffic-sensitive to non-traffic-sensitive



sources or rate elements.

Q. Not to interrupt you: Was it essentially some type of a rate rebalancing?

A. Yes. I think that's exactly the way to put it. It was a rate rebalancing with --

To the extent it's informed by a sort of knowledge or analysis of cost, there was an underlying, I would say, acceptance of the fact that traffic-sensitive costs were much lower than the rates, and that's based on whatever knowledge, evidence there was of costs, both accounting and economic forward-looking costs.

Q. And I assume it was done on a revenue-neutral basis?

A. It was done within the constraints of the price-caps system. So it was revenue-neutral, although subject to overall price-cap constraints, which built in productivity adjustment.

Q. You mentioned that looking at network costs is very difficult for Verizon and especially for CLECs. If the Department -- well, let me back up.

Assuming that you agree that Verizon's interstate rates, which they propose to use as the interstate cap, serve as a sort of proxy for costs, is there a way or can you think of a way that the Department might develop a proxy for CLEC costs, as a way to avoid the burdensomeness of conducting individual or industry-wide rate cases?

A. I think that, based on what I know and what I've talked about today, I believe that the ILEC costs of switching are a reasonable benchmark for the CLEC costs of switching, due to the nature of what the switch does and its functions and, as I said, sort of a very generous gap between Verizon's prices and its costs.

If that is not going far enough, I was trying to think, is there any other thing you could do? And about the only thing I could think of, if you wanted to benchmark the CLECs against themselves, what you would do is benchmark their terminating rates based off their retail rates. In other words, if a CLEC is really higher-cost and it's 15 times more costly than Verizon, then the only way it can really stay in the market is to charge 15 times more than Verizon on its retail as well as on its terminating rate.

So if you wanted to say to a CLEC -- again, you have to do this properly. It's not just



its originating access charge, because that can be an internal transfer. But if you want to say, if you charge your retail customers -- whether it's flat, per minute -- but if you work out how much you're charging your customers per minute for originating, that's the market test. That's what your customers are willing to pay. They're willing to pay 3 cents a minute for outgoing calling. Maybe that's a reasonable proxy for their costs and that should be the terminating access rate. I think it's the only thing I can think of, short of doing a cost study, and I think it's fair in the sense that it's based on what they're doing.

Q. Thank you. That's all I have.

EXAMINATION

BY MR. GOPALAKRISHNAN:

Q. I have a few questions. Do you know of any cases where Comcast and any other CLEC have negotiated switched-access rates through an ICA?

A. I don't know. Sorry.

Q. You had referred to the long-run incremental costs. I was wondering, why is the long-run incremental cost more appropriate than the long-run total costs?



A. That's an extremely good question. I've been thinking, because I automatically went to long-run incremental costs, as opposed to the total TELRIC costs.

First of all, I don't expect, with respect to measures of switching, that they're going to be very different. In fact, the cost studies that I referred to are generally TELRIC cost studies.

The reason I used the term "LRIC" here, is I think in this context it more appropriately captured the nature of the supply for that particular usage. If you're dealing with TELRIC, one of the problems is you have to know what element you're talking about. It's total-element long-run? Is the element line? Is the element DS-1 equivalence? Is the element minutes? Once you have something that has these multiple different elements that it's providing, I think you lose the sort of good arguments for TELRIC that are used in the UNE context.

In practice I don't think it makes a lot of difference, but conceptually I think it's a lot cleaner and easier to think about what's the



incremental cost being imposed by terminating usage.

Q. But if these numbers are actually different, what options does a CLEC have to recover the difference between incremental cost and total cost? And if you recover it elsewhere, would you be defeating the purpose of trying to recover the costs where they occur?

A. Well, I think that if there is a difference and -- I would back up a second.

When I refer to long-run incremental costs and the measures that I've looked at, it's not accepting the cost of the switch itself as fixed and then talk about usage on top of that. That's generally not what the studies measure.

But as a general matter, I think that when we're looking at intercarrier compensation issues, that carriers should not be imposing any of their sort of overhead costs or common costs on competitors; that that creates the problem of potentially imposing your own cost structure, your own inefficiencies on your competitors.

So that's why I think the appropriate benchmark, the appropriate method for looking at this issue of intercarrier compensation is really look at the additional calling that takes place. If I'm Comcast and I'm sending RNK 100 minutes and now I'm going to send them 200 minutes instead of 100 minutes, how much more does it cost them to handle the additional 100 minutes -- rather than get into everything else, which I think would, No. 1, obscure and distort competition, and, No. 2, almost be impossible to solve if you tried to, you know, get some cosmic sense of fairness out of that.

Q. Assuming that the CLECs have market power, is the remedy of capping CLECs' switched-access rates the best remedy? Can you think of any other, more efficient remedies to that problem?

A. No, I think once you have to control that market power, you need to set a rate, and I think the use of Verizon's rate is very compelling. First of all, it gives you reciprocity, and I think that's important in intercarrier compensation, that you don't have, you know, one carrier with exactly the same amount of traffic going to the other carrier, and as the other carrier sends to it -- you don't have money changing hands when you don't have a different amount of traffic being imposed on the different carriers. I think that's Point 1.



And Point 2 I think is what we've talked about already, which is that I think the Verizon rate is a generous rate relative to measures of long-run incremental cost or even total-element long-run incremental cost.

So I think that's good. And as I discussed with Mr. Isenberg, the only other thought that occurred to me is some sort of a self-benchmarking, and I think that would be -- take some extra steps to put it into place. But if there was a desire to say to the CLECs -- again, keeping a close eye on what you really mean when you're looking at their retail rates, because if it's an ILEC without much outgoing usage, you're not going to be able to identify it. But if it's an ILEC with a million minutes outgoing and a million minutes incoming and you look at what they're charging their retail customers, and if it's not 3 cents a minute, they shouldn't be charging their competitors 3 cents a minute.

Q. If this remedy results in the ability -- I mean it reduces the ability of the CLECs to compete effectively in this market, then is this outcome a desirable outcome for society?



A. I think it is. I think there are two possibilities here: one, that the CLEC is less efficient and, if it can't get it -- if it can't recover its costs from its competitors, it's not going to be able to recover it from its retail customers, then it should not be artificially propped up in the market.

And the other possibility is that if you have a CLEC that's based its business plan off of, let's say, traffic-pumping, then if you make a change and this reduces their ability to remain in that business, I think that's fine and that's exactly the correct outcome from a social-welfare standpoint.

Q. Thank you.

MR. DeROCHE: Thank you. Are we going to have any parties request recross? Richmond? Why don't you come forward and ask.

CROSS-EXAMINATION

BY MR. ADAMS:

Q. I'll try to make this really quick, but I just want to talk a little bit more about this line of questioning, as I have previously, questions from the Department about this notion that the costs to



terminate intrastate are the same as the costs to terminate interstate.

I have a question about that, and I'm having difficulty formulating it very specifically. I keep thinking about separations and that process, that historical-legacy process that was out there. Could you comment a little bit on how we went from there to how we got to here? Maybe that's too vague.

With a little bit of latitude here: Verizon's rates at one time were set under rate-of-return principles.

A. Yes.

Q. And its costs under FCC rules were separated into the interstate jurisdiction and the intrastate jurisdiction.

A. Yes.

Q. And the FCC did its thing and figured out what rates were to recover the interstate portion of those costs.

A. Correct.

Q. And the states essentially did the same thing.

A. For the intrastate portion.

Q. For the intrastate portion.
And then eventually we moved to price caps.
A. For price-cap carriers.
Q. For price-cap carriers at the Federal level.
A. Yes, and in the states there were various -- it depends on the state, it depends on the carrier. There were various incentive regulation plans.
Q. Was it the case that price caps essentially started with the rate-of-return rates, rates that were set under the rate-of-return regime?
A. Yes.
Q. And then that brings me to this question about costs. If I remember your testimony correctly, you were saying we were taking those historical costs and changing the way we were recovering them.
A. I think what I was talking about was the CALLS plan and the shifting of what was called cost recovery, but essentially revenue-requirement recovery, from different rate elements.
Q. Thank you. I think that's the word that I



was looking for, was revenue recovery, and that has its roots back in the rate-of-return days.
A. It does.
Q. Is what you're proposing is moving from that old-fashioned legacy regulation that was created for a monopoly market to what should rate regulation look like as we transition to a competitive market?
A. I think I scratched the surface on that whole issue.
Q. Right.
A. I mean, I think what we're dealing with here is much less complicated than that. All we're dealing with here is setting a rate where a rate was not set before.
Q. For the CLECs.
A. Correct.
Q. What about for a carrier like Verizon, and to benchmark its rate? Is that rate really the result of a competitive market?
A. No, it isn't a result of a competitive market. I mean, we're not setting that rate here, as far as I understand it.
Q. No.



A. So I think if you're asking me where does it come from -- I think we've talked about that at length. It's not based off of an economic cost study of terminating switched access, although it can be -- the rate can be compared to cost studies of switching.
Q. The last question: Were there policy reasons historically why regulators elected to set various rates for cost-recovery reasons above cost for that service?
A. Yes, there were reasons then, and those still figure into how regulators set rates.
Q. And is universal-service concerns, for example, one of those?
A. That's the phrase that's used to describe what's been done, and there's a lot of, I'd say, in my mind questions as to whether that's still the nature of why these rates are where they are. I don't think that Verizon's ability to serve its customers depends on charging anyone, any competitor, more than its costs that it imposes on Verizon.
Q. I don't mean to belabor the point. I'm trying to think if there's another question to



actually tie all this together.
If there are reasons that a regulator even today might want to set a rate above cost, does the regulator have the authority to do that, or should the regulator do that?
A. I won't speak to authority. But in terms of should it do that? I think it should, when we're talking about intercarrier compensation, because otherwise we're getting into something I don't think we can cover in one evening.
But intercarrier compensation is not the place where I think it would ever be reasonable to recover anything above cost. I think that just takes you directly to competitive-market distortions, and do not pass go, do not collect anything.
Q. And this is truly my last question: Given the legacy rates that we're dealing with, isn't really that the situation that we have? We have these above-cost rates, that they're there because of legacy regulation?
A. Yes, and that's why the proposal here is to cap the CLEC terminating rates at Verizon's terminating access charge, not at long-run

incremental cost.
MR. ADAMS: That's all my questions. I don't know whether it was helpful, but I feel better.
MR. MESSENGER: Can I break my previous promise and do two questions?
MR. DeROCHE: Quickly, yes.

CROSS-EXAMINATION

BY MR. MESSENGER:
Q. I'm John Messenger, from PAETEC. You've done a lot of talking about switching and switching costs and efficiencies of switching, and you alluded briefly to other elements, categories, which I understand you to describe as transport on the one hand and loops on the other.
A. Yes.
Q. Is it efficient for a new entrant looking to compete with the ILEC to put one switch into a rather wide territory and try to cover a broad geographic area with a single switch and fill it up?
A. Yes, I believe it is. It's tended to be the way that the industry has evolved.
Q. And in that case, if I'm a CLEC with a single switch serving a wide area, I might only



incur one set of switching costs, but I still need to get from that switch all the way out to my various end users scattered around the territory; is that correct?
A. Yes, you do. You still need to get it to your end users. You have a longer loop, would be another way to put it.
Q. A much longer loop, or perhaps a sort of hybrid form of transport?
A. I wouldn't call it hybrid form of transport. As I said, I'd call it a longer loop. Is it less efficient? It depends on the type of customers you have. It might not be on a per-minute basis any more costly to serve business customers with lots of volume on long loops than it is to serve residential customers with short loops.
So it's different, and the cost structure's different absolutely. But I don't think you can conclude that there's some easy way to translate differences in network structure into different recommendations for this case.
Q. If I'm an ILEC, on the other hand, and I have a hierarchical network and saturated end offices all over the territory and I have transport



trunks, common trunks, connecting the tandems and the end offices, isn't it true that I'm likely to recover through my switched-access charges more than just the costs of switching, and that, for example, common transport and some other elements --
In other words, getting from a single tandem switch out to end users that might be miles away from that tandem switch will partly be exposed on interexchange carriers through switched-access charges; is that correct?
A. If we divide this up, as I've tried to, between switching and interoffice transport, if you set the rates at cost, which has not been done, you're recovering your switching cost from your switching rate, you're recovering your interoffice network cost from your various transport rates. And those costs and the need to recover those costs are going to be different for different carriers. That's why I've sort of tried to focus much more on the whole switching issue.
When you're talking about transport, it's some very different issues, and I think it's very important to -- very, very important to control Verizon's rates properly, to make sure those are not



excessive, to make sure you have, you know, nondiscriminatory, efficient use of any sort of a Verizon transport network, because no other carrier is really comparable to them in terms of that network.
Q. From a cost-comparison standpoint, is it fair to compare a CLEC network with one switch covering a wide territory with a single ILEC end office serving a saturated exchange full of local loops? Are they the same? Are they comparable?
A. That depends what you mean by "fair." Is it fair to charge the same for switching? Yes. Is it fair to charge the same for transport? Well, you're not really charging transport in the case of the CLEC.
Q. Is it fair to charge the same for switched access in both network structures?
A. I think it's fair to charge --
Well, actually, let me say the following: Again, I look at switching; it's fair to charge the same. Should there be something more along the lines of the reciprocal-compensation rules, where a CLEC that serves an area through a single switch that the ILEC serves through a tandem

and they charge the same reciprocal rates? I think the recip-comp arrangement is better. If I ruled the world and could rewrite access tariffs, I would think it would be better to do it more along the lines of reciprocal compensation.

There's a limit to what I think we can accomplish in this case, and that's why, if we can get the switching rates cleaned up -- a very broad term -- that's an enormous first step. It's getting rid of a clear distortion. And then I'll probably be on the same side of the table as you when it comes to making sure we're regulating Verizon's transport rates properly.

Q. If there's any client left to be on the same side of. But thank you. I have no further questions.

MR. DeROCHE: Ms. O'Dell, do you have any redirect?

MS. O'DELL: May I have one minute.

(Discussion off the record.)

MS. O'DELL: Just one follow-up question.

REDIRECT EXAMINATION

BY MS. O'DELL:



Q. You had a discussion with Mr. Krathwohl about the traffic-pumping, and there was a discussion about the intrastate traffic-pumping versus the interstate traffic-pumping. Can you elaborate on that, on the differences there?

A. Yes.

Q. The interplay.

A. I think I was asked whether the data that I looked at showed a lot of interstate as well as intrastate terminating traffic, and, if so, was that not indicative that the problem of traffic-pumping was much greater than high intrastate termination rates.

I think that, while it's hard to say everything that contributes to traffic-pumping, if you do have high intrastate termination rates and you have a chat line or some service with a phone number that you can reach, that number can be reached from other states as well as within the state. And therefore, if you're only making these very high margins on your intrastate traffic and you're also collecting some interstate traffic as well, it's still a very good way -- or it's still something that you would see encouraged and caused



by the intrastate regime, by the intrastate termination rates.

You don't need to have high interstate rates and intrastate rates in order to see both high interstate and intrastate traffic.

MS. O'DELL: That's all I have.

MR. DeROCHE: Thank you very much, Mr. Pelcovits.

THE WITNESS: You're welcome.

MR. DeROCHE: Thank you very much for bearing with me, everybody. We'll see you tomorrow at 10:00 o'clock.

(6:12 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 24, 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 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--------

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**INDEX**

**EXAMINATIONS**





September 25, 2008 10:02 a.m.

P R O C E E D I N G S

MR. DeROCHE: We'll go back on the record. Good morning, and welcome to day three of DTC 07-09 hearings. It's nice to see everybody back after yesterday's marathon session.

It looks like after that we are back on schedule. Today we have two witnesses that we'd like to get through, Richmond's witness and then the CLECs'. So I think we're going to begin right away, if there are no procedural matters to deal with.

Mr. Adams, would you like to call your witness?

MR. ADAMS: Thank you. Richmond calls John Dullaghan.

JOHN A. DULLAGHAN, Sworn

DIRECT EXAMINATION

BY MR. ADAMS:

Q. Mr. Dullaghan, would you please state your name and title for the record.

A. John Dullaghan, vice-president of customer care and communications.

Q. On whose behalf are you appearing today?

A. Richmond Networks and Richmond Telephone.

Q. Have you prepared or caused to be prepared prefiled testimony in this proceeding?
A. Yes, I have.
Q. Do you have any corrections or changes to that testimony?
A. Yes. First off, I'd like to include a rate sheet from Verizon's tariff which demonstrates a UNE loop cost in the rural areas.
MR. ADAMS: Mr. Hearing Officer, this document was previously marked as Richmond Exhibit 3. It is referenced in the prefiled testimony; it was just omitted from the testimony.
MR. DeROCHE: Okay.
Q. I've just distributed a document marked as Richmond Exhibit 3. Is this the rate sheet that you mentioned?
A. Yes.
Q. Is this a true and accurate copy of the page from Verizon's tariff?
A. Yes, it is.
MR. ADAMS: Mr. Hearing Officer, at this point I would move admission of Richmond Exhibit 3 into evidence.
MR. DeROCHE: I'll accept this document as Richmond Exhibit 3.



MR. ADAMS: Thank you.
Q. Mr. Dullaghan, do you have any other changes or corrections to your testimony?
A. Yes, I do. Page 6, Line 7 of my testimony, Q&A on that line: After listening to Mr. Vasington describe how Verizon calculated their composite rate, we did not do it in the same fashion, and I am not confident that those numbers are accurate.
Q. Just for clarification, when you say "accurate," are you saying it's not an apples-to-apples comparison with Verizon's calculation?
A. Yes, I am.
Q. Are there any other changes?
A. Yes. In light of conversations with Verizon prior to the hearing and subsequent conversations with other parties, if the Federal rule is adopted in its entirety with the rural exemption, Richmond would be willing to adopt the NECA rates as the rural benchmark and omit Richmond Tel.'s rates as a proxy.
Q. Are there any other changes?
A. Yes. With that, the stipulation that if the NECA rates change due to any Federal access reform, that Richmond would be able to hold onto those interstate access rates until the Department makes a decision on the interstate rates.



Q. Any other changes?
A. No.
Q. With those changes, if you were asked the same questions today, would your answers be the same?
A. Yes.
Q. And do you adopt your prefiled testimony as corrected and amended?
A. I do.
Q. Did you also prepare or cause to be prepared discovery responses, responses to discovery from the Department?
A. I did.
Q. Do you have any corrections or additions to those?
A. I do. On Discovery Request DTC-Richmond-1-12, I'd also like to remove that, for the same reason that I mentioned, that the calculations were not performed in an apples-to-apples comparison to the way Verizon had calculated their composite rate. So those numbers were based on our composite rate that we had calculated earlier.



Q. Are there any other changes?
A. No.
Q. With that correction, if you were asked the same questions today, would your responses be the same?
A. Yes.
Q. And did you also prepare or cause to be prepared responses to discovery requests from the CLEC group?
A. I did.
Q. Do you have any changes or corrections to those?
A. No.
Q. If you were asked the same questions today, would your responses be the same?
A. They would.
MR. ADAMS: At this time I'd like to tender the witness for cross-examination.
MR. DeROCHE: Mr. Fipphen, Verizon?
MR. FIPPHEN: We have no cross-examination.
MR. DeROCHE: Mr. Gruber, AT&T?

MR. GRUBER: Yes, Mr. Hearing Officer. I can't resist, but it's very short.

CROSS-EXAMINATION

BY MR. GRUBER:

Q. Good morning.

A. Good morning.

Q. You're here on behalf of Richmond Networks, is it?

A. Correct.

Q. And you're also here on behalf of Richmond Telephone?

A. I'm here on behalf of Richmond Networks.

Q. And is there a Richmond Telephone?

A. There is.

MR. ADAMS: For clarification, the testimony was filed on behalf of both Richmond Telephone and Richmond Networks. Richmond Networks is a subsidiary of Richmond Telephone.

MR. GRUBER: Okay. Thank you.

Q. Does that sound accurate?

A. It does, yes.

Q. Richmond Networks, when did that begin operation?

A. Around the 2000 time frame.



Q. When it began operation, did it purchase a switch?

A. I wasn't around at that time, but I don't believe so.

Q. How did it get its switch capability?

A. I really don't know how the whole engineering worked out. I wasn't around at that time. But I know that it did utilize some of Richmond Telephone's switching.

Q. And today does it still utilize some of Richmond Telephone's switching?

A. It does.

MR. GRUBER: Thank you. That's all the questions I have.

MR. DeROCHE: Ms. O'Dell, Comcast?

MS. O'DELL: No cross.

MR. DeROCHE: Mr. Krathwohl?

MR. KRATHWOHL: No cross.

MR. DeROCHE: Mr. Messenger?

MR. MESSENGER: I do have a little.

CROSS-EXAMINATION

BY MR. MESSENGER:

Q. Good morning, Mr. Dullaghan.

A. Good morning.



Q. I'm John Messenger, for PAETEC.

You describe in your testimony that Richmond Telephone provides service within its ILEC territory and that Richmond Networks provides service outside of that territory, in the rest of Berkshire County; is that correct?

A. Yes.

Q. Does Richmond Networks provide service anywhere else in Massachusetts?

A. I know Richmond Networks does provide some ISP services outside, but very limited. We don't market it in that area, and there are some -- I don't know, maybe a handful that I can think of -- that are related because the customer wanted a single bill so far as they could come to us for it.

