

1 STATE OF NEW HAMPSHIRE
2 PUBLIC UTILITIES COMMISSION

3
4 July 10, 2007 - 10:15 a.m.
5 Concord, New Hampshire DAY I

6 RE: DT 06-067
7 FREEDOM RING COMMUNICATIONS, LLC
8 d/b/a BAYRING COMMUNICATIONS:
9 Complaint of Freedom Ring Communications, LLC
10 d/b/a BayRing Communications against
Verizon New Hampshire regarding access
charges.

11 PRESENT: Chairman Thomas B. Getz, Presiding
12 Commissioner Graham J. Morrison
Commissioner Clifton C. Below

13 Jody O'Marra, Clerk

14 APPEARANCES: Reptg. Freedom Ring Communications d/b/a
15 BayRing Communications:
Susan S. Geiger, Esq.

16 Reptg. AT&T Communications of New England:
17 Jay E. Gruber, Esq.

18 Reptg. One Communications:
Gregory M. Kennan, Esq.

19 Reptg. Sprint Communications:
20 Garnet M. Goins, Esq.

21 Reptg. Verizon:
Victor D. Del Vecchio, Esq.

22 Reptg. PUC Staff:
23 Lynn Fabrizio, Esq.

24 Court Reporter: Steven E. Patnaude, CCR

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1 P R O C E E D I N G S

2 CHAIRMAN GETZ: Okay. Good morning.

3 We'll open the hearing in docket DT 06-067. On April 28,
4 2006, Freedom Ring Communications, d/b/a BayRing, filed a
5 petition requesting that the Commission investigate
6 Verizon New Hampshire's practice of imposing switched
7 access charges, including carrier common line access
8 charges, on calls originating on BayRing's network and
9 terminating on a wireless carrier's network. On May 31,
10 Verizon filed an answer disputing BayRing's complaint and
11 contending, among other things, that Tariff 85 provides
12 that all switched access services will be subject to
13 carrier common line access charges.

14 On June 23, the Commission issued an
15 order of notice initiating a series of procedural steps,
16 culminating in the hearing this morning. Also note that a
17 secretarial letter was issued on July 6 regarding hearing
18 procedures, permitting oral summaries of prefiled
19 testimony and setting out the order of witnesses and the
20 order of cross-examination.

21 Can we take appearances please.

22 MS. GEIGER: Yes. Good morning, Mr.
23 Chairman, Commissioner Morrison, and Commissioner Below.
24 I'm Susan Geiger, from the law firm of Orr & Reno, and I

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1 represent BayRing Communications in this case. And, with
2 me this morning are the witnesses for BayRing, Mr. Darren
3 Winslow and Mr. Trent Lebeck. Also, with me this morning
4 is Mr. Ben Thayer, from BayRing.

5 CHAIRMAN GETZ: Good morning.

6 CMSR. BELOW: Good morning.

7 CMSR. MORRISON: Good morning.

8 CHAIRMAN GETZ: Mr. Gruber.

9 MR. GRUBER: Good morning, your Honors.
10 My name is Jay Gruber. I represent AT&T. And, with me
11 today is Mr. Christopher Nurse, Mr. Ola Oyefusi, and
12 sitting at the far right is Mr. Penn Pfautz, and those
13 three gentlemen will be testifying today. And, Mr. Jack
14 Habiak, has responsibility for this matter, and he is here
15 also today from AT&T.

16 CHAIRMAN GETZ: Good morning.

17 CMSR. MORRISON: Good morning.

18 CMSR. BELOW: Good morning.

19 MR. KENNAN: Good morning, Mr. Chairman.
20 Thank you, Commissioner Morrison and Commissioner Below.
21 Gregory Kennan, for One Communications. And, I'm just
22 here by myself today.

23 CHAIRMAN GETZ: Good morning.

24 CMSR. MORRISON: Good morning.

1 CMSR. BELOW: Good morning.

2 MS. GOINS: Good morning. My name is
3 Garnet Goins. And, I'm here on behalf of Sprint. And,
4 again, it's just myself.

5 CHAIRMAN GETZ: Good morning.

6 CMSR. MORRISON: Good morning.

7 CMSR. BELOW: Good morning.

8 MR. DEL VECCHIO: Good morning, Mr.
9 Chairman, Commissioner Morrison, Commissioner Below.
10 Victor Del Vecchio, representing Verizon. And, with me
11 are just two folks; my witness, Mr. Shepherd, and Shawn
12 Nester, from Verizon.

13 CHAIRMAN GETZ: Good morning.

14 CMSR. BELOW: Good morning.

15 CMSR. MORRISON: Good morning.

16 MS. FABRIZIO: Good morning,
17 Commissioners. Lynn Fabrizio, on behalf of Staff. And,
18 with me today are Kate Bailey, Director of the Telecom
19 Division, and making his inaugural telecom hearing
20 appearance is the new Assistant Director of Telecom,
21 Pradip Chattopadhyay, and David Goyette, also of the
22 Telecom Division.

23 CHAIRMAN GETZ: Good morning.

24 CMSR. MORRISON: Good morning.

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[Witness panel: Lebeck|Winslow]

1 CMSR. BELOW: Good morning.

2 CHAIRMAN GETZ: Is there anything we
3 need to address before the BayRing witnesses take the
4 stand?

5 (No verbal response)

6 CHAIRMAN GETZ: Please proceed.

7 MS. GEIGER: Thank you very much, Mr.
8 Chairman. BayRing would like to call as their witnesses
9 Mr. Trent Lebeck and Mr. Darren Winslow.

10 (Whereupon Trent Lebeck and Darren
11 Winslow was duly sworn and cautioned by
12 the Court Reporter.)

13 TRENT LEBECK, SWORN

14 DARREN WINSLOW, SWORN

15 DIRECT EXAMINATION

16 BY MS. GEIGER

17 Q. We'll start with you, Mr. LeBeck. Could you please
18 state your name for the record.

19 A. (Lebeck) Trent Lebeck.

20 Q. And, by whom are you employed and in what capacity?

21 A. (Lebeck) UTEL Companies, as Traffic Manager.

22 Q. Have you ever testified before the New Hampshire
23 Commission before?

24 A. (Lebeck) No.

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[Witness panel: Lebeck|Winslow]

1 Q. Could you then briefly summarize for the Commissioners
2 your educational background and your experience as they
3 relate to the telecommunications industry and access
4 charge billing more specifically?

5 A. (Lebeck) I'm an honors graduate of Wisconsin Indianhead
6 Technical College, specializing in Telephony. I have
7 attended college courses in accounting and computer
8 programming. I've attended many seminars and training
9 courses on Carrier Access Billing brought by NECA, the
10 National Exchange Carrier Association, and also other
11 industry corporations and associations.

12 For over 13 and a half years I was the
13 Vice President of Technical Services at ICORE
14 Incorporated, where I did, excuse me, I conducted
15 Carrier Access Billing reviews and also aided clients
16 in their tariff preparations. At UTEL, I'm responsible
17 for the preparation of Carrier Access Billing and the
18 review of all carrier access bills, that includes
19 BayRing.

20 Q. Okay. Mr. Lebeck, you indicated in your remarks that
21 you worked for "ICORE". Could you please explain for
22 the Commissioners what "ICORE" is?

23 A. (Lebeck) It's a cost consulting company for cost
24 separations studies.

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[Witness panel: Lebeck|Winslow]

1 Q. For what industry?

2 A. (Lebeck) For telecommunications.

3 Q. Thank you. Mr. Lebeck, I'm going to show you a
4 document, and I'm going to ask you to identify it for
5 the Commission.

6 A. (Lebeck) It is my prefiled testimony in this case.

7 Q. Mr. Lebeck, do you have any corrections that you'd like
8 to make to your prefiled testimony?

9 A. (Lebeck) A few minor ones. On Page 5 of my prefiled
10 testimony, approximately a third of the way down, the
11 last sentence of the first paragraph should read "This
12 again indicates that because cellular traffic does not
13 terminate to a Verizon end-user, then it is not subject
14 to CCL charges."

15 On Page 9 of my prefiled testimony,
16 following the last question of that page, in the
17 answer, "Meet Point Billing that", and then "the"
18 should be or "the" should be stricken, should be
19 removed. And, on Page 11, on the last paragraph, in
20 the middle of it, "Point of Interconnection", rather
21 than "Point of Connection" for the "POI". And, the
22 very last sentence in the question should have the word
23 "from" instead of "form".

24 Q. Mr. Lebeck, if you were asked the same questions today

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[Witness panel: Lebeck|Winslow]

1 under oath as the questions that are in your prefiled
2 direct testimony, with those changes, would your
3 answers be the same?

4 A. (Lebeck) Yes.

5 MS. GEIGER: Mr. Chairman, I would ask
6 that the prefiled Testimony of Trent Lebeck, which is
7 dated March 9th, 2007, consisting of 12 pages of questions
8 and answers and three exhibits or attachments, be marked
9 for identification as an exhibit in this case?

10 CHAIRMAN GETZ: And, what exhibit are we
11 --

12 MS. O'MARRA: Exhibit 1.

13 MS. GEIGER: Exhibit 1?

14 CHAIRMAN GETZ: Okay. So marked.
15 (The document, as described, was
16 herewith marked as Exhibit 1 for
17 identification.)

18 MS. GEIGER: Thank you. And, I have a
19 copy for the Clerk and a copy for the Stenographer. But I
20 understand that the Commissioners already have their
21 copies, as do the other parties, is that correct?

22 BY MS. GEIGER

23 Q. Mr. Winslow, could you please state your name for the
24 record.

[Witness panel: Lebeck|Winslow]

- 1 A. (Winslow) Darren Winslow.
- 2 Q. By whom are you employed and in what capacity?
- 3 A. (Winslow) I'm employed by the UTEL Companies as the
- 4 Controller of the UTEL Companies, which includes
- 5 BayRing Communications.
- 6 Q. Have you ever testified before the New Hampshire
- 7 Commission before?
- 8 A. (Winslow) Yes, I have, in docket 06-171, the Union
- 9 Telephone Company tariff changes docket.
- 10 Q. Okay. And, in your prefiled direct testimony, is there
- 11 a summary of your experience and background?
- 12 A. (Winslow) Yes, there is.
- 13 Q. Okay. Could you please identify this document?
- 14 A. (Winslow) Yes. That's my prefiled testimony in this
- 15 case.
- 16 Q. Okay. And, do you have any changes or corrections that
- 17 you'd like to make to your prefiled direct testimony?
- 18 A. (Winslow) Yes, a few minor changes. On Page 11, about
- 19 seven lines down, there's a line that says "It recovers
- 20 the costs to terminate the call at", and we should be a
- 21 "the" there, "the call at the terminating side of the
- 22 tandem switch". Also, on Page 21, about six lines
- 23 down, there is a "3", and that "3" should be a "4". On
- 24 Page 29, about four lines down, there is the word

[Witness panel: Lebeck|Winslow]

1 "included", and it should just be "include". On Page
2 33, about ten lines down, the question reads "When
3 Verizon assumed the billing from NYAB in August," I
4 want to insert "2006" after "August". And, then, the
5 next question down --

6 CMSR. BELOW: Wait.

7 WITNESS WINSLOW: I'm sorry.

8 CHAIRMAN GETZ: Trying to find that
9 correction. On Page 33?

10 WITNESS WINSLOW: Page 33.

11 CMSR. BELOW: Of '06?

12 WITNESS WINSLOW: Of '06, yes.

13 BY THE WITNESS:

14 A. And, the next question states, about on the 14th line,
15 "result created a substantial new revenues stream", it
16 should just say "revenue", strike the "s". And, then,
17 lastly, Page 53 of my testimony was actually a
18 duplicate page. That was also Page 37.

19 BY MS. GEIGER

20 Q. Okay. Mr. Winslow, with those corrections, if you were
21 asked the same questions today under oath as the
22 questions that are in your prefiled direct testimony,
23 would your answers be the same?

24 A. (Winslow) Yes.

[Witness panel: Lebeck|Winslow]

1 MS. GEIGER: Mr. Chairman, I'd like to
2 ask that the prefiled Testimony of Darren Winslow, dated
3 March 9, 2007, which consists of 36 pages of questions and
4 answers and seven attachments entitled "Exhibits A"
5 through "G", be marked for identification as "Exhibit 2"?

6 CHAIRMAN GETZ: So marked.
7 (The document, as described, was
8 herewith marked as Exhibit 2 for
9 identification.)

10 MS. GEIGER: And, again, I'll leave
11 copies for the Clerk and for the Stenographer.

12 BY MS. GEIGER

13 Q. Mr. Winslow, could you please identify this document.

14 A. (Winslow) Yes. That's the joint prefiled rebuttal
15 testimony of myself and Trent Lebeck.

16 Q. Okay. Do you have any corrections or changes that you
17 need to make to that document?

18 A. (Winslow) Yes, just another minor change. On Page 21,
19 Line Number 20, it should read "of the "contribution"
20 was set in the originated rate.", and strike the word
21 "so".

22 Q. And, is that the only change?

23 A. (Winslow) That's the only change.

24 Q. And, Mr. Lebeck and Mr. Winslow, if you were asked the

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[Witness panel: Lebeck|Winslow]

1 same questions today under oath as the questions that
2 are posed in your prefiled rebuttal testimony, would
3 your answers be the same?

4 A. (Winslow) Yes.

5 A. (Lebeck) Yes.

6 MS. GEIGER: Mr. Chairman, I'd like to
7 ask that the Rebuttal Testimony of Darren Winslow and
8 Trent Lebeck, dated April 20th, 2007, be marked as
9 "Exhibit 3" for identification?

10 CHAIRMAN GETZ: So marked.

11 (The document, as described, was
12 herewith marked as Exhibit 3 for
13 identification.)

14 BY MS. GEIGER

15 Q. Now, Mr. Lebeck, could you please briefly describe for
16 the Commissioners the events that led up to BayRing's
17 filing of the complaint in this proceeding?

18 CHAIRMAN GETZ: Excuse me, Ms. Geiger.

19 Before we proceed, I want to make sure there's
20 understanding on the ground rules. As I understand it,
21 the request that was made, that each witness will be
22 allowed to summarize their prefiled direct, their rebuttal
23 testimony that's prefiled, to also make oral rebuttal
24 comments, is that correct?

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[Witness panel: Lebeck|Winslow]

1 MS. GEIGER: I think the agreement that
2 we reached, at Verizon's request, is that the witnesses be
3 allowed to provide oral testimony that would rebut or that
4 would respond to the prefiled rebuttal. Is that correct?

5 MR. DEL VECCHIO: That's correct, Mr.
6 Chairman. I didn't anticipate, as we discussed among
7 ourselves, that there would be "direct examination", but
8 rather a summary by the witnesses, though I would also
9 add, with that caveat, that is correct, Mr. Chairman.

10 CHAIRMAN GETZ: Okay. I guess what I
11 want to make sure I'm heading off is there is not going to
12 be objections that the witnesses, under these ground
13 rules, are adding things in beyond the scope of their
14 prefiled direct.

15 MR. DEL VECCHIO: So long as the oral
16 response relates to the last round of prefiled about which
17 the parties did not have an opportunity to provide the
18 Commission with any replay, I would have no objection. I
19 may, I think, and the parties would reserve their rights,
20 to object to the extent that we seek by direct examination
21 to elicit additional information from our witnesses that
22 goes beyond that standard.

23 CHAIRMAN GETZ: Mr. Gruber.

24 MR. GRUBER: Yes, your Honor. I

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[Witness panel: Lebeck|Winslow]

1 generally agree with everything that's been said. I just
2 want to make sure that, to some extent, it's hard to
3 predict. I intend, on occasion, to interrupt Mr. Pfautz,
4 if I think he's missed a point in his summary that I'd
5 like to make sure that your Honors have understood. And,
6 so, there will be occasional questions from me during Mr.
7 Pfautz's presentation. The scope, however, will be
8 entirely within what has been said.

9 Secondly, the only exception to my
10 statement that it "will be entirely within what was said"
11 is a matter that has been discussed prior to the hearings
12 among all the parties, and that relates to the financial
13 estimate that was involved. And, matters have arisen
14 since the filings in this case that AT&T wanted to put on
15 the record. So, I will be asking Mr. Pfautz some
16 questions regarding Verizon's -- regarding AT&T's
17 prospective charge -- prospective traffic subject to the
18 CCL charge.

19 And, it's just a matter of, if we had
20 had this information at the time that Verizon had put its
21 prospective estimate into the record, we would have
22 pointed out that we didn't agree in one respect with it.
23 We didn't have that information. We now do. And, the
24 record would not be accurate if we left it standing as it

[Witness panel: Lebeck|Winslow]

1 is. That's the only reason why we're going to do that.

2 MR. DEL VECCHIO: And, Mr. Chairman, I
3 would not object to what Mr. Gruber has explained. We've
4 discussed this. I would, however, note that, by our not
5 objecting to his seeking to identify what AT&T now
6 estimates its local usage to be, thus impacting the
7 financial data going forward, Verizon is not necessarily
8 concurring that that estimate is correct or that the
9 methodology is correct.

10 CHAIRMAN GETZ: Okay. Thank you. Let's
11 proceed.

12 MS. GEIGER: Okay. Thank you, Mr.
13 Chairman.

14 BY MS. GEIGER

15 Q. I believe the question that I posed to Mr. Lebeck was
16 to ask him to briefly summarize the events that led up
17 to BayRing filing this complaint with the Commission.

18 A. (LeBeck) In reviewing BayRing's August 2005 bills from
19 Verizon for intrastate access charges, I noticed a
20 substantial increase in the amount of the bill over the
21 prior months. This led me to do a more detailed review
22 of the bill. In doing that, I noticed that the minutes
23 of use, MOU, that were assessed a Carrier Common Line,
24 CCL, far exceeded the MOUs that were assessed local

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[Witness panel: Lebeck|Winslow]

1 switching. It is unusual, because, in my experience,
2 the minutes of use that are charged a CCL are generally
3 equal to the minutes of use that are charged local
4 switching.

5 Also, in my experience, MOUs charged CCL
6 usually have to go through the local switch, which is
7 the local switching charge to be assessed the CCL.
8 Thus, the carrier, such as Verizon, bills a local
9 switching element, it would also bill a CCL charge. In
10 other words, CCL would only apply when a Verizon
11 end-user-user customer is charged CCL rate elements
12 versus local switching elements, and the MOUs are the
13 same.

14 When I looked at the bill, I noticed
15 that the minutes of use that were different were
16 minutes of use titled "Cellular Tandem Switched".
17 Cellular Tandem Switched MOUs terminate to a wireless
18 end-user and not a Verizon end-user. I believe Verizon
19 was billing CCL charges in error. I had never
20 encountered this situation before in my CABS billing
21 experiences. So, I checked Verizon's tariff to
22 determine the basis for these charges. After reviewing
23 Verizon's tariff, I conducted [concluded?] that CCL
24 charges on Cellular Tandem Switched MOU were not

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[Witness panel: Lebeck|Winslow]

1 authorized.

2 BayRing then initiated a dispute of
3 these charges with Verizon. Although representatives
4 of BayRing and Verizon met to discuss these disputed
5 charges, the dispute was not resolved, which led
6 BayRing to file a formal complaint with this
7 Commission.

8 Q. And, after BayRing filed this complaint with the
9 Commission, did anything change with respect to the
10 manner in which BayRing was being billed by Verizon for
11 access?

12 A. (Lebeck) Yes. Subsequent to BayRing's complaint on
13 April of 2006, Verizon began charging BayRing a CCL
14 rate element for other types of calls. Calls that
15 terminated to other CLECs and to ITC or Independent
16 Telephone Company end-users. Prior to that time,
17 Verizon's billing agent, New York Access Billing, LLC,
18 NYAB, was responsible for billing access charges and
19 had never billed BayRing for CCL on calls that
20 terminated to CLECs or to ITCs. NYB -- NYAB, Verizon's
21 third party billing experts, were acting consistently
22 with BayRing's interpretation of Verizon's tariff and
23 were not billing CCL charges for calls terminating to
24 non-Verizon end-users.

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1 Verizon's discovery response indicates
2 that NYAB did not bill CCL charges for these types of
3 calls for approximately ten years. These new CCL
4 charges imposed by Verizon create a substantial new
5 source of revenue for Verizon. For example, this
6 expanded CCL billing by Verizon resulted in BayRing's
7 disputes -- disputed charges increasing by 400 percent.

8 Q. Could you explain for the Commissioners why that's
9 significant?

10 A. (Lebeck) It is important for the Commission to
11 understand that the majority of BayRing's disputed
12 charges do not represent the long-standing Verizon
13 revenues, since Verizon has only been assessing the
14 bulk of these disputed charges since September of 2006.
15 Apparently, BayRing's complaint alerted Verizon to the
16 fact that they were not billing CCL to CLEC and to --
17 CLEC-to-CLEC or CLEC-to-ITC calls. And, therefore,
18 Verizon took this as an opportunity to impose those
19 additional charges to generate additional revenues for
20 itself.

21 Q. Mr. Lebeck, based on your experience and training in
22 Carrier Access Billing, or "CABS", as the acronym is,
23 could you please describe your understanding of the
24 application of a CCL charge?

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[Witness panel: Lebeck|Winslow]

- 1 A. (Lebeck) CCL charge is normally associated with
2 provisioning of a specific network element, namely, the
3 local facilities that connect the local switch to the
4 end-user.
- 5 Q. Is there a name in the industry that attaches to that
6 particular facility?
- 7 A. (Lebeck) It would be "common line" or "local loop"
8 would be two of them.
- 9 Q. Okay.
- 10 A. (Lebeck) And, this is consistent with Verizon's Tariff
11 Number 85, Exhibit 6.1.2-1, which is shown on Page 55,
12 Exhibit F of Darren Winslow's prefiled testimony.
- 13 Q. And, I'd just like to stop and make sure the
14 Commissioners have that in mind or at their -- for
15 their reference.
- 16 A. (Lebeck) Which clearly shows the common line as the
17 facilities between the end office and the end-user.
18 Additionally, other industry standards, such as the
19 NECA Handbook, indicate that CCL is associated with
20 "loop, drop and associated equipment from the end
21 office to the end-user", as shown in Exhibit B of my
22 prefiled direct testimony, I believe it was Page 16.
- 23 Q. Mr. Lebeck, what's NECA, N-E-C-A? What is that
24 acronym?

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[Witness panel: Lebeck|Winslow]

1 A. (Lebeck) The "National Exchange Carrier Association".

2 Q. Thank you. Mr. Lebeck, based on your experiences in
3 access billing and in the telecommunications industry,
4 have you ever seen an access bill from a carrier, other
5 than Verizon, that bills for individual rate elements
6 that are not provided by the billing carrier?

7 A. (Lebeck) No.

8 Q. Thank you. Next, I'd like to ask Mr. Winslow some
9 questions about the call flows that were appended to
10 his prefiled testimony. And, I would ask you, Mr.
11 Winslow, to please turn to Exhibit D of your prefiled
12 testimony, and please just explain to the Commissioners
13 what these diagrams are.

14 A. (Winslow) These diagrams are call flow diagrams that
15 the Staff and the parties worked on in this docket to
16 obtain an understanding how calls are routed over the
17 various networks, to terminate -- or, to originate and
18 terminate intrastate calls.

19 CHAIRMAN GETZ: Excuse me. Could I just
20 verify, are these identical to those that were filed on
21 December 15th by Staff?