Q. Does Richmond Networks have any plans to provide service outside of Berkshire County?

A. Not at this time.

Q. Is it restricted legally or otherwise from doing so?

A. No, I don't believe so.

Q. You had handed out Richmond Exhibit 3, which is the Verizon tariff page. It lists different rates for metro, urban, suburban, and



rural categories; is that correct?

A. That is.

Q. Do you know if under Verizon's tariff all of Berkshire County is considered rural?

A. I don't -- we did look at the census map, and according to the census map, most recent data that we looked at, it did demonstrate that it was rural, from what I could see.

Q. What's the largest city in Berkshire County? Would that be Pittsfield?

A. Yes.

Q. And you're stating that that's considered rural by Verizon?

A. Well, by the census data, it's considered rural. It may not be considered rural by Verizon. I apologize if I made that....

Q. You describe in your testimony how Verizon's rural unbundled loop rate exceeds its basic-exchange rate in rural territories by, I believe, $5 a line. Do you recall that testimony?

A. I do.

Q. And that's one of the reasons you give for why the Department should allow Richmond Networks to charge significantly higher for switched access?

A. That's one of the reasons access is important to us, yes.
Q. If a nonrural CLEC like PAETEC wanted to provide service to a customer in Berkshire County, would PAETEC have to provide -- pay the same unbundled loop rate that Richmond Networks was if it was obtaining unbundled loops?
A. I would think so.
Q. Is there any reason why any CLEC shouldn't be allowed to charge the higher switched-access charges that Richmond Networks is urging in Berkshire County?
A. Well, we provide service in Berkshire County. That's the mainstay of our business. So we don't have the ability to leverage that cost over urban areas and that sort of thing, and metro areas. We don't have that ability to leverage that cost. So for us it's a different scenario.
Q. So you're saying a nonrural CLEC should not be allowed to charge higher access charges in a rural area?
A. That's -- that's not something for me to decide right now, I think. I don't know what the ruling would be on that. I'm just talking about my



own company.
MR. MESSENGER: I have no further questions. Thank you.
MR. DeROCHE: Mr. Reyes?
MR. REYES: I have no questions.
MR. DeROCHE: Mr. Tenore, RNK?
MR. TENORE: No, thank you, Mr. Hearing Officer.

EXAMINATION
BY MR. ISENBERG:

Q. Good morning, Mr. Dullaghan.
A. Good morning.
Q. Just to be perfectly clear: If you were allowed to use the rural exemption or the Department approved the rural exemption for Richmond Networks, your company would use the NECA rate, as opposed to the composite rate that you discuss in your testimony and answers to discovery?
A. Correct.
Q. How does the NECA rate compare to your current tariffed rate?
A. Well, we have been up to this point unable to calculate the NECA rate because of our size. The people that do work on that are out of the office



and attending certain trainings and whatnot, so we've been unable to calculate that. But they did assure me that we would be able to survive on the NECA rate.
Q. So it would be a lower rate, then.
A. Yes, I believe so.
Q. Do you know how the NECA rates are calculated?
A. I don't know personally, so I can't say that I do.
Q. Are they calculated by the carriers or by NECA?
A. Well, seeing that I don't know how it's calculated, I wouldn't be able to answer that.
Q. If you could please refer to your answer to DTC-Richmond-1-6. In your answer you propose language to be added to the proposed rate-cap rule that Verizon has offered in this case. Is that language still relevant given that you now intend to use the NECA rate?
A. I would say that it is, because the Federal rule did -- the Federal rule did have a portion that was referring to the NECA rate and using that as the rural benchmark, from what I understand.



Q. So the language in the first sentence, that refers to highest-composite-rate tariff, would not create any inconsistency or ambiguity with Richmond using the NECA rate?
A. I'm not sure I understand your question.
MR. ADAMS: Could I have a moment to confer?
MR. ISENBERG: Okay.
(Pause.)
Q. Did you have something to elaborate on?
A. Yes, that we don't think that the language would apply any longer, now that we're going to accept the NECA benchmark.
Q. I'd like to ask a record request: If you could provide us revised language that you think will be sufficient to address the rural extension.
MR. DeROCHE: We'll caption that DTC Record Request No. 4.
(Record Request DTC-4.)
Q. Just to be clear for the record: You're not asking the Department to adopt the Federal rule; you're asking the Department to adopt something similar to the Federal rule for Massachusetts. Or you're not asking -- let me rephrase that.

You're not asking the Department to allow Richmond Networks to take advantage of the Federal rule, but you're asking us to create a similar rule here in Massachusetts that would allow for a similar exemption. Is that correct?

A. That is.

Q. Are you aware of any FCC rules or case law that would prevent a state from doing what you're asking us to do?

A. No, I'm not aware of the rules.

Q. In one of your responses to Department discovery -- and I'm sorry, I don't have the number -- but I believe that you had said that you thought it might be difficult to implement the exemption. And I was wondering what you were referring to when you say "difficult."

MR. ADAMS: Could we clarify which response that is? I don't recall that substance.

A. I believe it's DTC-Richmond-1-9.

MR. ADAMS: I don't believe the response was that it would be difficult to implement the rural exemption. I believe the response was that it would be difficult to implement Verizon's proposal of a cost-based exemption.



Q. One final question: In your testimony you referred on Page 7 to a price squeeze that Richmond Networks operates under, given the difference between Verizon UNE rates and Richmond -- and Verizon retail rates and Richmond retail rates. Are you asking the Department to address that price-squeeze situation?

A. We're not asking the Department to address that. We were just using that as evidence as to why the rural exemption would make sense for us.

Q. Thank you.

MR. DeROCHE: Thank you very much. Is there any party that wishes to re-cross-examine the witness?

Is there any rebuttal testimony?

MR. ADAMS: No, Mr. Hearing Officer. We're done.

MR. DeROCHE: Thank you very much for your testimony.

THE WITNESS: Thank you.

AUGUST H. ANKUM, Sworn

MR. DeROCHE: Mr. Krathwohl?

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



DIRECT EXAMINATION

BY MR. KRATHWOHL:

Q. Dr. Ankum, could you please state your name, your business address and business affiliation for the record?

A. My name is August H. Ankum, 1027 Arch Street, 304, Philadelphia, Pennsylvania 19107.

Q. Are you familiar with the document that's entitled Prefiled Testimony of Dr. August H. Ankum on Behalf of One Communications, PAETEC Communications, Inc., RNK Communications, and XO Communications Services, Inc.?

A. Yes, I am.

Q. And are you familiar with the various responses to information requests, which responses were filed on behalf of those four CLECs that I've just referenced?

A. Yes.

Q. Including the various supplements to those responses?

A. Yes.

Q. Are all the factual matters in the testimony and in the responses as supplemented true and correct, to your best knowledge?



A. Yes.

Q. Would the testimony and supplemented answers be the same today if you testified as to all those matters under oath?

A. Yes, they would.

Q. Dr. Ankum, could you please provide a very brief summary of your testimony.

A. Yes, I can.

MR. FIPPHEN: Objection. I thought we had established at the beginning there would be no live direct testimony of substance. I believe, if we go back to the transcript on the first day, that you had indicated that that would not be allowed.

MR. DeROCHE: That's correct. The Department has indicated that. I believe I know the point of confusion that's happened here. Mr. Krathwohl, what I indicated to you on the second day of testimony, I believe, when AT&T's witness was being cross-examined by Comcast, was that the CLECs would be afforded the same opportunity as any other party in the case to cross-examine the witness, be it friendly or unfriendly.

In this particular instance what's happened is that One Communications, PAETEC

Communications, RNK Communications, and XO Communications have jointly called the same witness. So I'm afraid that none of those parties will be allowed to offer any direct testimony outside of what we listed on the first day, being corrections and updates to the written filed testimony.

MR. KRATHWOHL: I understand and respect the instructions and the practice that was set out at the outset here. Certainly I think the record will be served -- it has been noted -- one thing that we can agree with Mr. Nurse on is that Dr. Ankum's testimony is long.

Also, in part, and in part because of some severe mischaracterizations of his testimony by Mr. Nurse, I think that it would help the record considerably to have a very brief summary of as well as to put everything in one place as we've been -- sort of the mantra we've been trying to adopt, at least most of us, I think, in the proceeding here, cutting to the chase.

I am confident that Dr. Ankum in his answers to questions, if afforded the latitude of Mr. Nurse, will be able to get in more than we're certainly going to put in for a brief summary here,



and, if not, in redirect.

So I think really it's a matter of trying to present succinctly, clearly, upfront, cutting to the chase, letting Dr. Ankum have a few minutes to really summarize what he has tried to put forth here.

MR. GRUBER: Mr. Hearing Officer, before you rule, I'd like to be heard. I would have been delighted to have allowed my witnesses to present it succinctly, all in one place, upfront as well. I think we've all got to live by the same rules.

MR. DeROCHE: Thank you. I agree. I think that the parties would be prejudiced if I were to allow you to enter this summary as part of direct testimony. As you pointed out, you will have an opportunity to offer rebuttal testimony; and if it's a little out of order, then so be it. But at least everybody will be given the same shot. So I'm going to deny that.

MR. KRATHWOHL: The witness is, then, available for cross-examination.

MR. DeROCHE: Thank you very much.

MR. GRUBER: May I ask for a clarification of your statement? Is the opportunity



for redirect that the CLECs will have, or is it for rebuttal? Is there a specific provision for rebuttal? That's all I'm trying to understand.

MR. DeROCHE: I'm sorry, they're going to have opportunity to offer redirect.

MR. GRUBER: I mean, I'll understand that they'll probably want to make it a rebuttal, but at least I wanted to understand your ruling as well.

MR. DeROCHE: It will be limited to what was asked of the witness during the testimony.

Richmond, Mr. Adams, would you like to begin?

MR. ADAMS: No questions.

MR. DeROCHE: Mr. Reyes, the Attorney General?

MR. REYES: No questions.

MR. DeROCHE: Mr. Gruber, AT&T?

MR. GRUBER: I have a few questions.

MR. DeROCHE: Please begin.

CROSS-EXAMINATION

BY MR. GRUBER:

Q. Good morning, Dr. Ankum.

A. Good morning.



Q. The testimony that you have in front of you, sir, did you write it, or did Mr. Starkey write it?

A. It's an iterative process. You want to know the genealogy?

Q. Yes, why don't you give me the genealogy.

A. I think the genealogy runs as follows: In 1986 --

Q. Can I just stop you? We only have a day.

A. I'll skip a decade, then, 1996, and this is very serious now, because this addresses your parent company, SBC.

In Illinois there was a case called Ameritech Customers First, and the idea that CLECs would have market power with respect to switched access, to my knowledge, first emerged in that particular proceeding. I at the time worked for TCG, a company that has been discussed yesterday by some of the AT&T witnesses. And together with some MCI witnesses we testified in this proceeding, and we all testified, including MCI, that CLECs did not have market power. And the arguments that we developed and presented there were kind of the genesis for the subsequent policy paper that evolved over time.

The next place where I systematically laid out my ideas was in a Virginia case, where I wrote a roughly 20-page type of white paper. That white paper then evolved into system testimony for Texas McLeod, again all along the same lines.

We then developed -- I developed it further into a white paper that was presented in Florida, and that white paper has been presented to you in response to data requests. And that white paper then was subsequently turned into this particular piece of testimony by one of the consultants that worked for QSI, Mr. Patrick Phipps. He has been referenced in the discovery responses.

The initial witness then was Mr. Starkey. Due to time conflicts, he could not be testifying, and so I adopted the testimony. But the genesis has pretty much consistently been my thoughts in terms of the policy arguments.

Of course, there's a whole number of facts that have been introduced. We do rate analyses. We show how rates vary across the country. Those types of empirical analyses have been performed by Dr. Denny, who is part of QSI.



She has access to a large database of switched-access charges; and switched-access charges, as you know, they vary widely across the country. They vary in the state. I didn't personally do that. She did that.

I also worked with, or our firm has a Dr. Rodriguez, who worked for the Federal Trade Commission for seven years. He did antitrust analysis. He has published widely on antitrust issues. He worked closely with me on drafting the white paper.

Those thoughts about the market-dominance analyses that focus so prominently in this proceeding he and I worked on together to make sure that what's found its way both into the QSI white paper as well as into this testimony is fully consistent with traditional antitrust analyses and the horizontal-merger guidelines that have come up during the discussion yesterday. I referenced that throughout his testimony. I applied the horizontal-merger guidelines in a very consistent manner, consistent with the Department of Justice and Federal Trade Commission practices. So Dr. Rodriguez had an input into that.



And now I've adopted this testimony, and it's presented to you.

Q. I'm delighted to have it. You, I take it, relied on Mr. Rodriguez as your expert on the horizontal-merger guidelines?

A. I relied on him as a sounding board, so to speak: I had used the horizontal-merger guidelines in one of my first market-dominance analyses with, interestingly enough --

Q. I'm sorry, I just asked you whether you relied on Dr. Rodriguez.

A. I said as a sounding board, but I am the primary author of those concepts and the applications thereof. And I was telling you, I was going back to AT&T's market-dominance case in Texas, where you requested to be declared nondominant. And that's when I first started as an economist working with the horizontal-merger guidelines. I applied them in Texas, and I have over the years studied them.

I just want to make sure that with respect to this particular case that what I was saying was consistent with what the Federal Trade Commission and the Department of Justice do. And



for that I used as a sounding board Dr. Rodriguez.

Q. Thank you. Let's turn now to some matters directly pertinent to the issues in the case. I'd like to start off with trying to see where we can agree and then get a little bit more focused on where we don't agree.

First of all, can we agree that as a policy matter competition is good if we can get it introduced into telecom markets?

A. Yes.

Q. And as a general proposition, competitive markets have produced good results for society? I think we can all agree on that, generally speaking.

A. Yes, although events of the last two weeks may cast some doubt on that. But generally, as an economist, I do agree.

Q. Understood. I take it it's also your recommendation to the Department that the Department should implement policies that promote and encourage competition in the telecommunications market.

A. Yes.

Q. And one of the reasons why competition is good is because it has the characteristic of driving down costs; is that right?

A. Yes.
Q. That's one of the reasons.
A. Yes.
Q. And in a competitive market, when costs are driven down, there's a tendency for prices to follow, as a general proposition.
A. Yes.
Q. Now I want to look at -- and I think we're still in agreement, but you can correct me if I'm wrong. I want to talk about what economists typically say are the good characteristics of a price in the competitive market, and I want to focus on economic efficiency. I'll read you a paragraph, and you tell me if you agree with it. It consists of about three or four sentences.
Prices serve to signal to all economic participants, buyers and sellers, in a society the relative scarcity of products and services. As such, they help to determine how much society will consume of a certain product or service. This means that if prices are out of alignment with costs, then society perceives the wrong signals about relative scarcities. The result is that society will either overconsume or underconsume certain products or



services. In any event, price distortions will lead to economic inefficiencies. Is that a statement that you can generally agree with?
A. Yes. In fact, I think I've pretty much argued that in this testimony, that prices must reflect underlying costs.
Q. Good.
A. If those costs vary, then when regulators set those prices, prices should follow those variations in cost.
Q. Let's just now talk about prices. We're getting some basic principles down before we get to where we are going to argue.
Can we agree that prices above the marginal cost of producing the item are inefficient in an economic sense?
A. If you have a single-product environment, I would say generally yes. Of course, we're dealing with a multiproduct environment, and there again, it's much more complex, since in a multiproduct environment the marginal cost of a single product may be relatively low, but if you set all prices based on marginal costs for a multiproduct firm, it may not recoup the share in common costs, and that



is true for every multiproduct company. And therefore, if you were to set prices at marginal cost across the entire product range, a company, any company, no matter how efficient, would go out of business, as long as there's sharing of common costs involved.
So the answer is, in a single-product environment, which is not relevant here, the answer is yes. In a multiproduct environment, which is relevant here, the answer is no.
Q. For the sake of argument, let's accept the assumptions I'm asking you to make. We otherwise are going to be here all day. We can then relax those assumptions later.
A. I'm so relaxed already.
Q. So something that costs $5 to make that's selling for $10 is inefficient because there are people who value it at 8 but can't buy it, even though it only costs $5 to make; right?
A. Yes. And you asked me to accept your assumptions, so I presume now -- let's make this explicit -- that the assumption is a single-product environment.
Q. A single-product environment.



A. In a single-product environment, what you just said is correct.
Q. And society is worse off in that example by $3 if the prices are set in relation to costs in the way I describe.
A. Yes. Well, it's more complex. But you're saying 8 minus 5 is $3. There's an overpricing by $3.
Q. Yes.
A. Society is not worse off by $3. There is a different analysis that underlies that. There's a demand function, supply function. You find what is called a dead-weight loss.
But as a shorthand, society is worse off -- it could be worse off as much as $3, but possibly less. So somewhere between zero and three dollars.
Q. But it's worse off.
A. Yes.
Q. And something that costs $5 to make that's selling for $3, that's a problem, too, isn't it?
A. Yes.
Q. Because society will tend to overconsume that; right?

A. Yes.
Q. Now I want to talk -- again, this is just establishing some principles. Now I want to talk about applying these principles to a single, homogeneous product, not a multiproduct industry -- at least not a multiproduct industry in the sense that you're probably talking about.
I want you to think about oil for a second, and assume that oil is going for $100 a barrel in the world market, which is not far off these days. And assume a company, and let's call it West Texas Petro, out in West Texas, a small operation looking to get into the oil business. It costs them $150 to produce a barrel of oil.
Now, assuming that the buyers of the oil are under no legal compulsion to buy it or other noneconomic compulsion to buy it, you would agree with me, wouldn't you, that ExxonMobil has no incentive to pay West Texas Petro more than $100 a barrel?
A. Yes.
Q. And that's because ExxonMobil can get that barrel for $100 from somebody else.
A. Yes.



Q. Now let's assume that a member of the royal family in Saudi Arabia has an oil well in his backyard, the backyard of his palace. And let's further assume that it costs this Saudi Prince Petro only $30 per barrel to produce a barrel of oil bubbling out of the backyard.
A. Yes.
Q. I think we can also agree that the Saudi Prince Petro oil company is probably not going to be satisfied with $30 a barrel.
A. Correct.
Q. He's going to sell it for $100 a barrel; correct?
A. In your hypothetical case, yes.
Q. So in my hypothetical case, we can agree that prices set at a market for a commodity like oil tend to coalesce around a single market-clearing price.
A. Yeah, and of course, I'm allowing you to make all these assumptions because we know that there are various distortions in particular markets relating to OPEC, which is a cartel trying to control prices. But for purposes of maintaining a clear example, I'm making all the assumptions that I



think you want me to make, and so the answer is yes -- which is no reflection -- go ahead.
Q. I want to go back to the West Texas Petro example for a minute and understand if we change one of the conditions we're looking at. Let's assume that the government steps in and makes, requires ExxonMobil to buy a barrel from West Texas Petro at $150 a barrel, the cost that West Texas Petro incurs to produce it. Would you agree with me that those extra $50 are an approximation of the net loss to society in that scenario? Is that correct?
A. I wouldn't say approximation, but I understand you're trying to qualify the question in light of our earlier discussion about dead-weight loss. So with that understanding, yes.
Q. It constitutes some kind of dead-weight loss. We're spending more resources to get the same amount of oil, is basically the case; right?
A. Yes.
Q. Now let's go a little beyond that, to the issues where we might not agree as well. Now, you've testified that CLEC access prices are higher than Verizon's probably because they have higher costs -- they, the CLECs, have higher costs. Is



that a fair characterization of your testimony?
MR. KRATHWOHL: Could we have a page reference, please?
MR. GRUBER: I don't have a page reference. This is just the general gist I got out of his testimony.
A. It's slightly different. My testimony is that the CLEC access charges are part of a bundle of services that the CLEC's offering to market. The bundle of services translates into a certain amount of profit. In the absence of barriers to entry, that profit is controlled by market forces.
So my testimony is, slightly different than what you suggest, that it is those market forces that push down on the amount of profit that CLECs can extract from access charges. What I'm saying is, markets abhor excess profits.
Now, exactly how markets tackle those things, I assume none of us knows that exactly because the marketing geniuses typically don't participate in these type of proceedings; they're out there making money. But one thing we do know, if there's no barrier to entry -- i.e., if other firms can step in to compete for excess profits, we

468

know they will, one way or another. And I've suggested in my testimony that the company ideally situated to compete for those excess profits is Verizon.

So my testimony, then, is that it's market discipline that controls whether CLECs are going to be setting their prices for all of their products, including switched access, which is just another price, and it's just another price that translates into just another profit. And it's just another piece of profit that is subject to competitive strife. There is nothing different. But the question becomes --

Q. Dr. Ankum, I ask the questions, sir.

MR. KRATHWOHL: Mr. Hearing Officer, I really have to jump in here. I mean, we went through this yesterday. Myself, Mr. Messenger, probably others were quite dismayed with the extent to which Mr. Nurse went afield. I think that between myself and Mr. Messenger we asked 50 yes-or-no questions. He testified for two hours or more in response to those questions. 50 yesses or nos could have been done in five minutes.

I think this is wholly within the same

469

rules as Mr. Gruber has asked for, to allow Dr. Ankum to answer the question and to provide his explanation of the relevant information that bears upon his answer.

MR. GRUBER: May I be heard on that?

MR. DeROCHE: Yes.

MR. GRUBER: First of all, I don't recall Mr. Krathwohl asking -- interrupting a nonresponse and objecting to the response. I think this is a different situation. Had Mr. Krathwohl done so, you might have made a ruling, and we might be talking about, you know, equal rules for both sides.

But what I'm trying to do is to keep us on track today, so that we can join the issues. If Mr. Krathwohl thinks that something's been left out that I have raised on cross, he's more than welcome to ask Dr. Ankum. But I'm never going to get through this cross if Dr. Ankum starts to pose the questions, as he was doing there, that he intends to answer, instead of answering the question that I asked.

MR. KRATHWOHL: I must beg to differ. I specifically asked the Bench for rulings and the

470

disciplining of the witness. There was some direction given, which I think did not really carry through with the witness's answers. Rather than having a perpetual argument between the lawyers, which is what we will have at this point -- we had made our point to the Bench. We had hoped that the witness would abide by what the Bench's directions were. That's the way we approached it.

So I really have to disagree with Mr. Gruber's characterization.

MR. DeROCHE: Mr. Gruber, I'm going to deny that objection. The witness is going to be free to answer the question in the way that he feels he must. He's got to elaborate on his testimony.

You can certainly feel free to try and redirect the witness and to keep the witness in line with the questions that you ask. But if he feels he needs to elaborate on something, I think I'm going to have to let him do that.

I will instruct the witness to try and keep your answers as succinct as possible and as direct to the point as the questioners are asking.

THE WITNESS: I will do that, Your Honor.

471

A. Ironically, I was about to reask your question, to finalize the answer.

Q. Do you want me to restate it?

A. Well, let me try, and you correct me if I'm wrong. But I believe the question was, are the CLECs' access rates higher than Verizon's because their costs are higher?

Q. That wasn't my question.

A. Something like that.

Q. I asked you whether one of the general points of your testimony was that CLEC access rates are higher than Verizon's because their costs are higher.

A. Fair enough. I understood that to be comparable questions.

Q. Did I hear that your answer to my question was yes, that is an important part of your testimony?

A. No, the way that I -- everything I said in response to the earlier question, I would say exactly the same thing. And I would want to conclude that CLECs set their rates relative to competitive pressures and, like all companies in competitive markets, the squeeze between the

competitive pressures and their own internal cost considerations. So it's not that the prices are set just based on costs; it's the twin considerations of their costs and their pressures, and the competitive pressures. That is the gist of my testimony.
Q. Can I turn you to Page 24, Lines 14 through 16. We're going to have to do it this way, I think. Let me know when you're there. Are you there?
A. Yes. Give me a second, please. Yes.
Q. My question's a very simple one. I'm going to read the following sentence: "Contrary to Verizon's claim that CLEC rates are higher is not an indication of market power but more likely a product of the cost differences between CLECs and Verizon, as well as the manner in which Verizon's intrastate switched-access rates have been established." Did I read that correctly?
A. Yes, I did.
Q. And you answered that.
And it's fair to say, isn't it, that the fact that CLEC costs for providing access is higher than Verizon's is an important part of your argument in support of allowing CLECs to set their access prices higher than Verizon's? Isn't that right?



A. Yes.
Q. So an important part of your argument is that there is some relationship between the cost that the CLECs incur and the prices that they set for switched access; is that correct?
A. Yes, their wholesale prices, and the standing paradigm for the last 100 years is that when we look at wholesale prices in this industry --
MR. GRUBER: This I don't see as relevant to what I asked.
MR. DeROCHE: Mr. Gruber, I think he's explaining his answer. I'm going to have to let him do that. If you feel that that is going too far astray, then please feel free to make an objection and we'll make a ruling. But I think we're going to have to hear that.
THE REPORTER: We don't have the end of that answer on the record.
MR. DeROCHE: Dr. Ankum, would you please repeat your answer.
A. Yes. I believe I said yes, that the standing practice for the last 100 years in this industry has been to set wholesale rates at cost, and we would expect to find prices for wholesale



services to reflect company-specific costs.
Q. And in fact, what you just stated there is a central aspect of your argument; is that correct?
A. Yes.
Q. But you in this case have presented absolutely no evidence that the cost of any of these CLECs, specific CLECs, reflect or relate to the price that they specifically charge; isn't that correct?
MR. KRATHWOHL: Objection to form.
MR. GRUBER: This is cross-examination.
MR. KRATHWOHL: I disagree with the premise. I don't think there's been any establishment by Mr. Gruber that his premise is correct.
MR. GRUBER: Mr. Ankum has testified in his prefiled testimony. It's there.
MR. KRATHWOHL: He hasn't testified what Mr. Gruber just said.
MR. GRUBER: He's free to object. This is cross-examination.
MR. KRATHWOHL: That's what I'm doing.
MR. GRUBER: No, I meant the witness is free to object.



MR. DeROCHE: And I would agree. I don't think Mr. Gruber has put forth any hypotheses. He's posed a question, and the witness is free to agree or disagree. But I don't think it's an objectionable question, at least for cross-examination.
The witness will please answer that question.
A. The way I understand Verizon's proposal to be is that it would apply not just to the four companies that are sponsoring my testimony but to all CLECs in Massachusetts.
So what I've done in my testimony, I've presented a whole number of reasons, or a large number of reasons, why one may fairly conclude that CLECs have higher costs than Verizon. And I do cite evidence in my testimony, and among many other things that I cite, I refer to FCC orders, a number of FCC orders, in which this has been established. I have a discussion of switch-vendor contracts. I have an extensive discussion of AT&T's and Verizon's switch-vendor contracts, and as this Commission knows, those contracts entail huge discounts. I made references to cases in which that has been

established.

I also discuss that CLECs, because they don't have that buying power, do not get the same cheap switches, they pay much more for switches than Verizon does. I believe that's evidence. One can only conclude, if you pay more for your inputs, even if everything else were to be exactly the same -- if you both drive a Ford Taurus but you put more gas in your tank, or you put gas in your tank but one person pays twice as much as the other person, ultimately you have higher costs.

So I have a whole discussion in my testimony about how input prices impact costs. There are extensive discussions in my testimony about how the network architectures of CLECs are different than ILECs. Again, I reference FCC orders. I explain how most of the CLECs have to use collocation facilities that they purchase from the ILECs. I point out in my testimony that those collocation facilities that are not used by Verizon in terminating access must be used by the CLECs; but moreover, that the cost of those collocation facilities has been pushed up by the ILECs across the country. I have not examined the collocation



charges in Massachusetts specifically, but I believe that there are generally important pressures on those input costs.

CLECs must use transportation costs between their own switches and those collocation spaces. I present evidence about those transportation costs, and I discuss that Verizon doesn't have those costs.

So those are all costs that CLECs, even optimally efficient CLECs, must incur in the provision of switched access. They cannot avoid those costs.

So if you ask me is there evidence in my testimony with respect to the cost structure of CLECs in Massachusetts in general, I say yes, there's ample evidence. In fact, I have a number of other very specific analyses in there that compares the rate of switch utilization of CLECs. It's an empirical analysis that I have in there. I have provided empirical analysis about customer densities that CLECs experience versus what ILECs experience, and I explain that when a company has a lower customer density, it has higher costs, which is exactly what all commissions have found, and I refer



to that in my testimony. The lower the customer density, when you look across the nation and when you look in Massachusetts itself -- the lower the customer density, the higher is the cost of serving the customer.

So yes, I do have those discussions, and yes, that evidence has been presented.

Q. Dr. Ankum, can you turn to Comcast-CLECs-1-7.

MR. KRATHWOHL: Do you want to give the witness a copy of that, or shall I?

MR. GRUBER: The hearing officer had said we're all responsible for bringing our own copies, so I assumed that's what we were going to do.

MR. KRATHWOHL: I have approached a witness before and had attorneys object to that, so I don't want that to happen to me.

MR. GRUBER: No objection.

MR. KRATHWOHL: And the reference is Comcast-CLECs-1-7.

A. May I have a second? (Pause.)

Yes, I'm ready.

Q. It reads -- correct me if I'm wrong --



"Please provide any analysis conducted by Mr. Starkey that shows the relationship between the retail rates of CLECs and their higher usage costs." Did I read that correctly?

A. Yes, you did.

Q. After the objection, it states, "Notwithstanding this objection, Dr. Ankum responds as follows." And then it says, "Neither Mr. Starkey nor Dr. Ankum has undertaken any such analysis." Did I read that erectly?

A. Yes.

Q. So despite the fact that this by your own testimony was a very important part of your position, do we agree that neither you nor Mr. Starkey undertook an analysis showing the relationship between the retail rates of CLECs and their higher usage costs, as you stated there? Is that true or not?

A. Yes, the way that this question here is phrased, this answer as provided to you in discovery is correct.

Q. Thank you. Now, the CLEC access rates that we saw in Massachusetts vary widely. Can we at least agree on that?

A. Yes -- and they should.
Q. Just to get some sense of what's going on, Mr. Vasington had said in his testimony that they vary up to 15 times Verizon's rate. Do you dispute that?
A. Well, to say "vary" by up to 15 times, that's a somewhat imprecise statement. I don't know what specific example he had in mind of which specific CLEC. So I will let Mr. Vasington's statement stand and speak for itself.
Q. Is it a fair statement that you filed your testimony after Mr. Vasington?
A. Yes.
Q. And it's a fair statement to say that you didn't take issue with Mr. Vasington's statements here?
A. I have taken issue with the thrust of his argument, which is that CLEC rates are out of alignment.
Q. I didn't ask you that question. We're talking about rate variation here.
A. I have also presented --
MR. KRATHWOHL: Also, if I could ask for a clarification: Are we talking about rate



variation among the four CLECs or among the universe of competitive carriers?
MR. GRUBER: At the moment I'm talking about the universe of competitive carriers in Massachusetts. I'm talking, in fact, about Mr. Verizon's --
(Laughter.)
MR. GRUBER: I'm simply referring to Mr. Vasington's testimony, that was never disputed by Dr. Ankum. That's what I'm referring to.
Q. Why don't we do this: We've certainly agreed that the universe of CLEC rates vary somewhat in Massachusetts. I think, Dr. Ankum, you did agree with that?
A. Yes, and I said they should.
Q. And that they should. Now, do you have a copy of AT&T's response to CLEC-1-15(a)? And I do happen to have a copy of that. If you'd just turn to the last chart. I'm going to represent to you what this is and ask you to assume it's that; and obviously, if I'm incorrect, your response will not be based on anything accurate. This is in the record, and it will be reviewed and determined whether my statement about it is correct or not.



Your answer, understand, is only based on my statement and what you see in front of you.
I'm asking you, do you see the right-hand row there? I'm sorry; that doesn't make sense.
First of all, let me back up for a moment. This was compiled by AT&T as a composite access rate based on tariffed elements, not based on average revenues per minute, of many of the CLECs in Massachusetts. There are two or three -- most of the elements are usage-based, per MOU, so there's no dispute about that. One of the elements has a mile component in it, and the assumption was a 10-mile transport facility. And then, of course, one has to make an assumption about how much of the traffic is tandem-routed, and the assumption here was 20 percent.
And so under those assumptions, if you look in the right-hand column, you'll see AT&T's calculation of the blended access rates in relation to Verizon. Are you with me so far?
A. Yes.
Q. Is it fair to say that on this chart it varies from, among the CLECs who are sponsoring your testimony --



First of all, Choice One is one of the One Communications companies, isn't it?
A. I believe so.
Q. So if we look at Choice One, its blended rates as AT&T calculated run about 16 to 20 percent above Verizon's; is that right?
A. Yeah, they have a peak and an off-peak rate, and I presume these are tariffed rates, so there's nothing proprietary.
Q. That's correct.
A. Yes, that's what these numbers here show. If you're saying 16 to 20 percent, if you refer to the far-right column --
That's what you're referring to; right?
Q. Yes.
A. These numbers, 16 and 20 percent, appear there. I'm not speaking to the veracity of the underlying numbers, of course.
Q. I understand. And Conversent Communications there, that says that it's 1,277 percent higher than Verizon's; is that correct?
A. That's what the number says, yes.
Q. And Conversent is also one of the One Communications companies; correct?

A. Yes, I believe so.
Q. If these numbers are correct, that's, then, you would say, a fair amount of variation, wouldn't you?
A. I think the variation is much smaller in nominal terms -- again, assuming that these numbers are correct. The variation in nominal terms is much smaller than what's suggested here by the percentages. That's Point 1.
Secondly, you asked me is this a large degree of variation. That, of course, is relative to what one would expect. But I believe the percentages are what they are.
One third point: The Conversent rates are somewhat higher than, if I'm scanning the rates here, of other carriers, but are not grossly out of alignment with those other carrier rates. So if you are asking me to speak to whether there's an undue variation here or whether Conversent is an outlier, I don't think that one can necessarily conclude that from the percentage that AT&T has calculated here -- in addition, of course, to the obvious observation, as I've already made in my testimony, that Verizon's rates are a benchmark of nothing other than some


regulatory process, which is hardly a touchstone for meritorious rates for anybody other than Verizon itself.
Q. Dr. Ankum, just to keep us on track here: We weren't focused on whether CLEC access rates were higher or lower than Verizon's; we were focused on the variation. So we could have put any number in there as the benchmark -- right? -- and we still would have the same variation; is that correct?
A. Not percentagewise, and the numbers would suggest very different things.
Q. But they all have the same relationship to one another no matter what Verizon's rate is. Is that a fair statement?
MR. KRATHWOHL: A clarification: Mr. Gruber used the word "relationship." Are we talking about percentage relationship, which has been the subject of the last several questions, or something else?
Q. Let's take the least expensive, the lowest rate on here, and let me ask you: Is it fair to say that Conversent's actual rate is over 1,000 percent higher than Choice One's actual rate, or something approaching that?


A. You're asking me if Verizon's rate --
Q. I'm sorry, I may have misspoken. If Conversent's rate is something like 1,000 times higher than XO's rate.
A. XO.
Q. I am misspeaking.
A. You're straining my eyesight.
Q. I'm sorry, I am misspeaking all over the place. Let me see if I can make it more clear.
I'm asking you whether Conversent Communications' rate is in the neighborhood of 1,000 percent higher than Choice One's rate. Hopefully I got it right.
A. Which Choice One rate? I'm playing with you now.
I think generally these numbers speak for themselves, assuming that they're correct. What you're asking me, is there a number 1277 percent? The answer is yes. And I presume that number stands in relationship to the Verizon rate, at least as how you presented it. And I have no problem with that statement.
Q. Now, four of your clients merged into One Communications; is that correct?


MR. KRATHWOHL: Could I have the question repeated by the stenographer, please.
(Question read.)
A. One Communications is the client.
Q. Your client is a merger of four CLECs; is that correct?
A. I don't know that. Subject to check, I would accept that.
Q. Let me understand this correctly: You're saying that there's a relationship between the CLEC access rates and their costs, and you don't even know whether some of these CLECs have combined into a larger company?
MR. KRATHWOHL: That wasn't the question.
MR. GRUBER: That's my question now.
A. Well, there are two components to that question; right? Are CLEC access rates set just based on cost? And I believe we had a discussion earlier, so I won't repeat that.
Now, the second question is how do I incorporate those observations into my testimony -- I believe that's what you're asking -- and do I need to examine the particular circumstances of each one

of the constituent companies that merged into One Communications and have I done that? And I haven't done that, and I don't believe it's germane to my discussion here.

Q. Dr. Ankum, do you believe that the merger of four smaller companies into one larger company has an effect on economies of scale?

A. Yes.

Q. And wouldn't you expect that the merger of these four companies would produce an improved economy of scale?

A. Yes, that is my testimony.

Q. And as far as you know, sir, there's been no change in the access rates of those companies, have there, since the merger has taken place? Is that correct?

A. I have not looked at that.

Q. Wouldn't that be an important thing to look at to test your hypothesis that access costs are in part a function of the size of the CLEC?

A. I don't know what the financial relationships are between the underlying entities that make up One Communications. That's Point 1.

Secondly, we're talking generally



whether there are competitive pressures being brought to bear on CLECs and CLEC access charges. One doesn't need to establish what's going on with each individual CLEC in the marketplace, just like in any other market we do not need to establish whether the prices offered by all firms in the industry are appropriately aligned. Companies are involved in their own assessment of what the market can bear he, and some companies may overshoot that, other companies may undershoot that. And particularly in a multiproduct environment, that particular adjustment and assessment where prices should be is a fairly complex one. So I have not ventured to go into the constituent companies of One Communications to examine that. That's, I believe, way beyond the scope of this proceeding. And I've already been accused of having filed too many pages.

Q. Let me understand this: You don't believe that testing your hypothesis that higher access rates are a function of, in part, economies of scale would merit actually trying to do that with the companies that you're here on behalf of today?

A. I've tested the hypotheses that economies of scale translate into lower cost. I've filed



extensive testimony on that. Then I filed extensive testimony on the variations in access charges across the state, across the nation. I've also stated, and again earlier this morning, that access charges are set with an eye on cost-recovery, but that's not the exclusive consideration.

So there is simply no way for me -- first of all, I haven't really asserted that economies of scale directly impact the access charges of CLECs, so for that reason I have not examined it. But also, as I said, it's not really germane to see what the underlying economies for the constituent companies do with respect to One Communications and their access charges.

Q. Is it your testimony that economic pressure should, one would expect, force down the access charges of, let's say, Conversent if it acquires, as it should, economies of scale through this merger?

A. I think the pressures are there regardless of what Choice One's economies of scale are. The tariffed access rates are there for everybody to see. Every company in this industry can take a look at these access charges. Every company in this industry can look at that and say, "Hmm, there's a



fair amount of profit being made." The question is, can every company step in and compete for those customers, those Choice One or Conversent customers? And that becomes a question of are there barriers to entry.

Now, obviously there will be some companies, some CLECs, that will not be well positioned to compete for those Choice One customers; but that is not the question. The question is, are there companies that are well situated to compete for those profits, and the answer there, of course, is yes -- most notably, of course, Verizon is ideally positioned to compete for those customers. They know who those customers are. On the originating side Verizon knows not only who the customer is, but chances are that customer is a presubscribed long-distance customer of Verizon.

So Verizon already has an established connection with that customer. It knows where the customer lives. It knows calling patterns. It knows credit ratings. It has building access. It has right-of-way. It has facilities -- because typically the CLECs offer their services over Verizon loops, UNE loops. So Verizon has the facilities in place and obviously has the switches in place, because these loops terminate in Verizon offices.

So everything is in place for a company like Verizon to compete for those customers. The only question is, does Verizon have the will? Well, that's not an economic consideration for me.

So to the extent that Choice One has high access rates, the question is not will the market -- or, broader: If Conversent begins to experience or Choice One begins to experience economies of scale, will the market as a response to those economies of scale being down the access charges. Rather, it is everybody can see how much profit there is, and the market will put pressure on Choice One and Conversent regardless of their economies of scale.

Q. The market will put pressure on Conversent. So now is it your testimony that the prices set by CLECs are without regard to their economies of scale?

A. There's the market and there's the CLECs. Those are two different concepts. Conversent will obviously consider its own costs. Rates have to be



compensatory. The market doesn't care that necessarily. Now, I think regulators should, but the markets don't really care about that.

What I'm saying is, if there's profit being made by a company, markets won't tolerate that. So markets will put pressure on the individual companies to keep their access charges and everything else within reasonable limits.

Now, does the market tolerate that Choice One or Conversent is setting the access charges higher than some other company? Well, obviously it is, and what are the reasons for that, you're asking me, or somebody could ask. And those reasons we don't know, because I'm not privy to why Verizon chooses to compete for some customers and chooses not to compete vigorously for other customers -- because one can put the question on its head: What is it that keeps Verizon from gaining the converse sent and Choice One customers? It could, but it chooses not to. Now, is that irrational, or is that an economic decision? I don't know what goes into those economic decisions that Verizon makes.

Q. This is a very interesting part of your



testimony, which, quite frankly, Dr. Ankum, I struggled hard to understand. And what I'm understanding you to say is that the market is going to put downward pressure on access rates. Is that a fair statement?

A. Yes.

Q. And that will keep CLECs from earning supernormal profits. I think you stated on that on Page 21, Lines 13 through 15.

A. Yes.

Q. And so this is what I'm struggling with, is how that happens. So I'm going to pose a hypothetical to you. I'm going to say I'm an IXC and you are a CLEC, and you have very high access rates, that I'm paying each time I terminate a call from one of my customers to one of your customers.

You've recently, in my hypothetical, raised your rates to supernormal levels, let's assume, because we're trying to see how the market is going to prevent that, push it back down. So now I as the IXC have an incentive, you say, to acquire that customer. Is that right?

A. No. Do you want me to explain?

Q. No. Let me go one step further. I



understood you to say that I, as the IXC, have an incentive to vertically backwards-integrate, to become a CLEC -- or, in the case of Verizon, since they're already vertically integrated here, they don't have to do that. But in either event, a vertically integrated company has an incentive to go after that customer as a local-exchange customer. Did I get it right that time?

A. No, you got it wrong. Do you want me to explain?

Q. Let me keep trying for a second. Well, why don't you explain.

A. Are you sure you want to ask that question?

Q. Within reasonable bounds, yes.

A. Not every purchaser of access needs to be in a position to compete for the customer. All he needs are guardians of the market. The question is, are there a sufficient number of customers that when a CLEC earns excess profits, are there guardians in the industry that could step in and grab for those profits by taking those customers?

And again, the key is each customer of that CLEC that has those high access charges -- those high access charges translate into profits.