22 WITNESS WINSLOW: I believe they are.

23 CHAIRMAN GETZ: Thank you.

24 MR. GRUBER: Just so -- excuse me, your

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[Witness panel: Lebeck|Winslow]

1 Honor. Just so the record is clear, and we've got all our
2 dates straight, I think that was December 20th -- no,
3 maybe I'm misspeaking, I'm not sure, but I just wanted to
4 make sure that the --

5 CHAIRMAN GETZ: I have a cover letter
6 from Ms. Fabrizio dated "December 15" that shows a series
7 of call flow scenarios. I just want to make sure we're --

8 MR. GRUBER: My apologies. That is
9 correct. That just sounded unfamiliar. I apologize.

10 CHAIRMAN GETZ: Thank you.

11 BY THE WITNESS:

12 A. (Winslow) Specifically, these call flows show the
13 network elements used during a intrastate call by
14 various carriers. These call flows also show the
15 access charges or the charges the specific carriers
16 charge the originating carrier to terminate a call.

17 BY MS. GEIGER

18 Q. And, Mr. Winslow, why do you believe it's important for
19 the Commission to understand these call flows?

20 A. (Winslow) BayRing's position in this case is that
21 Verizon is not authorized to collect certain access
22 charges for services that it does not provide. These
23 call flows highlight the differences between call
24 scenarios to which Verizon is authorized to charge CCL

[Witness panel: Lebeck|Winslow]

1 and those for which it provides no service, and
2 therefore would not be able to charge the CCL service.

3 Q. Okay. Mr. Winslow, I'd like you to provide the
4 Commissioners with a brief summary of the call flow
5 diagrams which show calls for which Verizon is billing
6 the access charges, specifically, the CCL charge, which
7 BayRing is disputing, and also to indicate during that
8 summary, where appropriate, what effects on the
9 competitive telecommunications market in New Hampshire
10 are being created by Verizon's imposition of those CCL
11 charges.

12 MS. GEIGER: And, for ease of
13 presentation, we will not have the Commissioners have to
14 flip through all of the various call flows. What we've
15 done is we've blown up a couple of call flows of which Mr.
16 Winslow will be referring to. I also have eight and a
17 half by eleven paper copies of the same information. And,
18 I guess, at this point, I'd like to have them marked for
19 identification as I believe "Exhibits 4" and "5".

20 CHAIRMAN GETZ: So, these represent
21 selected scenarios?

22 MS. GEIGER: They do. And, they're
23 selected scenarios, and they are derived from the
24 information in Mr. Winslow's prefiled testimony, although

[Witness panel: Lebeck|Winslow]

1 they are not -- they're not exactly like the call flows
2 that are in the appendix or in the document that was filed
3 in December of '06. And, so, what I would like to have
4 marked for identification as "Exhibit 4", I believe, is a
5 document that contains three, three call flows, the first
6 of which is Staff Call Flow 22, the middle one is Staff
7 Call Flow 13, and the last is Staff Call Flow 11.

8 CHAIRMAN GETZ: Okay. That will marked
9 for identification as "Exhibit Number 4".

10 (The document, as described, was
11 herewith marked as Exhibit 4 for
12 identification.)

13 MS. GEIGER: And, while we're marking,
14 the next eight and a half by eleven copy of another call
15 flow chart that has been blown up that I'd like to have
16 marked for identification as "Exhibit Number 5" shows
17 again Staff Call Flow 22, the middle call flow is going to
18 be Staff Call Flow 15, and the last call flow is based on
19 Staff Call Flow 23.

20 CHAIRMAN GETZ: It will be so marked.

21 (The document, as described, was
22 herewith marked as Exhibit 5 for
23 identification.)

24 MS. GEIGER: Thank you.

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[Witness panel: Lebeck|Winslow]

1 BY MS. GEIGER

2 Q. Okay. Mr. Winslow, turning to what's been marked for
3 identification as "Exhibit 4", could you please briefly
4 summarize, again, for the Commission, the nature of the
5 call flows that appear on that exhibit and why they're
6 significant?

7 A. (Winslow) Sure. Just to summarize, BayRing is
8 disputing calls where a BayRing end-user makes a call
9 to a -- terminates a call to a non-Verizon end-user.

10 Q. And, what --

11 A. (Winslow) And, those calls --

12 Q. What type of call?

13 A. (Winslow) An intrastate toll call. And, those
14 intrastate toll calls terminate a non-Verizon end-user
15 to include -- include calls that terminate to CLECs,
16 wireless carriers, and independent telephone companies,
17 or ITCs. My prefiled testimony focuses on a lot of
18 details within the call flows that are already in
19 Exhibit D. I have tried to simplify this presentation
20 today to just focus on the CCL charge. And, the reason
21 to focus on the CCL charge is that the CCL charge
22 represents over 90 percent -- approximately 90 percent
23 of the total access charge that could be charged on any
24 given call by a carrier. Again, that's the primary

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[Witness panel: Lebeck|Winslow]

1 issue in dispute in this case.

2 So, the first call flow that we're going
3 to talk about, for which BayRing disputes, represents
4 this call flow here, which is Call Flow Number 13. If
5 you'd like to look at the original call flow, that is
6 on Exhibit D, Page 45. The first thing I'd like to do,
7 though, is to get -- the first thing I'd like to do is
8 to take a look at a call flow in which BayRing believes
9 Verizon is properly charging the CCL charge and other
10 access charges for an intrastate toll call.

11 So, this first call flow, which is "Call
12 Flow Number 22" in the Staff's exhibit, represents a
13 call from a CLEC end-user, or BayRing, in this case, to
14 a Verizon end-user. In this case here, the end-user
15 picks up the phone. That signal is received by
16 BayRing's end office switch, which then routes that
17 call to the Verizon tandem. Verizon then routes that
18 call over its facilities to the Verizon host office or
19 the Verizon end office. Which then, from the end
20 office, the call routes over the common line facilities
21 that Trent spoke about to the Verizon end-user. In
22 this case, again, Verizon is charging a CCL charge, and
23 BayRing believes it is okay with that charge, as
24 Verizon is actually providing this facility here

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[Witness panel: Lebeck|Winslow]

1 [indicating], which is from the end office to the
2 end-user. And, we will show later how that is
3 described and to -- to show how that's consistent with
4 Verizon's tariff, I would bring up Exhibit F in my
5 prefiled, which Trent Lebeck spoke about, which, in
6 this exhibit, which is in Verizon's tariff, under
7 Section 6.1.2, this exhibit looks basically the same as
8 Call Flow 22. It has an end-user on the end. It has
9 the "CL", which is this common line plant in between
10 the end-user and the end office. The other components
11 are the local switching, which recovers for the end
12 office, and local transport facilities, which are
13 between the end office and the serving wire center.
14 It's critical to understand this diagram as it applies
15 to the call flows.

16 So, the next call flow that I'd like to
17 review is Call Flow Number 13. And, this is a call
18 flow in which BayRing disputes access charges that
19 Verizon is assessing on an intrastate toll call. In
20 this call flow -- In this call flow scenario, again, a
21 BayRing end-user makes a call, intrastate toll call,
22 this time it terminates to a CLEC end-user, which, in
23 this case, is One Communications. So, again, this call
24 -- this call is routed by BayRing's own switch, over

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1 BayRing facilities to the Verizon tandem. Verizon
2 switches that call at its tandem on trunks to One
3 Communications' end office switch. And, then, One
4 Communication terminates that call over its common line
5 facilities to its end-user.

6 So, if we compare these two call flows,
7 Call Flow 22 and Call Flow 13, everything that --
8 everything is the same on the originating side, but, on
9 the terminating side, we can clearly see that Verizon
10 is only providing a tandem function in here, it may
11 provide some of this transport, however, it does not
12 provide the local switch or, more importantly, the
13 common line facilities between the CLEC switch and the
14 CLEC end-user. And, in this case, on this chart, on
15 this call flow, and on all the call flows, you can see,
16 on all the call flows in which BayRing disputes access
17 charges, you will see a red CCL charge.

18 It's important to note on this call flow
19 as well that the terminating CLEC in this case, One
20 Communication, would also charge a Carrier common line
21 charge. And, that is correct, because One
22 Communication is actually providing the service,
23 whereas Verizon is not providing the service that is
24 described in its tariff. This exhibit also -- And,

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1 this CCL charge here is also in contradiction with
2 Verizon's picture in its 85 Tariff. Again, there's no
3 Verizon end-user here, so, therefore, they should not
4 charge the CCL.

5 The next call flow -- Trent, could you
6 just pick that up just a little bit.

7 Q. Excuse me, Mr. Winslow. Before you move on, in that
8 middle call flow that appears in Exhibit 4, could you
9 please explain for the Commission whether that
10 represents -- to what extent that represents the types
11 of calls that BayRing is disputing in this case? Is
12 that a significant amount of the calls?

13 A. (Winslow) Yes. CLEC-to-CLEC calls are a significant
14 amount of the calls that BayRing is disputing. And,
15 again, all the call flows that we're disputing will
16 look like this, where somebody else, another carrier,
17 is providing the terminating facilities.

18 Looking at the next call flow example,
19 for comparison purposes, we wanted to take a look at
20 Staff Call Flow Number 11. This is a call flow where a
21 Verizon end-user is making an intrastate call to a CLEC
22 end-user. In this case here, it could actually be the
23 same CLEC end-user. So, a BayRing customer obviously
24 can make an intrastate call to one end-user, a Verizon

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1 end-user can make a call to the same CLEC end-user. As
2 you will see, the terminating portion of these call
3 flows are exactly the same. The Verizon tandem is in
4 the middle. We've got some facilities between the
5 Verizon tandem and the CLEC switch. And, then, we have
6 the common line of the end-user-user plant, which,
7 again, is terminated off of the One Communications' end
8 office switch.

9 What we'd like to note here is that One
10 Communications is going to charge Verizon for the use
11 of its terminating facilities. The one charge that it
12 will charge Verizon will be the CCL charge, again, for
13 the facilities between the end office switch and the
14 CLEC end-user. If we compare -- If we compare these
15 three call flows, just looking at the CCL charge, we
16 can see that, when BayRing terminates a call to a
17 Verizon end-user, it gets charged one CCL charge. Its
18 total terminating charges that it pays Verizon
19 approximately -- approximately three cents. For a
20 similar looking call, that terminates to a CLEC
21 end-user, Verizon still charges the CCL charge, it also
22 charges some tandem switching, and that total
23 terminating charge that Verizon charges BayRing to
24 terminate to a CLEC end-user is approximately 2.7

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1 cents. The CCL charge is 2.649 cents of this 2.7.

2 So, as you can see, whether a call
3 terminates to a Verizon end-user or a CLEC end-user,
4 the cost to BayRing, charged by Verizon, is
5 approximately the same. It's a 3/10ths difference.
6 What's even more significant is that, when BayRing
7 terminates a call to a CLEC end-user, of course, the
8 CLEC that's terminating that call wants to get its
9 access charges. So, therefore, it charges CCL and any
10 other components that it provides, such as local
11 switching or any transport, and those charges would
12 approximate 2.9 cents. So, as you can see, BayRing is
13 being billed two CCL charges to terminate one call.
14 BayRing's approximate cost to terminate a call to a
15 CLEC would be approximately 5.6 cents. BayRing's cost
16 to terminate a call to Verizon would be approximately 3
17 cents.

18 If we compare that to -- If we compare
19 that cost and how Verizon is billed to terminate to the
20 same CLEC end-user, again, Verizon is only going to be
21 billed one CCL equivalent charge here. The CLEC would
22 charge Verizon approximately 3 cents to terminate this
23 call to their end-user. Again, if we compare that to
24 what BayRing pays to terminate the call to the same

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[Witness panel: Lebeck|Winslow]

1 CLEC end-user, BayRing's cost is almost double of what
2 Verizon's cost represents in this case.

3 Q. Mr. Winslow, when you referred to the charges in your
4 remarks a few moments ago, could you please explain
5 whether those cents are on a per minute basis or on
6 some other basis?

7 A. (Winslow) I'm sorry. Yes. Those are -- All of these
8 charges are on a per minute basis. And, these are
9 summarized in my Exhibit A in my prefiled testimony as
10 well.

11 Q. Before we move onto Exhibit 4 [5?] and your
12 summarization of those calls, Mr. Winslow, do you have
13 any other concluding comments for the Commissioners
14 about the information presented in Exhibit 4?

15 A. (Winslow) Yes. Obviously, based on the charges billed
16 BayRing in this, for these three call flow examples,
17 it's easy to see that, when a call terminates to a CLEC
18 end-user, Verizon has a unreasonable competitive
19 advantage, cost competitive advantage over Verizon --
20 excuse me, over BayRing in this case. Again, we're
21 talking BayRing pays 5.6 cents; Verizon is paying 3
22 cents. Let's take a look at the next exhibit.

23 Q. Mr. Winslow, could you just summarize for the
24 Commissioners the information that appears on

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1 Exhibit 5.

2 A. (Winslow) Okay. This exhibit is basically to compare,
3 to take a look at the charges that BayRing disputes in
4 Staff Call Flow Number 15. These are calls that
5 terminate to a wireless end-user. Again, Call Flow
6 Number 15 appears in Exhibit D, Page 46. I'd also like
7 to note that BayRing disputes Call Flows Number 14 and
8 Number 16, which are similar to Call Flow 15, again,
9 terminating to a wireless end-user.

10 Again, first, we -- I put up here Staff
11 Call Flow Number 22, which is the same call flow on my
12 first exhibit. Again, the comparison here is just to
13 show where BayRing believes Verizon is charging the CCL
14 charge appropriately, because it is providing the
15 facilities between the Verizon host or the end office
16 and the Verizon end-user.

17 Taking a look at Staff Call Flow Number
18 15, this call flow looks very similar to Call Flow 13
19 in the other diagram. This is where a CLEC end-user is
20 making an intrastate toll call to a wireless end-user.
21 Just like in Call Flow Number 13, BayRing is routing
22 that call to the Verizon tandem. Verizon routes that
23 call to the wireless carrier's MTSO, or "Mobile
24 Telephone Switching Office". And, then, the wireless

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[Witness panel: Lebeck|Winslow]

1 carrier terminates that call to its end-user over its
2 common line like facilities, again, to its end-user.
3 Just like in Call Flow Number 13, Verizon is still
4 charging BayRing a CCL charge when Verizon does not
5 provide the facilities between the end office and the
6 end-user.

7 In certain cases, a wireless carrier may
8 charge BayRing local termination charges to terminate
9 that toll call to its end-user. Therefore, again,
10 BayRing is being billed two CCL charges, whereas, when
11 it terminates to -- two CCL like charges, whereas, when
12 it terminates a call to a Verizon end-user, it pays one
13 CCL charge.

14 Now, taking a look at a intrastate long
15 distance call from a Verizon end-user to a wireless
16 end-user, we're looking at Staff Call Flow Number 23.
17 Just like the third call flow on my prior exhibit, the
18 terminating facilities on this call flow are very
19 similar to the call flow in which BayRing disputes
20 access charges in Call Flow Number 15. Again, in the
21 middle, you have the Verizon tandem. We've got some
22 transport facilities here that are provided by Verizon.
23 We have the MTSO switch, that is the wireless carrier
24 switch, and you have the wireless end-user. So, the

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1 terminating facilities are exactly the same.

2 In this call flow, the wireless carrier
3 is going to charge Verizon local terminating charges.
4 So, if you compare Call Flow Number 23 with Call Flow
5 Number 15, BayRing could get two charges to terminate a
6 call to a wireless carrier, whereas Verizon is only
7 going to get one charge.

8 If we look at the rates that are charged
9 for these switched access services, again, in Call Flow
10 Number 22, Verizon is charging roughly 3 cents per
11 minute to terminate the call to its own Verizon
12 end-user. When BayRing terminates a call to a --
13 actually to a Verizon end-user -- excuse me, a wireless
14 end end-user, Verizon is going to still bill BayRing
15 approximately 2.8 cents. And, again, most of the
16 2.8 cents is representative of the CCL charge that
17 Verizon is billing.

18 Again, BayRing may be charged by the
19 wireless carrier some local termination charges. What
20 I would say here is that BayRing at least has to pay
21 2.8 cents to terminate this call, and it could pay
22 anywhere from 2.8 cents to 3.8 cents, depending on the
23 agreements it has with wireless carriers. Again, in
24 this scenario, being charged two charges to terminate

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1 versus one.

2 If we take a look at Staff Number 23, to
3 terminate the same call or to terminate any call
4 possibly to the same wireless end-user, Verizon is only
5 going to have to pay the wireless carrier local
6 termination charges. We've approximated those at 2 --
7 2/10ths of a penny. So, this is not a typo here, this
8 is 2/10ths of a penny. So, if we compare this to what
9 BayRing has to pay to terminate a call to a wireless
10 end end-user, we know BayRing has to pay at least 2.8
11 cents, compared to 2/10ths of a penny.

12 This 2/10ths of a penny is made up of a
13 couple of items. The local termination charge that the
14 wireless carrier bills Verizon, according to Verizon's
15 discovery responses, is 7/100ths of a penny. So, the
16 7/100ths of a penny per minute represents what the
17 wireless carrier charges Verizon to terminate to its
18 end-user. The difference here represents costs that we
19 imputed to Verizon based on Verizon's access rates for
20 its costs to recover the facilities here [indicating],
21 which, again, are the same facilities up here
22 [indicating].

23 Again, it's clear to see by these call
24 flows, based on the different prices that BayRing has

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1 to pay compared to Verizon, that Verizon has an unfair
2 competitive advantage over BayRing to terminate calls
3 to wireless end-users.

4 Q. Mr. Winslow -- I think, Mr. Lebeck, if you can sit down
5 now, I think we're done with Exhibit 5. Thank you very
6 much. Mr. Winslow, does BayRing dispute any other
7 charges that are shown or associated with other call
8 flows that are either depicted in your prefiled
9 testimony or in the attachment to your prefiled
10 testimony or in the document that Staff filed with the
11 Commission back in December?

12 A. (Winslow) Yes, it does. BayRing also disputes calls
13 terminating to Independent Telephone Companies, which
14 is Call Flow Number 20. The concepts are exactly the
15 same as I explained in the other call flow exhibits
16 under Call Flow Number 13 and Number 15. Verizon is
17 charging CCL charges when it does not provide the
18 service. The service is actually provided by the
19 Independent Telephone Company, who also bills CCL for
20 that service. Thus, again, BayRing is paying two CCL
21 charges when it terminates calls to Independent
22 Telephone Companies.

23 Q. And, before we move on to a summarization of BayRing's
24 position with respect to the tariff provisions, Mr.

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1 Winslow, do you have any other information that you'd
2 like to provide to the Commissioners about the call
3 flows?

4 A. (Winslow) Yes. Although the call flow diagrams may
5 appear a little bit confusing, the manner in which the
6 call flows are physically routed are not disputed in
7 this case. The real issues in this case involve common
8 sense and fairness. Verizon admits that it's not
9 providing the common line service. A common sense
10 approach to this dispute would lead one to conclude
11 that Verizon should not charge for rate elements that
12 it does not actually provide. It is common knowledge
13 within the telecommunication industry that CCL charges
14 are billed in relation to common line plant connecting
15 the end-user with the end office. Again, that's
16 exactly how Verizon has depicted that charge in its
17 Tariff Number 85.

18 As Mr. Lebeck noted as well in his
19 testimony, that understanding is the same understanding
20 we believe Verizon's hired experts had on the CCL
21 charge, and that's why they did not bill those charges
22 for over ten years.

23 The call scenarios above clearly show
24 Verizon's erroneous application of the CCL charge is

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1 extremely anti-competitive. The rates that it's
2 charging for these disputed charges are not just and
3 they're not reasonable.

4 Q. Thank you. Now, Mr. Winslow, turning your attention to
5 the specific tariff provisions that you've noted in
6 your prefiled testimony, could you please briefly
7 summarize for the Commission BayRing's position
8 regarding what it believes to be the appropriate
9 interpretation of Verizon's access tariff provisions,
10 specifically, the CCL charge provisions?

11 A. (Winslow) Sure. A plain reading of Verizon's tariff
12 indicates that the CCL rate element is charged for the
13 use of common line plant between the local end office
14 and an end-user. BayRing and AT&T both outlined in our
15 prefiled testimony the legal interpretation of this
16 question. And, BayRing will provide legal and other
17 argument in a post hearing brief.

18 However, with the Commission's
19 permission, I will provide a brief summary of some of
20 the tariff provisions that indicate the proper
21 interpretation is that the CCL is only authorized to be
22 charged when a Verizon common line is actually used.

23 As I previously mentioned, Verizon
24 graphically depicts its switched access service in

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1 Exhibit 6.1.2-1, which, again, clearly shows the common
2 line is facilities between the end office and the
3 end-user. This picture, as I said before, is
4 consistent with the industrywide treatment of the
5 Carrier Common Line rate element. Also, an examination
6 of various other provisions of Verizon's tariff
7 supports BayRing's position. For example, the Carrier
8 Common Line charge is described in Tariff NHPUC Number
9 85, Section 5.1.1A, which states as follows: "Carrier
10 Common Line access provides for the use of end-user's
11 Telephone Company", "Telephone Company" meaning
12 Verizon, "provided common lines by customers for access
13 to such end-users to furnish intrastate
14 communications." This tariff provision is referred to
15 on Page 11 of my prefiled testimony and a copy of the
16 tariff is appended with Mr. Shepherd's prefiled
17 testimony.

18 In addition, Section 1.3.2, set forth on
19 Page 23 of my prefiled testimony, defines "common line"
20 as follows: "Common line - A line, trunk or other
21 facility provided under the general and/or local
22 exchange tariffs of the Telephone Company, terminated
23 on a central office switch." And, again, the "central
24 office switch" were the end offices that I talked about

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[Witness panel: Lebeck|Winslow]

1 on the call flow. The definition further states: "A
2 common line residence is a line or trunk provided under
3 the residence regulations of the general and/or local
4 exchange service tariffs. A common line business is a
5 line provided under the business regulations of the
6 general and/or local exchange service tariffs."

7 The above description of the CCL service
8 in Verizon's tariff and the definition of "common line"
9 clearly link the CCL rate elements to the services
10 provided for the use of Verizon's local plant, meaning
11 services utilizing facilities between Verizon end
12 offices and Verizon end-users. Looking again at the
13 definition of "CCL" itself clearly states that "CCL
14 access provides for the use of end-user's telephone
15 provided common line."

16 Section 5.1.1A.1 states: "The telephone
17 company", Verizon, "will provide Carrier Common Line
18 access service to customers in conjunction with
19 switched access service provided in Section 6." Thus,
20 Verizon's tariff is clearly stating that it's providing
21 a service when it provides the Carrier Common Line.
22 Yet, Verizon admits, and the disputes in this case
23 clearly show, no CCL service is being provided by
24 Verizon.

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1 In addition to the above definition
2 requiring Verizon to actually provide the CCL service,
3 BayRing and AT&T outlined in our prefiled testimonies
4 other provisions within Verizon's tariff which states
5 CCL should be billed when it's provided. Verizon CCL
6 service tariff provisions are specifically linked to
7 other sections of Tariff 85, such as Sections 4 and 6,
8 and also tariffs such as Verizon's FCC 11 Tariff, which
9 reinforce the common practice of only billing services
10 when they are used.