So that's like, you know, like the target -- you've got these special sales, there's a little blue light coming on at Kmart. That's kind of what's happening in the market; right? Everybody can look at these access charges, and these access charges are like these special sales, like the little light coming on, that says, "Hey, here's profit, excess profit," we should call it.

When the guardians in the industry or in the marketplace, like Verizon, which is fully vertically integrated, those guardians could step in and snap shows customers up -- and with the customer comes all that profit. That's really what the game is all about.

So it's the presence of a number of companies that are positioned to compete that puts the pressure on the CLEC. Now, if the CLEC could price-differentiate and charge Verizon low access charges or some of the other CLECs and IXCs low access charges -- but if it could then look at another smaller IXC, for example, that has absolutely no alternatives and charge them high access charges, so price-discriminate, so to speak, then you have a problem, that they can do it.



So the CLEC is under pressure to keep all of its rates, but also its access rates, at a reasonable level, where the lights don't go off, where the lights don't say, "I'm making so much money; come and get me," because then the big guys will come in and take it away. As long as you make sure that these access rates are across the board the same for a CLEC, that the CLEC cannot price-discriminate, then the guardians make sure that these access charges don't spin out of control -- and I presented empirical evidence in my testimony that they don't -- and then the other IXCs, the one that you're postulating about, will ride on the coattails and reap the benefits of the competitive pressures that are being applied by the guardians.

Q. Are you done?

A. Yes.

Q. Thank you. I want to go back to my example, because I still don't get it. Now, one way, if I'm one of those guys that's standing there ready to acquire that customer -- and I don't think I misstated what you said, even after your answer -- one way that I would try to acquire that customer is



to lower my retail rate to that customer. Is that a fair statement?

A. Yes.

Q. And one way that the CLEC that has that customer can retain that customer is by lowering further its retail rate; is that right?

A. Right. There will be price -- among many other considerations. But that will be one way to do it. But I must add to that, and this is very important to note, that -- and we're talking, of course, mostly about business customers here, because CLECs, they serve small, medium-sized business customers, sometimes large business customers. They also serve residential customers, but I think it's fair to say that a fair amount of their revenue base comes from business customers.

Particularly with business customers, it's not just price that drives why a customer will choose your company. There's a whole host of other considerations that go into that. This has to do with the flexibility of the service, the responsiveness of the salespeople -- just all these other considerations.

And the key really is that we're not



really dealing with commodities. That word has been thrown around so much the last few days: "Oh, it's a commodity." Nothing could be further from the truth, of course. When you're dealing both with switched access and with the medium-sized business customer, it's not a commodity. Customer service is important.

So competition plays out in more than price, and that begins to shift the analysis. But go ahead.

MR. DeROCHE: If I could just interrupt for a second. I don't want to interrupt your flow, Mr. Gruber, but we're going to need a break fairly shortly. Are there many other questions along this line?

MR. GRUBER: Yeah. I'd like to just finish this section, and then we could take a break. Of course, it's going to depend on Dr. Ankum's answers. Let's give it a try.

Q. If I recall correctly, you stated in response to an information request -- and I believe it was Comcast-CLEC-1-6, that in the retail market, for retail customers, CLECs are price-takers; is that correct?

A. Yes.
Q. The way they get retail customers is to price their retail services at or below current market prices; right?
A. Generally speaking, yes.
Q. So in order to get this retail customer and therefore acquire the access revenues that go along with it, any company is going to have to lower its retail price, not its wholesale price; correct?
A. Generally, yes. It's the retail competition that controls the wholesale market. But generally that's how the competition could play out.
Q. So, now, one way in which a company that's unfettered by any regulatory requirements could accomplish the result of acquiring a retail customer, and therefore the access revenues, is, as we stated, to lower their retail rates. And one way they could actually do that is lower it below their costs of providing retail, if they had a source of supernormal profits in access rates. Is that correct?
A. Well, they can always choose -- I mean, you said unfettered by regulations. Companies can always choose, as a loss leader, for example, to



lower their prices below cost. We see that in many industries, and we have seen it surely in telecommunications.
To give you an example -- again, going back --
Q. Could I just finish the hypothetical? Is that all right? Or do you really want --
A. Go ahead.
Q. So you did agree with me that one way they could do this -- and that's all I want to do right now -- is to price their retail services below cost using excess revenues for access charges; correct? That's one way they could keep their retail rates low. I mean, we have to look at the incentives that they're under, and that's what I'm trying to do.
A. You're asking me is that one of the ways that they could do that. I suppose that could be one of the ways in which they do -- I can't foreclose that particular line of reasoning.
Q. So if the carriers competing for that retail customer can do it, if they want to acquire the retail customer and the access rates that go along with it, don't they have an interest in keeping access rates high?



A. And I think this is where we're running the risk now of trivializing the price-setting in a multiproduct environment. In a multiproduct environment, where companies offer 10, 20 different products, where they may compete on the full array of services face to face with one of its competitors but there are other competitors where they have a smaller set of products that they compete on, the price-setting is much more complex. The price-setting will have a multitude of considerations.
The subsidy argument that you're rolling out -- and, by the way, let me say, I don't agree with the word "subsidy." That needs to be qualified. But the dynamic you're laying out, as I understand it -- and correct me if this is not the dynamic that you're hinting out -- that somehow this is going to be putting upward pressure on access charges and obviously downward pressure on retail, let's say business rates -- which I would consider to be a good thing, and I presume that you consider the upward pressure on the access charges to be a bad thing --
Now, you asked me --
Q. I didn't say that, so don't presume that.



A. Now, the question is is it possible that the company would do that. My answer is yes. Is it likely that all companies will be boosting their access charges in this arrangement to get the lowest possible retail rates? My answer to that is no -- and again, for the very same reasons that I alluded to earlier: The more you begin to boost these access charges, the more you begin to flag to everybody that you're doing something out of the norm and the more attractive becomes your customer base. And the CLECs have to fight hard to find a niche in the market where they have a competitive advantage, and the last thing they want is to create situations where they're going to be raising flags so that what was their niche now becomes a common pool.
Also, empirically, we haven't really seen this.
Q. Well, that's a matter of dispute in the case. You're testifying, I guess you're saying to me, that the rates we see here are not supernormal rates, providing excess profit, and you're doing that on the basis of not having done a cost study?
A. The reason I'm saying that these rates are

not out of alignment with what we wanted to see -- with what we expect to see, is, first, the rates that you are looking at --

Q. Wait a minute. Start with the question that I asked, and then you can go on, because I lose track if you don't answer my question. Can we at least get an answer to the question and then you can explain?

THE WITNESS: Can I have the question read back.

(Question read.)

A. And I proceeded to give you the basis of my conclusion.

Q. Could you state your conclusion first and then give me your basis?

A. I have done cost studies, and I think I've stated as much in response to data responses -- or data requests -- and the basis for my conclusion that rates are not out of alignment is simply an empirical one, to look at the rates of the CLECs, and you find that they're very close to where Verizon's rates were prior to their last rate reduction, in DTE 01-31. In fact, the average of the CLECs is slightly below where Verizon was.



It's important to realize, as I state in my testimony, part of the basis for my conclusion, that Verizon had a reduction in rates, but it did not have a reduction in its revenues. As you may recall, Verizon lowered its rates. There was a $50 million shortfall. That $50 million shortfall was then placed on the inelastic residential customer. That's the construction; right? So that at the end of the day or the end of the year Verizon is still reaping the same revenues.

I've also pointed out the problem with that construction: If you ask CLECs to follow suit, the problem with asking the CLECs to follow suit is that CLECs don't have inelastic customers, because the very definition of an inelastic customer is that the customer is captive, captive to Verizon. CLECs don't have such customers.

Therefore, if you just look at the revenues that are being earned, Verizon is still earning the same amount of revenues, and CLECs have not followed suit in that rate reduction. But if you compare them to the 2002 rates of Verizon, the CLEC rates fall right in line with that. There's nothing really anomalous there.



MR. DeROCHE: If I could interrupt you there. I'm afraid we're really going to have to take a break. Why don't we take 15 minutes. We'll come back at 10 after 12:00.

(Recess taken.)

MR. DeROCHE: Dr. Ankum, just before we begin, I'd just like to remind you that we are under a tight deadline. I don't want to constrain your answers in any way, but I would ask that you confine your answers to the questions that are asked by counsel and try not to answer additional questions until they're asked.

THE WITNESS: I'm appreciative of that deadline. I have one myself -- very urgently, actually. It's a commonality of interests.

MR. KRATHWOHL: That does allow for explanation of the answer to the question, though; correct?

MR. DeROCHE: Absolutely -- and I don't want to try and pen you in too much. But please just stick to the subject matter of the question.

THE WITNESS: I'm homeless. I checked out of my hotel. I have no place to go.

MR. DeROCHE: Hopefully we'll get you



back home before that becomes a problem.

Mr. Gruber, would you like to continue?

MR. GRUBER: Yes. Thank you, Mr. DeRoche.

Q. Where we left off, Dr. Ankum -- I had asked you a question, and I'm not sure I got the answer, so I do want to go back to my last question. I'll break it down.

Now, do I understand your testimony today to be that CLECs are not making excess profits today in Massachusetts? Are you stating that?

MR. KRATHWOHL: Is that any CLECs, all CLECs?

MR. GRUBER: Any CLECs.

A. Can you refer me to a statement in my testimony?

Q. No, I'm just asking. I just want to see the limits of what you're stating.

A. I believe that if we look back over the last ten years, where we have seen CLECs, it's fair to say that a large number of them have gone out of business. The ones that are in business do not seem to be making much profit. If we look at the market share of CLECs, they have pretty much stagnated or

are somewhat declining.
So, from those trends I infer that it's no gravy train, neither nationwide nor in Massachusetts.
Q. You didn't look at the financial books of any CLEC in this case, did you?
A. Not for purposes of this proceeding; that's correct.
Q. And you can't state, can you, that the revenues that any one CLEC is making are not in excess of normal profit?
A. Subject to my previous answer, I have not looked at any specific numbers.
Q. So you can't rule out the possibility that, say, Conversent at 5 cents a minute is not earning excess profits? You can't rule that out, can you?
A. Actually, I happen to have proprietary information about Conversent from past work with Conversent. I can't divulge that information.
MR. DeROCHE: No, I don't think we want you divulging proprietary information that is not going to become part of the evidentiary record in this case.
Q. I'll just ask it a different way: You



didn't use, take advantage of any opportunity in working for Conversent to review Conversent's books for this case, did you?
A. That's correct.
Q. And you didn't take advantage to review the books of any of the other CLECs that are sponsoring you in this case, did you?
A. I have not done a profitability analysis of my four clients; that's correct -- for purposes of this proceeding.
Q. So you can't state, as you sit here today, that the shareholders of those CLECs are not lining their pockets with excess profits. You can't state that on the basis of any empirical evidence, can you?
A. Well, I've earlier explained why I deem that to be highly unlikely, given national trends for the last ten years and shrinking market shares, et cetera, et cetera. If you ask me specifically did I look at the financial statements of these companies and whether they are "lining their pockets," as I said earlier, I have not looked at those financial statements.
Q. And did you ask your clients to see those



financial statements?
A. No, I have not.
Q. You didn't consider it important in this case?
A. No, I did not.
Q. What I'd like to do is return -- we were having an interesting discussion on the dynamic that takes place. I was trying to understand your argument about how the dynamic is going to push down access rates. And I think we were talking about the possibility of a CLEC trying to raise its access rates above, you know, some economic costs and earn supernormal profits. I'm just returning us to our discussion. So far you're with me?
A. Yes, I'm with you.
Q. We said that, if I understand you right, that the threat of a Verizon or some other carrier trying to acquire the retail customer is what's going to set off lights and prevent a CLEC from increasing its access rates. Is that roughly correct?
A. Roughly -- among other things.
Q. I guess where I was getting confused is that, in order to acquire that retail customer,



since it's a competitive retail market, the best way to acquire it -- in fact, as you yourself have testified, as price-takers, the only way to acquire it is pretty much to set your price at or below the market price. Right?
A. In addition to tailoring the service to the customer and a variety of those other things. But surely price competition is an important component.
Q. It's certainly important. So as a carrier paying your high -- "you" being the CLEC -- paying your high access rates, my incentive is to try and acquire your local-exchange customer, and in order to do that, I've got to, you know, lower my retail rates.
A. Among other things.
Q. Now, I can't understand why that doesn't create an incentive for all carriers to reduce their retail rates and, since their costs are not going away, recover their costs from their access rates. Why isn't that the incentive created by this model?
A. I think this goes back to an earlier discussion we had this morning, and I hate to regurgitate that, since I believe your question is very much the same. I sort of have to.

512

As I explained earlier, you're in a multiproduct situation, where the considerations about individual prices are made jointly with the prices of all these other products that these companies offer -- and they may offer 30, 40 different products, with a fair amount of shared and common costs.

And so the notion somehow that there's an easy solution of taking money from access and funneling it into just a particular business service, it has to pass through this much more complex set of considerations. And what I indicated earlier this morning is that one of the big countervailing considerations is that the CLEC does not want to raise a flag to the entire industry by means of high access charges, that it's earning exorbitant profits on access charges, because it's raising a flag, and it's raising a flag to all existing competitors, and it's raising a flag to potential competitors who enter the industry. But it basically says to the industry, to the market, "Come and get me." Because these tariffs are publicly available at the Commission, everybody knows what these access charges are.

513

Now, the retail prices, of course, and the services that are being delivered, et cetera, et cetera, are much more obscure. Verizon doesn't know necessarily what services a One Communications offers to its business customers, what great relationships they may have with their business customers.

So there's all those other considerations. However, just simply raising your access charges is just raising this huge red flag to everybody: "Easy profits. Come and get me." That is a market discipline. And I think it's a very straightforward dynamic.

Now, I must also add to this, and I've already said that this morning: I'm no marketing genius, and if you ask me to spell out exactly how it is that markets compete away profits, I say, "Well" -- I mean, I can give you some ideas, as I just have, and I have some understanding of it. But the true marketing geniuses are out there doing it.

The key question is, what is it that Verizon and AT&T maintain, what is the miraculous barrier to entry that allows a CLEC to shield excess profits? I have not seen any discussion of the

514

barrier to entry that you have put forth. I am the only one that is talking about the barrier to entry. And it's a miracle to me why these companies that always talk about competition, when it comes to big profits that they assert for CLECs, why you don't address the question head on: What is it that allows them to maintain these what you call excess profits? No argument has been put forth by you, and it runs contrary to economic theory.

Q. Okay, I'm going to give you an argument. You tell me what's wrong with it. That red flag that you're talking about there, that says, "Come and get me," it's a red flag, but who looks at and responds to that red flag? I'll answer my own question. This is part of what I'm proposing to you, and you tell me what's wrong with it.

When the red flag goes up that this customer is a profitable customer, it's a red flag to acquire the customer. So the companies that are going after that customer don't change their access rates to acquire that customer, as is the usual case; they change their retail rates -- because we've agreed that's what the customer is responding to. And the more they decrease their retail rates,

515

because this is a competitive market, the greater incentive there is to maintain high access rates, because that's the only way they can do it.

Now, on top of that is the additional problem that when a Verizon, for example, acquires or seeks to acquire that customer and all the revenues associated with it, it immediately applies its own access rate, not the access rate of the prior carrier. So it's not going to enjoy the extra revenues that were there before.

Now, it's true, it's eliminated this excess profit that it was having to pay, but it's probably had to build in the cost of that elimination into its operating costs.

So that's the way I see it. Tell me what's wrong with that?

A. I believe this issue was addressed by the FCC in the CLEC access reform order of 2001. I think it's pretty much to the point here.

The FCC examined CLEC access charges, and it noted some of the distortions. And I think we can agree that there are certain price distortions in the market -- which, as I've discussed, stem in large part from the, at least on the entry side, the prohibition for IXCs to deaverage their rates. That's the Section 254(g) discussion. And because of that, IXCs can't send the price signals that would otherwise elicit the demand responses, so we're looking at the supply responses.

So when the FCC was looking at the supply side of the market -- and I jokingly said earlier this morning what we have heard in the testimony is the sound of one hand clapping. It's only the demand side that has been analyzed by these companies. But a market-dominance analysis looks at demand side and the supply side. That's two hands, and then you get a sound.

The FCC did that in the CLEC access reform order, and it laid out two preconditions for functioning access markets explicitly, two conditions: an alliance between IXCs and ILECs -- that's one -- and the second one was IXC entry into local markets.

And the dynamic that the FCC laid out in its own order is that when these things happen, we will see competition for the end user. It's a supply response. Companies will begin to compete



for the end user and the profits associated with the end user.

So the empirical question before you now is -- if you are inclined to turn to the FCC's policy analysis, the empirical question is, have those two conditions been met? And this is apropos your discussion. Has there been an alliance between IXCs and ILECs? Well, Verizon, of course, has merged with MCI, so to the extent that the FCC had concerns about an MCI being a captive IXC, so to speak, MCI now has access to all the facilities of Verizon. So that condition has been met; right? Likewise, AT&T has merged with SBC; so again, to the extent that the FCC had concerns about AT&T being a captive IXC customer, again, they no longer are a captive customer because now they have access to all the knowledge, the know-how, the resources of SBC.

So this vertical integration that the FCC was laying out as a precondition has been met in spades. These companies are now fully positioned to look at the market. If they feel that there are access charges that are too high, they can step in and approach these customers if they feel there are.

Now, is that profitable to them? Well,



first, I've already discussed all the advantages that a Verizon may have. They already have the customer, it's their own long-distance customer, so they know everything about that customer. To the extent it's a business customer, they may in fact already have their salespeople going in-house. They have all the facilities, because it's the Verizon loops that are being used. All that is in place.

Now, if Verizon feels that this particular CLEC to which it's terminating that traffic or from which it's originating the traffic -- let's say a business customer, and let's fill out your example: There's a business customer with, you know, 20 lines going into a location, and it's being funneled through Conversent, and AT&T is originating and terminating the call to this business customer, and there's a fair amount of volume coming out of it. Let me just make that example Verizon. And Verizon already has its long-distance people in there. They have their own business connections. They take these people out to lunch. So they know everything about these customers.

Now, the question is, at some point when



Verizon feels that the underlying CLEC is charging them too much for access charges -- they just feel like it's exorbitant -- you tell your salespeople, "The next time you have lunch with these people, make them a deal. Take these people onto our own network. Take the loop back. We have win-back programs." You're familiar presumably with Verizon's win-back programs. They're always very aggressive programs. Verizon has pricing flexibility for its business customers. You don't really scrutinize what prices are being offered to small business customers. Verizon can just go in there, make a deal with the customer. The customer migrates away from the CLEC with the high access charges and now joins the Verizon family. Is that in Verizon's interest? Verizon no longer has to pay those access charges.

So it's up to Verizon to make its own personal private economic cost/benefit analysis. Now, if you ask me what considerations go into that analysis, of course there are a multitude of considerations. They will lose the CLEC as a UNE customer, because the CLEC is purchasing loop and collocation and all these other things from Verizon.

So when Verizon looks at this and says, "Do I want to take these customers back? What do I gain? What do I lose," it's a complex analysis; but clearly, they can do so.

Now, secondly, we're all familiar in regulation with the dominant-firm/competitive-fringe model. Is it in the interest of Verizon to just gobble up all the customers in the industry? Well, the dominant firm/competitive fringe, that model says no, it's not in the interest of Verizon to do that, because for Verizon to be a profit-maximizing firm, it doesn't need to have the entire market, because it may cause the firm to begin to lower prices where it doesn't want to go. So it may be much better off leaving certain niche situations to the CLECs. It's a standard model. I think that's one of the other considerations that goes into this particular decision-making process.

The bottom line is, however, that the CLEC knows very well that Verizon, for example, is pervasive in the marketplace. They are so happy to have a niche in the marketplace. They have picked up certain customers that they can call their own. The last thing they want is to begin to raise access



charges where, if Verizon gets really ticked off and says, "You know what, you're really costing me too much money" -- now, of course, the first response is to go to the regulator; but absent that consideration, if Verizon in the marketplace says, "You're costing me too much money," they can pick up these customers.

CLECs know that. They don't want to jeopardize the niches they have created for themselves. So they self-regulate, and that's exactly what happens in most competitive markets. To the extent that the customers in the market are contestable, which they are in this case, the market participants self-discipline.

The profit that is being earned by the CLECs are no different than any other profits. You can only say that they're excess profits if you point me to a barrier to entry, and you have showed me none.

Q. Let me, there's an old saying, follow the money. Let me take the exact example that you posed, of a business customer with 20 lines; Verizon as the guardian, ready to swoop in and take it over, and why don't their account teams meet with the



customer for lunch one day and offer them a better deal. So that's the situation we're working with.

Now, because we're testing the theory that there can't be for any sustained period of time supernormal profits in the CLEC industry for access, we're going to assume that there are and see if they get competed away, under your scenario. So under my hypothetical, the same thing as yours, but the CLEC has supernormal profits in access.

In order to compete away that customer, Verizon -- it is the customer that's making the decision. The costs that the CLEC is imposing are not to the customer. So the customer looks at the retail price. Verizon says, "I want to be relieved of these excess profits," because that's what we've assumed, "generated by the CLEC, so I'm going to offer that retail customer a great deal." The retail customer takes that great deal. The CLEC loses it. What happened to the money?

The problem here is that Verizon, in order to buy off that customer, had to internalize the excess profits that had been made by the CLEC and as a result has to recover the cost of those excess profits from its other customers. So the net



effect in your example is that we've got excess profits, and they've been imposed upon the consumers of Massachusetts, and the lucky business customer has got a great deal.

Now, what's wrong with that?

A. There's a number of components to that; right? Now, first let me give you an example. I think we're all suffering under high hotel rates right now in Boston. You may not have noticed that, since obviously you don't have to sit in a hotel to attend this hearing, but I pay roughly $460 a night for Doubletree. I love the cookies, but $460 is a bit steep.

My colleagues here are experiencing rates that are even higher, and we're all moaning and groaning under this. So we made a little scheme and said, well, this time, of course -- and that's the problem with the short-run analysis that leads you to conclusions of market power -- you need to do a longer-run analysis and ask yourself are there supply-and-demand responses?

Well, we said, in the longer run, next time we come back here, and if these rates are that exorbitant, I'm not going to tie myself into like a four-day reservation and pay $2,000. We're going to go to a somewhat neighboring community, where the rates are, let's say, $100, or $150, and we're going to take a cab. So we're going to be driving in.

Now, you may not want to pay $50 for a cab to do that, but if I can save myself not having to pay $400, I would gladly shell out $50 for a cab ride, even though that seems exorbitant, too, but I'm still better off.

What I'm illustrating here is that self-provisioning is a supply response, and self-provisioning will put pressure on the market.

Now, back to your example, more apropos: If Verizon feels, again, that a particular CLEC is charging exorbitant access charges, at some point Verizon will just simply say, as I explained earlier, "The heck with that CLEC. I'm going to do it myself, because I'm tired of paying these huge sums of money," the way that we are tired of paying 400, 500 dollars for a hotel rate. "We're going to do it ourselves." That's what Verizon will say.

Now, it avoids those CLEC access charges. The CLEC knows that possibility, and therefore the CLEC won't let it come to that



situation. They preemptively self-discipline.

Now, there's a second component to your question, and I think you begin to suggest somehow that this is at the expense of the Massachusetts ratepayers, and let me address that point. When Verizon offers or begins to --

Let me put it a different way: When Verizon migrates the customer from the CLEC to its own network, which is avoiding the access charges that were previously paid to the CLEC, none of the other customers are impacted by that. That's what you call basically a revenue-neutral migration. At least it could be constructed as a revenue-neutral migration.

Now, I've already indicated that Verizon has a number of ways in which it can approach that customer. It's more than just price. Verizon can offer to be more responsive than the CLEC, or Verizon may say, "These are the local services that you're getting from your CLEC; but you know what? You're doing that over my network. They don't have trunk loop facilities. They're using my collocation space. And guess what? I got this new fancy feature: If you migrate to my services, I can offer



you those and those and those things." So Verizon can put a competitive package together and migrate the customer. In doing so, it avoids the high access charges.

To the noninvolved customers that you were referring to, the ratepayers of Massachusetts, do they carry some subsidy burden? The answer there is no. All of that can be done without involving the revenues and costs for those noninvolved ratepayers, as you refer to them.

So no, there is no subsidy involved at all; and yes, CLECs have a strong incentive to self-discipline.

Now, the kicker here is, of course -- I can hear you thinking -- this is, of course, not true for all of the CLEC customers. There will be small business customers, one or two lines, where Verizon may never come except when they order pizza. So this whole dynamic, I can hear you think, doesn't really apply to the small customer. But that doesn't really matter, because, as I said earlier, as long as the guardians are active, as long as the CLEC is required to charge the same access charges to every IXC everywhere -- not the same access



charge as Verizon -- but as long as the CLEC is required to charge the same access charges associated with a big customer and to Verizon as it does to, you know, a small business customer with two lines that is served by some small IXC, the market is disciplined by the presence of the big customer, the ability of Verizon to step in, take away that customer, and by the natural inclination of the CLEC to self-discipline.

So all of it nicely falls into line. Markets do work. The CLEC industry was supposed to be competitive under the Act. I think the Commission should think very hard to do this kind of like cross-trend, where increasingly we're deregulating Verizon and increasingly looking at CLECs as if somehow they are the culprits. It's putting the regulatory regime topsy-turvy.

Q. I'm going to focus on your answer there, and what I heard in your answer to the problem that I identified was that -- just so we stay on the same page, the problem I identified was that under my assumption there were excess profits that the CLEC was earning, and that in order to get that customer away and avoid having to pay the CLEC's excess

528

profits, the IXC or competitor has to take the present value of those excess profits and basically bribe away the retail customer -- and "bribe" is a legal bribe, an appropriate bribe -- the retail customer.

Your response was, "Maybe they won't compete on price. Maybe they'll do something else." But I didn't hear a principled reason why there isn't a transfer of the cost of this excess profit back to the acquiring carrier, which then must recover it in its rates. I didn't hear a response to that. Is there not one?

A. I think I gave one, because that goes to the question of how are the ratepayers of Massachusetts impacted by what the Commission will be ruling here; right? And the Commission has before it two alternative proposals. One is as you in your hypothetical sketched out that situation, and my response that the market takes care of this. And I will come to the question of the subsidy issue that you're raising there.

And the alternative is to cap, under your proposal, the CLEC rates at Verizon's level; right? And there the notion is somehow that when

529

you cap those CLEC rates, you do take tens of millions of dollars away from the CLECs in Massachusetts and you give it to the large IXCs, where the money flows to San Antonio and New York. You do that analysis. How does that benefit ratepayers in Massachusetts? How does Verizon's proposal pay off under a public-interest finding for the ratepayers of Massachusetts? And you're contrasting that with our proposal of letting CLECs self-discipline.

Now, under your proposal, I see no benefits to the ratepayers of Massachusetts, and I see a negative impact because your regulatory regime is predicated on a competitive marketplace, to which CLECs are integral. If you take tens of millions of dollars out of the CLECs' hide, you will undermine that predicate for your regulatory pricing-flexibility regime and fundamentally harm Massachusetts ratepayers.

Now, is there a subsidy flow under the scenario that you sketched out? First of all, as you said, Verizon will be avoiding the access charges that it's paying to the CLEC. It's avoiding those access charges. So it's a cost that's not

530

incurred. Those dollars are not leaving the Verizon pocket.

How is that impacting Verizon's residential customers, for example?

Q. Do you want me to answer your question?

A. Let me answer the question, and I will say it does not. The dollars were flowing out of Verizon's pocket, millions of dollars a year -- of course, which is a lot to CLECs. It may not be a lot to Verizon, but that's not the issue. But we know it's millions of dollars. We're talking about a large-size or medium-size business customer, that could be a substantial amount of excess payments that Verizon used to make to the CLEC, up to the point where it gets fed up.

So those dollars that Verizon used to pay out it no longer pays out. Now, if Verizon made no gesture to the customer, it was able to migrate the customer to its own network with a wink and a nod, the residential ratepayers would be better off -- right? -- because somehow Verizon's costs have been reduced, and somehow that could flow through in some trickle-down theory -- which is a variation of your other trickle-down theory in the

531

long-distance market; right? -- it could flow through to the residential ratepayers. It would make them better off to the extent it did.

But those monies that are avoided can be used to attract the customer. As long as Verizon doesn't pay more to that customer than it's avoiding in the access charges, everybody else is being kept whole or completely unaffected -- except for one thing: It creates competition in the marketplace for business customers, and as such, the general marketplace for business customers benefits, it makes for a vibrant industry. Of course there's this interplay between various prices, but it makes for a rich caldron in which things bubble up. Why would you want to squelch that by price regulation?

Q. Let's deal with your situation. I think you hit the nail right on the head.

A. My caldron?

Q. Just before that you said, "How does it hurt other ratepayers? Verizon will use the money that it avoids paying extortionate rates to attract the retail customer." And that is precisely my point.

A. That's only one example.

Q. As the result of -- you can tell me what's wrong with this. But as a result of having done that, it's now incurred those costs that have to be recovered from ratepayers. That's the reason why it does hurt other ratepayers. What's wrong with that?

A. You say it has incurred those costs. We've got to separate the costs that are involved; right? There's the money that Verizon pays out in access charges. If it can avoid those access charges -- and again, it's analogous to the hotel situation. If we can get a hotel, hopefully a Doubletree, because these cookies are tempting, the next time we can get a Doubletree in the suburbs and pay $150 a night and then pay $50 for a cab and commute into the city, I can avoid paying 400 or 500 dollars for the hotel.

Now, you can say, "Oh, but that's $50 that you're paying for the cab that must now be subsidized by QSI or other clients." No, the $50 is not being subsidized by anybody else. I'm avoiding $400 per night for a hotel. Out of those savings I can easily pay my taxi fare. Nobody else is being affected by that. Everybody else is being kept equally well off.



In fact, to the extent I'm avoiding $400 and only have to pay $50 for a cab fare and, let's say, $150 for a hotel -- that's $200 -- I've got $200 extra to play with.

Now, to the extent I want to gift it as a freebie for a lunch for other clients, there's no subsidy going on. Others benefit, too. Likewise, when you avoid the access charges that you pay to CLECs and you save yourself a bundle of money, you can spread that around, you can be generous -- if you want to, but that's up to you. Actually it's up to Mr. Fipphen in this example; we're talking about Verizon.

Q. I think it's one of the situations, Dr. Ankum, where we've got, you know, the little ball under three pebbles and the fellow's moving it around and wants you to figure out -- not pebble; shell game. We've got to figure out where the little ball is under the shell. The problem is that if we assume in your example -- for example, the hotels --

Let's assume for a moment that there's a monopoly in the city and hotels are charging $1,000 a night for a hotel and that there's excess profits



in that. Now, you come into the city and you want a hotel and you're not prepared to pay $1,000, and so you go out into the suburbs and you find a hotel. You're prepared to go a long way out to avoid that. The fact is that you're going to incur -- you're going to end up paying more because there was a monopoly on hotel rooms than you would have paid. In other words, the cost still gets imposed upon you. You might find a way to mitigate it, but the cost still gets imposed upon you, and therefore it has to be recovered from other people.

This is the problem. You've got to follow the pebble under the shell.

A. Good; let's follow the pebble. You say you have to go very far out, so that's your addition to my example. And building out your hypothetical: I've earlier provided simple numbers, so I don't know where the shell is and the ball that you're seeing, because I gave very simple numbers of $400, $500 for a hotel room, us finding a hotel room in the suburbs for $150, $50 for a taxi. There's $200 that I have to play with. Now, I don't know where that is a pebble and a shell. That seems to be fairly straightforward math. I'm saying that



because there's $200 to play with, nobody else has to subsidize this supply response, this self-provisioning.

Now, given that you're quibbling with my example -- you say, "You may have to go so far out that it becomes no longer feasible to do so." I understand that's kind of what your suggestion is, that you have to travel so far that even though you're paying $50 for a cab; I mean, it's cumbersome, and that involves a cost.

Well, okay. The response there is that within that construct I think the Commission has to appreciate how uniquely positioned Verizon is to compete for that customer. It would be as if somehow we all owned the Doubletree downtown for which I'm paying $500. The Doubletree has leased from us the building, because that's exactly what the situation is, of course. The CLECs are leasing the loops from Verizon, and then Verizon is the long-distance customer of the CLEC for its long-distance traffic, and so it terminates over, let's say, One Communications' network for long-distance traffic, but One Communications uses the Verizon loop.

So it's analogous to us owning the hotel, Doubletree leasing the hotel from us, and leasing it where we can on a monthly basis take every room back, because that's what a win-back program is, of course, in telecom. Most customers pay on a monthly basis, and when you win back a customer within a month, you can roll them over to your own network.

So we would have -- we would own the building, and instead of having to go all the way out to the suburbs, if we feel like, "Well, they're charging us every time we go to Boston, they're charging us 400 or 500 dollars for a hotel. You know what? It's our building, for heaven's sake. Let's just kind of pick up a few rooms for ourselves. Yes, Doubletree won't pay us the lease rate, but those are our rooms now, and I'm avoiding paying 400 or 500 dollars."

So to appreciate how well Verizon is situated to compete -- they own the network; they have building access; they know who the customer is; they've got white pages in which they can publish the customer's numbers; all of the traditional barriers to entry which the 1996 Act addressed --



none of those barriers to entry apply to Verizon. Verizon is fully equipped and set up to compete for those customers, as if somehow we owned the Doubletree building and at a snap of a finger could take its hotel rooms back.

If Doubletree knew that we could do that, it would not be charging $400, because it would know that we can just take these rooms. And if, moreover, the Doubletree were required, as CLECs are, to charge everybody the same price for a room, everybody, then the very fact that we could take over those rooms would discipline the Doubletree and keep the prices in alignment.

So the very fact that Verizon can come in and almost at Will take over customers where it is fed up with paying access charges, that very possibility disciplines the CLECs.

Now, there's, of course, questions like why are the access charges higher than Verizon? But you're not asking me about that, and we discussed that this morning. But that's a different discussion, and it goes back to the multiproduct environment and the higher costs of the CLEC, because at Verizon's access charges the CLECs simply



can't stay in business, and so they have no choice but to find the money -- to set prices for access that are commensurate with their costs.

Nobody in the United States economy should be forced, forced, to sell its products below cost, unless you give them an option to scale back their operations, and I have not seen any discussion of that in Verizon's or AT&T's testimony. It's like, "You shall sell this to me even though I know it's below cost, and I give you no option as to how much you sell me. No, you must do it." I think any person in this room should be very, very concerned about the government telling a private company that it must sell certain amounts of services without adequate compensation and without the possibility to withdraw or scale back its operations. That's a different discussion, but I think it's the flip side of this.

Q. I don't think the government is proposing that a CLEC has to provide a service. If it's not economic, the CLEC is entitled to withdraw its capital and provide another service; isn't that correct?

A. Good. I was hoping you'd ask me that. I



think this goes to the heart of the question of whether Verizon's access charges can serve as a proxy for a competitive marketplace's prices. And to your question: In a competitive marketplace, competitive companies, they have a choice: They can either enter the market, and if they feel that rates are compensatory, they can do so; or, if they feel that a rate is not compensatory, they can scale back their operations.

Now, the CLECs don't have that option here. They are obligated. When an IXC comes to them and terminates or originates long-distance traffic, the CLEC has no choice. It cannot block that traffic. It must offer its services, and it must accommodate that traffic. That's very different from a competitive market.

The FCC addresses that in the CALLS order. Let me refer you specifically to Paragraphs 17, 175, and 181. What the FCC talks about there is that when access charges are no longer compensatory, they will be confiscatory. Now, of course, that applies to the regulated rates of the ILECs. The FCC says, "When I set your access rates and if I don't allow those rates to be compensatory, well, then, it's confiscation, and you're protected against that under the Constitution." In fact, one of those paragraphs that I referred you to discusses that explicitly.

Now, the CLECs are not regulated, so at this point they can do what they want, the self-disciplining. But if you are going to be setting rates for the CLECs and you force them to accommodate IXC traffic, you'd better make sure that those rates are compensatory, because otherwise you're doing something that I as an economist would say is confiscatory.

Q. Are you aware, Dr. Ankum, that Verizon's proposal permits CLECs who believe that their costs are higher than the proposed rate to demonstrate such? Are you aware of that?

A. Good. And there has been --

Q. You are aware of that?

A. Yes, I am, and there was some discussion of that with the other witnesses. And I think that's a very important point to note.

Now also, when you read the testimony of your witnesses, Verizon, AT&T, and Comcast, they make passing references to cost demonstrations.



But, of course, the crux of the matter is, are rates just and reasonable? You either rely on market forces -- and I suggest that you do, because I've sketched out why you think access markets work just fine.

But if you don't rely on market forces, I recommend that you stick with the existing paradigm that has ruled public-utility regulation for the last 100 years, which is that where it concerns wholesale services and where it concerns services where the regulator regulates the prices, rates are set based on company-specific cost considerations -- as evidenced by the fact that all companies charge different rates for UNE loops. If you look at Verizon and SBC across their states, these things are all over the place. The same goes for, they still offer unbundled local switching as part of UNEs; they're all over the place.

If you look at, let's take switched access, which is before us. It's a wholesale service. I've presented data in my testimony. I've presented Verizon's switched-access rates. They vary hugely across the country. I just came back from South Dakota. The access charges there for



Qwest, the CLECs, and the rural LECs are all in the neighborhood of 6 to 12 cents a minute. Let me guarantee you, those rates will never go down as low as Verizon's rates in either Massachusetts or in New York, where the cost structure is very different. Wholesale rates, be it for switched access, for unbundled UNEs -- or unbundled network elements -- the paradigm is that wholesale rates are set based on company-specific network architectures, network-specific costs. That is what regulators always do.

And if you are going to be setting regulated rates and if you are going to be using benchmarks, then you must consider those company-specific circumstances and benchmark the CLECs against comparably situated companies and not against a company whose rates, first of all, as they have admitted themselves, stand in no relationship to their costs, and a company that in any event looks very different from the CLECs.

The rates that Verizon charges for access are arbitrary in the sense that they come out of a long regulatory process, with jurisdictional separations, which may be viewed as a large sausage-maker with two spouts at the bottom. One



spout is interstate; the other spout is intrastate costs.

Q. Excuse me, Dr. Ankum. I don't mean to interrupt, but I just want to keep us on track in the interests of time. Do you want to finish your answer?

A. In one sentence, almost. Is that okay?

Q. Okay.

A. These rates are not a meaningful proxy for CLECs. They are arbitrary -- not capricious, but arbitrary -- for Verizon. If you apply them to CLECs, those rates are arbitrary and capricious.

Q. I have in mind to go somewhere else, but I just wanted to close this issue, because I had asked you, or I was trying to ask you, whether an opportunity for a CLEC to establish higher costs and get that rate, why that doesn't satisfy your concern. And let me add: The advantage of that would be that if the CLEC happened to have particularly low costs, it doesn't have to set its rates at that low cost. It gets the advantage of having the Verizon rate.

A. Let me answer that briefly.

Q. I don't understand what's wrong with that.

A. Let me answer that briefly. Verizon has presented its proposal, the "simple" solution. Let me paraphrase, but I've forgotten who originally said this, but it's a little witticism: For every complex problem is a simple solution that is wrong. I've pointed out why this simple solution is wrong.

But more importantly, what you hear now is that it's not really a simple solution at all, because for this to work, Verizon and AT&T had to create a safety valve, which is that CLECs somehow must not prove up their costs -- of course, a horrifying thought. It's supposed to be a competitive industry. You're supposed to move away from regulation and all these regulatory costs and expenses associated with that.

So the notion now is somehow that CLECs have to construct cost studies and incur all those expenses and then come to you guys and say, "Here are my cost studies," and now you have to start looking at all these cost studies? I don't understand how that is a simple solution at all.

What I would say is, the simple solution is what the Commission has right before it, which is to say, "Let me look at these access charges. Now,



I've heard Dr. Ankum, and he says that the CLECs self-discipline. Well, there's something to that argument, but I'm not entirely convinced." At that point you can just look at the access charges. You don't have to do a draconian rule and apply it to all CLECs, with all the harm thereof. You can simply look at these access charges and say, "Well, some of them I don't really trust. They're outliers. Let me talk to that company." You can use moral suasion.

There's also a complaint process that AT&T and Verizon and others can use. If they feel access charges are unreasonable -- I've already said they can compete for them, but if they don't want to, they can use the complaint process. That I think generates far less work, is far more efficient than the Verizon proposal, which says -- given that it's calling for CLECs to come in with cost studies, which are really complex; I don't think that's a simple policy at all. I think that is draconian, especially since CLECs have never been required to have these studies. They don't have them on file. They must be created from scratch.

MR. DeROCHE: Mr. Gruber, before you



move on to another section, we're going to have to take a break for lunch. Why don't we take an hour. We will come back at 2:10.

(Recess taken.)

MR. DeROCHE: We'll go back on the record. Mr. Gruber, your witness?

MR. GRUBER: Thank you, Mr. DeRoche.

Q. Dr. Ankum, just as a preface, I told Mr. DeRoche that I would do everything in my power to finish within 30 minutes; and so if you could help me on that, to the extent you can, that would be great. I just have a few questions left.

Unfortunately, though, I need to return to one of the examples we were using, which is your example of the hotel room. What were the range of rates that you were seeing?

A. I think I'm paying something like $460, and somebody else, one of my clients, I think, is paying something over $500.

Q. Let me ask you: Did you have a choice? Could you have stayed at a hotel in the suburbs?

A. Could I have stayed in the suburbs? Yes.

Q. See, that was easy. Now, we were talking before about vigorous competition -- this is just



intended to be an introductory statement, not something to argue about -- vigorous competition for retail customers pushing rates down. In general that's what we were talking about; right?

A. Yes, we talked about it extensively, and I note that we have lost most of our audience.

Q. And in fact, we've seen the price to some local-exchange customers of CLECs going so far down that they're negative; isn't that correct? And by that I mean, we've seen examples of CLECs sharing their -- paying certain local-exchange users to become their customer. Isn't that correct?

A. Well, you're assuming some facts that I think, as a lawyer would say, are not in evidence. But if you can help me out with what you're referring to.

Q. Well, there have been --

A. Maybe there are; if you can help me.

Q. There have been some traffic-pumping schemes or, shall we say, alleged traffic-pumping schemes that have been pointed out by both Verizon and AT&T. I was referring to those. They were the subject of some cross-examination.