11 As an example, Section 5.1.1A1 again
12 states: "Telephone Company will provide Carrier Common
13 Line access service to customers in conjunction with
14 switched access service provided in Section 6." Thus,
15 Section 5 cannot apply without the provisions of
16 Section 6. Section 6.1.2B specifically lists Carrier
17 Common Line as a separate rate category. And, as we
18 have already discussed, the diagram under 6.1.2 also
19 shows CCL as a separate rate category. In Section 6,
20 Section 6.6.3A states: "Usage rates apply only when a
21 specific rate element is used. They are applied on a
22 per access minute basis or a per call basis." CCL is
23 clearly a usage element, as it is charged under Section
24 30.5.1 on an access minute basis.

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1 It is reasonable that tariffs identify
2 separate charges for separate service elements. When
3 all the applicable tariff provisions are read together,
4 it is obvious that Verizon CCL service is only intended
5 to apply when Verizon's common line plant is used.

6 Q. Mr. Winslow, could you please explain for the
7 Commissioners your understanding of why BayRing and
8 Verizon are in disagreement over the proper
9 interpretation of Verizon's Tariff 85?

10 MR. DEL VECCHIO: Excuse me,
11 Mr. Chairman. I would just -- I apologize for
12 interrupting. I just want to get a sense as to how much
13 further the summary will be, since, according to my watch,
14 it's been about 53 minutes? And, I wasn't certain as to
15 what the ground rules were when the Commission identified
16 a "reasonable amount of time".

17 MS. GEIGER: No longer than five
18 minutes.

19 CHAIRMAN GETZ: Is there any argument
20 that it's going beyond the scope or is it just the timing,
21 Mr. Del Vecchio?

22 MR. DEL VECCHIO: I wouldn't necessarily
23 argue it went beyond the scope, Mr. Chairman. I would
24 just submit that what's good for the goose is good for the

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[Witness panel: Lebeck|Winslow]

1 gander. And, I'd like to get a sense as to what the
2 ground rules are now. And, if 60 minutes is it, then, I
3 would not object.

4 MS. GEIGER: No more than three or four
5 minutes. I'm sure the witness can wrap up in the next
6 five minutes or so.

7 CHAIRMAN GETZ: And, I hesitate to give
8 a set time limit in advance, because I assume there's
9 variations among the testimonies. But I'm assuming that,
10 if you go to 60 minutes, you're not going to see an
11 objection. Please conclude.

12 BY THE WITNESS:

13 A. (Winslow) Verizon erroneously relies on a generic
14 sentence within its NHPUC Tariff Number 85 for its
15 argument that CCL applies when common line facilities
16 are not used. That sentence states "Except as set
17 forth herein, all switched access service provided to
18 the customer will be subject to Carrier Common Line
19 access charges." Verizon's interpretation is
20 incorrect, because it ignores the statement "Except as
21 set forth herein", which clearly means that there are
22 exceptions to the general language. The tariff needs
23 to be read as a whole and, as discussed previously, the
24 tariff clearly defines "CCL" as a usage-based element,

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1 which only should be charged when Verizon provides the
2 service of a common line to its end-user to originate
3 or terminate a call.

4 BY MS. GEIGER

5 Q. Could you please describe for the Commissioners what
6 relief BayRing is seeking in this case?

7 A. (Winslow) BayRing respectfully asks the Commission to
8 conclude that Verizon's billing of access charges for
9 usage elements that it does not provide, specifically
10 the CCL rate element, is not authorized and the charges
11 are not just or reasonable. BayRing would also request
12 the Commission order Verizon to immediately cease
13 collecting these charges and provide BayRing with a
14 refund of these charges in an amount to be determined
15 at the next phase of this proceeding.

16 Q. Is there anything else that either you or Mr. Lebeck
17 would like to add to your oral summaries this morning
18 for the Commissioners?

19 A. (Winslow) We would just like to, on behalf of BayRing,
20 like to thank the Commissioners for their time and
21 consideration of this matter.

22 MS. GEIGER: I have no further
23 questions. Thank you.

24 CHAIRMAN GETZ: Thank you. And, I

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[Witness panel: Lebeck|Winslow]

1 understand the order of cross, we turn to Mr. Gruber.

2 MR. GRUBER: Yes. Thank you. With the
3 permission of the Commission, I'll just ask a couple of
4 questions.

5 CROSS-EXAMINATION

6 BY MR. GRUBER

7 Q. Mr. Winslow, turning to Exhibit 4, and the call flows.
8 I'm looking at the first two you've got listed there,
9 Call Flow 22 and 13. You have those in front of you?

10 A. (Winslow) Yes.

11 Q. Now, as I understand it, if a BayRing customer called,
12 let's say, Mary, who is a Verizon end-user customer.
13 Under that call flow scenario, BayRing would get
14 charged by Verizon one CCL, is that correct?

15 A. (Winslow) Under Call Flow 22, that's correct.

16 Q. Yes. Now, same call flow then, because let's assume
17 that Mary switches to one of Verizon's competitors.

18 A. (Winslow) Okay.

19 Q. So, let's say One Communications. Same call is made,
20 Verizon now charges for two CCLs?

21 A. (Winslow) No, Verizon charges for one CCL.

22 Q. Oh. Okay.

23 A. (Winslow) Under that call.

24 Q. And One Communication charges for another CCL?

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[Witness panel: Lebeck|Winslow]

1 A. (Winslow) Right. One Communications would charge the
2 other CCL charge.

3 Q. Which switch is Mary connected to in that scenario, One
4 Communications or Verizon?

5 A. (Winslow) Mary would be connected to the One
6 Communications' end office switch.

7 Q. And, let me just ask you this. If Mary were to go back
8 to Verizon, so that BayRing's user was calling Mary
9 again, has it ever been your experience that the CLEC
10 that had served Mary before had tried to charge BayRing
11 that CCL that it used to get?

12 A. (Winslow) No, I have not seen that.

13 Q. So, only Verizon seeks to charge a CCL when it loses
14 the customers, in your experience?

15 A. (Winslow) Correct.

16 MR. GRUBER: Okay. Thank you. That's
17 all I have.

18 CHAIRMAN GETZ: Mr. Kennan.

19 MR. KENNAN: Thank you, Mr. Chairman. I
20 wonder if this might be a time to take a break, because I
21 would like to just confer briefly with Ms. Geiger on one
22 issue before I start. And, my cross-examination will be
23 very brief, but there is potentially one clarifying issue
24 that I would like to raise with her before I ask the

[Witness panel: Lebeck|Winslow]

1 question. So, might this be the right time for the
2 morning break or could I at least have a couple of minutes
3 just to confer?

4 CHAIRMAN GETZ: Let's just take a couple
5 of minutes here.

6 MR. KENNAN: Okay. Thank you.

7 (Atty. Kennan conferring with Atty.
8 Geiger.)

9 CHAIRMAN GETZ: Okay. Back on the
10 record. Mr. Kennan.

11 MR. KENNAN: Thank you, Mr. Chairman. I
12 appreciate your indulgence for a few minutes while we
13 clarified an issue.

14 BY MR. KENNAN

15 Q. Gentlemen, just to be absolutely clear, there is no
16 question that, when a BayRing customer makes a call to
17 a wireless end-user within the State of New Hampshire,
18 there is no doubt that no Verizon common line is
19 involved in that call, is that correct?

20 A. (Winslow) Correct.

21 Q. And, Verizon has never claimed that there's a common
22 line involved?

23 A. (Winslow) Not to my knowledge.

24 Q. And, similarly, when a BayRing customer makes a call to

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[Witness panel: Lebeck|Winslow]

1 the end-user of another CLEC within the State of New
2 Hampshire, there's no question that there is no Verizon
3 common line involved in that call either?

4 A. (Winslow) Correct.

5 Q. And, Verizon has never claimed that a Verizon common
6 line is involved in that call?

7 A. (Winslow) No, they have not.

8 Q. I'd like to direct your attention to Page 35 of Mr.
9 Winslow's direct testimony, which is "Exhibit 2" for
10 identification please. And, around the middle of the
11 page, Mr. Winslow, you make a statement to the effect
12 of "Verizon's interconnection agreements with wireless
13 carriers consider as local traffic" -- "as local",
14 excuse me, "all traffic originated and terminated in
15 the State of New Hampshire."

16 A. (Winslow) Yes.

17 Q. Is that correct?

18 A. (Winslow) That's correct.

19 Q. Do you know why the interconnection agreements between
20 Verizon and the wireless carriers consider as local all
21 traffic originated and terminated within the State of
22 New Hampshire?

23 A. (Winslow) Because they're all intra-MTA calls.

24 Q. And, "MTA" is a "Major Trading Area"?

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[Witness panel: Lebeck|Winslow]

- 1 A. (Winslow) Yes.
- 2 Q. And, to your knowledge, is the entire State of New
3 Hampshire one MTA?
- 4 A. (Winslow) Yes.
- 5 Q. So, for purposes of the relationship between -- excuse
6 me, for purposes of the relationship of Verizon New
7 Hampshire to a wireless carrier, a call from a Verizon
8 New Hampshire customer in Manchester to a wireless
9 customer in North Conway is a local call?
- 10 A. (Winslow) Correct.
- 11 Q. And, earlier, you went through what you believe to be
12 some of the rates that are contained in those
13 interconnection agreements between Verizon New
14 Hampshire and wireless carriers, for that call from the
15 Verizon New Hampshire customer in Manchester to a
16 wireless customer in North Conway?
- 17 A. (Winslow) Correct.
- 18 Q. I believe you said that you had estimated that the call
19 -- that the total charges imposed by the wireless
20 carrier is something on the order of 2/10ths of a cent
21 per minute?
- 22 A. (Winslow) Yes, that's correct.
- 23 Q. Is that an access charge?
- 24 A. (Winslow) No, I think that's a reciprocal compensation.

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[Witness panel: Lebeck|Winslow]

- 1 Q. So that, when that Verizon New Hampshire customer in
2 Manchester calls the wireless customer in North Conway,
3 Verizon New Hampshire pays reciprocal compensation to
4 the wireless carrier that that subscriber uses?
- 5 A. (Winslow) Correct.
- 6 Q. But, if a BayRing customer in Manchester calls that
7 very same wireless customer in North Conway, then
8 Verizon New Hampshire imposes an access charge on
9 BayRing to carry that call, is that correct?
- 10 A. (Winslow) Correct.
- 11 Q. And, the access charge that Verizon New Hampshire
12 imposes includes the Carrier Common Line charge that's
13 the subject of this case?
- 14 A. (Winslow) Yes, it does.
- 15 Q. And, could you please remind the Commissioners what
16 that Carrier Common Line charge is?
- 17 A. (Winslow) It's 2.649 cents per minute.
- 18 Q. So, you have at least 2.6 cents per minute charged --
19 that Verizon charges to BayRing, versus 2/10ths of a
20 cent a minute that Verizon New Hampshire pays to the
21 wireless carrier to terminate that call?
- 22 A. (Winslow) Well, just to clarify, the wireless carrier
23 is only going to charge 7/100ths of a penny per minute
24 to Verizon. The remainder of the cost, the 2/10ths of

[Witness panel: Lebeck|Winslow]

1 a cent, minus the 7/100ths of a cent, represents
2 Verizon's own internal cost that I imputed to get to
3 that 2/10ths of a penny.

4 Q. Okay, 7/100ths, so that's even less. So, how does that
5 difference in the rates affect the competitive
6 situation of the Verizon New Hampshire customer in
7 Manchester -- or, Verizon New Hampshire carrying the
8 call to the wireless carrier, versus BayRing
9 originating the call in Manchester and carrying it to
10 that same wireless carrier?

11 A. (Winslow) Well, obviously, -- obviously, Verizon's
12 costs are much, much lower in that call scenario. So,
13 therefore, Verizon has a very large competitive
14 advantage over a CLEC, such as BayRing, in this case.

15 Q. And, that competitive advantage to Verizon New
16 Hampshire is caused by this Carrier Common Line access
17 charge?

18 A. (Winslow) Yes, it is.

19 MR. KENNAN: That's all I have. Thank
20 you, Mr. Chairman.

21 CHAIRMAN GETZ: Thank you. Ms. Goins?

22 MS. GOINS: Yes, Chairman. Sprint does
23 not have any questions for the witnesses.

24 CHAIRMAN GETZ: Thank you.

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[Witness panel: Lebeck|Winslow]

1 Ms. Fabrizio.

2 MS. FABRIZIO: Thank you, Mr. Chairman.

3 BY MS. FABRIZIO

4 Q. A couple of questions just to sort of clarify some
5 loose ends at this time. First, Mr. Lebeck, do your
6 responsibilities include review or production of
7 Carrier Access Bills issued by the ILEC, Union
8 Telephone?

9 A. (Lebeck) Yes, it does.

10 Q. And, does Union bill carriers for CCL usage?

11 A. (Lebeck) Yes, it does.

12 Q. And, does Union's CCL charge recover some of Union's
13 non-traffic sensitive costs of its common line or loop?

14 A. (Lebeck) Yes.

15 Q. And, does Union ever charge CCL when its common line is
16 not being accessed or used?

17 A. (Lebeck) No.

18 Q. And, I want to refer to your direct testimony, Page 7.
19 And, again, for clarification here, on Page 7 in your
20 testimony you note that, and this is approximately at
21 Line 6, that "Verizon does not have Meet Point Billing,
22 or MPB, arrangements with most of these carriers as
23 described in the NECA Tariff Number 4." And, then,
24 later, towards the end of the page, Line 19 or so, that

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[Witness panel: Lebeck|Winslow]

1 the NECA Tariff Number 4 includes "no Verizon
2 intermediate carrier MPB percentages for switched
3 access in New Hampshire for the disputed call flows."
4 Could you explain why those observations are relevant
5 here?

6 A. (LeBeck) By looking at NECA Tariff Number 4, which is
7 referenced in Verizon's tariff as a governing body for
8 billing, it details the percentages -- excuse me, the
9 percentages that are equated between the two parties.
10 So, in other words, a LEC and another LEC, who have
11 different service territories, would negotiate who
12 would have what portion of transport, and they would
13 have a meet point at which they would hand off all
14 traffic between the two carriers. And, the meet point
15 percentages are negotiated between the two companies
16 prior to it being put into Tariff Number 4, and it
17 means that they have a Meet Point Billing arrangement.
18 And, it's done by end office to end office.

19 So, for instance, I could use Kearsarge
20 Telephone Company's Kearsarge exchange and Verizon.
21 They have a meet point, and they would, at that meet
22 point, negotiate who has what percentage of the airline
23 miles between the Kearsarge exchange and the Verizon
24 exchange in question. So, in other words, the

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[Witness panel: Lebeck|Winslow]

1 Manchester tandem and Kearsarge. And, they would
2 negotiate this outside of an agreement that they would
3 make, and then they would submit it to Tariff Number 4
4 to be filed. This helps anybody who is ordering access
5 to Kearsarge, knowing that they will have charges from
6 Kearsarge, charges from Verizon, and the transport
7 would be divided between the two. So, it helps -- it
8 helps you equate what charges you're going to have for
9 your billing and to review a bill that comes after you
10 order that access.

11 Q. Thank you.

12 MS. FABRIZIO: We're just conferring
13 here. Hold on one second.

14 (Short pause.)

15 MS. FABRIZIO: Thanks.

16 BY MS. FABRIZIO

17 Q. Just for a little bit of further clarification, what
18 are the implications of your statement that "Verizon
19 must not have joint access provisioned switched access
20 with the related carriers"? Is that required under the
21 NECA tariff, in order to charge these CCL charges?

22 A. (Lebeck) Yes. According to Verizon's tariff, all Meet
23 Point Billing arrangements are listed in Tariff Number
24 4.

[Witness panel: Lebeck|Winslow]

- 1 Q. And, are there any meet point arrangements between
2 Verizon and CLECs in the NECA tariff?
- 3 A. (Lebeck) A few. A few.
- 4 Q. Thanks. And, one final question. You've worked in a
5 number of states on telephony regulation, including on
6 access issues, according to your prefiled testimony?
- 7 A. (Lebeck) Yes.
- 8 Q. Are you aware of an equivalent to Verizon's CCL charge
9 being assessed in other states?
- 10 A. (Lebeck) When they are not supplying the -- I'm not
11 sure what you're asking me.
- 12 Q. Yes. When it's actually not being provided as a
13 service?
- 14 A. (Lebeck) No.
- 15 Q. No. All right. Mr. Winslow, let's see, Exhibit 4,
16 Call Flow 13, does Verizon or One own the facility from
17 its tandem to One's switch? Which company, Verizon or
18 One, owns the facility between, in the center of the
19 call flow here, Verizon and One?
- 20 A. (Winslow) For Call Flow Number 13?
- 21 Q. Yes.
- 22 A. (Winslow) First, you're looking at who owns the
23 facility between Verizon's tandem and One
24 Communication's end office switch?

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[Witness panel: Lebeck|Winslow]

1 Q. Right.

2 A. (Winslow) I think it depends on the carrier in this
3 case. I think, in certain cases, the carrier may be
4 connected right at the Verizon tandem. And, so,
5 therefore, there's really no facilities there. So --
6 I'm sorry, there would be a cage facility at the
7 Manchester tandem. In that case, the CLEC would own
8 the transport between the tandem and its end office
9 switch. I think, in certain cases, I think Verizon may
10 supply some of the transport or all the transport
11 potentially maybe to an end office switch.

12 Q. Okay. And, you --

13 CHAIRMAN GETZ: Excuse me. Mr. Winslow,
14 it might be helpful if you bring the microphone closer to
15 you.

16 WITNESS WINSLOW: Okay.

17 BY MS. FABRIZIO

18 Q. In your Exhibit 4 and 5, you have the CCL charges
19 listed on the right-hand side. It's a little bit
20 confusing, because they change from flow to -- diagram
21 from diagram. So, just wondered if you could clarify,
22 does the per minute rate shown on these exhibits
23 reflect only the CCL charges or does it also reflect
24 total terminating access charges, which would be paid

[Witness panel: Lebeck|Winslow]

1 in these particular instances?

2 A. (Winslow) It's reflecting the total terminating access
3 charges in these cases.

4 Q. Okay. And, with respect to Exhibit 5, could you
5 explain why the local termination charge in Call Flow
6 15 is one cent per minute and 0.0007 per minute in Call
7 Flow 23?

8 A. (Winslow) The one cent per minute is an estimate that I
9 put out there. Those agreements are between the
10 wireless carriers and any of the CLECs or other
11 carriers that have a connection agreement with a
12 wireless carrier.

13 Q. Okay. Thanks. And, what is that 0.007 based on here?

14 A. (Winslow) The 0.007 is based on an FCC rate for
15 reciprocal compensation.

16 Q. Okay. And, why was that rate not used in Call Flow 15?

17 A. (Winslow) Again, because carriers, like BayRing, may
18 have a different -- may have specific agreements with
19 wireless carriers that may be more than the 7/100ths.

20 Q. Okay. And, could you explain again the imputed charge
21 that you discussed in Call Flow 23?

22 A. (Winslow) Basically, what I did is Verizon has specific
23 rates for its Tandem Switching Charge and its Local
24 Transport Charge. Basically, the facilities between

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[Witness panel: Lebeck|Winslow]

1 the tandem to get to the MTSO. What I did is I used an
2 approximate charge, an access charge -- I'm sorry, I
3 used the access charges that Verizon charges other
4 carriers for those facilities, and added that to the
5 local termination charge to get to the 2/10ths of a
6 penny.

7 So, again, what the wireless carrier
8 charges Verizon, based on Verizon's discovery request,
9 7/100ths of a penny per minute, the difference
10 represents imputed cost to Verizon based on its own
11 access charge that it would charge another carrier.

12 Q. And, is there a CCL charge wrapped into that too?

13 A. (Winslow) No, there is not.

14 MS. FABRIZIO: Okay. Great. Thanks.

15 That was very helpful. I conclude.

16 CHAIRMAN GETZ: Mr. Del Vecchio.

17 MR. DEL VECCHIO: Thank you, Mr.

18 Chairman.

19 BY MR. DEL VECCHIO

20 Q. Gentlemen, my name is Victor Del Vecchio, and I
21 represent Verizon. First, let me ask a few questions
22 regarding the summary you've given this morning. I
23 understood you to make certain reference to the
24 competitive environment in New Hampshire, is that

[Witness panel: Lebeck|Winslow]

1 correct?

2 A. (Winslow) Correct.

3 Q. And, I wanted to see if we're on the same wavelength,
4 in terms of what the issues are for resolution in this
5 docket, to see whether if your testimony was intended
6 to support the Commission's investigation in that
7 regard. Is it the case that the Commission has
8 identified for resolution whether calls made or
9 received by end-users, which do not employ a Verizon
10 local loop, involve switched access? Is that one of
11 the first issues that the Commission is attempting to
12 resolve in this docket?

13 MS. GEIGER: Mr. Chairman, I think it
14 would be helpful, if Mr. Del Vecchio wanted to explore
15 this particular issue, if he wanted to show this -- show
16 the witnesses a copy of the orders of notice or procedural
17 orders that actually set forth what's at issue here, that
18 might be help.

19 MR. DEL VECCHIO: Mr. Chairman, I don't
20 believe I have to make reference to an order to go through
21 the basic question of "Why was testimony submitted in the
22 first place?" Particularly, since this should come as no
23 surprise to any of the parties what the Commission has
24 specifically identified for resolution in Phase I of this

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[Witness panel: Lebeck|Winslow]

1 docket.

2 CHAIRMAN GETZ: Well, I think it's fair
3 to inquire of the witness what his understanding of it is,
4 of the -- the purpose of the proceeding is, but I would
5 attach no legal significance to his answer as to an
6 interpretation of what the order of notice would mean, in
7 terms of legitimate scope of the proceeding. But --

8 MR. DEL VECCHIO: And, I would assume
9 the same would apply to tariff interpretation, Mr.
10 Chairman. I think that goes without saying.

11 BY MR. DEL VECCHIO

12 Q. So, having said that, can you answer my question?

13 A. (Winslow) I don't think the directly, I guess, that
14 this case is trying to solve that issue. But I think
15 that, you know, when we sat down and spent hours and
16 hours on call flow diagrams, I think it's clear that
17 that type of -- that type of anti-competitiveness for
18 an intrastate call is interwoven into this access case.

19 Q. Oh, I'm sorry. You did not agree with what I
20 characterize as one of the two issues for resolution in
21 this case?

22 A. (Winslow) No, I agreed with that. I'm sorry.

23 Q. Okay. And, the second issue, I take it then, you would
24 agree, is whether, if calls made or received by

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[Witness panel: Lebeck|Winslow]

1 end-users, which do not employ a Verizon local loop,
2 involve switched access. Does Verizon's access tariff
3 require or permit the payment of certain rate limits,
4 including, but not limited to, Carrier Common Line? Is
5 that a second issue that the Commission has identified
6 correctly?

7 A. (Winslow) That sounds correct.

8 Q. Okay. Now, getting to briefly the issue of
9 competition, and which you discussed in connection with
10 Exhibits 4 and 5, I think you said something to the
11 effect that this created an "unreasonable competitive
12 advantage for Verizon", is that true?

13 A. (Winslow) Correct.

14 Q. And, is it your testimony to this Commission that
15 Verizon competes to provide with instate long distance
16 service to a BayRing end-user?

17 A. (Winslow) To a BayRing end end-user?

18 Q. Correct.

19 A. (Winslow) I would probably agree that Verizon is not
20 trying to market to toll, to a -- directly to a BayRing
21 end-user.