A. If you can clarify for me: How does that

548

relate to rates being below cost?

Q. Well, I'm postulating -- let's just assume for a moment, if you don't think it's all in evidence. The issue that I'm trying to get at is: If a CLEC agrees to share access revenues with an end user, in order to encourage that end user to sign up with it, would you think that's a good or a bad thing?

A. Is that a good or a bad thing?

Q. Is that an example of vigorous competition that we want to promote, or is that detrimental to the social good?

A. To be honest, I have not seen evidence of that. I don't discuss this in my testimony. My understanding of this proceeding was that it was pertaining really to a mirroring of the FCC's benchmarking policies, and I have not investigated at all arrangements that you're talking about.

Q. Well, I'm asking as a hypothetical. As an economist studying the situation, is it good or bad competition from a public-policy and economic-efficiency point of view for CLECs to compete so vigorously for the retail customer that they're willing to actually pay the retail customer to

549

become their customer? Is that a sign of socially beneficial competition?

A. I would have to see the specifics of those situations. As I said, I have not examined that. I haven't filed testimony on it. I think it's dependent on the specifics.

Q. Why don't we just consider: You're familiar with the concept of traffic-pumping, aren't you?

MR. MESSENGER: Objection. Can we get that term defined? It's been tossed around a lot in these hearings.

Q. Have you been in the hearings?

A. Yes.

Q. Do you as an expert in telecommunications have a sense of what traffic-pumping is?

MR. MESSENGER: I'm not sure there was a ruling on my objection.

MR. DeROCHE: You asked for a definition of traffic-pumping to be given. I think if you could provide a definition in this case. I understand the term is rather nebulous, but in this specific example, if you could provide a definition, I think that would be helpful.

550

THE WITNESS: By traffic-pumping I mean a local-exchange carrier setting its terminating access rates significantly above costs and then encouraging or soliciting end-user customers that produce a lot of terminating traffic to become their end user. That's what I mean.

MR. DeROCHE: Thank you.

A. Is there a question pending?

Q. My question is: You're familiar with traffic-pumping, as a general matter; right?

A. Well, you just provided me with the definition.

Q. Have you never heard of traffic-pumping before?

A. The term --

Q. Excuse me, have you ever heard --

A. Yes, I've heard the term, of course. As the judge correctly noticed, the way at least that term is being used, it's generally somewhat nebulous and in various contexts. So I think it's good to have a common definition. I think you just gave one.

Have I heard of your definition, after you've provided it to me? The answer is yes.

551

Q. And do you think traffic-pumping is an example of beneficial competition?

A. As I said earlier, I think it depends on the specific circumstances. I'll give an example --

Q. Let me give you two different examples. In one case the end user that gets paid a share of the excess revenues is a porn site, and in another case it's a customer-care calling center. Now, does it matter which one it is, as to whether you think it's a good or bad example of competition?

A. Well, are those examples, or are they hypotheticals?

Q. I can't testify, so they're my hypotheticals. You were asking me to make it more concrete.

A. I asked you for examples, because I said earlier it depends on the specific circumstances, and I wanted to expand a little bit. But you said, "Let me give you an example," and I think you gave me a hypothetical.

Within the context of the hypothetical -- well, it's very difficult -- it's difficult to make an assessment about whether this is in the public interest or not. I'm not speaking

about the quality of the customer care.
I don't know where to go with your hypothetical.
Q. I guess what I'm trying to understand is --
A. Hypotheticals tend to flow out going nowhere.
Q. Whether as an economist and public-policy -- adviser on public-policy matters you believe that a system or regime that encourages traffic-pumping is a positive one that you would recommend to have implemented by state public service commissions.
A. Well, let me say this: I think various witnesses have testified to this, that when CLECs enter the market, they tend to have underutilized facilities.
Q. Can I just ask you to answer the question and then you can explain?
MR. KRATHWOHL: If he can answer the question.
A. I'm explaining --
MR. DeROCHE: That's a legitimate point. If you are able to answer the question, I would appreciate it if you answered it in the order that



counsel has asked.
THE WITNESS: Yes, Your Honor.
A. The public-interest question hinges on a number of considerations, and one of the considerations is the extent to which CLECs are allowed to stimulate traffic on the networks. As I said, one of the problems that CLECs experience as market entrants is that they have underutilized facilities. They have a ramp-up stage, and the whole objective is to get more traffic on the network so they can achieve the economies of scale that everybody is talking about. The only way to do that is to stimulate traffic.
Now, when you ask me is traffic stimulation a good or a bad thing, I say generally it's a good thing, for two reasons: first, it allows the CLEC to grow the amount of traffic on its network, to enjoy the economies of scale that come with that. On the public-interest side, telecommunications is generally recognized as a good thing. The more we have it, the more we have of it, the better it is.
So based on those two considerations, I say, generally speaking, traffic stimulation is a



good thing.
Q. So you're in favor of implementing a regime that permits and indeed provides incentives for traffic-pumping; correct?
MR. KRATHWOHL: I think that's asked and answered. We're trying to ask -- Mr. Gruber is trying to ask questions with an underlying economic theory where he's using some very loaded terms, and I think that Dr. Ankum has tried to give a thoughtful response to the policy and the economic issues and trying to leave aside the loaded example of perhaps one CLEC in Massachusetts for what fraction of a percent of traffic might be involve.
Those are not the issues. In fact, Verizon's own witness said this is not a traffic-pumping case. We're trying to talk about what the costs are, what they ought to be, what the rates are, what they ought to be. Certainly I haven't objected to Mr. Gruber asking the economic question, but when we get into trying to put Dr. Ankum on the horns of a dilemma of talking about, well, there's an economic premise, but if you apply that to what might be a fraction of a percent of a situation and that may be a societally disfavored use, whether or



not it's supported by the First Amendment, you know, it becomes something that is very difficult to answer without misleading the record.
MR. GRUBER: May I be heard, Mr. Hearing Officer?
MR. DeROCHE: Yes.
MR. GRUBER: This term "traffic-pumping" has been used repeatedly in this proceeding. It is used and defined by the FCC. I defined it for purposes of my question. My question was a simple one: Does Dr. Ankum recommend to the Department that it implement a program or permit a program to continue that encourages traffic-pumping. It's a very simple question, that's a yes or no.
MR. KRATHWOHL: And Dr. Ankum testified in just the previous moments that traffic stimulation is generally something that is a good thing.
MR. GRUBER: And by doing so, very neatly avoided answering my question.
MR. DeROCHE: Is your objection to the term "traffic-pumping" being used in the question, or is your objection to the question in general?
MR. KRATHWOHL: I think that the

economic question of traffic stimulation was a reasonable question, and it was answered. I think then to ask again, with now a loaded connotation label, is either asked and answered or I object to it on form.

MR. GRUBER: Let me explain. There's a difference between stimulation and traffic-pumping. Stimulation is a general notion of going out and promoting a service and increasing traffic. Traffic-pumping is sharing access revenues with your retail customer. That's traffic-pumping. So I didn't ask about stimulation; I asked about traffic-pumping. Dr. Ankum has not answered it.

MR. KRATHWOHL: Of course, we have no evidence on this record that there is any payment to customers.

MR. DeROCHE: I agree with you. However, I don't believe that the term "traffic-pumping" has been established with a negative connotation. As you've pointed out yourself, that matter is up for some debate. So I don't see that there's the stigma attached to it that you're concerned about.

I do take that there is a difference, a



legitimate difference, between traffic-pumping and traffic stimulation. So I'm going to allow the question to stand, and I'm going to ask the witness to answer it.

THE WITNESS: May I have the question read back, so I'm sure I'm answering the right question?

MR. DeROCHE: Yes.

(Question read.)

A. No, I don't agree. I don't think it's that the regime that I'm advocating promotes or encourages traffic-pumping. I think the critical question, of course, is --

Q. That's the only question I asked you. In the interests of time, I think we'd better move on.

A. Fair enough.

Q. Am I understanding your testimony correctly, Dr. Ankum, that you are essentially warning the Department that a cap on access rates may put some CLECs out of business? Is that fair? Again, sometimes I don't know -- I thought we wouldn't argue about this, but I never know.

A. I'm not sure that I used that language. If I have, could you refer me to it? If you want me to



take it in the general spirit of the question, I can answer that.

Q. Yes.

A. I believe that Richmond -- I may be wrong, but I believe that Richmond stated in its testimony that it may be withdrawing from the market.

I have not generally testified that it would drive CLECs out of business. What I have said is that when you take tens of millions of dollars out of the business industry, that necessarily means that CLECs will be impaired, their ability to build out their networks and to compete, and therefore CLEC competition will be less vibrant.

Q. Dr. Ankum, have you looked at the states in which a cap on CLEC intrastate access rates was imposed to determine --

Let me ask you this: You haven't presented in your testimony, anyplace that I could find, an evaluation of whether a cap on intrastate access rates in other states has had the effect of impairing CLECs, have you? That's not in your testimony?

MR. KRATHWOHL: Can we have a definition of the cap? I believe that even AT&T's own exhibits



or their witnesses have acknowledged that there's at least a reasonable range in what the different states have done.

MR. GRUBER: I don't think that's necessary to go into for my question. I'll make it broadly.

Q. Did you present in your testimony any empirical analysis showing the impact of any regulatory restriction on intrastate access rates?

A. No. I have not. I have not shown --

Q. And I'll represent to you that if you -- and if you turn to the Exhibit A to Dr. Oyefusi and Mr. Nurse's testimony, AT&T has presented a long list of states that have implemented some form of restriction on CLEC access rates. On that list -- and you can verify it if you like -- Maine has had a cap since 2003. Now, have you asked any of your CLEC clients whether that's presented a problem to them?

First of all, you're aware that One Communications operates in Maine; right?

A. Subject to check, I will accept that.

Q. And did you investigate whether Maine's cap has had any effect on One Communications?

A. No, I have not.
Q. And I'll represent to you that Maryland has a cap that's codified in its regulations. Now, you're aware that One Communications, XO, and PAETEC operate in Maryland; right?
A. Subject to check, I'm willing to accept that.
Q. And have you done any analysis to see whether that cap has affected the operations of XO, One Communications, and PAETEC?
A. No, I have not.
Q. And you were aware, if you were to look at the exhibit, that New Hampshire also has a cap codified in its regulations, and I'll represent to you that One Communications and PAETEC operate in that state. I take it that you've not even asked them whether that cap has had an effect on their operations?
A. I have not asked them.
Q. And likewise for Virginia: It implemented a cap a year ago. I'll represent to you that XO and PAETEC operate in Virginia. Have you done any analysis of the impact of that cap on XO and PAETEC?
A. No, I haven't.



Q. Should the Department -- you'll be happy to know I'm getting right to the end. Should the Department approve or permit an existing system -- I'm sorry, any system that would allow CLECs to recover imprudently incurred costs?
A. Could you define those for me, imprudently incurred costs?
Q. You have some general background in regulatory economics, don't you?
A. Yes. I can fill it in for you, if you want.
Q. Yes, why don't you tell me what you think imprudently incurred costs are.
A. I can answer it, just generally describe the cost issue, without going over the words.
Q. Let's get focused on the question, and then we'll elaborate, so we don't lose track of what we're talking about.
MR. KRATHWOHL: Can I interject for a second: Could you speak up, please?
THE WITNESS: Yes.
Q. Do we need to define "imprudently incurred costs," or would you like to define it?
A. Well, the "imprudent" generally refers to



costs that within an examination of a rate case -- say with an electric utility, since they are the ones typically still subject to rate-based regulation -- that during a rate case there will be an examination of the company's accounting cost. And the point is raised are certain investments and the costs prudently made and incurred? That then translates sometimes into prudency reviews by commissions.
And if a cost is prudently incurred -- and it's a tricky analysis, because it oftentimes involves looking back in time and saying, for example, when a utility invested in a nuclear power plant ten years ago, was that a prudent decision; and then even if, right now, looking back, it may not be a prudent investment, with the benefit of hindsight, that's not the standard. You go back ten years and you ask yourself as a regulator, was it -- given the set of information available to the utility ten years ago, was it a prudent thing to do?
So there's a complex analysis.
Q. I'm satisfied, Dr. Ankum, with that definition. And with that definition, would you recommend to the Department that it approve a system



or regime that permits CLECs to recover imprudent costs?
A. I'm not in favor of price regulation for CLECs, and so I would recommend you leave it up to the marketplace.
Q. But that wasn't my question.
A. I believe it was.
Q. We're disagreeing here on what the marketplace produces, so I want to get that off the table. I'm just saying, assume the marketplace is not producing what you believe it is. Do you recommend that the Department put in place a system that permits CLECs to recover imprudent costs?
A. I'm with your assumption that the marketplace is not functioning.
Q. Is not doing it.
A. At which point -- and the Commission still can go different directions. But one of the things that the Commission could do if the market truly is dysfunctional is to price-regulate. And as I testified this morning, the longstanding tradition in public-utility regulation is to set prices based -- prices for wholesale products, to set prices for wholesale products based on company-

specific considerations.

Now, what is involved in those considerations? The FCC has never spoken clearly to how to set or what cost standard to use for switched access.

Q. Wait a minute. I just wanted to stick to your -- to the question. Did I understand you --

Tell me if this is wrong, but I think I understand you to be saying that if the market is not working, then the form of regulation that we use should not permit CLECs to recover imprudent costs. Is that a fair position for you?

A. I was going to go and say no standard has yet been established. Now, if you ask me what cost foundation should the Commission use to set CLEC rates -- because the first thing I say is, then, I don't think they should. But if they are going to, what cost standards should they use? I think that is --

Q. Doctor.

A. -- the answer there -- you're asking me about the cost standard, should the cost standard allow for certain investments and certain costs, not --



Q. Dr. Ankum, I'm only asking you, using your definition of "imprudency," should we have a system -- would you recommend to the Department that we have a system under which CLECs can recover imprudent costs without review?

MR. KRATHWOHL: I guess I'd have to ask for -- it sounds like a simple question, but it's not. The assumption in there is that there are imprudent costs, but the only way costs can be determined whether they're imprudent is in the grand regulation scheme that Dr. Ankum is trying to get to explain, that a regulator has deemed that some market participant has acted imprudently.

So we have that built into the question here, but without a recognition that there is going to be a determination whether or not there was imprudence.

MR. GRUBER: We'll bypass all this.

Q. Dr. Ankum, you're asking the Department not to change the current arrangement for setting CLEC access rates; correct?

A. To keep the regime in place, but perhaps to more proactively use the rules that are in place and the capabilities that the Department has in terms of



using more or less suasion, perhaps more actively scrutinizing the access charges to see if they're outliers. But other than that, yes.

Q. And just to be clear, there is no evidence in this case that's been presented by anybody as to the actual costs, their prudency or not, of any CLEC in Massachusetts. We haven't examined a single financial book in this case. Is that correct?

A. We have not examined a single book. You're correct.

MR. GRUBER: No further questions, you'll be happy to hear.

MR. DeROCHE: Thank you. The Attorney General? I understand you have questions?

MR. REYES: Just a few. No hypotheticals.

MR. DeROCHE: And Dr. Ankum, I'm going to ask again that you try and keep your answers succinct and direct to the questions that are asked.

THE WITNESS: Yes, Your Honor.

CROSS-EXAMINATION

BY MR. REYES:

Q. I'm going to your testimony about the economic pressure -- the competitive pressure that



you say is imposed on the pricing of switched access. Is it fair to say that the source of this pressure is the potential loss of revenue that could come from predatory pricing should a CLEC price its rates for switched access at a sufficiently high rate? Predatory pricing in the retail markets, that is.

A. I haven't focused on the predation part.

Q. Let's not use that word, but pricing -- let's not use "predation." That's a bit loaded. Let's say pricing retail services below marginal cost in order to gain customers from a CLEC that's overpricing its switched-access services.

A. That may happen. I believe that Verizon has a sufficient degree of pricing flexibility, but I'm not sure where it can engage in what we can call predation. So I don't see that that is necessarily a problem.

Q. Can you tell us at what level a CLEC can price its switched-access services above marginal cost before that pressure to limit that cost applies?

A. I can't quantify that for you.

Q. Do you recall yesterday there was testimony referring to potential regulatory pressure that would place some boundary on the pricing for that service?

A. Yes, generally.

Q. Is the competitive pricing pressure that you're testifying exists, would that force the price to be lower than what that regulatory price -- let me start over.

In your view, is that regulatory pressure sufficient to limit the prices of switched access, absent the competitive pressure that you're testifying to?

A. I think the strength comes from the combination of market forces and, you know, regulatory oversight and applying moral suasion. But would regulation by itself be sufficient absent competition? I don't know. It depends on how proactive the regulator's going to be. But I would think you would need a very proactive regulator if there were no market dynamics to back them up.

So let me say, I don't think that just a distant regulatory oversight would be sufficient absent market forces.

Q. Let me ask the other question: Would the



market forces that you're claiming exist that would limit prices of that service be sufficient to control the price absent regulatory oversight?

A. I think so, but fortunately, we do have a regulatory agency, and I think the combination of the two is yet better than just market forces; but I believe markets by themselves would do a fine job for CLECs.

Q. Is that competitive pressure sufficient to drive the rates for switched-access services down to marginal costs in the long run?

A. No, nor do I think that that would be desirable. I can explain if you want me to.

Q. I'm not sure I need an explanation. I won't ask it, but if your counsel wants to ask it, that's up to him.

You testified earlier that competitors need to compete on price or they can compete by providing ancillary services like better customer service. Is that a fair characterization of your testimony?

A. And/or, yes.

Q. Is it possible for a carrier to maintain --

So if it's "or," is it possible for a



carrier to maintain retail prices that are higher than its competitors, based on those additional services?

A. Yes.

Q. Now, if the marginal cost that each carrier is paying for switched access to other carriers goes down because of a cap, can carriers maintain higher prices -- or maintain their existing prices without passing through those costs, or cost savings?

A. They almost certainly will maintain their current toll rates. That's what you're asking me about; right?

Q. Right.

A. I would think that the cost savings that Verizon and AT&T and others may experience will flow to San Antonio and New York. And there may be a trickle-down effect possibly, but unlikely, I believe, in the form of toll rates.

Q. Do CLECs have that similar capability, to shift those cost savings to end users who are not in Massachusetts?

A. And the cost savings you're referring to are which?

Q. The reduction in marginal costs due to a



cap in switched-access services.

A. And how does that translate into cost savings for the CLEC?

Q. Would you agree that CLECs are also paying these switched-access services when their customers have to call another CLEC, or a customer on another CLEC?

A. So you're referring to the cost savings that a CLEC may experience when it's terminating and originating calls on another CLEC.

Q. Yes.

A. There will be some cost savings for the CLEC; but, of course, the vast majority of calls that a CLEC terminates will be on the RBOCs. Very few of those calls go to other CLECs. So the cost savings for the CLEC that it experiences are minuscule, but its loss in revenues, because of lost access charges that it now can't charge, are going to be very substantial. So on balance the CLEC will lose a lot of money.

Q. What effect will that have on end-user rates? If that question is answerable.

A. Well, the dynamics -- it will make competition in Massachusetts less vibrant because

CLECs will be impaired in their ability to compete, which may undermine the regulatory regime in Massachusetts, which is predicated on a vibrant CLEC community. And to the extent that Verizon has pricing flexibility for business services, for example, it has received that pricing flexibility in large part because there are competitors out there. With its competitors less vibrant and healthy, Verizon may use that to its advantage and slightly nudge up its business rates, so ratepayers in Massachusetts will be harmed.

MR. REYES: No further questions.

MR. DeROCHE: Thank you. Ms. O'Dell, Comcast?

MS. O'DELL: Thank you. Hopefully I just have a few.

CROSS-EXAMINATION

BY MS. O'DELL:

Q. Good afternoon, Dr. Ankum. I'm Deanne O'Dell, on behalf of Comcast.

A. Good afternoon.

Q. Just a few questions for you. This morning you stated that CLECs are at a cost disadvantage because they don't get the benefit of switched



discounts that Verizon does. Do you recall that?

A. Yes.

Q. Shouldn't this mean that the end-user retail rates for all services that use the CLEC's switch services should be higher?

A. No. There are many components that go into pricing retail services -- and considerations.

Q. So, then, the only place for a CLEC to recover the cost of these higher switches is through terminating interstate switched-access rates?

A. No.

Q. Could they refer them through the local terminating rates?

A. Those costs will generally be covered in a multitude of ways. As I explained, the CLECs are, like most telecom firms, are multiproduct firms. To the extent that the switch is used in the provision of a large number of services, the cost-recovery of that switch is spread out over those services.

Q. Is it spread out through the retail end-user services, or is it spread out through other intercarrier compensation charges?

A. All of them.

Q. So as you sit here today, you cannot



definitively state that any cost savings a CLEC receives -- I'm sorry, a cost increase a CLEC has or additional costs over Verizon is passed through to the retail end-user customer? Excuse me. There's not a direct correlation between a higher cost on a -- a higher-cost direct correlation to higher retail rates?

A. Well, there is an indirect correlation or an indirect relationship. The costs of the CLEC, including the switch costs, where I believe you're focusing, dictates where and when the CLEC can compete, so it determines the footprint of the CLEC. And so in that sense it impacts rates and ratepayers in their retail rates.

Q. But you would not expect to see higher-than-Verizon retail rates, for the reasons you had discussed earlier, about being a price-taker?