22 Q. And, when --

23 A. (Winslow) But I would argue that --

24 Q. Sorry.

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[Witness panel: Lebeck|Winslow]

1 A. (Winslow) -- that Verizon is competing for that same
2 toll call.

3 Q. But, with respect to the end-user of BayRing, that
4 BayRing end-user does not and cannot obtain intrastate
5 toll calling from Verizon at the same time as being a
6 BayRing end-user, is that correct?

7 A. (Winslow) Not at the same time.

8 Q. And, that would apply, I take it, to the description of
9 Exhibits 4 and 5, because they're all toll calls, isn't
10 that correct?

11 A. (Winslow) I'm sorry, can you just clarify your
12 question, Victor?

13 Q. I was simply asking whether, when you just stated about
14 the ability to obtain toll service from Verizon if
15 you're a BayRing end-user, would apply to the call
16 flows on Exhibits 4 and 5, to the extent that their
17 disputed call flows? Because those call flows talk
18 about toll, isn't that correct?

19 A. (Winslow) Again, those calls talk about toll, but
20 Verizon has the ability to get that toll customer just
21 as much as BayRing has the ability to get that toll
22 customer.

23 Q. That is, if they take the end-user, a local customer,
24 from BayRing, is that correct? Is that what you're

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[Witness panel: Lebeck|Winslow]

- 1 talking about?
- 2 A. (LeBeck) I would say that's not true.
- 3 Q. So, you're disagreeing with Mr. Winslow or you're
- 4 disagreeing with me?
- 5 A. (Lebeck) I would say that Verizon is able to be a long
- 6 distance carrier in BayRing's territory and BayRing's
- 7 switch, in other words, they would have CIC 698.
- 8 Q. So, your understanding is Verizon provides naked toll
- 9 to CLEC customers?
- 10 A. (Lebeck) Please define "naked toll".
- 11 Q. "Naked toll" is the toll which is not provided in
- 12 conjunction with an underlying end-user service. Is
- 13 that your understanding?
- 14 A. (Lebeck) In New Hampshire?
- 15 Q. Yes, to CLEC customers.
- 16 A. (Lebeck) Yes.
- 17 Q. And, you're certain of that?
- 18 A. (Lebeck) I'm not positive.
- 19 Q. I think, Mr. Lebeck, you talked about the issue of
- 20 Union charging Carrier Common Line, is that correct?
- 21 A. (Lebeck) Yes.
- 22 Q. And, that's Union Telephone, not to be confused with
- 23 it, to the extent they are affiliated with BayRing,
- 24 correct?

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[Witness panel: Lebeck|Winslow]

- 1 A. (Lebeck) That's correct.
- 2 Q. And, does Union Telephone Company provide the
- 3 intermediate carrier function that you describe
- 4 Verizon's service as being?
- 5 A. (Lebeck) No. We supply a tandem function.
- 6 Q. Do you provide a service between a CLEC on one hand and
- 7 a CLEC on the other hand or a CLEC on one hand and a
- 8 wireless carrier on the other hand?
- 9 A. (Lebeck) We do not.
- 10 Q. Much like the disputed calls, in this case, that
- 11 Verizon is providing? So that, when you're discussing
- 12 the issue of common line, wouldn't necessarily Union
- 13 Telephone Company's common line be used in every one of
- 14 the calls that Union handles?
- 15 A. (Lebeck) As far as switched access is concerned?
- 16 Q. As far as transitting calls between -- a toll call
- 17 between two other carriers?
- 18 A. (Lebeck) Between two other carriers? Union does not
- 19 have two other carriers.
- 20 Q. You also, Mr. Lebeck, talked about the fact that you
- 21 were not aware of any other states in which Verizon
- 22 charges a Carrier common line in the absents of
- 23 providing the common line itself, is that correct?
- 24 A. (Lebeck) I believe the question was "a company like

[Witness panel: Lebeck|Winslow]

1 Verizon".

2 Q. Oh, I see. So, you're not suggesting that Verizon
3 doesn't charge a Carrier Common Line in the absence of
4 providing a common line in other states?

5 A. (Lebeck) The only place that I know of is New York.

6 Q. Now, I'd like to start from the beginning, if I could,
7 and ask you questions about your prefiled testimony,
8 gentlemen. And, why don't we start with you, Mr.
9 Lebeck. Page 5. And, I apologize for not having the
10 specific line numbers, I don't know that they were
11 available. So, you have to bear with me as we try to
12 identify the sections. On the top of the page, Page 5,
13 you make reference to "Section 6.1.2D of Verizon's
14 Tariff 85", is that correct?

15 A. (Lebeck) Yes.

16 Q. And, you state that "Local transport, local switching
17 and carrier common line when combined to provide a
18 complete switched access service as illustrated in
19 6.1.2-1", correct?

20 A. (Lebeck) Yes.

21 Q. And, what exactly does that mean?

22 A. (Lebeck) That means when switched access is ordered,
23 you will get local transport, local switching and
24 carrier common line, altogether.

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[Witness panel: Lebeck|Winslow]

- 1 Q. Can BayRing purchase particular components of switched
2 access service?
- 3 A. (Lebeck) In what scenario do you mean?
- 4 Q. In any scenario. Can BayRing purchase components of
5 switched access service, as you've defined them?
- 6 A. (Lebeck) Not as the tariff reads.
- 7 A. (Winslow) That's covered --
- 8 Q. I'm sorry, I was asking Mr. Lebeck, in his testimony.
- 9 A. (Lebeck) Not as the tariff reads.
- 10 Q. Not as the tariff reads. So, BayRing must purchase
11 switched access service as a bundle, is that your
12 testimony?
- 13 A. (Lebeck) We must order switched access to the end-user
14 of Verizon, whether it be terminating or originating.
- 15 Q. And, it must include all the items you've identified,
16 local transport, local switching and carrier common
17 line?
- 18 A. (Lebeck) In order to be charged as switched access.
- 19 Q. Because that's how you define "switched access", the
20 combination of all three of those components, correct?
- 21 A. (Lebeck) As far as the CLEC is concerned.
- 22 Q. And, when you talk about "local transport", you're
23 necessarily, again, explaining that you have to
24 purchase all elements within local transport, is that

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[Witness panel: Lebeck|Winslow]

1 your testimony to the Commission?

2 A. (Lebeck) No.

3 Q. I see. So, you can purchase components of that piece
4 of how you -- of what you describe as "switched
5 access", is that correct?

6 A. (Lebeck) Yes, because of the elements involved inside
7 of local transport.

8 Q. Okay. Directing your attention specifically to
9 Section 6.1. Do you have a copy with you? If you
10 don't, I have copies here, sir.

11 MR. DEL VECCHIO: For the Commission's
12 convenience, I have sections of the tariff. And, while I
13 know we can take administrative notice, just for
14 convenience, I'm happy to provide copies.

15 (Atty. Del Vecchio distributing
16 documents.)

17 BY MR. DEL VECCHIO

18 Q. And, directing your attention to Sections A, B, and D,
19 of 6.1.2, I believe. I take it, based on what you've
20 testified earlier, that it's not your testimony that
21 BayRing must purchase all of the services listed in
22 Sections A or B, in order to purchase switched access?

23 A. (LeBeck) Excuse me, could you please reiterate that?

24 Q. I said, I take it that it's your testimony, based on

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[Witness panel: Lebeck|Winslow]

1 what you just explained to the Commission, that BayRing
2 is not required to purchase all of the services listed
3 in A or B, in order to have purchased switched access
4 service under Section 6?

5 A. (Lebeck) That would be incorrect, because you asked
6 about elements. Here, you're talking about services.

7 Q. So, there are elements within the services that BayRing
8 need not purchase, and yet it would still be switched
9 access?

10 A. (Lebeck) As long as the service supplied access to the
11 Verizon end-user.

12 Q. Okay. Again, then, directing your attention to Section
13 6.1.2, and I think that would be the diagram. Looking
14 at that diagram, can you tell the Commission whether
15 BayRing must purchase every component listed on the
16 combined diagram, if it wishes to purchase any
17 component on the diagram?

18 A. (Lebeck) The exception would be the transport for the
19 tandem, because you show that, in the diagram, that it
20 could be direct trunk or tandem switch. But, yes, you
21 would have to order it all the way to the end-user.

22 Q. So, there are features within that LT component that
23 need not be purchased?

24 A. (Lebeck) There are elements in that feature, yes, that

[Witness panel: Lebeck|Winslow]

1 there would not be, would not need to be purchased.

2 Q. And, it still would be switched access service?

3 A. (Lebeck) As long as the end-user is involved, Verizon
4 end-user.

5 Q. As long as the Verizon end-user is involved. I'm
6 sorry. Well, to the extent that a Verizon end-user is
7 not involved, and a local transport and local tandem
8 switching were purchased, that would not constitute
9 switched access?

10 A. (Lebeck) That would be switched access only in the
11 scenario of Meet Point Billing as listed in your
12 tariff.

13 Q. And, "Meet Point Billing" is what?

14 A. (Lebeck) Where two carriers, with different exchange
15 boundaries -- or, not "exchange boundaries", I'm sorry,
16 service territories would have an agreement for
17 transport facilities between them.

18 Q. So, there are circumstances then when, in your
19 definition, it would constitute switched access, where
20 Meet Point Billing is used?

21 A. (Lebeck) On -- Yes.

22 Q. And, directing your attention to Page 5 of your
23 testimony, the bottom, I believe. You state that "CCL
24 is charged" -- "is a charge associated with the

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[Witness panel: Lebeck|Winslow]

1 provision of a specific network element." I'm sorry,
2 that was Page 6. Let's go back to Page 5. You state
3 that "This is further evidence that Verizon switched
4 access under Tariff Number 85 is only for calls
5 originating or terminating to a Verizon end-user." Is
6 that correct?

7 A. (Lebeck) As I read your tariff, yes.

8 Q. Okay. And, once again, it's your testimony that
9 Verizon -- I'm sorry, that BayRing can only purchase
10 switched access components, local transport, local
11 switching or common line, where the call originates
12 from or terminates to a Verizon end-user, correct?

13 A. (Lebeck) Would you please rephrase that.

14 Q. It's your testimony that BayRing can only purchase
15 switched access components, local switching, local
16 transport or common line, where the call originates
17 from or terminates to a Verizon end-user?

18 A. (Lebeck) I would say "terminates from a Verizon
19 end-user" -- or "terminates to a Verizon end-user", I'm
20 sorry.

21 Q. Okay. They can't purchase local transport from
22 Verizon, in the absence of a Verizon end-user, is that
23 your testimony?

24 A. (Lebeck) Under switched access? It would be under

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[Witness panel: Lebeck|Winslow]

- 1 special access or facilities, not switched.
- 2 Q. Switched, tandem switching with local transport, can
- 3 they purchase that from Verizon?
- 4 A. (Lebeck) Would you please state it again.
- 5 Q. I asked whether your carrier -- your customer can
- 6 purchase tandem switching with local transport, in the
- 7 absence of a Verizon end-user?
- 8 A. (Lebeck) To another carrier that has Meet Point Billing
- 9 arrangements with Verizon.
- 10 Q. And, that's the only circumstance?
- 11 A. (Lebeck) Per your tariff, that's the only circumstance.
- 12 Q. I'm not talking about my tariff, sir. I'm talking
- 13 about what you can do or can't do. Does BayRing
- 14 purchase tandem switching with local transport from
- 15 Verizon in the absence of a Verizon end-user presently?
- 16 A. (Lebeck) Would you state that again please.
- 17 Q. Okay. I'm asking you whether BayRing currently can and
- 18 does purchase tandem switching and local transport,
- 19 even in the absence of a Verizon end-user, presently?
- 20 A. (Lebeck) Under the auspice that we are originating or
- 21 terminating calls to an IXC.
- 22 Q. A toll call?
- 23 A. (Lebeck) Yes.
- 24 Q. Now, directing your attention to the top of Page 6.

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[Witness panel: Lebeck|Winslow]

1 Again, you state that "CCL is a charge associated with
2 the provision of a specific network element. In this
3 case, the local facilities that access a Verizon
4 end-user." Correct?

5 A. (Lebeck) Yes.

6 Q. Can you direct the Commission's attention to the
7 specific tariff language which states that CCL is a
8 charge associated with the provision of a "specific
9 network element" or words to that effect?

10 A. (Lebeck) Yes. Section Number 5 of the NHPUC Number 85,
11 5.1.1A. "Carrier common line access provides for the
12 use of end-users' Telephone Company", in the tariff,
13 meaning Verizon, "provided common lines by customers
14 for access to such end-users to furnish intrastate
15 communications. Carrier common line access also
16 provides for the use of switched access service
17 terminating in 800 database access line service."

18 Q. And, that's the sentence or paragraph or section upon
19 which you rely that supported the proposition that the
20 Commission requires -- or, the tariff, I should say,
21 requires that the CCL charge must be associated with a
22 specific network element? That's it?

23 A. (Lebeck) It does state that the carrier common line is
24 "for the use" of the end-user.

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[Witness panel: Lebeck|Winslow]

- 1 Q. And, can, in fact, BayRing purchase access to a carrier
2 common line to a local loop from Verizon?
- 3 A. (Lebeck) To just the local loop?
- 4 Q. Access to the local loop, in connection with
5 transmission of a toll call?
- 6 A. (Lebeck) Please rephrase that.
- 7 Q. In the diagram flows depicted earlier, where you were
8 explaining that you did not object to the payment of
9 CCL, was a local loop provided by Verizon in those
10 examples?
- 11 A. (Lebeck) Yes, in conjunction with local transport and
12 local switching.
- 13 Q. Right. And, I'm asking you whether this section,
14 5.1.1A, does not, in fact, relate to the provision of
15 access to a local loop?
- 16 A. (Lebeck) It does.
- 17 Q. And, that's also the section I believe you're
18 testifying requires that carrier common line can only
19 be charged if a common line is actually provided. Is
20 that your testimony?
- 21 A. (Lebeck) Yes.
- 22 Q. Okay. Direct your attention to Page 7, the bottom of
23 the page. You state here, I believe, that "I reviewed
24 the NECA FCC Tariff Number 4 and found that there are

[Witness panel: Lebeck|Winslow]

- 1 no Verizon intermediate carrier MPB", Meet Point
2 Billing, "percentages for switched access in New
3 Hampshire shown in NECA's FCC Tariff Number 4 for the
4 disputed call flows. Thus, Verizon must not have joint
5 switched access with the related carriers and should
6 not be charging access for these calls." Is that
7 correct?
- 8 A. (Lebeck) Yes.
- 9 Q. And, is it your testimony that the Federal Interstate
10 Tariff governs Verizon's provision of the intrastate
11 calls in this case?
- 12 A. (Lebeck) Only where it is stated in your tariff that
13 Meet Point Billing arrangements will be listed in
14 Tariff Number -- NECA's Tariff Number 4.
- 15 Q. So, it may or may not apply, depending on the
16 circumstances?
- 17 A. (Lebeck) Your tariff explicitly says that it will be
18 listed in Tariff Number 4 of NECA.
- 19 Q. Okay. And, I think you're answering then that "yes, in
20 certain circumstances it applies, and in certain
21 circumstances the FCC tariff does not apply, as
22 appropriate", or words to that effect?
- 23 A. (Lebeck) No.
- 24 Q. So, it applies in every instance in connection with the

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[Witness panel: Lebeck|Winslow]

1 disputed calls in this case? That's my question to
2 you.

3 A. (Lebeck) Please rephrase.

4 Q. I've asked you whether it's your testimony to this
5 Commission that the FCC interstate tariff applies in
6 every instance associated with the disputed calls in
7 this case?

8 A. (Lebeck) No. FCC interstate tariff, I referenced
9 "NECA's FCC Tariff Number 4". I did not reference your
10 "FCC interstate tariff".

11 Q. Okay. And, is it your testimony that the FCC NECA
12 tariff applies -- I'm sorry, you're suggesting that
13 this NECA FCC tariff does not apply to Verizon?

14 A. (Lebeck) You told me the "interstate FCC tariff", which
15 I inferred here as your -- your, Verizon New
16 Hampshire's, interstate tariff.

17 Q. Let's go back a step. The reference on Page 7, the
18 bottom of your testimony, is that intended to apply to
19 Verizon, when you talk about the "NECA FCC Tariff
20 Number 4"?

21 A. (Lebeck) Yes.

22 Q. Okay. And, my question then is, that reference, is it
23 your testimony that the FCC tariff applies in every
24 instance to every disputed call in this case?

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[Witness panel: Lebeck|Winslow]

- 1 A. (Lebeck) Not every scenario.
- 2 Q. Okay. Mr. Winslow, I'd like to ask you a few
- 3 questions. Directing your attention to Page 8 of your
- 4 direct, the middle of the page. I believe you agree
- 5 that Verizon should be compensated for the services
- 6 that it provides, is that correct?
- 7 A. (Winslow) Correct.
- 8 Q. And, even in the disputed call flow diagrams that you
- 9 described earlier and in your testimony, Verizon does
- 10 provide certain services, correct?
- 11 A. (Winslow) Correct.
- 12 Q. And, directing your attention to Page 16 of your
- 13 testimony, the first two bullets, you describe "Local
- 14 Transport Tandem Switching, that's "LTTS", and "Local
- 15 Transport Termination (LTT) and Local Transport
- 16 Facilities (LTF)" as services or elements that Verizon
- 17 provides in connection with the disputed call flows on
- 18 Page 15 of your testimony, correct?
- 19 A. (Winslow) Verizon provides -- does provide the routing
- 20 functions that are similarly described as those rate
- 21 elements, yes.
- 22 Q. Okay. And, I believe you stated that it "seems
- 23 reasonable that Verizon should charge some service,
- 24 like LTT and LTF, for this type of call." Is that

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[Witness panel: Lebeck|Winslow]

1 correct?

2 A. (Winslow) Yes.

3 Q. To the extent that they're providing the service, I'm
4 assuming, yes?

5 A. (Winslow) Correct.

6 Q. And, you further acknowledge in your direct testimony,
7 on Page 8, that BayRing initially believed that the
8 tandem switched services to Verizon provided was
9 pursuant to Tandem Transit Service under Tariff 84? Is
10 that correct?

11 A. (Winslow) Correct.

12 Q. And, on further review, you stated in your testimony
13 that BayRing now believes that Tariff 84 does not apply
14 to this traffic, is that correct?

15 A. (Winslow) Correct. Well, excuse me, I mean Verizon has
16 said that "84 does not apply". We think the tariff
17 provisions of 84 might not be as clear as Verizon
18 intends. But our position is that 85 does not apply to
19 these call flows.

20 Q. So, you have no position yourself as to whether Tariff
21 84 applies, as you initially suggested?

22 A. (Winslow) I think 84 is somewhat ambiguous in that, in
23 when it's talking about "interconnecting calls between
24 two carriers other than Verizon". I think there are

[Witness panel: Lebeck|Winslow]

1 some exceptions in there that we might be able to lean
2 on that TTS is the service provided in this case, but
3 it's not -- it's not entirely clear in --

4 Q. So, therefore, that's no longer your position, if it
5 ever was your position, is that correct?

6 A. (Winslow) It clearly was our position initially. After
7 we went through the call flows and understood more
8 about it, we decided that that was not our position.
9 We did not want to take that as our direct position.

10 Q. Fair enough. And, in your view, Verizon is, in
11 essence, providing the services that you described on
12 Page 15 of your testimony -- or, Page 16, I should say,
13 providing them for free?

14 A. (Winslow) I don't think they're providing them for
15 free. I think that the tariffs -- the tariffs that
16 Verizon alleges -- or, the tariffs that Verizon is
17 using to make those charges do not allow it to do so.

18 Q. So, Verizon's Tariff 85, in your view, does not
19 authorize the charging of access fees, if you will, for
20 these types of services, and I'm referring to the LTTS
21 and the LTT and the LTF, set forth on your Page 16,
22 and, therefore, in your view, BayRing is not obligated
23 to pay anything?

24 A. (Winslow) That is correct. However, we, obviously,

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[Witness panel: Lebeck|Winslow]

1 realize that we should pay something for those
2 facilities. Or, excuse me, those services provided.

3 Q. And, since the tariff doesn't authorize, in your view,
4 Verizon's provision of these particular services, is it
5 your view that Verizon can simply withdraw them, since
6 they're not authorized by the tariff, need not offer
7 them to BayRing?

8 A. (Winslow) no, I think that Verizon needs to be offering
9 the routing functions that they are providing.

10 Q. It needs to provide the LTTS, Local Transport Tandem
11 Switching, and the Local Transport Termination, and the
12 Local Transport Facilities, but is not authorized under
13 its tariff to provide them and is unauthorized to
14 collect charges for them. Is that your testimony?

15 A. (Winslow) Our position -- Our position regarding access
16 charges that 85 does not apply, really relates a lot to
17 the scope of which 85 was adopted, when there was no
18 local competition. Our position is that, if 85 was
19 written in a manner that a Verizon end-user had to be
20 on at least one end of the call, for which none of
21 these calls that we've disputed, Verizon does not have
22 an end-user on the end of the call. We think that 85,
23 you know, needs to be updated to reflect the fact, to
24 cover these call flow situations.

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[Witness panel: Lebeck|Winslow]

1 Q. And, in the interim, and for, in your view, years,
2 Verizon should have been providing those services, but
3 shouldn't have been permitted to charge for them?

4 A. (Winslow) I guess that's correct, yes.

5 Q. And, on Page 18 of your testimony, at the bottom, you
6 state that "In addition to the tandem switching
7 function, Verizon should assess the CLEC charges for
8 LTT and LTTS like services to provide recovery for
9 Verizon's portion of its network facilities used to
10 route the call to the ITC's meet point." Is that
11 correct?

12 A. (Winslow) I'm sorry. Can you say where you started
13 that again, Victor?

14 Q. Sure. I'm sorry for speaking quickly.

15 A. (Winslow) No, that's okay. We don't have the line
16 numbers.

17 Q. On Page 18, the bottom of your testimony, you stated
18 that "In addition to the tandem switching function,
19 Verizon should assess the CLEC charges for LTT and LTTS
20 like services to provide recovery for Verizon's portion
21 of its network facilities used to route the call to the
22 ITC's meet point." Is that correct?

23 A. (Winslow) Correct.

24 Q. And, by that you meant that, again, like other examples

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[Witness panel: Lebeck|Winslow]

1 of the disputed call flows, Verizon's network is, in
2 fact, being used, correct?

3 A. (Winslow) Correct.

4 Q. And, there are certain features or services that you
5 describe as "LTT and LTTS like", which, in addition to
6 the tandem switching, Verizon should be charging for,
7 correct?

8 A. (Winslow) Correct.

9 Q. Now, directing your attention to Pages 10 and 11 of
10 your direct. Here I believe you've identified again
11 the various switching elements for which Verizon should
12 charge when a CLEC end-user calls a Verizon end-user,
13 correct?

14 A. (Winslow) That's correct.

15 Q. And, you go through the list, I believe, and they're
16 similar to what we just discussed, and I'll just
17 abbreviate them for convenience, the LTTS, which is the
18 tandem switching, the LTT, the LTF, the local switching
19 and the carrier common line, correct?

20 A. (Winslow) Correct.

21 Q. And, can you explain to the Commission what you
22 understand the "LTTS" to be?

23 A. (Winslow) That is for the use of Verizon's tandem.

24 Q. And, that I believe you cited Section 6.2.1.G.3?

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[Witness panel: Lebeck|Winslow]

- 1 A. (Winslow) Correct.
- 2 Q. And, that's a rate category set forth in Section 2.1,
3 also cited in your tariff -- or, in your testimony, I
4 believe?
- 5 A. (Winslow) Yes, that's a rate component. Correct.
- 6 Q. And, "Local Transport Termination", or "LTT", what do
7 you understand that to be?
- 8 A. (Winslow) The termination? That's for the portion of
9 the voice transmission data that the host end office
10 and remote switching office, it covers the cost to
11 terminate the call at the tandem side of the switch and
12 the end office side of the switch.
- 13 Q. Okay. Thank you. And, you cited Section 6.2.1.G.1, is
14 that correct?
- 15 A. (Winslow) Correct.
- 16 Q. And, then you mentioned the "Local Transport
17 Facilities", I believe in Section 6.2.1.G.2, is that
18 correct?
- 19 A. (Winslow) Correct.
- 20 Q. And, once again, this is another switched access rate
21 element or service?
- 22 A. (Winslow) Correct.
- 23 Q. It's just like the LTT and the LTS -- the LTTS above,
24 I'm sorry?

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[Witness panel: Lebeck|Winslow]

- 1 A. (Winslow) Yes.
- 2 Q. And, can you explain to the Commission what the "LTF"
- 3 service represents?
- 4 A. (Winslow) That is -- That represents the actual
- 5 facility charges between the tandem and the end office
- 6 or between -- and/or between an end office and a remote
- 7 serving office.
- 8 Q. And, the local switching, of course, is, I take it,
- 9 just that, a switching element associated with the end
- 10 office facility? Is that correct?
- 11 A. (Winslow) Correct.
- 12 Q. And, "carrier common line", you cited Section 5.1.1.A,
- 13 is that right?
- 14 A. (Winslow) Correct.
- 15 Q. And, you didn't cite Section 6 for that proposition, I
- 16 take it because carrier common line appears in
- 17 Section 5 and not in Section 6?
- 18 A. (Winslow) Carrier common line is first mentioned in
- 19 Section 5. It is also mentioned in Section 6 as well.
- 20 Q. But you cited to Section 5 there, for purposes of
- 21 explaining and defining it, is that correct?
- 22 A. (Winslow) Correct.
- 23 Q. And, I think Section 4.1 is referenced in Section 5.1,
- 24 is that correct?

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[Witness panel: Lebeck|Winslow]

- 1 A. (Winslow) Subject to check, I believe it is.
- 2 Q. And, subject to check, does that relate to the issuance
- 3 of bills?
- 4 A. (Winslow) Yes, it does.
- 5 Q. And, Section 30.5 I believe was also cited in
- 6 Section 5.1, is that correct?
- 7 A. (Winslow) Correct.
- 8 Q. And, that relates, subject to check, to specific rates
- 9 and charges?
- 10 A. (Winslow) That's correct.
- 11 Q. Now, under Section 5.1.1.A, which you've cited, it
- 12 provides that "The Telephone Company provides carrier
- 13 common line access service to customers in conjunction
- 14 with switched access service provided in Section 6."
- 15 Is that correct?
- 16 A. (Winslow) Correct.
- 17 Q. Now, please explain to the Commission what your
- 18 understanding of the words "in conjunction with" mean?
- 19 A. (Winslow) It's providing it -- It's providing it at the
- 20 same time.
- 21 Q. And, can you tell the Commission, in your understanding
- 22 of how something is provided "in conjunction with"
- 23 switched access service, which you describe on Page 11
- 24 of your direct as being an element of switched access

[Witness panel: Lebeck|Winslow]

1 service?

2 A. (Winslow) Well, previously, in my summary today, I
3 showed that CCL was a rate element section -- within
4 Section 6 as a specific rate element. It shows up as a
5 separate charge in 30.5 as a specific rate element as
6 well.

7 Q. So, you have something called "carrier common line",
8 and that's in Section 5, and you have "switched access
9 service" in Section 6. And, the tariff says that
10 "carrier common line is to be charged in conjunction
11 with switched access in Section 6." And, it's your
12 testimony to the Commission that the definition of
13 "switched access" nonetheless includes carrier common
14 line, which is to be provided in conjunction with
15 carrier common line?

16 MR. GRUBER: I'm going to object. Mr.
17 Del Vecchio said something about, first of all, it was a
18 very long question, so I had a hard time following, but he
19 definitely said something about "charged in conjunction
20 with", it was the language "charged in conjunction with",
21 which is definitely not in the tariff. So, maybe you
22 could restate.

23 MR. DEL VECCHIO: Fair enough. Thank
24 you, Mr. Gruber.

[Witness panel: Lebeck|Winslow]

1 BY MR. DEL VECCHIO

2 Q. "Provided in conjunction with". Do you understand my
3 earlier question?

4 A. (Winslow) I'm sorry, could you just repeat it.

5 Q. You defined earlier I believe that switched access
6 service includes, among other things, various rate
7 elements or services, one of which was carrier common
8 line, correct?

9 A. (Winslow) Correct.

10 Q. So, can you tell the Commission or explain to the
11 Commission please how could something be provided in
12 conjunction with a service which already includes it?

13 A. (Winslow) It's a separate -- It's a separate rate
14 element, it's a separate charge for a specific service
15 that's intertwined with all the other switched access
16 services. So, therefore, it's provided when those
17 other services are provided.

18 Q. And, in your view then, that there was a need to say
19 that it is to be provided "in conjunction with"
20 something that already, by your definition, encompasses
21 it?

22 A. (Winslow) I mean, that sounds like a question for the
23 drafter of the tariff. I --

24 Q. You don't know, is that your answer?

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[Witness panel: Lebeck|Winslow]

1 A. (Winslow) I didn't write the tariff, Victor, no.

2 Q. I understand you didn't write it, and that's fair. But
3 my question to you, which I think is also fair, is you
4 don't know, do you?

5 A. (Winslow) We've interpreted the tariff to the best of
6 our ability. That's all I can say.

7 Q. Thank you.

8 CHAIRMAN GETZ: Mr. Del Vecchio, I
9 assume you have some additional cross-examination?

10 MR. DEL VECCHIO: I do.

11 CHAIRMAN GETZ: I think this may be a
12 good time to take the lunch recess. And, we will resume
13 at 1:30. And, I think, for this afternoon, we would like
14 to go in 90 minute pieces, with a break in between. So,
15 just for your planning purposes, that's how we'll proceed
16 this afternoon. So, let's take the lunch recess. Thank
17 you.

18 (Lunch recess taken at 12:13 p.m. and
19 the hearing resumed at 1:38 p.m.)

20 CHAIRMAN GETZ: Good afternoon. Is
21 there anything we need to address before resuming with Mr.
22 Del Vecchio's cross-examination?

23 MR. GRUBER: Yes, Chairman Getz. I just
24 wanted to mention that AT&T put up on the -- behind the

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[Witness panel: Lebeck|Winslow]

1 witness stand part of the tariff for the convenience of
2 the parties, and eventually for AT&T's witnesses for
3 reference. But I just wanted to make sure everybody was
4 aware of it, that we did it. If anybody had an objection,
5 I wanted to make sure everyone's attention had been drawn
6 to it.

7 CHAIRMAN GETZ: Okay. Thank you. Mr.
8 Del Vecchio.

9 MR. DEL VECCHIO: Thank you, Mr.
10 Chairman. Good afternoon, gentlemen.

11 BY MR. DEL VECCHIO

12 Q. In addition to the switched access services or elements
13 that you identify on Page 11 of your direct, Mr.
14 Winslow, there are other switched access features or
15 elements that a CLEC can purchase, is that correct?
16 And, this isn't a trick question. I'm making reference
17 to the elements that are available in Section 6.2,
18 which are the rate categories.

19 A. (Winslow) I'm sorry, Victor. Can you please repeat --

20 Q. Just wondering, in addition to the elements you
21 identified on Page 11 of your direct testimony, are
22 there other switched access features or elements that a
23 CLEC can purchase?

24 A. (Winslow) I think this covers most of the switched

[Witness panel: Lebeck|Winslow]

1 access services.

2 Q. Are there more specific features, though, that are
3 available under Section 6.2? And, to assist you, let
4 me hand you a copy of that tariff.

5 (Atty. Del Vecchio distributing
6 documents.)

7 BY THE WITNESS:

8 A. (Winslow) Are you talking about the "Direct Trunked
9 Transport" and "Entrance Facilities"?

10 BY MR. DEL VECCHIO

11 Q. Yes. I'm talking about all the features that are set
12 forth in 6.2, under the various categories. There are
13 a number of elements that I can see, and I just want to
14 confirm that these are available to a purchasing
15 carrier?

16 A. (Winslow) Yes.

17 MR. DEL VECCHIO: Mr. Chairman,
18 actually, I would like to ask that that be marked for
19 identification, the earlier excerpt that I provided the
20 Commissioners with, that was Section 6.1.2. And, also
21 this, have it marked for identification. The earlier one
22 would be "Exhibit 6" and this would be "Exhibit 7".

23 CHAIRMAN GETZ: Okay. They will be so
24 marked.

[Witness panel: Lebeck|Winslow]

1 (The documents, as described, were
2 herewith marked as Exhibit 6 and
3 Exhibit 7, respectively, for
4 identification.)

5 BY MR. DEL VECCHIO

6 Q. Now, on Page 12 of your testimony, Mr. Winslow, you
7 described another disputed call flow example, as I
8 recall, is that correct?

9 A. (Winslow) Yes.

10 Q. And, again, I believe you state that it "seems
11 reasonable for Verizon to charge some tandem switching
12 fee for this type of call", isn't that correct?

13 A. (Winslow) Correct.

14 Q. Now, on the bottom of Page 12, you state that "The CCL
15 rate element is charged on a per access minute basis
16 and is therefore a usage rate." You then cite to
17 "Section 30.5.1 and Section 6.6.3.A", is that correct?

18 A. (Winslow) Correct.

19 Q. And, just for clarification, where exactly in Section 3
20 -- I'm sorry, 30.5.1 does it state that carrier common
21 line access service is a "usage rate"?

22 A. (Winslow) It said it's a "per access minute rate".

23 Q. And, that's in Section 30.5? In 30.5, does it talk
24 about carrier common line as being a "usage rate"?

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[Witness panel: Lebeck|Winslow]

- 1 A. (Winslow) Yes, it says "per access minute".
- 2 Q. It says "per access minute" for which?
- 3 A. (Winslow) It says "per access minute" for the CCL
- 4 originating or terminating charge.
- 5 Q. And, this is on which section of 30.5?
- 6 A. (Winslow) 30.5.1, it says "Terminating - Per access
- 7 minute", and then it has the rate; "Originating - Per
- 8 access minute", and then it has the rate.
- 9 Q. And, does it say "carrier common line" in there though?
- 10 A. (Winslow) Thirty --
- 11 Q. In 30.5? Or, is it understood?
- 12 A. (Winslow) The page I'm looking at is Section 30, Page 5
- 13 Original. It says "30.5 Carrier Common Line Access
- 14 Service". And, then, it says "30.5.1 Carrier Common
- 15 Line". And, then, in the rate element it says
- 16 "Terminating - Per access minute", it says "Originating
- 17 - Per access minute", which basically means it's a
- 18 usage based rate.
- 19 Q. All right. So, you understand that it's usage. It
- 20 doesn't use the word "usage" in there, but that's your
- 21 understanding, based on the language set forth,
- 22 correct?
- 23 A. (Winslow) Per access minute.
- 24 Q. Okay.

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[Witness panel: Lebeck|Winslow]

- 1 A. (Winslow) Correct.
- 2 Q. All right. And, now, directing your attention, if I
3 could, to Page 11 of your direct. The elements that
4 are set forth here I take it are examples of rate
5 elements, is that correct?
- 6 A. (Winslow) Correct.
- 7 Q. And, the usage rates apply only when a specific rate
8 element is used, in your view, is that correct?
- 9 A. (Winslow) Correct.
- 10 Q. And, the CCL usage rates apply particularly to the rate
11 elements set forth on Page 11 of your direct, is that
12 correct?
- 13 A. (Winslow) Can you rephrase that, Victor?
- 14 Q. The CCL usage rates apply particularly to the rate
15 elements set forth on Page 11 of your direct?
- 16 A. (Winslow) Apply to the rate elements?
- 17 Q. Yes. You explained to us that what's set forth on
18 Page 11 are rate elements, that's what you said a
19 moment ago. And, I'm asking you now whether the CCL
20 applies to the rate elements, those rate elements you
21 identified on Page 11?
- 22 A. (Winslow) I'm sorry, Victor, I just don't understand
23 the question.
- 24 Q. Okay. Page 11 sets forth rate elements, is that

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[Witness panel: Lebeck|Winslow]

1 correct?

2 A. (Winslow) Correct. Those are individual charges within
3 the tariff.

4 Q. And, common line, for example, is for the use of an
5 end-user's loop, correct?

6 A. (Winslow) Correct.

7 Q. And, I'm asking you whether carrier common line applies
8 to the elements set forth on Page 11, all the elements?

9 MS. GEIGER: Mr. Chairman, excuse me.

10 I'm going to object, just because I think this is going to
11 muddy the record. It's very clear if you read -- Mr. Del
12 Vecchio has not referred to witness to the narrative or
13 the information that's contained underneath the call flows
14 on Page 10 that then lead into the information on Page 11.
15 And, so, I think it's a little unfair to ask the witness
16 to take the -- to take these rate elements out of context.
17 And, it seems to me, in order for the record to be clear
18 and consistent with the prefiled, the witness really
19 should be referred to the information on Page 10 first.

20 MR. DEL VECCHIO: Mr. Chairman, I wasn't
21 aware that the witness was confused about that particular
22 element.

23 BY MR. DEL VECCHIO

24 Q. But, that said, I don't object to clarifying that this

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[Witness panel: Lebeck|Winslow]

1 is an example of various rate elements. You've said
2 that before, isn't that correct?

3 A. (Winslow) Correct.

4 Q. And, I was just asking whether, to the extent one uses
5 rate elements, carrier common line applies?

6 A. (Winslow) Carrier common line is a separate charge, a
7 separate rate element.

8 Q. It's a separate rate element. So, it's not a part of
9 switched access?

10 A. (Winslow) Section 6, carrier common line can be
11 provided without -- without providing other switched
12 access or switched access services under Section 6.
13 That's why it's in the separate -- in a separate
14 category by itself. So, you need -- It needs to be
15 provided in conjunction with Section 6, but it's an
16 individual, separate charge.

17 Q. So, carrier common line is not part, in and of itself,
18 of switched access. Is that what you just testified?

19 A. (Winslow) I think carrier common line is billed as part
20 of a switched access call.

21 Q. I'm sorry?

22 A. (Winslow) Carrier common line is billed as a part of a
23 switched access call.

24 Q. So, is the answer to that "no"?

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[Witness panel: Lebeck|Winslow]

- 1 A. (Winslow) I think that's correct, yes. Correct.
- 2 Q. Now, directing your attention to Page 22 of your
- 3 testimony. Here you state that, "As the term "access"
- 4 indicates, Verizon's switched access service allows
- 5 another carrier to reach something (i.e. Verizon's end
- 6 use customers)", "end use" or "end-user", "over which
- 7 Verizon has rights or control." Did I paraphrase that
- 8 correctly?
- 9 A. (Winslow) Correct.
- 10 Q. And, why did you use the word "something", when
- 11 defining the term "access"?
- 12 A. (Winslow) In order to provide access, you have to
- 13 provide access to something.
- 14 Q. Okay. And, is Verizon's tandem switched access, local
- 15 transport tandem switching, local transport
- 16 termination, and/or local transport facilities
- 17 something?
- 18 A. (Winslow) Yes, it is.
- 19 Q. And, does Verizon have rights or controls over its
- 20 tandem switching equipment and facilities?
- 21 A. (Winslow) Yes, it does.
- 22 Q. Directing your attention now to Page 25 of your direct.
- 23 Here you discuss Section 5.2.1.A, is that correct?
- 24 A. (Winslow) Correct.

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[Witness panel: Lebeck|Winslow]

1 Q. And, you explain here that, again, the discussion
2 regarding the use of Verizon's common line, and I won't
3 repeat the section that's set forth, we can all look at
4 that. But my question is simply this. Can you explain
5 to the Commission what your understanding is as to why
6 the tariff provides in Section 5.2.1.A, which you
7 cited, that where the customer is provided with
8 switched access service, then, in essence, the Company
9 will provide the use of a common line for access to the
10 end-user? In other words, if that's not clear, and I
11 would understand, what's your understanding as to why
12 the -- it was necessary for the tariff to explain that
13 the Company will provide use of a common line where the
14 customer is provided switched access service, if
15 switched access service necessarily includes the use of
16 a common line?

17 A. (Winslow) Well, again, Victor, I didn't write the
18 tariff. And, I believe that the tariff, in the
19 originating -- in the service definitions of the
20 tariff, the tariff talks about providing access to
21 Telephone Company end-users or end offices.

22 Q. So, again, as you said earlier this morning, you're not
23 sure, one way or the other?

24 A. (Winslow) It's certainly not clear.

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[Witness panel: Lebeck|Winslow]

1 Q. Moving along to your rebuttal testimony, gentlemen.

2 Page 10, Lines 1 through 19. Here you describe

3 Mr. Shepherd's testimony in docket DE 90-002, is that

4 correct?

5 A. (Winslow) I'm sorry, Victor, I'm just catching up with

6 you. What page?

7 Q. Page 10, Lines 1 through 19, approximately.

8 A. (Winslow) Okay.

9 Q. And, I believe here you're discussing Mr. Shepherd's

10 testimony, the same Mr. Shepherd that's testifying here

11 today on behalf of Verizon, when he testified eons ago,

12 if you will, in docket 90-002, is that correct?

13 A. (Winslow) Yes.

14 Q. And, you specifically make reference here the issue of

15 the imposition of the CCL charge, is that right?

16 A. (Winslow) Yes.

17 Q. And, can you tell the Commission whether, referring to

18 Mr. Shepherd's testimony in docket 90-002, Mr. Shepherd

19 at any time testified in that docket that the carrier

20 common line was specifically intended to recover

21 non-traffic sensitive costs allocated to incremental

22 cost of switched access?

23 A. (Winslow) I cannot testify to that, no.

24 Q. Directing your attention to Page 11 of your rebuttal,

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[Witness panel: Lebeck|Winslow]

1 and I think Lines 1 through 21. On Page 11, you
2 further describe the issue of "contribution", is that
3 correct?

4 A. (Winslow) Yes.

5 Q. And, in the course of your testimony again, you state
6 that "it is more reasonable to consider the CCL element
7 as being a "contribution element" that contributes to
8 the recovery of the cost of Verizon's end-user loops on
9 a usage basis." Is that fair?

10 A. (Winslow) Yes.

11 Q. And, you also testify on Page 11 that "the Commission
12 did not state in any order", or orders, "that the CCL
13 charge was not intended to recover costs assigned to
14 the local loop." Is that correct?

15 A. (Winslow) Correct.

16 Q. In that regard, sir, are you aware of any Commission
17 orders that prohibited setting the CCL rates residually
18 to provide contribution to achieve the stipulated
19 target switched access levels in docket 90-002?

20 A. (Winslow) I'm sorry, can you just repeat that question?

21 Q. Are you aware of any orders, since you've been
22 discussing the orders in dockets 90-002, on Page 11 of
23 your testimony, any orders that prohibited the carrier
24 common line rates being set residually to provide

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[Witness panel: Lebeck|Winslow]

1 contribution to achieve the stipulated target switched
2 access rate levels in 90-002?

3 A. (Winslow) No.

4 Q. Are you aware of any orders that prohibited recovering
5 contribution from all switched access usage provided
6 for a carrier's usage of Verizon's network?

7 A. (Winslow) No.

8 Q. Are you aware of any orders that specify that the
9 carrier common line was only applicable if and when
10 Verizon provided the carrier with access to a Verizon
11 end-user customer?

12 A. (Winslow) Well, I think that the -- I think in the
13 order where they approve the original tariff, I think
14 that was certainly the intent.

15 Q. And, does it say that? Does it specifically identify
16 --

17 A. (Winslow) I think the tariff says that and the tariff
18 was approved.

19 Q. I'm asking now whether the orders that this Commission
20 has approved specifically stated that "CCL was only
21 applicable where an end-user customer line was in play?

22 MS. GEIGER: Mr. Chairman, I'm going to
23 object. It seems to me the Commission's orders speak for
24 themselves. And, certainly, the Commission could take

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[Witness panel: Lebeck|Winslow]

1 administrative notice of its own orders. I'm not sure how
2 -- what is going to be gained by asking this witness about
3 his subjective knowledge of an order that may or may not
4 say something.

5 MR. DEL VECCHIO: Mr. Chairman, if I
6 may? I'm looking at Page 11, where the witness has stated
7 categorically that "the Commission did not state in any
8 order that the CCL charge was not intended to recover
9 costs assigned to the local loop." That was a pretty
10 absolute statement about which there was no reservation to
11 opine about the availability of an order. And, I'm asking
12 them some follow-up questions --

13 (Oversized chart attached to wall fell
14 down.)

15 MR. DEL VECCHIO: The collapse of Rome.

16 (Laughter.)

17 MR. DEL VECCHIO: -- whether there are
18 other orders that the witness is aware on a related issue.

19 CHAIRMAN GETZ: Well, I believe you
20 covered that. And, it seems to be getting cumulative. I
21 think he originally answered that he was not aware of any
22 orders that specifically responded to your question. So,
23 it seems that it's just a repetitive question, and I think
24 we should move on.

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[Witness panel: Lebeck|Winslow]

1 MR. DEL VECCHIO: That's fine, Mr.
2 Chairman. And, you'll be happy to know, gentlemen, that
3 in the break I was able to reduce some of my questions,
4 given that we covered things. So, at this point, I have
5 no further questions. Thank you, Mr. Chairman.

6 CHAIRMAN GETZ: Thank you.

7 BY CHAIRMAN GETZ

8 Q. I just have a couple of questions. Mr. Lebeck, I want
9 to make sure I'm reading some of this history
10 correctly. And, Exhibit 1, your testimony, you spoke
11 to the issue that you originally identified the
12 imbalance because of a bill that was issued from
13 Verizon to BayRing in August 2005, is that correct?

14 A. (Lebeck) Yes.

15 Q. And, then, later, on Page 8, you're talking about some
16 billing by New York Access Billing on behalf of Verizon
17 in August of 2006, I guess that was on a bill that
18 BayRing received in September of 2006, is that correct?

19 A. (Lebeck) Correct. The bill would have been for the
20 time period of data that included August and September
21 data.

22 Q. Of 2006?

23 A. (Lebeck) Of 2006.

24 Q. And, that bill, and for these charges in 2006, that

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[Witness panel: Lebeck|Winslow]

1 those were -- that's when Verizon replaced NYAB in
2 preparing the billing, is that accurate?

3 A. (Lebeck) That is correct.

4 Q. Now, back in 2005, who conducted the billing on the
5 bill you reviewed that noticed the first imbalance?

6 A. (Lebeck) That was from Verizon, and it was strictly for
7 Verizon "end offices" as it was billed. There were no
8 CLLIs that belonged to another carrier or were detailed
9 common language identifiers that would show that the
10 exchanges or the switches were not owned by Verizon.
11 So, in other words, we believed it was all Verizon's,
12 terminating to Verizon, not any other carrier.