A. Yes, in addition to the discussions we had about ancillary services, customer-service compacts, higher reliability, offering a better lunch -- the whole panoply of techniques and skills and things that CLEC salespeople use.

Q. On Page 58 of your testimony, Lines 15 through 18?



MR. KRATHWOHL: Could I ask the witness to try to speak up a little bit more, too, please.

THE WITNESS: Yes.

A. Which lines?

Q. Page 58, Lines 15 through 18.

A. Yes.

Q. You make a statement there that switched-access rates are in general intended to help the underlying carrier recover the traffic-sensitive costs it incurs in accommodating the long-distance traffic of other carriers. Is that accurate?

A. Yes.

Q. Would you agree that the basic function of the switch is the same for local telephone calls as it is for long-distance telephone calls?

A. They're generated off the same switch, but it may draw on different functionalities in the switch.

Q. Does it matter if the call that comes in is a local telephone call or an intrastate telephone call or an interstate telephone call? Does the switch care?

A. Well, to give an example, a local call that is on net -- inter-switch and will come in on the switch and will go right back out to, let's say, a neighbor of the CLEC customer, served by the same CLEC -- it would be a local call. It would be an inter-switch call that uses different functionalities than, let's say, an interstate long-distance call, which comes in on one side of the switch and passes through the switch and calls through some different trunk ports --

Q. But the call termination is the same, regardless of what the call is. It moves the call from one end of the switch to the other end of the switch?

A. It passes through the switch, in somewhat different ways. But, I mean, it is the same switch, even though, as I said, there may be different functionalities that are activated.

Q. I'd like to refer you to Comcast-1-13.

A. Yes.

Q. In this response to Comcast's interrogatory request, you made a statement there regarding unbundled local switching. I quote your answer there, that "Unbundled local switching encompasses only the use of the switch itself, whereas switched access includes not only local switching but



transport, traffic aggregation, and other features." Do you see that?

A. If you'd give me a second.

Yes.

Q. So we can agree that the use of the switch is the same. It's an equal component in unbundled local switching as it is in switched access? Understanding that switched access in your opinion includes other things that need to happen.

A. There's a certain component of the switch that is used in both services.

Q. Would you agree with the statement that ILECs -- this is a quote -- that "ILECs do not incur additional costs when the switch is being used. Usage, as a matter of economic principle, should not be a cost driver in switch cost studies"?

A. Switch cost studies, and I presume in the context of unbundled network elements?

Q. Yes; for purposes of that statement, yes.

A. If the express purpose of the purchaser of the elements is it must buy the entire capacity of the switch and that's associated with the switch port, the answer is yes. If the purchaser explicitly wants to purchase the product on a per-



minute-of-use basis, then it can be done on a per-minute-of-use basis.

The analogy I've made is that if I travel a lot and I want to have use of a computer, I can go to a Kinko's and lease a computer on a per-minute-of-use basis. If I want a computer for my office, I go to the computer store next door to Kinko's and buy the computer. In the first instance I get the capacity and I get the whole computer, and if I want that, that should be available to me. If, on the other hand, I want a computer on a minute-of-use basis, the way that IXCs want switched access, on a minute-of-use basis, it should be made available on a minute-of-use basis.

So it's customer demand that drives how the price should be set there.

Q. When you're referring to purchaser, you're referring to the telephone company in this situation, the IXC that wants to use that other telephone company's switch; correct?

A. Yes.

Q. In terms of the purchase of the switch itself, though, whether it's an ILEC or a CLEC that has to purchase the switch, is that switch purchased



on a traffic-sensitive-use basis?

A. The switch is generally purchased on a capacity basis.

Q. Capacity is something different from traffic-sensitive; correct?

A. It depends on how the switch is engineered. That's one thing.

Secondly, it depends on what terms the company -- the company being the telephone company -- has negotiated with the vendor.

Q. The company that has purchased the switch?

A. No, in this case the underlying ILEC that is negotiating with a switch vendor like Nortel, Lucent, Siemens.

The RBOCs have traditionally, over the last ten years, purchased those switches on a capacity basis, mostly based on the number of ports that the switch can accommodate. But that is wholly contingent on the specific desires, again, of the RBOC, or this could be a CLEC. They may want to purchase a switch on a usage basis. Vendors have accommodated both.

Q. So what I understand you to be saying is, there's different types of switches. There's a switch that a telephone company could purchase, that is capacity-based, but it's not usage-limited. There's another type of switch that a telephone company could buy that's simply on a per-usage basis. Is that accurate?

A. Actually, the switch is the same, but the contract will be different.

Q. Okay, so it's the same piece of equipment.

A. Yes, like I can lease a car, and I can lease it based on how many miles I drive or I can lease a car with a flat rate for the day. If I get the flat rate, I buy the whole capacity of the car for one day, so to speak. Or I can say, "I know I'm not going to be driving that much, so I'd rather have a mileage charge." Now, the car-lease industry has gravitated to a flat rate, by and large, but you get the principle.

Q. For purposes of this case here, are the switched-access rates per-usage-based for, let's say all of the CLECs in this case?

A. Yes, I believe that's generally -- the switched-access uses that we're discussing are per-minute-of-use charges. However, yesterday there was an extensive discussion about the tandem trunk ports



that some IXCs use and purchase, Verizon tandems and AT&T tandems, and there was some discussion about whether those flat- rated elements have been or have not been appropriately accounted for in the revenue-per-minute calculation.

MR. DeROCHE: If we can stick to the switches.

A. So the tandem port is the switch, and to the extent that it's dedicated, IXCs can also buy access on a dedicated basis.

Q. Taking the advice of the hearing officer, I'll just wrap this up. So the bottom line is, a switch is basically purchased on a capacity basis. Switched access, interstate access charges are on a per-minute-of-use basis, the charge that carriers -- IXCs are required to pay.

A. Different permutations are possible; but generally, particularly in an RBOC setting, that's true, yes.

MS. O'DELL: That's all I have. Thank you.

MR. DeROCHE: Mr. Fipphen, Verizon?

CROSS-EXAMINATION

BY MR. FIPPHEN:



Q. Good afternoon, Dr. Ankum.

A. Good afternoon, Mr. Fipphen.

Q. Would you please refer to Page 45 of your prefiled testimony.

A. Yes.

Q. Specifically, I'd like you to look at Lines 9 through 11. You testify there, and I'll read it and ask you to confirm that's what it says, "As a result, capping CLEC access rates at levels charged by Verizon will likely result in CLECs offering switched-access services at prices below their costs of production." Did I read that correctly?

A. Yes.

Q. Let's take that sentence, and let's focus on the words "CLEC access rates." You're referring there, I take it, to intrastate switched-access rates in Massachusetts; is that correct?

A. Yes.

Q. And when you refer to Verizon, I take it that you are referring to Verizon - Massachusetts, the ILEC here in Massachusetts?

A. Yes.

Q. And when you're referring to CLECs offering switched-access services, are you referring to all



CLECs generally, or are you referring to just your four clients on behalf of who you are appearing today or some other subset of CLECs?

A. It's a general statement; i.e., beyond the four clients, and qualified by the phrase "will likely."

Q. Let's focus on the last three words of that sentence. You talk about their costs of production. Am I correct?

A. (Nodding.)

Q. You have not presented any evidence, to the best of my knowledge, in this testimony about CLEC costs of production in Massachusetts, have you?

A. I have not specific to Massachusetts, but I've provided lengthy discussions about CLEC costs. I believe we talked about that this morning.

Q. But no Massachusetts-specific data?

A. I think that's correct.

Q. Now, I'd like you to turn to Page 61 of your prefiled rebuttal testimony.

A. Yes.

Q. And specifically Lines 14 through 15. Have you reviewed that, those two lines?

A. Just a second.

Yes.

Q. We're talking about -- the topic is customer density; correct?

A. Yes.

Q. And you state here, "I'm not aware of available data that would allow a Massachusetts-specific analysis in this regard." Did I read that correctly?

A. Yes.

Q. Can you tell me, Dr. Ankum, whether you asked your four clients in this proceeding whether they would be willing to provide any Massachusetts line-count density information?

A. I have not.

Q. Now I'd like you to turn to your response to Comcast-1-9.

A. I may be there. If you can read me the question, I can confirm.

Q. It's the interrogatory directed to the joint CLECs by Comcast-1-9.

A. I believe I'm there.

Q. You're with me. Okay. And I believe the last -- in words or substance, the last line of your response is that CLECs lack the ability to mark up



retail rates for internal cost considerations. Is that what you said?

A. Yes.

Q. Can you tell me, Dr. Ankum, whether CLECs have the ability to mark up switched-access rates for internal cost considerations?

A. That goes to the discussions that I had this morning with the AT&T attorney, and my general notion there is that they don't because markets are functioning.

Q. Dr. Ankum, I believe that you testified earlier today that CLECs have an incentive to discipline their own rates in order to preserve their market niches that they've set up for themselves. Is that correct?

A. Yes, generally.

Q. Now, hypothetically, if a CLEC were to have rates that are priced above the rates that Verizon - Massachusetts currently has and hypothetically were to raise those rates by 100 percent, would you consider that rate increase to be an exercise of self- discipline?

A. It could be, it could not be. In any market, there's always opportunistic behavior,



meaning a company may seek to set a price that the market can bear and then time will tell whether that was an error or not. That's Point 1.

On the other side of that coin, the company might have been setting its prices too low and may have decided to raise its prices. Absent cost information and more details about the specifics, I can't make a judgment about whether that is an aberration or not.

Q. Dr. Ankum, have you done any analysis to compare CLEC access rates in Massachusetts with the lines-per-switch information for CLECs in Massachusetts?

A. No, I have not.

Q. Dr. Ankum, I'd like you to take a look at Page 86 of your prefiled testimony.

A. Yes.

Q. Actually, beginning over on Page 85, I believe you're talking about -- the topic here generally is formal market-power analyses; is that correct?

A. Yes.

Q. Now, over on Page 86 you make a reference to market-power analyses that were done by both the



FCC and the Department. Do you see that?

A. The Department of Justice, yes.

Q. Dr. Ankum, I'd like to walk you through a hypothetical telephone call. Let's make the calling party a residential customer in Pittsfield, Massachusetts, who is a local-exchange customer of Verizon. Okay? Are you with me?

A. Yes.

Q. And that customer is presubscribed to AT&T for long-distance service. Okay?

A. Yes.

Q. Now let's make the called party a small business customer located here in the City of Boston who is a local-exchange customer of One Communications. Okay?

A. Yes.

Q. Now, you're generally familiar with how telecommunications traffic is routed through telecommunications networks, are you not?

A. Yes.

Q. Am I correct that once the calling party dials the telephone call, the call will first be routed by the local Verizon switch to AT&T over switched-access facilities? Is that correct?

A. Yes.

Q. So now the AT&T network has the call; right?

A. Yes.

Q. And it must somehow get that call to the called party here in Boston; correct?

A. Yes.

Q. So am I correct that the AT&T network must do a database dip to determine which carrier to hand that call off to?

A. Yes, generally.

Q. And am I correct that that database dip will return to the AT&T network that that called party is a local-exchange customer of One Communications? Correct?

A. Yes.

Q. So AT&T will have to send that call to the One Communications switch serving the called party; correct?

A. Yes.

Q. Now, can you tell me how in my hypothetical that AT&T can get that call to the called party without going through the One Communications switch?

A. The moment a call is made, there is a



short-run analysis. As in all short-run analyses, there is no instantaneous alternative unless it's beforehand provided for. So there is no alternative in the flash moment that the call is being made.

Q. So the AT&T network for that call has no choice; correct?

A. For that call, at the moment that the call is made, there is no choice.

Q. Thank you, Dr. Ankum. That's all I have.

MR. DeROCHE: Thank you very much.

(Recess taken.)

MR. DeROCHE: We'll go back on the record. We'll begin with Mr. Gopalakrishnan.

EXAMINATION

BY MR. GOPALAKRISHNAN:

Q. Verizon's residential rates are regulated; hence, they may not be able to compete for residential customers on the basis of price. So is it fair to conclude that CLECs have market power as far as terminating switched access for residential customers is concerned?

A. I would say no. Again, it goes to the importance of defining the market correctly. While what you're saying is not necessarily -- some of the



dynamics with respect to the residential markets may not be entirely untrue or it may be completely true, my testimony this morning has been that as long as the CLEC has to set switched access for all customers the same, the guardians of the market --

Take Verizon. If they control where the CLECs' or the bulk of the CLECs' revenues come from, which is the small business, medium-sized business customers, the excess charges for residential ratepayers will come down commensurately, and so the residential market gets the protection from the business market.

And so if you do the appropriate market-dominance analysis, you cannot conclude that the CLEC has market power, because the market consists of these many components and is brought generally down.

Q. Looking at other CLECs who do not have the same advantages of Verizon, if they are to compete for the customers of a CLEC which is charging high switched-access rates -- so in that environment where one CLEC cannot compete with another for their customers, which you said was the supply-side mechanism to keep prices low -- in that environment,



would it be good policy to set switched-access rates between CLECs on a reciprocal basis?

A. Well, your premise is that the CLECs won't be able to compete for each other's customers.

Q. Because you made a case that Verizon has significant advantages which enhance their ability to compete and CLECs don't have such advantages. So the fact that they cannot compete with each other, is it a justification to set policy that switched-access rates between CLECs should be on a reciprocal basis?

A. It's an interesting question that I haven't really considered. But off the top of my head, I think actually having worked for TCG, a CLEC, and having worked with CLECs, CLECs oftentimes do compete for each other's customers, and they do have at times difficulties overcoming certain barriers to entry. But by and large what you find is that when you have medium-sized or small business customers in particular areas in the city, there typically is a number of CLECs that are competing with each other for those customers, in addition to competing with the ILEC.

So I don't think that the premise for

your question, the assumption that CLECs are unable to compete for each other's customers -- I don't think that's borne out by looking at what's actually happening in the CLEC industry. I think there's a large degree of overlap of these areas where they actually do compete.

So, to answer your question, I don't think that that is -- the reciprocal access charges between CLECs, I don't think that that is necessary.

Q. Looking at the very wide spread of access rates between CLECs, do you think all of them are competitive? It cannot be that such a wide range of switched-access rates, that all of them are competitively set. So are some competitive and some not competitive? Can we make a conclusion of that kind?

A. I think that what the variation among access charges -- what that signifies, as I state in my testimony, is not really market power. If you look at access charges across the country, they do vary hugely from company to company. It is the norm. So that's Point 1.

Now, why is it the norm that access charges vary hugely from company to company? The



reason there is that access is not a commodity, so you don't expect the access charge to gravitate toward a common price level. It doesn't empirically, when you look, and theoretically it shouldn't, either.

Why not? Because different companies offer access, even though we use the generic phrase -- but they offer access services over different architectures in very different ways, in very different circumstances. Whether it's, say, an ILEC in South Dakota or a CLEC in Boston or Verizon, all of them do it in different ways. All of them provide this wholesale service in a unique fashion.

Now, they have no choice. They must accommodate the IXC for access, so they must provide it, but they all have chosen different architectures, and each architecture has its own costs. And therefore you would expect to see, because it's not a commodity, you expect to see huge variations in costs, and that's exactly what we do see, not just among CLECs, but across the country. And I've provided Verizon's own access charges across the country, and they vary hugely, too.

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 course, a longer-run analysis quickly indicates that that is not true, because if you take a longer-run analysis, then all of a sudden the market begins to function. The market says, oh, if American Airlines does these tricks, then the demand response is I no longer fly American Airlines, and the other airlines would take advantage of that aberrant behavior, so you'd have a demand-and-supply response.

Long story short: Most commissions have used, falsely, the analysis that is being offered by Verizon and AT&T, who are the main instigators of many of these proceedings -- they have used the short-run analysis. It has an intuitive appeal, but it's also wrong. It's like two people on a parking lot arguing whether the Earth is flat and saying intuitively, yes, the parking lot is flat, therefore the Earth is flat. Of course, that's wrong. And this analysis that's being offered to you and other commissions is just not consistent with the merger guidelines.

Q. On Page 83 of your testimony you quote from the FCC order, CLEC access reform order, I believe. And you emphasize where it says, "We decline to conclude in this order that CLEC access rates across



the board are unreasonable." You felt that's the most important element of that quote. Further on in the quote it says, "Nevertheless, there is ample evidence that the combination of the market's failure to constrain CLEC access rates, our geographic rate averaging rules for IXCs, the absence of effective limits on CLEC rates, and the tariff system create an arbitrage opportunity for CLECs to charge unreasonable access rates. Thus, we conclude that some action is necessary to prevent CLECs from exploiting the market power in the rates that they tariff for switched-access services."

Could you comment on that conclusion?

A. Yes. We had some discussion of that this morning. It's important to realize that the commission, the FCC, analyzed the market in 2001, and I indicated that the FCC laid out two conditions, two preconditions, for functioning access markets: alliances between IXCs and ILECs, and IXC entry into markets. And it said, "If these things were to happen, then switched-access markets would be competitive." Then the FCC said, "However, we thought it would happen, but it hasn't happened yet, and because it hasn't happened yet, IXCs don't



have the alliance with the ILECs. Because of that, there are certain distortions, and therefore we're going to impose this, not permanent, but a transitional mechanism, and we'll see how the market plays out."

So what we have found is that subsequently we have seen the megamergers. The conditions the FCC set have in fact been met now. The IXCs and the ILECs have aligned themselves. And what does that do? It means that the IXC now can use the ILEC facilities -- in other words, the supply response that the FCC was looking for that in 2001 would have been absent because the barriers to entry -- MCI and AT&T had had great difficulties getting into local markets.

So the entire story I was telling this morning about how the IXC could compete away or somebody could compete away the customer that's associated with excessive profits, that whole story didn't necessarily apply in 2001.

At this point Verizon is fully integrated. MCI and Verizon are the same. And so they can go to that customer and compete it away.

So, in other words, the conditions the



FCC laid out in 2001 have now been met. So that's my comment on that quote. That's why I think that the FCC's order is just no longer relevant.

Q. If the conditions have been met -- and we're not talking met yesterday; may have been met a few years ago -- why is it that we're seeing this great variation in access rates, particularly between the ILECs and the CLECs?

A. Well, for a number of reasons. As I said earlier, access is a wholesale service, and as a wholesale service, it's not a commodity. It's not like a can of Coke or a soda. You know, sodas are sold across the country roughly for the same amount of money, because it's a commodity.

Now, if you look at switched access, you can't find almost two companies that offer switched access at the same rate. In fact, if you look at Verizon's own access charges, they vary from New York to Boston to wherever they operate. You find hugely differing access charges. That is true for virtually all wholesale services.

Wholesale services are just not commodities, and you wouldn't them to come out at some uniform level, where cans of sodas, as commodities, come out. It couldn't, because each company has a different cost.

It would be like expecting that all cars in the United States would be sold for the same price. Obviously, they're not a commodity. A top-of-the-line Mercedes will sell for a very different price than a Honda Prelude. Why? Because it's not a commodity. Not all markets create a homogeneous product and a commodity price.

Q. Unlike the Mercedes and Honda Prelude example, is in fact the access -- it's no different regardless of who provides it to you.

A. Oh, it's very different, it's hugely different. When a call gets terminated in South Dakota to an ILEC that serves a very sparsely populated area, with very long loops and long transport links and a largely underutilized switch, the cost to the ILEC in South Dakota is tremendously different than when a call is terminated to a Verizon office in Manhattan, where they have a huge switch that is fully loaded, with very short transport links, with all the efficiencies of economies of scale.

These two calls, which are called access



calls, could not be more different, and it will never be that the costs of production for these calls are going to be the same; and unless regulators force these down, with all the harm thereof, access prices for these radically different products will just never be the same, because the costs are not the same.

Q. I was more referencing intrastate calls in Massachusetts as an example. So if a customer in Worcester were to call two clients in Boston, one who was terminating to a CLEC and one terminating to Verizon, is there a difference in the access function in that case?

A. And the answer there is yes. I gave the example of New York City and South Dakota. But it matters not the names of the geographic locations. What matters is the underlying architecture.

So let's now take that South Dakota switch and loop and customer density and place it side by side in Boston with a Verizon switch and customer density. It's the argument I've made in my testimony: When the call terminates to the CLEC, as opposed to Verizon, it gets terminated over an entirely different architecture, and it terminates



on a customer base that is relatively sparse. I've had an entire discussion in my testimony about customer densities and how the CLEC customer density falls somewhere in between the rural ILECs and Verizon. And lo and behold, you find that the access charges of the CLECs fall somewhere between rural ILECs and Verizon.

MR. DeROCHE: I think we've answered the question, haven't we?

MR. MAEL: Just one more try, to make sure.

Q. From the end-user perspective --

MR. DeROCHE: If I can clarify a little bit: I think you've asked is there a difference between switched-access service, and I think what's been answered is that there is a difference, it depends on which IXC is providing the service, which switch is providing the service and which loops they're connected to.

THE WITNESS: Which ILEC, CLEC 1 versus CLEC 2. If the architecture is different, the costs are different.

Q. One last question: In the witness from Verizon's original testimony, he pointed to a number



of states where there have been proceedings on capping access rates. He pointed to Illinois. You in your testimony indicated that you in fact know, having participated in a workshop, that there has in fact not been a proceeding in Illinois -- to which the witness from Verizon indicated that perhaps there hasn't been an overall proceeding, but there have been case-by-case bases.

A. Actually, there was a proceeding. We had a workshop, and I redacted the testimony. Mr. Starkey personally participated in the workshop, and I did not personally participate, even though I worked with the clients.