13 Q. And, NYAB was not involved in the billing?

14 A. (Lebeck) That's correct.

15 Q. Did you review bills prior to August 2005 to --

16 A. (Lebeck) Yes.

17 Q. And, were there bills there that included the CCL
18 charges that what you allege were improper in the
19 August 2005 bill?

20 A. (Lebeck) After we noticed them in August of 2005, I did
21 go back and review other bills. And, yes, it was
22 involved. It was for a small amount of traffic, just
23 for calls terminating to wireless carriers only.

24 CHAIRMAN GETZ: Okay. Thank you.

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[Witness panel: Lebeck|Winslow]

1 Redirect, Ms. Geiger?

2 MS. GEIGER: Yes. Thank you, Mr.

3 Chairman.

4 REDIRECT EXAMINATION

5 BY MS. GEIGER

6 Q. Following up on those questions, Mr. Lebeck, is it
7 accurate to say that, back in August of '05, that
8 BayRing was receiving bills for Verizon calls or bills
9 both from Verizon, as well as from the New York biller.

10 A. (LeBeck) That is correct.

11 Q. Okay. So, does that explain why -- And, then, after
12 August of '06, did BayRing's bill come just directly
13 from Verizon?

14 A. (Lebeck) That would be correct.

15 Q. Okay. Following up on some questions from Mr. Del
16 Vecchio on cross-examination about toll service, and
17 either Mr. Winslow or Mr. Lebeck. Is it possible for a
18 BayRing customer to be a toll customer of Verizon?

19 A. (Winslow) Sure. Definitely.

20 Q. Okay.

21 A. (Winslow) Definitely. A BayRing customer could pick
22 Verizon as its intrastate long distance customer.

23 Q. Okay. So, Verizon can be providing toll service to a
24 BayRing customer?

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[Witness panel: Lebeck|Winslow]

1 A. (Winslow) Yes.

2 Q. Turning for a moment back to the access tariff, or
3 Tariff 85. What does Section 5 of Verizon's Tariff 85
4 relate to?

5 A. (Winslow) Carrier common line.

6 Q. Okay. And, what does Section 6 of Verizon's Tariff 85
7 pertain to?

8 A. (LeBeck) Switched access billing.

9 Q. Is it possible for a CLEC like BayRing to buy CCL from
10 Verizon on a stand-alone basis?

11 A. (Winslow) No, it's not.

12 Q. Why is that?

13 A. (Winslow) Because, in order to provide CCL, you have to
14 provide some of the other switched access, some of the
15 switched access services in Section 6 in order to get
16 to the common line.

17 Q. Now, are there charges for the common line in
18 Section 6?

19 A. (Winslow) No, there are not.

20 MS. GEIGER: Nothing further. Thank
21 you.

22 CHAIRMAN GETZ: Okay. Then, I think
23 that's all for this panel of witnesses. Thank you very
24 much, gentlemen. Mr. Gruber, you may want to effect your

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[Witness panel: Oyefusi|Nurse|Pfautz]

1 repairs and bring up your panel.

2 (Off the record.)

3 (Whereupon E. Christopher Nurse, Ola A.

4 Oyefusi and Penn L. Pfautz were duly

5 sworn and cautioned by the Court

6 Reporter.)

7 E. CHRISTOPHER NURSE, SWORN

8 OLA A. OYEFUSI, SWORN

9 PENN L. PFAUTZ, SWORN

10 DIRECT EXAMINATION

11 BY MR. GRUBER

12 Q. Thank you, gentlemen. Could you please state your name

13 and position for the record. And, I note for the

14 record this is a panel, there are three gentlemen

15 sitting on the witness stand, and we'll start from my

16 left, your right, beginning with Mr. Nurse.

17 A. (Nurse) Good afternoon. My name is E. Christopher

18 Nurse, and I'm the Regional Vice President for

19 Regulatory and External Affairs for AT&T in the

20 Atlantic Region.

21 Q. And, Mr. Oyefusi.

22 A. (Oyefusi) Ola Oyefusi. I'm the Manager at AT&T in the

23 National Access Management.

24 Q. And, Mr. Pfautz.

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[Witness panel: Oyefusi|Nurse|Pfautz]

1 A. (Pfautz) Penn Pfautz. I'm the Director in National
2 Access Management.

3 Q. Okay. And, gentlemen, if you could speak up just a
4 little bit. All right. Mr. Nurse, have you testified
5 before this Commission before?

6 A. (Nurse) Yes, I have.

7 Q. Can you just briefly summarize your experience for the
8 Commissioners?

9 A. (Nurse) Yes, I have a Bachelor's degree in economics
10 from the University of Massachusetts. I have an MBA
11 from New Hampshire College, now I think it's Southern
12 New Hampshire University. I've worked in the
13 telecommunications industry for 26 years, seven years
14 here on the staff at the Commission. And, since then,
15 ten years with TCG, and then AT&T. I'm responsible for
16 AT&T's regulatory and external affairs in the Verizon
17 East footprint, the Virginia to Maine states. I've
18 appeared in five, six, seven dozen dockets on a variety
19 of issues, typically, operational issues and the
20 regulatory implications, access cases, collocation
21 cases, TELRIC cases, arbitration cases. And, I also
22 now do the associated legislative work in those same
23 states, largely on the same issues.

24 Q. All right. Thank you, Mr. Nurse. Mr. Oyefusi, have

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[Witness panel: Oyefusi|Nurse|Pfautz]

1 you testified in this Commission before?

2 A. (Oyefusi) No, I have not.

3 Q. Could you, for the Commissioners, please summarize your
4 background and training.

5 A. (Oyefusi) Yes. I have a Ph.D in Economics from George
6 Mason University in Fairfax, Virginia. Since
7 graduating, I worked for the D.C. Public Service
8 Commission initially as a Staff Economist.

9 Q. For how long were you there?

10 A. (Oyefusi) I was there for about eight years. And,
11 initially, I was -- I was representing staff. I
12 testified on a variety of different matters, including
13 telephone and electric matters. And, later, during my
14 tenure at the Commission, I was the Commission advisor
15 and I reviewed several tariffs filed by Verizon and
16 other companies, and I also advised Commissioners, the
17 Commissioners on UNE matters and access matters and
18 tariff matters. I joined AT&T in 1999, and since then
19 I was working on network access issues, I testified on
20 behalf of AT&T in Pennsylvania and New Jersey,
21 Delaware, over the period on UNE, access, facility
22 matters, and including this case.

23 Q. All right. Thank you. Thank you, Mr. Oyefusi. Mr.
24 Pfautz, please.

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[Witness panel: Oyefusi|Nurse|Pfautz]

1 A. (Pfautz) I have a Ph.D in Psychology from Yale
2 University. I joined Bell Telephone Laboratories in
3 1980, initially, within Human Factors Engineering,
4 eventually moved over to the network side. In support
5 of AT&T's re-entry into the local market, I was part of
6 the team that put together the LRN Local Number
7 Portability solution that's deployed throughout the
8 United States, and was heavily involved in the
9 technical and regulatory aspects of AT&T's
10 implementation of number portability and also of number
11 pooling.

12 I am now in the Access Organization, and
13 I have a lot of involvement in the past in the local
14 service opening, I was involved as a subject matter
15 expert in lots of Interconnection Agreement
16 negotiations, so I've become thoroughly familiar with
17 call flows and that sort of access arrangement.

18 Q. All right. Thank you, gentlemen. I'd like to put in
19 front of you a document titled "Panel Testimony of",
20 and it states each of your three names. Its dated
21 "March 9, 2007". Do you recognize that document? Each
22 of you can say "yes".

23 A. (Nurse) Yes.

24 A. (Oyefusi) Yes.

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[Witness panel: Oyefusi|Nurse|Pfautz]

1 A. (Pfautz) Yes.

2 Q. Thank you. Do you have a copy of that document in
3 front of you? Each of you can say "yes".

4 A. (Nurse) Yes.

5 A. (Oyefusi) Yes.

6 A. (Pfautz) Yes.

7 Q. Now, are there -- is this testimony that was prepared
8 by you or under your supervision? And, one at a time,
9 Mr. Nurse beginning.

10 A. (Nurse) Yes.

11 Q. Mr. Oyefusi.

12 A. (Oyefusi) Yes.

13 A. (Pfautz) Yes.

14 Q. Okay. Now, are there any corrections that you would
15 like to make to your panel testimony today?

16 MR. GRUBER: And, when I ask this
17 question, I'm going to draw attention to the fact that
18 AT&T has filed on April 13th a corrected version of this.
19 They were principally typographical errors on about six or
20 seven pages. And, I'm not sure whether your Honors have
21 before you the corrected version or not?

22 CHAIRMAN GETZ: We have both filings
23 from March 8 and April 13.

24 MR. GRUBER: All right. Well, what I

[Witness panel: Oyefusi|Nurse|Pfautz]

1 think we'll do, just to save time, is not read into the
2 record the changes that were made on the April 13th, and
3 we'll let the record stand. I've presented to the
4 Stenographer and to the Clerk the corrected version. So,
5 we'll let that be the official version.

6 BY MR. GRUBER

7 Q. Now, in addition to those corrections, are there any
8 other corrections you'd like to make?

9 A. (Nurse) Yes. On Page 8, Line 11, --

10 CMSR. MORRISON: Dated which?

11 WITNESS NURSE: I'm sorry. This is the
12 panel rebuttal, on Page 8 --

13 MR. GRUBER: Oh, no, no, no. We haven't
14 reached the panel rebuttal yet.

15 WITNESS NURSE: You through me off.

16 BY MR. GRUBER

17 Q. So, there are no other changes to your testimony?

18 A. (Nurse) Yes. On the direct, obviously, on Page 4, Line
19 7, as I mentioned in the introduction, we'd strike
20 "Director of Legislative and Regulatory Policy" and
21 substitute the "Regional Vice President of Regulatory
22 and External Affairs". The substantive change on Page
23 24, Line 1, right at the top of the page, between the
24 word "Verizon" and "revenue", that cite from the order

[Witness panel: Oyefusi|Nurse|Pfautz]

1 should include the word "total". So that it reads

2 "Verizon] total revenue".

3 Q. Any other changes?

4 A. (Nurse) No.

5 Q. All right. Gentlemen, if I were to ask you the

6 questions that are set forth in this document, would

7 you provide the answers that are set forth there in as

8 we've modified them today or as they were modified on

9 April 13th? Each of you, beginning with Mr. Nurse.

10 A. (Nurse) Yes.

11 A. (Oyefusi) Yes.

12 A. (Pfautz) Yes.

13 MR. GRUBER: All right. Thank you. I'd

14 like to have this document marked as our next exhibit,

15 what Exhibit number would that be?

16 MS. O'MARRA: Seven.

17 MR. GRUBER: I think we had Exhibit 7,

18 didn't we?

19 CHAIRMAN GETZ: I think we're at 8. One

20 second.

21 MR. GRUBER: Can I give you another

22 copy?

23 CHAIRMAN GETZ: Yes, if we can get a

24 full copy.

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[Witness panel: Oyefusi|Nurse|Pfautz]

1 CMSR. BELOW: I have an incomplete copy
2 of the panel testimony. It ends on Page 19 with the
3 exhibits. And, he doesn't have the exhibits.

4 MR. GRUBER: The exhibits should be --

5 CHAIRMAN GETZ: Let's just go off the
6 record for a second here. Let's get this straightened
7 out.

8 (Brief off-the-record discussion
9 ensued.)

10 CHAIRMAN GETZ: Okay. We're back on the
11 record. We'll mark for identification as "Exhibit Number
12 8" the panel direct testimony, as revised to include
13 corrections that were filed on April 13th.

14 (The document, as described, was
15 herewith marked as Exhibit 8 for
16 identification.)

17 MR. GRUBER: All right. Thank you, Mr.
18 Chairman.

19 BY MR. GRUBER

20 Q. Now, gentlemen on the panel, I'm putting in front of
21 you another document. It's entitled "Panel Rebuttal
22 Testimony", and it identifies each of you as being
23 authors of that. Do you see that there?

24 A. (Oyefusi) Yes.

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[Witness panel: Oyefusi|Nurse|Pfautz]

- 1 A. (Nurse) Yes.
- 2 A. (Pfautz) Yes.
- 3 Q. All right. Do you have a copy of that in front of you?
- 4 A. (Oyefusi) Yes.
- 5 Q. And, I ask you, was this testimony prepared under your
- 6 supervision or control? Each of you in turn, from Mr.
- 7 Nurse.
- 8 A. (Nurse) Yes, it was.
- 9 A. (Oyefusi) Yes, it was.
- 10 A. (Pfautz) Yes.
- 11 Q. All right. Thank you. Are there any changes that
- 12 you'd like to make to this?
- 13 A. (Nurse) Yes. Now turning to Page 8, Line 11.
- 14 Q. I beg your pardon?
- 15 A. (Nurse) Page 8, Line 11. After the word "12 cents",
- 16 for clarification we could insert "after a four year
- 17 transition period". So, "about 12 cents after a four
- 18 year transition period".
- 19 Q. Anything else?
- 20 A. (Nurse) No.
- 21 Q. I beg your pardon?
- 22 A. (Nurse) No.
- 23 Q. Thank you. Gentlemen, with the modifications we've
- 24 just discussed, if I were to ask you these questions,

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[Witness panel: Oyefusi|Nurse|Pfautz]

1 would you provide these answer today?

2 A. (Oyefusi) Yes.

3 A. (Nurse) Yes.

4 A. (Pfautz) Yes.

5 MR. GRUBER: Thank you. I'd like to
6 have this marked as the next exhibit please.

7 CHAIRMAN GETZ: Okay. The rebuttal
8 testimony will be marked for identification as "Exhibit
9 9".

10 (The document, as described, was
11 herewith marked as Exhibit 9 for
12 identification.)

13 MR. GRUBER: And, I've provided the
14 Bench, there's actually a copy of the rebuttal testimony
15 underneath the panel. All right. I would like to have
16 Mr. Pfautz make a presentation of our case, principally
17 related to the call flows, with a focus on the
18 interexchange carrier in the equation, since BayRing's
19 focus was principally on the CLEC in the equation.

20 BY MR. GRUBER

21 Q. Mr. Faults, you want to -- well, what I can do is ask
22 you -- ask you to explain, just at the outset, what is
23 the gist of the dispute between AT&T and Verizon in
24 this case?

{DT 06-067} [Day I] (07-10-07)

[Witness panel: Oyefusi|Nurse|Pfautz]

1 A. (Pfautz) The gist of the dispute is really the extreme
2 interpretation of the tariff language that Verizon is
3 propounding. We believe that, if you apply this, you
4 get crazy results that it's hard for us to believe the
5 Commission or any Commission would intend. So that,
6 when Verizon loses a customer, they still get revenue
7 for that loop for the carrier common line that they are
8 no longer providing. So, you know, to extrapolate
9 that, if they were to lose all their customers, but
10 still supply tandem switching, they would get loop
11 revenue from all their customers. And, of course, that
12 loop or CCL component is really, by far, the biggest
13 component of the access charges that we pay, about
14 90 percent I think is the figure. And, of course, our
15 -- Verizon's contention is that the tariff indeed
16 allows them to collect these charges when they don't
17 supply the loop. And, our contention is that the
18 tariff language only allows them to collect those
19 charges when they supply the loop.

20 Q. Thank you, Mr. Pfautz. How did this matter come to the
21 attention of AT&T?

22 A. (Pfautz) Well, our billing folks, looking at the
23 November 2005 bill, noticed that something was amiss.
24 And, so, we then set on a course of trying to resolve

[Witness panel: Oyefusi|Nurse|Pfautz]

1 this on a business-to-business basis. That was
2 ultimately unsuccessful. And, given the dollars
3 involved, finally, in June of 2006, we went to the
4 regulatory counsel and said, you know, "we've got to
5 file a complaint", and they turned around and said
6 "well, you know, BayRing beat you to it."

7 Q. Thank you. So, now, if I can ask you to take a look at
8 some of these call scenarios and relate the call
9 scenarios to the application of the CCL that's in
10 dispute.

11 A. (Pfautz) Sure. I hope everybody can hear me here.
12 Although as was mentioned, we came up with 35 call
13 flows on a very long, very long day back in last fall.
14 I'm only going to torture you with three of these.
15 And, you'll see from those what, you know, in fact,
16 Verizon is providing and what it's charging for. I
17 want to start with the basic case. And, these are
18 essentially the Staff call flows, now modified as to
19 reflect the changes Verizon brought up and simplified a
20 little bit, in that we've combined some of the
21 subelements of local transport, the facility and the
22 termination charge into a single element, because those
23 aren't in dispute, and we wanted to fit it all on the
24 page.

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[Witness panel: Oyefusi|Nurse|Pfautz]

1 MR. GRUBER: Mr. Pfautz, I'm going to
2 interrupt you for just a second, and we'll mark for
3 identification also a hard copy of what you're showing.

4 CHAIRMAN GETZ: Okay. We'll mark for
5 identification as "Exhibit Number 10" the three pages of
6 call flows representing Scenarios 1, 5 and 7.

7 (The document, as described, was
8 herewith marked as Exhibit 10 for
9 identification.)

10 BY MR. GRUBER

11 Q. All right.

12 A. (Pfautz) Okay. So, this first Call Flow Number 1,
13 which is not in dispute, by the way, let me be clear
14 about that, is just the basic intrastate toll call from
15 one Verizon customer to another Verizon local service
16 customer. You can think of this as back in the days
17 when, prior to local service competition, in its
18 territories, Verizon was the only local service
19 provider. And, this kind of flow here came into being,
20 along with Tariff 85, when local toll competition was
21 opened up. So, what that was, of course, was that,
22 rather than providing the whole call end-to-end within
23 the state, there would be a toll provider, like AT&T --
24 yea -- that could provide the toll portion of the call.

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[Witness panel: Oyefusi|Nurse|Pfautz]

1 So, what I'd like to do is then walk through the
2 elements, show how the call works. Suppose you've got
3 Fred who's, say, a Verizon end-user in Bedford, like
4 all other end-users would have to be in Bedford at that
5 time a Verizon end-user. And, he's got a friend over
6 in Durham, Joe, who also happens to be a Verizon
7 customer, as, at that time, all local customers would
8 have had to be in that area.

9 So, Fred is going to pick up the phone,
10 be connected over the loop, which I've made a big thick
11 red here, and, by the way, the red is kind of the
12 Verizon network, and I've got that in a box, that's
13 something that we added for clarity. He's going to be
14 connected to his Verizon serving end office. Verizon
15 is going to look at that call and say "whoa, this is a
16 toll call", and Fred's toll provider is AT&T. So,
17 rather than carry that call myself, I need to deliver
18 it to the AT&T network. And, the way in which you
19 would do that, it would send it over a Verizon trunk to
20 Verizon's Manchester access tandem, and then over a
21 Verizon trunk to AT&T's network. And, AT&T would look
22 at that call and say "well, that needs to go to Durham.
23 Let's see. How do I get there? I send it over a trunk
24 that I get from Verizon to their Dover tandem. That,

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[Witness panel: Oyefusi|Nurse|Pfautz]

1 in turn, sends it on to the Verizon end office in
2 Durham, the one that serves Joe, rings Joe over this,
3 again, Verizon-supplied loop.

4 So, if we look at the charges that are
5 involved here, naturally, that's a Verizon loop, so
6 there's a Carrier Common Line Charge associated with it
7 going to Verizon. There's local transport between the
8 end office and the tandem, and, oh, and of course a
9 local switching for use of Verizon's end office.
10 There's local transport tandem switching for use of
11 Verizon's tandem. There's another trunk to get to the
12 AT&T switch, also supplied by Verizon and also properly
13 charged. Then, on the terminating end, there's another
14 Verizon trunk to deliver it from the AT&T switch to the
15 Verizon Dover tandem, and then a corresponding Local
16 Transport Charge. Another Local Transport Tandem
17 Switching Charge for use of Verizon's Dover tandem now.
18 Another trunk to get to the Verizon end office and
19 associated Local Transport and Local Switching Charges.
20 And, finally, a Carrier Common Line Charge for use of
21 that Verizon loop to get to Joe's house.

22 Q. Mr. Pfautz, before you go on, could you just show,
23 point to the big icons and link to where in the tariff
24 you would order it from, just the section numbers.

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[Witness panel: Oyefusi|Nurse|Pfautz]

1 A. (Pfautz) Let's see. Well, the loops, carrier common
2 line come out of Section 5; the other elements all come
3 out of Section 6.

4 Q. Okay. Thank you.

5 A. (Pfautz) So, I want to stress this flow and the charges
6 associated with it are not in dispute. Verizon
7 provides all those elements indicated. We're happy to
8 pay them for it. We think access providers should be
9 compensated, because we're a big one ourselves now.

10 What I'd like to do now is go to another
11 call flow, Call Flow 5. And, now, we start to see
12 where the problem arises. Now, we've got local service
13 competition, in addition to intrastate toll
14 competition. So, it's not necessarily just Verizon on
15 either end of the call, it can be another carrier.
16 And, let's say this is just really the same kind of
17 call, except our friend Joe has decided to go to
18 BayRing. Now, there is one difference that was in the
19 Staff call flow, here we show a host/remote serving
20 arrangement on the originating end. That was just put
21 in there to capture that. Doesn't really change
22 anything, because, again, this whole originating block
23 in the dashed red is not in dispute. So, once again,
24 we've got Fred picking up the phone over his Verizon

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[Witness panel: Oyefusi|Nurse|Pfautz]

1 loop to the Verizon end office to the Verizon tandem,
2 delivering the call to AT&T. Because, again, AT&T is
3 Fred's selected provider. And, of course, AT&T
4 processes the call, knows that it has to get to Joe,
5 but things are a little bit different. It knows that
6 it has to get to the BayRing end office that now serves
7 Joe. And, as it happens, the way it gets there is
8 through the Verizon tandem. So, of course, again it
9 hands it off on a Verizon trunk to the Verizon tandem.
10 And, Verizon, rather than handing it off to its Durham
11 end office, is now going to hand it off to BayRing over
12 a trunk that BayRing arranges for. BayRing will switch
13 it in the office that they provide. And, then, they
14 will deliver it to Joe now over a loop, which is
15 supplied by BayRing. Okay?

16 Same number of loops, basically, the
17 same number of switches, but they don't all belong to
18 the same party. So, let's look at the charges now.
19 Well, Verizon, of course, is going to charge
20 originating CCL, because they supply the loop. They're
21 going to charge the local switching, because they
22 provide that, they're going to charge the local
23 transport for the connections they provide, they're
24 going to provide local transport tandem switching for

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[Witness panel: Oyefusi|Nurse|Pfautz]

1 delivering it to AT&T. Up to this point everything is
2 fine. We have no objections or dispute about those
3 charges.

4 And, we don't dispute what we pay them
5 the local transport for the trunk, deliver it from our
6 network to the terminating tandem in Dover. And, we
7 don't dispute the local transport tandem switching for
8 the use of that tandem. They don't charge us for a
9 trunk to the BayRing Switch. BayRing charges us that.
10 That makes sense. They have got to arrange for that
11 trunk. They, of course, charge us local switching for
12 the -- their end office, and they charge us terminating
13 CCL properly, because they're now supplying the loop
14 that goes to Joe's house.

15 Q. And, "they", in that case, was BayRing?

16 A. (Pfautz) BayRing. Right. So, what's the problem? The
17 problem is here [indicating]. Verizon wants to charge
18 us a CCL on the terminating side, even though they no
19 longer are supplying the loop that goes to Joe.

20 Q. All right. Thank you, Mr. Pfautz. The one thing that
21 looks kind of funny is the CCL is not under the loop,
22 it's under the Verizon tandem.

23 A. (Pfautz) Okay.

24 Q. Why is that?

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[Witness panel: Oyefusi|Nurse|Pfautz]

1 A. (Pfautz) Well, originally, when we were developing the
2 flows, for a while the CCL was always under the loop.
3 However, Verizon requested and ultimately insisted that
4 the CCL charge that they have be placed under the
5 tandem.

6 Q. All right. Thank you. Now, just so that I understand
7 this, that's a BayRing customer on the right-hand side?

8 A. (Pfautz) Yes.

9 Q. So that, what you're saying is that Verizon's claims
10 the right to charge, in this case, the toll provider in
11 the middle --

12 A. (Pfautz) Right.

13 Q. -- for connecting the toll provider in the middle to a
14 BayRing customer?

15 A. (Pfautz) That's correct.

16 Q. To a BayRing customer?

17 A. Right.

18 Q. All right. So, you mean, like in your scenario, if
19 Verizon lost Joe to BayRing, even though BayRing -- Joe
20 is no longer a BayRing -- I mean, Joe is no longer a
21 Verizon customer. Verizon still claims the right to
22 charge the toll provider for providing the access to
23 Joe?

24 A. (Pfautz) Yes. And, specifically, for providing, I

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[Witness panel: Oyefusi|Nurse|Pfautz]

1 mean, they don't charge us for all the elements. For
2 example, they don't charge us for local transport or
3 the local switching that Bay Ring provides, but they do
4 insist on charging us for the carrier common line,
5 which BayRing provides.

6 Q. All right. Thank you. Now, what would happen if Joe
7 were to decide to go back to Verizon as his local
8 exchange carrier, would BayRing be able to continue to
9 charging the toll provider for the service it no longer
10 provides?

11 A. (Pfautz) No, they would not.

12 Q. Okay. Now, are there other call flows you wish to
13 discuss to show the results of Verizon's interpretation
14 of Tariff 85?

15 A. (Pfautz) Yes. There's one more flow that I'd like to
16 present. And, this flow kind of shows the logical
17 continuum. Suppose on the -- Suppose Joe now is going
18 to call back to Fred, but now Fred has likewise decided
19 that the grass is greener and he's going to go get
20 local service from another CLEC, maybe One
21 Communications, for example. So, now, we have the same
22 kind of call flow. It's in the reverse direction.
23 And, let me just quickly walk through that. You know,
24 Joe picks up the phone over his BayRing loop to the

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[Witness panel: Oyefusi|Nurse|Pfautz]

1 BayRing switch. And, he's also chosen AT&T as his
2 intrastate toll provider. So, BayRing is going to have
3 to get the call to AT&T, goes through the Dover Verizon
4 tandem to do that. And, then, AT&T says "Well, this
5 has got to go to Bedford, so I need to send it to the
6 Manchester tandem." And, the Manchester tandem says
7 "Well, it's got to go to the One Communications end
8 office, say. And, so, it ships it there, and then the
9 call finally terminates down the loop that CLEC Number
10 2, say, One Communications, provides to Fred. Okay?

11 So, basically, again, same number of
12 switches, facilities, but, again, the ownership has
13 changed. Now, Verizon has no loop involved on either
14 end of this call. Yet, Verizon now wants to continue
15 to charge us originating and terminating CCL. We
16 already pay those charges to the two CLECs, BayRing and
17 One Communications, that actually provide the
18 originating and terminating loops. But Verizon is
19 saying "no, you have to pay us for those as well, even
20 though we no longer supply those.

21 MR. GRUBER: All right. Thank you, Mr.
22 Pfautz. Okay. What I'd like to do is just address the
23 financial estimate issue that I raised at the beginning of
24 the proceeding. I'm handing out a document that I would

[Witness panel: Oyefusi|Nurse|Pfautz]

1 like to have marked as a confidential exhibit.

2 (Atty. Gruber distributing documents.)

3 CHAIRMAN GETZ: We'll mark for

4 identification as "Exhibit Number 11" a one-page document

5 that will be treated as confidential.

6 (The document, as described, was

7 herewith marked as Exhibit 11 for

8 identification.)

9 BY MR. GRUBER

10 Q. Mr. Pfautz, you have the document in front of you?

11 A. (Pfautz) Yes.

12 Q. Or do you?

13 A. (Pfautz) I think I have it. But, yes, I'll take a

14 separate copy.

15 MR. KENNAN: Mr. Chairman may I just

16 ask, Jay, do you have a redacted version of that?

17 MR. GRUBER: I don't, but I can get one

18 to you.

19 MR. KENNAN: Would you provide one that

20 is --

21 MR. GRUBER: It will become clear what

22 it is, but I will be happy to.

23 CHAIRMAN GETZ: Well, Mr. Gruber, are

24 you going to be addressing confidential information that

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[Witness panel: Oyefusi|Nurse|Pfautz]

1 other parties should not be in here?

2 MR. GRUBER: I set it up this way so
3 that we didn't have to clear the room. That's the only
4 reason I created that document. This could have easily
5 been done in an oral examination, but I was trying to
6 avoid having to clear the room.

7 BY MR. GRUBER

8 Q. Mr. Pfautz, are you aware that Verizon filed an
9 estimate on February 8th of this year, pursuant to the
10 Commission's order to provide a estimate of annual
11 impacts that could be affected by the decision in this
12 case?

13 A. (Pfautz) Yes.

14 Q. And, you're aware that Verizon included that estimate
15 on Page 30 of Mr. Shepherd's March 9th testimony?

16 A. (Pfautz) Yes, I am.

17 Q. Did AT&T take issue with that estimate at that time?

18 A. (Pfautz) No, we did not.

19 Q. And, today, does AT&T believe that that estimate is an
20 accurate estimate going forward?

21 A. (Pfautz) No, we no longer believe that.

22 Q. And, what happened in between?

23 A. (Pfautz) Okay. Basically, Verizon's estimate of the
24 amount of money that the disputed CCL charges would

[Witness panel: Oyefusi|Nurse|Pfautz]

1 generate from AT&T and other carriers was based on
2 traffic studies from the Fall of 2006. At that time,
3 we were using an old transit factor. The factor that
4 breaks traffic out into local and toll. And, the
5 traffic that's allocated to toll is really the traffic
6 that's at issue in this proceeding. And, at that time,
7 the factor that we had allocated a significant portion
8 of AT&T's non-Verizon originated and terminated traffic
9 to toll, thus subjecting a larger volume to the charges
10 that are disputed here, the CCL charges. Since then,
11 we've got new traffic studies that have led us to
12 change the factor, and they now allocate less of the
13 traffic to toll.

14 Q. And, in the normal course, has Verizon objected to
15 AT&T's updated factor in its billing arrangements?

16 A. (Pfautz) No, they have not. And, in May of 2006,
17 Verizon --

18 Q. You mean in 2007?

19 A. (Pfautz) '07, I'm sorry. Began billing on the basis of
20 the new factors, and the CCL charges that are at issue
21 here drop significantly. We think that the month of
22 May 2007 is a much better indicator of the prospective
23 impact of any decision in this case.

24 Q. And, just so that the Commission has this confidential

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[Witness panel: Oyefusi|Nurse|Pfautz]

1 information on the record, when I ask you how much of a
2 reduction in Verizon's going forward estimate the
3 factor revision caused, I'm going to ask you to take a
4 look at the exhibit that I've just distributed and had
5 marked.

6 A. (Pfautz) Uh-huh.

7 Q. And, I'm going to ask you if this accurately represents
8 the changes in AT&T's traffic and the reduction in the
9 AT&T component of Verizon's estimate that would be
10 caused by that?

11 A. (Pfautz) Yes, it does.

12 Q. Okay. And, on what basis was the reduction calculated?

13 A. (Pfautz) Basically, just an annualization of the May
14 2007 numbers.

15 MR. GRUBER: All right. Thank you.

16 Thank you, your Honors. That's all I have.

17 CHAIRMAN GETZ: Thank you. Ms. Geiger.

18 MS. GEIGER: Yes. Thank you, Mr.

19 Chairman.

20 BY MS. GEIGER

21 Q. I think, Mr. Pfautz, these questions are for you, at
22 least initially. Is it AT&T's position in this case
23 that Verizon cannot charge for access rate elements
24 unless it is actually providing the service associated

[Witness panel: Oyefusi|Nurse|Pfautz]

1 with that rate element?

2 A. (Pfautz) Yes, it is.

3 Q. Okay. And, on Page 17 of your prefiled testimony, I'll
4 give you a minute to find that, I believe you state
5 that "CCL is a usage rate"?

6 A. (Pfautz) Yes, we do.

7 Q. Within the meaning of Verizon's Tariff 85, and,
8 therefore, a CCL charge can't be applied unless a call
9 actually traverses the Verizon end-user common line is
10 that your position?

11 A. (Pfautz) That is AT&T's position.

12 Q. Okay. So, just to be clear, AT&T is in agreement with
13 BayRing's position in this case that Verizon's tariff
14 does not permit Verizon to impose a CCL charge when no
15 Verizon end-user is involved in a call, is that
16 correct?

17 A. (Pfautz) That's correct.

18 Q. Okay. Now, do you know whether AT&T participated in
19 the docket 90-002 in this Commission, which led to the
20 filing of the initial access charge docket -- excuse
21 me, access charge tariff?

22 A. (Pfautz) I believe that we did. I'm not really the
23 tariff expert.

24 A. (Nurse) I can say "yes", they did.

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[Witness panel: Oyefusi|Nurse|Pfautz]

- 1 Q. Okay.
- 2 A. (Nurse) Although I was not with them at the time.
- 3 Q. Okay. And, I believe in Mr. -- Well, at least in
- 4 AT&T's prefiled testimony as the panel, it is indicated
- 5 on Pages 17 and 18 that there is -- you've cited
- 6 language from a New Hampshire Commission order that
- 7 supports your position that switched access rate
- 8 elements are charged as used. Did you find that?
- 9 A. (Pfautz) Yes.
- 10 A. (Oyefusi) Yes, we did.
- 11 Q. Now, Mr. Nurse, you were a member of the Staff at the
- 12 Commission at the time docket 90-002 was decided, is
- 13 that correct?
- 14 A. (Nurse) Yes, I was. And, just to clarify Staff, after
- 15 the Staff was bifurcated, Ms. Bailey and others were
- 16 advocatory staff and I was advisory staff.
- 17 Q. So, you advised the Commission as they made their
- 18 decision in that docket, is that correct?
- 19 A. (Nurse) Yes, I did.
- 20 Q. Okay. And, at the time the Commission decided the
- 21 issues in docket 90-002, which established the access
- 22 charges that are at issue in this docket today, were
- 23 there any competitive local exchange carriers like
- 24 BayRing in existence in New Hampshire?

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[Witness panel: Oyefusi|Nurse|Pfautz]

1 A. (Nurse) No, that didn't come about until the '96
2 Telecom Act.

3 Q. Okay. And, did the tariff that Verizon's predecessor,
4 New England Telephone, file in response to the decision
5 by this Commission in docket 90-002 contain any
6 information relating to charges, access charges or
7 other charges that would be assessed to competitive
8 local exchange carriers, like BayRing?

9 A. (Nurse) Just let me back up. The current Tariff 85 was
10 78, and then it evolved through to Tariff 85. But, at
11 the time that the tariff was filed, after the 90-002
12 case, the tariff wouldn't have addressed CLECs, because
13 CLECs didn't exist. So, you know, naturally, they
14 didn't address them then.

15 Q. Are you generally familiar with provisions of Tariff 85
16 that we've been discussing today?

17 A. (Nurse) Yes.

18 Q. Are there any provisions in that Verizon tariff that
19 relate to a competitive local exchange carrier or what
20 that particular carrier is supposed to pay Verizon for
21 common line charges, if any?

22 A. (Nurse) No, the CLEC services are in another tariff.

23 Q. Okay. Now, if you'll turn around and look behind you
24 at the -- this is a diagram that appears in Verizon's

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[Witness panel: Oyefusi|Nurse|Pfautz]

1 Tariff 85, Section 6.1.2. Is there anything in that
2 drawing, in other words, anything in the depiction
3 there, that relates to a competitive local exchange
4 carrier?

5 A. (Nurse) no.

6 MS. GEIGER: Thank you. I have no
7 further questions.

8 CHAIRMAN GETZ: Mr. Kennan.

9 MR. KENNAN: Thank you, Mr. Chairman.

10 BY MR. KENNAN

11 Q. Referring in the -- sorry, excuse me -- your rebuttal
12 testimony, to Pages 12 and 13 please. And, on those
13 pages, you make some statements regarding growth in
14 wireless revenues and minutes of use, correct?

15 A. (Nurse) Yes.

16 A. (Oyefusi) Yes.

17 A. (Pfautz) Yes.

18 Q. And, specifically, in Footnote 7, you referred to an
19 FCC Annual Report regarding "Competitive Market
20 Conditions With Respect to Commercial Mobile Services".
21 Do you see that?

22 A. (Nurse) Yes.

23 A. (Oyefusi) Yes.

24 Q. Commercial mobile services means "wireless" --

[Witness panel: Oyefusi|Nurse|Pfautz]

1 A. (Nurse) Wireless or cellphones or mobile phones.

2 Q. Could you please just very quickly and generally
3 describe the report that you cite in Footnote 7 in the
4 testimony?

5 A. (Nurse) Yes. This is -- The FCC puts out, over time,
6 annual reports about the status of long distance
7 carriers. They have other reports about the status of
8 local competition. And, this is the one that's about
9 the status of mobile service. And, they look at things
10 like the number of carriers, the number of cell sites
11 in the industry, the number of employees, revenue,
12 minutes, about developments, about new technologies,
13 about new spectrum options and how that will expand
14 capacity. And, they describe that segment of the
15 industry or that industry and then how you look at it.
16 And, then, of course, they're particularly useful,
17 because they're good trend data to look at a record
18 year over year. You know, it's from the same source
19 typically and collected on a very similar or same
20 basis. So, it's nice to have, you know, year over year
21 growth was "X".

22 Q. And, based on what you're saying and what appears from
23 your testimony, this report contains various statistics
24 about commercial mobile services?

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[Witness panel: Oyefusi|Nurse|Pfautz]

- 1 A. (Nurse) Yes, there's a lot of metrics.
- 2 Q. And, assume the FCC compiles these statistics?
- 3 A. (Nurse) The FCC either directly collects them or
- 4 collects them through the industry trade association,
- 5 the CTIA.
- 6 Q. And, you've relied on these statistics to form the
- 7 basis of your testimony?
- 8 A. (Nurse) Yes. I think the FCC reports are broadly
- 9 relied on in the industry.
- 10 Q. And, so, you believe the statistics to be accurate?
- 11 A. (Nurse) Yes, I think, and, in particular, you know,
- 12 people always have -- always quibble over little piece
- 13 parts of these reports. But, I think, certainly, in
- 14 the big picture and over the long run, all that, the
- 15 little quibblings wash out. And, when you look at the
- 16 order of magnitude of changes over a decade and over
- 17 two decades, you know, the results are what everybody
- 18 knows. Everybody has a cellphone now, it's really
- 19 cheap. You know, the kids text to death. They have
- 20 obnoxious ring tones.
- 21 Q. And, in Footnote 7, you refer to an "Eighth Annual FCC
- 22 Report" dated from 2003. Does that imply that there
- 23 are subsequent annual reports?
- 24 A. (Nurse) Yes.

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[Witness panel: Oyefusi|Nurse|Pfautz]

1 Q. More recent than that?

2 A. (Nurse) Yes.

3 MR. KENNAN: I'd like to have marked as
4 the next exhibit for identification, which is Number 12 by
5 my count, a copy of a document entitled "Annual Report and
6 Analysis of Competitive Market Conditions With Respect to
7 Commercial Mobile Services, FCC Document Number 06-142,
8 Eleventh Report, Released: September 29th, 2006".

9 (Atty. Kennan distributing documents.)

10 CHAIRMAN GETZ: Okay. It's so marked.

11 (The document, as described, was
12 herewith marked as Exhibit 12 for
13 identification.)

14 BY MR. KENNAN

15 Q. I've shown you what purports to be the FCC's Eleventh
16 Annual Report dated September 2006. And, does that
17 look like a more recent version of the Eighth Annual
18 Report that you cite in your testimony?

19 A. (Nurse) Yes. The reports lag a little bit, because it
20 takes some time to put together. This one's from
21 September '06, so September '07 the next one will be
22 out.

23 Q. Please refer to Table 2 on Page 97.

24 A. (Nurse) Yes.

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[Witness panel: Oyefusi|Nurse|Pfautz]

1 Q. Would you agree that this is statistics that the FCC
2 cites as to the number of mobile telephone subscribers
3 in each state over a period of time?

4 A. (Nurse) Yes. It's the number of working handsets. So
5 that, if you have, you know, a husband and wife have
6 two phones, that counts as two, not as one bill, but as
7 two phones.

8 Q. And, how many mobile subscribers or mobile handsets did
9 the FCC say that existed in New Hampshire in
10 December 1999?

11 A. (Nurse) Less than 300,000, about 280,000.

12 Q. And, how many handsets in New Hampshire in December of
13 2005?

14 A. (Nurse) Almost a million, 989,000.

15 Q. Would you agree with me then that, if my math is
16 correct, that from December '99 to December 2005, there
17 was at least a tripling of the number of handsets in
18 New Hampshire?

19 A. (Nurse) Yes, that's why we see all those ads.

20 Q. And, please refer to Table 10 on Page 106. This has a
21 column entitled "Minutes of use per month". Do you
22 know what that is?

23 A. (Nurse) Yes. They take the total number of minutes,
24 cellular minutes, and they divide them by the total

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[Witness panel: Oyefusi|Nurse|Pfautz]

1 number of working cellular handsets to derive the
2 minutes per month. And, I mean, the trend on the data,
3 and this is one of the -- I think more so than any
4 particular point, data point, it's the trend of the
5 data over time that's important. And, you basically
6 see the minutes running in the mid one hundreds, until
7 you get to 1999, and then it jumps up significantly.

8 Q. These are nationwide figures?

9 A. (Nurse) Yes. They're nationwide average numbers.

10 Q. Do you have any reason to think that these numbers at
11 least approximately are different in New Hampshire?

12 A. (Nurse) I think this is a reasonable proxy for the
13 numbers. They're going to vary, you know, slightly
14 state by state, because it's a nationwide average. But
15 it's certainly the trend that drives this. I mean,
16 what drives this inflection point here was when AT&T
17 Wireless, before AT&T spun it off, and then ended up
18 buying it back through Cingular. When they went to --
19 they used to have roaming charges on your cellphone,
20 and, you know, \$5.00 a pop. I remember getting, you
21 know, several in one day. And, that suppressed usage.
22 And, when AT&T did the AT&T One rate, and you didn't
23 have to pay the roaming charges anymore, and it got to
24 be the whole call was -- the whole country was a local

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[Witness panel: Oyefusi|Nurse|Pfautz]

1 call, that this really rose subscribership, it really
2 drove usage, it really increased value. And, of
3 course, it also then put the incentive on the cell
4 carriers to go reduce roaming costs, because now they
5 were paying them, rather than passing them on. So,
6 that's what drives this inflection point up.

7 Q. And, just, again, some quick math. Using the same time
8 period that we used just a second ago, would you agree
9 that, from 1999 through 2005, the average minutes of
10 use by a mobile subscriber more than tripled?

11 A. (Nurse) Yes. And, that's largely what -- that's a
12 large driver behind the reduction in the average
13 revenue per minute, is that customers were paying a
14 price that was going down a little bit, but their price
15 per minute was really going down quickly, because the
16 denominator was growing, the number of minutes was
17 growing. So, customers were getting a lot more value
18 out of their phone, so they were getting a lot more
19 usage out of their phone.

20 MR. KENNAN: Thank you, Mr. Chairman.
21 That's all I have. Thank you.

22 CHAIRMAN GETZ: Ms. Goins.

23 MS. GOINS: No, Sprint doesn't have any
24 questions for the witnesses. Thank you.

[Witness panel: Oyefusi|Nurse|Pfautz]

1 CHAIRMAN GETZ: Thank you. Ms.

2 Fabrizio.

3 MS. FABRIZIO: Thank you, Mr. Chairman

4 I'm going to distribute copies for reference only of

5 Commission Order 20,040, dated January 21st, 1991, for

6 reference purposes.

7 (Atty. Fabrizio distributing documents)

8 BY MS. FABRIZIO

9 Q. This is Order 20,040 of this Commission, which granted
10 AT&T authority to carry instate toll calls under

11 certain conditions in 1991. I'll address my questions
12 to the panel, whoever would like to respond feel free.

13 Was AT&T permitted in 1991 to carry local traffic?

14 A. (Oyefusi) In 1991?

15 Q. Yes.

16 A. (Oyefusi) No.

17 Q. And, why was that?

18 A. (Nurse) There were -- That order was one of a series,
19 there were four consecutive orders. Long Distance

20 North, Sprint, MCI, AT&T got local entry, and that was
21 a controlled, you know, kind of Barbarian at the gate,

22 to try to control how we let them in and set up a

23 temporary access regime. But that was all about the

24 toll market, rather than the local market. I mean, for

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[Witness panel: Oyefusi|Nurse|Pfautz]

1 example, there wasn't local number portability, they
2 wouldn't have ability to get local numbers. So, you
3 just didn't have any of the preconditions for local
4 service at that time. That didn't come till later.

5 Q. And, so, was AT&T prohibited from providing local
6 service at that time under the consent decree, in 1991?

7 A. (Oyefusi) In 1991?

8 Q. Yes.

9 A. (Oyefusi) AT&T was not allowed to provide local service
10 in 1991. The local competition did not come until
11 after the Telecom Act.

12 Q. Thank you. And, so, as Mr. Nurse has noted, the
13 service that AT&T was being authorized under this order
14 was only instate long distance?

15 A. (Oyefusi) That is correct.

16 A. (Nurse) Right. And, they list in the second "whereas"
17 paragraph, the AT&T Mega Com Watts, AT&T Mega Com 800,
18 AT&T ReadyLine, AT&T MultiQuest, those are all toll
19 products.

20 Q. Okay. Thank you. And, Condition 6 of this order
21 required AT&T to compensate the LEC for originating and
22 terminating access. At the time, did AT&T have access
23 to any LEC customers who were not either customers of
24 New England Telephone or an Independent Telephone

[Witness panel: Oyefusi|Nurse|Pfautz]

- 1 Company?
- 2 A. (Oyefusi) No.
- 3 A. (Nurse) No, there weren't any LECs who weren't Verizon
- 4 or their predecessor or the Independent Telephone
- 5 Companies.
- 6 Q. Thank you. At the time, were all customers in New
- 7 Hampshire then served with local exchange service by
- 8 either New England Telephone or an Independent?
- 9 A. (Nurse) Yes.
- 10 Q. What was the charge called that AT&T paid New England
- 11 Telephone to access a New England Telephone customer?
- 12 And, let's just assume a residential customer, who
- 13 chose to use AT&T as its long distance carrier. What
- 14 element was charged in that case?
- 15 A. (Oyefusi) At that time, the only two elements, only two
- 16 access elements that were available or that were
- 17 charged was local transport and local switching.
- 18 Q. And, that essentially was what switched access was at
- 19 that time, is that --
- 20 A. (Oyefusi) That is correct.
- 21 Q. Okay. When AT&T used originating switched access, the
- 22 call always traveled over a New England Telephone or
- 23 Independent Telephone Company common line, is that
- 24 correct?