This is what transpired. We had the workshop --

Q. I'm sorry, I didn't mean to get onto that train. I was just going to say that there have been earlier in the decade a couple of different cases in Illinois that were handled on a particular-CLEC basis, as opposed to an overall investigation.

A. Yes, I believe so.

Q. What is your opinion about handling complaints on an individual basis versus an overall?

A. I think that will be administratively easier to do than imposing a cap across the board, which will basically force the CLECs' hand and to come in here with cost studies, all of them, in which case we will always be swamped with looking at those studies.

If the Commission just funnels all this through either a complaint process or just individually looks at CLECs where they may have concerns, I think it can be done possibly even inside of the context of contested hearings, and the Commission can sit down with the CLEC and say, "Explain to me, why are your rates the way they are?" So I think on an individual basis is far preferable --to examine CLEC rates on an individual-case basis is far more preferable than the draconian, across-the-board cut.

Q. Thank you very much.

EXAMINATION

BY MR. DeROCHE:

Q. I have a couple of questions, that I hope will be quick.

You've indicated that there are certain guardians to the market and that Verizon is perfectly situated to be one of these guardians.



A. Yes.

Q. And you've said or implied that if Verizon believed there were excess profits being made in the access market, that one of the first steps they would do is come to a regulatory body, like ourselves, before beginning to aggressively compete and take the most attractive customers away from the CLECs.

We now see today that Verizon is before us. It would appear that your prediction is coming true, that there are excess profits being made and that the market has not self-regulated. Are we at the point where, if this Commission chooses to do nothing, Verizon will begin aggressively taking customers away from CLECs, and from a public-benefit point of view, is that something that the Commission could be concerned about?

A. There were a number of steps in there. I didn't mean to say that Verizon would at the exclusion of competing come to the Commission. I believe Verizon is competing, and I believe that the CLECs are self-disciplining.

However, Verizon can take a huge bite out of the apple by simply, at relatively low cost,



rolling out a rate proposal, which they have -- in which case their switched-access expenses go down tremendously. It's a simple cost-benefit analysis; right? How much does a legal proceeding costs. How much do I stand to gain in switched-access-revenue savings? And I can guarantee you that the switched-access-revenue savings greatly outweigh the cost of this regulatory proceeding, and thus the likelihood of succeeding with the Department.

So Verizon and AT&T clearly have an incentive to just play the regulatory game -- not at the exclusion of competing in the marketplace, but in addition to, because it's an easy alternative. Why not?

Now, is that something that, as you said, if the Commission doesn't act and Verizon and others therefore will have an increased incentive to compete, is that in the public interest? And my answer is, wasn't that the very objective of the 1996 Act? Isn't that precisely what we want? What is bad about Verizon competing for the CLEC customers? I think that would be a wonderful thing, or is a wonderful thing, and the more we have of it, the better it is.



Q. You had also testified that one of the ways Verizon could compete is to take the dollar value of the access charges that they are being charged and make a cost-benefit analysis and determine that they could use those dollars to in turn lower their retail offerings and use those lowered retail incentives to compete with CLECs.

A. Generally, yes.

Q. Do you believe that that would be a very successful campaign?

A. I think that is probably what Verizon already is doing, selectively. I think Verizon's competitive actions -- their win-back programs, et cetera, et cetera -- are guided not by the objective to gain 100 percent of the market, but to maintain the market share that the company feels is maximizing its profits.

Q. To take the big fish.

A. To take not just the big fish, but to maintain a solid foothold in, let's say, the Boston market. It may be willing to forfeit -- I believe right now the CLEC market share in Massachusetts is, according to the FCC report, 23 percent. Verizon may be perfectly comfortable with that percentage going to competitors as long as it can maintain the rest of them.

Q. If I were to say to you that I believe that the purpose of the '96 Act was not so much to allow Verizon to compete but to allow others to compete with Verizon, would you agree with that statement?

A. Not really.

Q. Would you agree that the purpose of the '96 Act, then, was to increase competition generally?

A. Yes, between --

Of course, at the time there weren't that many participants. But to open markets up to competition so that the incumbent would have to act like a competitive company, with all the benefits thereof.

There is no particular benefit to just having a bunch of CLECs out there that just compete and the big guy, that has still 70 or 80 percent of the market, being insulated from the competitive pressure. In fact, the very objective of the instigating competition is to induce Verizon to behave like a competitive company, with all the benefits thereof, to offer all competitive services.

I worked in Texas, and it was very



dismaying to see that AT&T deliberately did not want to offer ISDN services when it was technically able to. That behavior was recognized by regulators, and regulators said, "The only way to nudge these big guys is to make them compete."

So I would say the objective is equally to have CLECs and ILECs compete.

MR. DeROCHE: I have nothing further.

EXAMINATION

BY MR. ISENBERG:

Q. Dr. Ankum, has any evidence specific to the CLECs in this case been presented on their network architecture, economies of scale, or facilities utilization?

A. Not specifically with the clients that I represent.

Q. Were your client CLECs permitted in this case to offer their own cost data on switched access?

A. Are they permitted?

Q. Were they permitted.

A. To be honest, I don't know.

MR. KRATHWOHL: Frankly, Mr. Hearing Officer, I would think that would sort of go to a



scoping issue. Certainly the CLECs did make the argument that, hey, this is a complaint by Verizon. It really constitutes an effort --

MR. ISENBERG: Let me cut you off there. I don't believe it goes to a scoping issue. It's a straightforward question. If the witness can't answer it, I'll take that as a record request.

A. I don't know.

MR. DeROCHE: We'll issue it as Record Request DTC-5.

(Record Request DTC-5.)

Q. As a follow-up to that: If the Department has not been presented with any specific cost data from your client CLECs, how can the Department determine that Verizon's rate cap would not recover those CLECs' costs?

A. It's inherently, of course, an empirical question, and all I can offer you is the theoretical arguments I've rolled out. If you find those unpersuasive, and if that's the question where you're focusing, then I suppose at some point there needs to be a more detailed discussion about costs in some form or another. I don't know what the Commission provides for there.



Q. Thank you. With Mr. Mael you had some discussion about alternatives to Verizon's rate cap. Let me follow up on that. Assuming that the Department determines that a cap on CLEC access rates is necessary but that Verizon's rates are not the appropriate benchmark, then whose rates would be more appropriate as a benchmark?

A. In general terms, I would say comparably situated companies. Let me not say which are comparably situated companies. I think we may want to look at companies that have comparable customer densities, comparable architectures possibly. I think the Commission may want to further investigate that, because it's not -- I can't readily point toward specific companies. But, as I said, I can allude to the principle.

Q. Would any of those comparable companies be any of the CLECs that participated in this case?

A. Generally, since they represent, you know, some significant CLECs in Massachusetts, you clearly do want to look at their -- how they are situated. I can't tell you exactly how you would construct a benchmark just out of one of those companies. I think one has to put a little bit of thought into how to do that without running afoul of the tautology. You don't want to benchmark a company against itself, because that defeats the purpose of a benchmark.

So I don't think that this is necessarily a trivial exercise, and I think we probably want to stick our heads together and think about it a little bit. I think it's very doable, but I don't have a ready answer for you.

Q. Yesterday Dr. Pelcovits testified about an alternative benchmark, capping CLEC rates at Verizon's rates. Are you familiar with that testimony, or were you familiar with it?

A. I recall him proposing something; but to be honest, I've forgotten exactly what it is. If you could please refresh my -- a little bit more detail.

Q. I believe his suggestion was that access rates be benchmarked against retail rates.

A. To be honest, I somewhat -- I understood him to say, but I may be wrong --

Well, let me not go out on a limb and try to restate his proposal. We can give you a written -- if I may, since I would have to review what he said, because at this point I don't think



that I caught everything that he said, unless somebody else can provide that to me and I can give you an answer now. But I hate to speculate.

MR. DeROCHE: We'll make that DTC Record Request 6.

(Record Request DTC-6.)

Q. Following up on that, and also following up on Mr. Mael's question: Can you think of other more appropriate mechanisms, benchmarks perhaps, that could be used to cap CLEC rates and that would be administratively workable and relatively simple to implement?

A. I think I've already made some suggestions about the complaint process and moral suasion. Those are my primary recommendations -- and that moral suasion involves perhaps asking CLECs to explain their access charges in terms of coming in with more of a presentation about their network, et cetera, et cetera.

Let's say if those rates were to fall out of some range, you may look at the CLECs collectively and say, "They're all sitting in a grouping, but we have some outliers," and that would pique your interest. That could be a way to



approach it. I don't have a ready benchmark for you, as I said.

Q. What about an average of a broad spectrum of CLECs on a national basis?

A. It's an interesting thought. I'm not sure necessarily that -- where that would fall out conceptually, if it would give you a comparison between generally comparably situated companies. I think it's really an interesting idea. People would have to look at where that may come out. I think it's an idea that, as I said, would be interesting to examine.

Q. That's all I have. Thank you.

A. Thank you, sir.

MR. DeROCHE: Does any party wish to re-cross-examine?

MR. FIPPHEN: I have a few questions.

MR. DeROCHE: Mr. Fipphen.

FURTHER CROSS-EXAMINATION

BY MR. FIPPHEN:

Q. Good afternoon again, Dr. Ankum. Dr. Ankum, I believe in response to questions from the Department regarding variations in switched-access rates around the country, I believe I thought I



heard you testify that the explanation for variation in rates has to do with differences in cost. Is that correct?

A. In addition to the regulatory regimes that take into account those costs. But there are differences in costs, and they tend to align with the differences in rates, yes.

Q. I thought I heard you state in response to questions from the Department that the primary, if not the sole, driver of the differences in rates were due to different costs which you said were driven by different network architectures. Did I misunderstand your testimony?

A. I might have overstated that. I think that cost considerations or net differences in network architectures and the associated costs, when you look at switched-access rates and where those rates are high -- and I talked about South Dakota, which demonstrably has high costs -- and lo and behold you find high access rates, and in Boston Verizon is more efficiently situated and has lower access rates, there is definitely a correlation.

Now, we've also discussed, of course, that there's a regulatory process that heavily influences these rates. And so I didn't mean to overstate the case.

There's a correlation between cost and access rates, but it's obviously not the sole determinant.

Q. How do you know there's a correlation?

A. Well, I've worked in a large number of states. I have looked at -- I have worked for the Texas commission, for example, and we did studies there, and we examined the costs of some 50 ILECs, ranging from the big guys to the very small rural companies, and the access charges that were being charged. There's a clear correlation. I think it's generally acknowledged in the industry that the small rural companies tend to have higher access charges than the big urban ILECs. I don't think it's a controversial observation.

Q. And you've presented on Page 43 of your testimony a study on Verizon's access rates around the Verizon footprint; correct?

A. Yes.

Q. Now, did you make any attempt to correlate the different rates that you populated this chart with with any evidence that you might have regarding



costs?

A. Not for purposes of this presentation on this page here.

MR. KRATHWOHL: I'm not sure if Mr. Fipphen is going to keep going along this line, but I'm not sure if I recall the Bench cross going into this particular area.

MR. DeROCHE: I'm sorry, could you repeat what Mr. Fipphen's question was.

MR. KRATHWOHL: It's only relevant if Mr. Fipphen is going to continue.

MR. FIPPHEN: I have one more question for Dr. Ankum on this topic, because it did appear from his response to the Department that there was an inconsistency with his prefiled testimony and his response to the Department. I think I'm entitled to probe that a little bit, and I have one more question.

MR. DeROCHE: We'll allow the one question.

Q. Dr. Ankum, I refer you to Page 41 of your prefiled testimony, Line 19.

A. Yes, I'm there.

Q. You just testified, I thought, that there



were variations explainable by costs and by regulatory considerations. Is that correct?

A. Yes.

Q. And would you please explain to me why your testimony at the bottom of Page 41 is not consistent with what you said earlier?

A. Are you referring to Line 19?

Q. Yes.

A. If I may start at the beginning of the paragraph, to place it slightly in context, and it's only a short paragraph. "An examination of Verizon's interstate switched-access rates shows that there's an enormous degree of variation from company to company and state to state. This degree of variation is at odds with any notion that Verizon's switched-access rates are reasonable surrogates of proxies for a competitive market. There is no uniformity. In fact, there is a hodgepodge, reflecting the non-cost-based considerations involved in setting Verizon's switched-access rates." And I suppose that you're focusing on that last parenthetical.

Q. That's correct.

A. As I discussed earlier and as I just said



in response to you, there's a correlation between costs and rates if you look across the country and across companies. We also discussed earlier that the manner in which access charges have been set went first through separations proceedings that, while not devoid of costs, since they obviously take company costs, involved a whole bunch of other, non-cost considerations, like universal service.

Those distortions are in there, so I surely don't want to say that access charges are reflective of economic cost. My point here is that they don't serve as good proxies for CLECs because there is no uniformity. There's, in fact, huge variation.

Q. Dr. Ankum, I believe that you also in response to questions from the Department suggested that an easier manner for the Verizons and AT&Ts of the world to deal with the problem of high CLEC access rates would be to file individual complaints with the Department. Is that correct?

A. I suggested that companies can use the complaint process, yes.

Q. Let's play it out for a minute. If Verizon were to take a look at the number of carriers that

are charging rates that in its opinion are too high, that would require some number of complaints to be filed with the Department. Two, three, four, five, six, seven; who knows? Correct?
A. Possibly. It depends on how they fall out.
Q. And so from the Department's perspective, do you think the Department would prefer to address this issue on a generic basis, with one set of hearings and one set of rates, or they would rather do seven cases, with seven prehearing conferences and seven briefs and seven set days of hearings? What do you think would be administratively easier for the Department?
A. I'm not sure what the Department would prefer, but I don't think that if you bring one complaint case and a CLEC is able to prove up its costs adequately, either through filing a cost study or through other persuasive evidence, that you necessarily have an incentive to go to the next complaint case and yet another one.
I believe that a pattern may emerge. The Department will very quickly get up on the learning curve and be able to see or better understand, perhaps, through those complaints and



looking at CLECs what may be reasonable and what may not be reasonable. And I think the scenario you sketch of six, seven, eight complaint cases I think are unlikely to transpire.
Q. But only unlikely if Verizon were to file them at different times. If we were to file them at the same time, those benefits would not happen, would they?
A. You're infinitely more creative there than I can possibly envision.
Q. One more question, Dr. Ankum: You also testified that another means possibly by which rate issues could be dealt with was by the Department using its moral suasion to try to persuade a carrier to lower its rates. Did I hear you correctly?
A. In general, yes.
Q. In your experience, Dr. Ankum, over the many years you've been in the industry, are you aware of any significant rate reductions that have ever occurred in this state or any other state by a regulator sitting down and asking a regulated company to "Please lower your rates"?
A. Yes. When I worked for the Texas commission myself, that was standard fare. Before a



company would make a formal filing, they would come in and sit down with staff and say, "Well, here is our new service. These are the rates that we're proposing. Do you think that will fly?" I think that is what the commissions routinely do. They routinely sit down with company representatives and get some sense of what may fly and what may not fly. I think that's part and parcel of regulating the industry.
Q. Thank you, Dr. Ankum. That's all I have.
MR. ISENBERG: Maybe Mr. Fipphen was thinking about his experience with regulators and Verizon.
(Laughter.)
MR. FIPPHEN: Touche, Mr. Isenberg.
MR. DeROCHE: Ms. O'Dell?
MS. O'DELL: Thank you. I have a quick follow-up question.

FURTHER CROSS-EXAMINATION

BY MS. O'DELL:
Q. You were having a discussion with Mr. Isenberg regarding, if the Department were not interested or didn't agree to benchmark to Verizon's rate, would there be some other alternative that you



might consider. The question I have for you is: What would you think about benchmarking it to that CLEC's current originating access charge? So, for example, XO's terminating access charge would be benchmarked to its current originating access charge. What do you think of that as a possibility?
A. I think that originating and terminating access -- I believe I've answered that in discovery requests -- that the costs of the two are somewhat comparable. I think that I don't necessarily want to go to the place where you say let's just flash-cut and force the CLECs to make them the same. But I would say among the panoply of options that we rolled out -- the benchmarks, the moral suasion, the complaint process -- the Commission can ask the CLEC to explain why its terminating access is different than originating access. I think it will be a fair question.
Q. But I think I heard you say as a general principle, this would be reflective of that specific CLEC's costs, as opposed to, you know, your position that Verizon's costs are not the same as the CLEC costs?
A. I think there's information in there. I

don't want to say that any specific access charge necessarily reflects the costs of a CLEC. I don't think that I've testified to that. But clearly there is information in those access charges, and I think it's worthwhile to look at them.

Q. Thank you.

MR. DeROCHE: Mr. Gruber?

MR. GRUBER: I have one follow-up question in response to some questions from the Bench.

FURTHER CROSS-EXAMINATION

BY MR. GRUBER:

Q. Dr. Ankum, I think I'm referring to the same give-and-take that Mr. Fipphen was. I believe you testified in response to questions from the Bench that the variation in CLEC access rates that we see around the country are in large part driven by their network architectures and other cost considerations; is that correct?

A. Correlated with.

Q. And you're familiar, of course, with PAETEC's May 6th, 2008 tariff filing, are you not?

A. I know that there was such a filing, but I'm not familiar with the filing.



Q. Well, will you take subject to check that PAETEC made such a filing and increased its access rates by approximately 100 percent for per-minute switching and trunk ports?

A. Subject to check, I would accept that.

Q. And was that cost increase corresponding to increases in those costs by 100 percent?

A. I don't know that. I have not looked at PAETEC's costs, nor have I looked at the tariff.

Q. Is that consistent with your position that access rates are being driven to cost?

A. It's not inconsistent, and I refer to what I call opportunistic behavior, and I don't mean that pejoratively, the way it's used in common parlance -- but where companies attempt to set a price, and it remains to be seen whether price is sustainable. It doesn't invalidate what I'm saying -- it neither invalidates nor supports my contentions. It's no more than one company behaving in a certain way.

Q. Have you observed or even attempted to observe any price decreases in the access market in the last year in Massachusetts?

MR. KRATHWOHL: Was that the subject of the Bench cross?



MR. GRUBER: Yes. We were talking about access prices and their relationships to costs, and costs don't change very much in a year. I'm trying to understand how much costs have to do with access-price increases or decreases.

MR. DeROCHE: I'll allow it.

A. I'm not aware of any, but that doesn't mean there weren't any. I'm just not aware of them.

MR. GRUBER: No further questions.

MR. DeROCHE: Thank you. Any other parties?

Mr. Krathwohl, do you wish to redirect?

MR. KRATHWOHL: We might have one or two questions. If I could just have a couple of minutes here.

MR. DeROCHE: Sure. Why don't we take a ten-minute break.

(Recess taken.)

MR. DeROCHE: We'll go back on the record. I understand that there is no redirect required, so I will declare that portion of this hearing closed.

I would like to move on to some



procedural matters on the record, just before we let everybody go. The witness is excused. Thank you very much for your patience this afternoon.

THE WITNESS: Likewise.

MR. DeROCHE: The first order of business: I promised rulings on the motions for confidential treatment. I'd just like to get those on the record.

The following motions for confidential treatment have been granted: The motion on behalf of Richmond Communication dated September 11, 2007 has been granted.

The motion for confidential treatment on behalf of AT&T Corp. and its affiliates dated September 23rd, 2008 has been granted.

The motion for confidential treatment on behalf on AT&T CORP. and its affiliates dated September 18, 2008, has been granted.

The motion for confidential treatment on behalf of One Communications dated September 11, 2008, has been granted.

The motion for confidential treatment of One Communications dated September 27th, 2008, has been granted.

The motion for confidential treatment of RNK, Inc. dated September 18, 2008, has been granted.

The motion for confidential treatment of RNK, Inc. dated September 11th, 2008, has been granted.

The motion for confidential treatment of PAETEC Communications dated September 11th, 2008, has been granted.

The motion for confidential treatment of Verizon - New England dated July 7, 2008, has been granted.

The motion for confidential treatment of Verizon - New England dated August 1, 2008, has been granted.

And the motion for confidential treatment of XO Communications dated September 11, 2008, has been granted.

Before this hearing began, I indicated to all the parties that all discovery documents would be entered into the evidentiary record by Department motion at the end of these hearings. I propose that the Department renumber all exhibits by a uniform Department number, which will give



individual Department numbers to prefiled testimony and maintain discovery-response numbers for all discovery responses. Is there any objection to this method?

Seeing none, I enter all discovery responses and all prefiled testimony into the evidentiary record of this hearing. The Department will circulate a detailed exhibit list, including exhibit numbers, to all the parties in the next business day.

I'm going to set a deadline to respond to all record requests issued at these hearings for five business days from tomorrow.

I have one final procedural matter: There is still a pending motion to compel from Verizon, seeking to compel RNK to produce further discovery requests. The Department has not yet ruled on this motion. We anticipate ruling on this motion shortly. But I would like to solicit comment from the parties that, in the event we grant the motion and compel RNK to provide further evidence, we would like comments on how that evidence should be entered into the record and whether any of the parties would be prejudiced by that evidence being



entered into the record. I'd like the parties' comments on that in five business days from tomorrow.

Are there any other matters that this panel needs to address before we adjourn these hearings? Hearing none, I declare these hearings closed. Thank you very much.

(4:39 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 25, 2008.

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Alan H. Brock, RDR, CRR

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