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[Witness panel: Oyefusi|Nurse|Pfautz]

- 1 A. (Oyefusi) Yes, at that time.
- 2 A. (Nurse) Say that again.
- 3 Q. When AT&T used originating switched access?
- 4 A. (Nurse) Yes.
- 5 A. (Oyefusi) Yes. At that time, yes, it would have been a
- 6 New England Telephone end-user originating the call,
- 7 and the call would have originated over New England
- 8 Telephone common line, yes.
- 9 Q. Okay.
- 10 A. (Nurse) And, just to be clear, I just want to
- 11 distinguish, which is where I was stumbling on the
- 12 switched versus special, very large business customers
- 13 have a PBX, would have been coming out of special
- 14 access. Small business customers or residential
- 15 customers would have been coming in over a common line.
- 16 So, residential service, small business service would
- 17 essentially always be special on the household end.
- 18 A. (Pfautz) You mean "switched".
- 19 A. (Nurse) So sorry, would be "switched". Large business
- 20 customers were very typically special. And, that gets
- 21 into some pricing stuff later that's important.
- 22 Q. So, when AT&T used the originating switched access, the
- 23 call travelled over NET or Independent's common line,
- 24 where was that common line usage covered in the

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[Witness panel: Oyefusi|Nurse|Pfautz]

1 charges?

2 A. (Oyefusi) There was no separate charge that was
3 identified.

4 Q. So, was it included in either the local switching or
5 the local transport charge?

6 A. (Oyefusi) I'm not sure, because I wasn't aware, I mean,
7 I didn't --

8 Q. Because it wasn't broken out?

9 A. (Oyefusi) Well, it wasn't broken out, and also I'm not
10 really privy to how the rate design was developed for
11 that particular tariff.

12 A. (Nurse) But I would say, if you look at the rate level,
13 the rate level on the initial entry, the access rate
14 was about 20 cents, much, much higher than even the
15 first year after the stipulation was approved. So,
16 sort of a, you know, Prego, it's in there. There was
17 enough money in that 20 cent rate that it certainly
18 covered everything that was in the stipulation
19 afterwards, because the rate was well north of the
20 stipulation rates.

21 Q. Okay. We may return to that point. So, AT&T paid an
22 originating switched access to New England Telephone to
23 access a New England Telephone customer who used AT&T
24 as its long distance carrier, is that correct?

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[Witness panel: Oyefusi|Nurse|Pfautz]

1 A. (Oyefusi) Yes.

2 Q. And, what rate elements would AT&T have paid to New
3 England Telephone at that time for AT&T to gain access
4 to that customer?

5 A. (Oyefusi) AT&T would have paid local switching and
6 local transport. And, if I -- without knowing how the
7 rate design was developed at that time, it is hard to
8 tell where the -- how that common line was actually
9 compensated.

10 Q. I'd like to show the panel, again for reference
11 purposes, a page from Tariff Number 78, Section 4,
12 Page 1 of New England Telephone and Telegraph Company.
13 This is an Original Page from that tariff?

14 A. (Nurse) Yes.

15 MS. FABRIZIO: Chairman, we can make
16 copies at the break for distribution and introduction as
17 an exhibit.

18 CHAIRMAN GETZ: Okay.

19 MS. FABRIZIO: I think it would be
20 useful.

21 BY MS. FABRIZIO

22 Q. Do you see any difference in this diagram, Tariff
23 Number 78, with the diagram that's on the wall behind
24 you that we've been discussing this morning?

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[Witness panel: Oyefusi|Nurse|Pfautz]

1 A. (Oyefusi) Yes.

2 Q. And, what is that difference that you see?

3 A. (Oyefusi) It appears like the rate design that actually
4 developed this tariff combined the charges for common
5 line and local switching -- local switching and common
6 line appear to have been combined as the same rate
7 element in this Tariff Number 78.

8 A. (Pfautz) And that element was the local switching rate
9 element.

10 A. (Oyefusi) These two pieces right here, these two rate
11 elements that is shown in this Tariff 85 were initially
12 combined in the local switching rate element as one
13 tariff.

14 MR. GRUBER: You need to identify for
15 the record which two elements were combined.

16 BY THE WITNESS:

17 A. (Oyefusi) This common line [indicating], that will be
18 the CCL, and this is local switching [indicating], and
19 this was taken out of Tariff 85. The predecessor of
20 that tariff, the 78 that you just gave me right here,
21 and in this tariff the two elements were combined in
22 the local switching element.

23 A. (Nurse) The two, the CCL, the common line, and the
24 local switching. Two elements were combined together.

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[Witness panel: Oyefusi|Nurse|Pfautz]

1 So that you show what's here is two arrows
2 [indicating]. In the predecessor tariff these two were
3 together as one, with just the local switching in the
4 middle.

5 BY MS. FABRIZIO

6 Q. So, it appears that common line usage was recouped
7 under the local switching rate element?

8 A. (Nurse) That's the way the picture is depicted. And,
9 certainly, the number, the rate, that was high enough
10 to fit the two in there. So, it appears that way, yes.

11 MS. FABRIZIO: Thank you. Mr. Chairman,
12 I'd like to reserve Exhibit 13 for this, when we make
13 copies.

14 CHAIRMAN GETZ: Okay. We will reserve
15 that exhibit.

16 (Exhibit 13 reserved.)

17 MS. FABRIZIO: Now, I'm going to
18 distribute a page from Tariff 78 filed in compliance with
19 the order that we distributed earlier, 20,040, for
20 reference purposes.

21 (Atty. Fabrizio distributing documents.)

22 BY MS. FABRIZIO

23 Q. Tariff 78, Section 3, Page 2. Could AT&T have
24 purchased common line -- carrier common line on a

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[Witness panel: Oyefusi|Nurse|Pfautz]

1 stand-alone basis under the terms of this tariff?

2 A. (Pfautz) No.

3 A. (Oyefusi) Under the terms of the Tariff 78?

4 Q. Yes. In Paragraph 3.2.1?

5 A. (Nurse) Right. This -- no. And, it makes sense to, in
6 reading the tariff, the reason I say "no" is that it
7 makes sense, because common carrier line, on a
8 stand-alone basis, is a non sequitur. It's just an
9 oxymoron. You cannot get a minute of loop on its own,
10 floating out there. It doesn't work that way. You
11 could get a UNE loop. You could buy the whole loop for
12 the whole month and pay the UNE loop rate, and you
13 could buy that, and you wouldn't need anything
14 connected to it, and you would be billed for that whole
15 loop, because you would have that copper pair all to
16 yourself all month long. Or, you could buy a DS0
17 special access circuit, which could essentially be the
18 same thing. You would have that, that channel or that
19 pair all to yourself all month long. So, because it's
20 by the month, it's easy to do.

21 But, if you want to get a minute of use
22 on a telephone pair, and there's going to be other
23 services using that pair at other times of the day and
24 other days of the week and month, you need to (a) make

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[Witness panel: Oyefusi|Nurse|Pfautz]

1 sure you only have one user at a time, and you need to
2 make sure that you measure how many minutes each guy
3 used it, so that you can bill them out accordingly.

4 So, the only way you can get carrier
5 common line service is if that carrier common line is
6 connected to a switch that's going to measure or meter
7 how many minutes did one guy, like the local service
8 provider, use that loop, use that line, how many
9 minutes did an interstate or an intrastate toll carrier
10 use that loop. So, it makes sense to me that the
11 tariff says, as a term and condition, that you can't
12 get carrier common line service on a stand-alone basis,
13 you have to have the other tariff, the other access
14 services in order to get it, because that's the way the
15 network parts plug together. So, it makes sense from
16 an engineering standpoint, it makes sense from a plain
17 reading standpoint, in my amateur reading.

18 Q. Thank you. Now, do you have a copy of the current
19 tariff in front of you, the particular sentence --

20 A. (Nurse) The 85 Tariff?

21 Q. Yes.

22 A. (Nurse) Yes.

23 Q. In particular, Section 5.2.1.

24 A. (Oyefusi) Section 5.

[Witness panel: Oyefusi|Nurse|Pfautz]

- 1 A. (Nurse) 5.2.1, yes.
- 2 Q. Would you read the language under A.
- 3 A. (Nurse) "Where the customer is provided with switched
4 access service under this tariff, the Telephone Company
5 will provide the use of Telephone Company common lines
6 by a customer for access to end-users." And, just for
7 clarity, the "customer" there is the IXC, because this
8 is a wholesale tariff. The "end-user" is your regular
9 customer. This is the IXC customer.
- 10 Q. And, is that essentially the same language that you
11 just reviewed under Section 3.2.1 of Tariff 78?
- 12 A. (Nurse) It's very, very similar.
- 13 Q. And, that was when local switching and CCL were
14 combined. It's the same language that applied in both
15 tariffs?
- 16 A. (Oyefusi) Yes.
- 17 Q. Regardless of the rate design. Thank you. Okay.
18 Would AT&T have paid an Independent, such as Granite
19 State Telephone, originating access to access a Granite
20 State customer who chose to use AT&T as its long
21 distance carrier?
- 22 A. (Nurse) Well, there's a -- if, as a hypothetical, if
23 AT&T were the Granite State long distance customer at
24 that time, and that's a hypothetical "if", you know,

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[Witness panel: Oyefusi|Nurse|Pfautz]

1 Granite State wouldn't let you use their network for
2 free, so, yes, you would have to pay. The problem is
3 that's before presubscription and you weren't allowed
4 to pick AT&T as your local customer. After 002, the
5 LECs still got to pick the local customer, and they
6 picked Verizon. So, you could not do it on a
7 presubscribed basis. You'd have to dial around.

8 Q. Thank you. Now, when Tariff Number 85 was written, was
9 the scenario at issue in this case even contemplated?

10 A. (Nurse) No. And, you know, the CLECs didn't exist
11 then, you didn't have the necessary conditions, you
12 didn't have collocation, but for a few places a little
13 later, you didn't have number portability.
14 Fundamentally, you didn't have the Telecom Act. And,
15 in many, many places, the LECs were taking the position
16 that their "franchise" was an exclusive, you know,
17 property right, and you couldn't take it away from
18 them, they were entitled to money before you were going
19 to do that, and stranded costs and all that. So, CLECs
20 didn't exist, and they weren't contemplated. And,
21 Verizon's testimony from Mr. McCluskey was express on
22 this point, that this doesn't apply to a multi-LEC
23 environment. And, I mean, that's what the Verizon
24 testimony at the time said they thought they were

[Witness panel: Oyefusi|Nurse|Pfautz]

1 doing.

2 Q. Thank you. Mr. Oyefusi, during your tenure at the
3 Washington, D.C. Commission, did you work on switched
4 access issues?

5 A. (Oyefusi) No. There wasn't, in D.C. territory at that
6 time, was -- I mean, the whole of D.C. was local. So,
7 there was no intrastate access.

8 Q. So, you didn't deal with the switched access issues,
9 okay. Thanks. Okay. And, turning to Mr. Pfautz, does
10 AT&T provide tandem switching to connect CLEC-to-CLEC
11 toll calls in the ILEC territories it has acquired?

12 A. (Pfautz) Yes, it does.

13 Q. And, does AT&T charge CLECs a CCL when it provides
14 tandem switching in its Southwest Bell or any other
15 ILEC area when the common line is not used?

16 A. (Pfautz) No, it does not.

17 Q. And, why not?

18 A. (Pfautz) Our position is that people should pay for
19 what they use and we should only charge for what we
20 provide.

21 Q. Thanks. Okay. I guess this will be directed also to
22 Mr. Pfautz, because you were with the Company at the
23 time of the DE 90-002 proceedings. What was your
24 understanding of the purpose of the CCL charge when

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[Witness panel: Oyefusi|Nurse|Pfautz]

1 AT&T signed the stipulation agreement under that
2 proceeding?

3 A. (Pfautz) I was not involved in that proceeding. So, I
4 probably cannot testify as to what the intent was.

5 Q. Okay. Mr. Nurse, you were an advisor to the Commission
6 at that time, --

7 A. (Nurse) Yes.

8 Q. -- in that proceeding. Do you have anything to add
9 with regard to your understanding at the time of the
10 purpose of the CCL element?

11 A. (Nurse) Well, it's kind of a complicated answer. But
12 the dilemma that preceded it, coming out of 89-010, was
13 what did you do with the quarter of the loop that they
14 hadn't figured out where to put it. They put half of
15 it on local and they put a quarter of it on interstate.
16 And, there was an issue about, you know, where do you
17 put the other part, and they wanted to get it out of
18 toll. They set the toll rate high enough that that
19 happened. You got into the access case, Staff said
20 that access should go to the interstate rate,
21 essentially 8 cents. The rate was up around 20. When
22 they came in with the stipulation, you get kind of a
23 divorce a little bit. You know, they came in with the
24 original ones and for non-800, kind of regular switched

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[Witness panel: Oyefusi|Nurse|Pfautz]

1 access. They came in with a proposal that was 16
2 cents. And, Verizon, and this did carry through, I
3 think, from Verizon's original proposal, they set the L
4 rates, the ones that don't matter, the LS and LT, and
5 the other L rates, they set those at incremental cost.
6 They're very, very small numbers. Which is why almost
7 none of the money is on anything but the carrier common
8 line.

9 So, they set those other rates very low,
10 at incremental cost. And, then, all the rest of the
11 money from where the old rates were, you worked on a
12 cram down. So, you went, on the first go, from
13 basically 20 cent access rates, the stipulation came in
14 at 16 cents. So, where did the four cents go? It went
15 away. I mean, the Commission just, you know, the
16 stipulation, as proposed, voluntarily proposed by
17 Verizon and the other carriers, just chopped four cents
18 out. I mean, you know, whether that was four cents of
19 fluff or whether that was, you know, four cents of
20 efficiency or four cents of technology, four cents just
21 went away. And, the stipulation, as proposed,
22 envisioned that the next year another two cents, and
23 then two years later another two cents a minute would
24 just go away. And, those costs just went away.

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[Witness panel: Oyefusi|Nurse|Pfautz]

1 And, of course, you know, the Commission
2 rejected that and ordered, finding it inadequate,
3 ordered an even further and more aggressive step down.
4 So, when you're done, and you end up with these rates
5 that are basically short of four cents, it includes a
6 carrier common line, and then whatever amount of money
7 was left.

8 MS. FABRIZIO: Thank you to the panel.

9 That concludes my questions.

10 CHAIRMAN GETZ: Okay. I think it's time
11 for the afternoon recess. And, we will resume in about 15
12 or 20 minutes.

13 (Recess taken at 3:18 p.m. and the
14 hearing resumed at 3:45 p.m.)

15 CHAIRMAN GETZ: Okay. We're back in the
16 hearing, and turning to Mr. Del Vecchio.

17 MR. DEL VECCHIO: Thank you, Mr.
18 Chairman. I had one logistical question, before we begin.
19 And, that has to do with the remainder of the afternoon.
20 And, I would like to request that, when we complete the
21 panel this evening, or this afternoon, I should say, that
22 we schedule the direct of Mr. Shepherd tomorrow morning.
23 And, I wasn't certain as to the starting time. I was
24 going to suggest 9:00 a.m., as opposed to 10:00 a.m., if

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[Witness panel: Oyefusi|Nurse|Pfautz]

1 that would work for the parties. So, we could complete
2 this matter hopefully by sometime tomorrow, perhaps
3 tomorrow morning.

4 CHAIRMAN GETZ: Well, the first question
5 is, do you have any --

6 MR. DEL VECCHIO: Yes.

7 CHAIRMAN GETZ: -- expectation of how
8 long your cross-examination --

9 MR. DEL VECCHIO: I don't know,
10 actually. I don't think it will be that long, but I can't
11 give you an exact amount right now.

12 CHAIRMAN GETZ: Any objection to, I
13 guess, basically Mr. Del Vecchio's proposal is starting
14 his witnesses at 9:00 a.m. tomorrow morning?

15 MR. GRUBER: No objection.

16 MR. KENNAN: And, I would support that.

17 CHAIRMAN GETZ: Carry on, Mr. Del
18 Vecchio.

19 MR. DEL VECCHIO: Thank you, sir. Good
20 afternoon, gentlemen.

21 WITNESS PFAUTZ: Good afternoon.

22 WITNESS OYEFUSI: Good afternoon.

23 WITNESS NURSE: Good afternoon.

24 MR. DEL VECCHIO: Mr. Nurse, welcome

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[Witness panel: Oyefusi|Nurse|Pfautz]

1 back.

2 WITNESS NURSE: Good to be back.

3 BY MR. DEL VECCHIO

4 Q. A few questions, if I could. First, with respect to
5 the Exhibit 11, which, Mr. Pfautz, that you testified
6 to earlier, and that's the prospective annual estimate
7 for AT&T. Without identifying any proprietary numbers
8 on the sheet, I had a few questions. First, you stated
9 that this represents a change in the traffic analyses.
10 And, I take it you were referring to the percentage
11 local usage factor?

12 A. (Pfautz) Yes.

13 Q. And, without identifying exact amounts, would you agree
14 that it's a very substantial change in the percent
15 local usage factor?

16 A. (Pfautz) Yes, it has a substantial impact.

17 Q. Multiples of the factor that had been originally
18 reported by AT&T and upon which Verizon relied earlier
19 in its estimate?

20 A. (Pfautz) Yes, I don't have the exact numbers of the
21 factor here before me.

22 Q. Does it sound right, though, that it would be multiples
23 of the original number?

24 A. (Pfautz) I would just have to say I think so.

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[Witness panel: Oyefusi|Nurse|Pfautz]

1 Q. Okay. And, just to wrap up on this point. You
2 understand, of course, that, while Verizon and AT&T are
3 hopeful of reaching some agreement or understanding as
4 to the factor, that the parties have reserved all their
5 rights, including the right to present competing
6 estimates and traffic and usage factors for the
7 Commission's consideration at the appropriate time?

8 MR. GRUBER: I object. I mean, this is
9 -- we're on the record as having said, this is not really
10 something for witnesses, this just doesn't seem
11 appropriate. I will stipulate to the fact that, if Mr.
12 Del Vecchio doesn't believe it's correct and wishes to
13 present an alternative view, I will stipulate that that's
14 appropriate. I just don't think it's appropriate for my
15 witnesses to be talking about that.

16 MR. DEL VECCHIO: I'll accept the
17 stipulation, Mr. Chairman. However, it's not whether Mr.
18 Del Vecchio thinks so. It's whether Verizon thinks so.

19 BY MR. DEL VECCHIO

20 Q. And, the fact that you mentioned something about
21 "Verizon not having objected to some billing in May",
22 Verizon hasn't concurred, have they? Have they done
23 anything affirmatively to tell you that it was okay?
24 A. (Pfautz) I believe that they billed us based on the new

[Witness panel: Oyefusi|Nurse|Pfautz]

1 factor, which I would, and perhaps naively, would take
2 as concurrence.

3 Q. You haven't seen any specific expressed concurrence on
4 this, have you?

5 A. (Pfautz) Not personally.

6 Q. Now, Mr. Pfautz, you also said earlier, in response to
7 a question from Ms. Geiger, that you or that AT&T
8 agreed with BayRing's position on the issue of the
9 carrier common line treatment in this docket?

10 A. (Pfautz) I said that we agreed that the carrier common
11 -- with their position insofar as it was a case of that
12 carrier common line should not be charged when the
13 corresponding network element loop is not provided.

14 Q. Okay. And, you were present during the testimony of
15 the BayRing panel this morning?

16 A. (Pfautz) I was.

17 Q. And, are there any particular comments or testimony
18 that BayRing provided to the Commission this morning of
19 which you strongly disagree?

20 A. (Pfautz) I confess my memory is a little hazy. Nothing
21 especially jumps out. Was there something that you --

22 Q. No, I was just wondering whether something jumped out
23 at you?

24 A. (Nurse) Something jumped out at me.

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[Witness panel: Oyefusi|Nurse|Pfautz]

1 Q. Well, Mr. Pfautz is the one who testified earlier, so
2 I'm asking him that.

3 A. (Nurse) I understand that.

4 Q. The answer is "nothing"?

5 A. (Pfautz) Not that I can think of right now.

6 Q. And, regarding, I believe, the Exhibit 13, which is
7 Tariff 78 or the Tariff 78 diagram. Do you recall
8 that? That came in by way of Mr. Kennan's questions, I
9 think. Oh, I'm sorry.

10 A. (Nurse) No.

11 Q. That was by Ms. Fabrizio.

12 A. (Nurse) No, that's from the Staff.

13 Q. Yes.

14 A. (Nurse) Yes. I'm sorry, was that the original tariff
15 page?

16 MS. FABRIZIO: Yes.

17 BY THE WITNESS:

18 A. (Nurse) We gave that back to Staff. It was actually a
19 Pat Duffy signed Original Page. Didn't want to take
20 that home with me.

21 BY MR. DEL VECCHIO

22 Q. And, that's the diagram of the local switching and
23 local transport?

24 A. (Nurse) Yes.

[Witness panel: Oyefusi|Nurse|Pfautz]

- 1 Q. That's correct?
- 2 A. (Nurse) Yes.
- 3 Q. And, I take it that that structure, if you will,
- 4 changed as a result of docket 90-002?
- 5 A. (Pfautz) I believe that's the case. I mean, this is --
- 6 A. (Oyefusi) No. This was the original, this was the
- 7 original tariff that was filed in, I believe, '91. So,
- 8 this was before the 90-002 as well.
- 9 A. (Nurse) Yes. The tariff page is dated '87.
- 10 Q. All right. My question was that this structure changed
- 11 as a result of the proceedings in 90-002?
- 12 A. (Nurse) Yes. An additional rate element was created,
- 13 and then that picture correspondingly changed with the
- 14 compliance tariff.
- 15 Q. And, the additional rate element was the carrier common
- 16 line element?
- 17 A. (Nurse) Yes. Right. And, it's an additional element,
- 18 and you have to be careful in which way you mean that.
- 19 It's not an additional physical element, it's an
- 20 additional rate element. And, I would say that what
- 21 the difference between the 85 -- Tariff 85 picture and
- 22 the picture in Tariff 78 is that the LS, the Local
- 23 Switching element, was split. It was subdivided. So,
- 24 you went from three to two by splitting one in half.

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[Witness panel: Oyefusi|Nurse|Pfautz]

1 So, it's a little -- you had no more, it was no more
2 further end to end, but you had three names for the
3 piece parts in between the two ends.

4 Q. And, that led me or leads me to another question. And,
5 that is, I think you used words to the effect that it
6 appears by the picture that that's what happened. Do
7 you have any specific knowledge, under oath at the
8 Commission, that there was no contribution in local
9 transport that was then assigned to the Carrier Common
10 Line Charge, as well as contribution from local
11 switching?

12 A. (Nurse) Well, let's back up and start with what
13 "contribution" is. And, I've taken "contribution" to
14 be an amount of the price that's above incremental
15 cost. Contribution could be a good thing, it could be
16 a bad thing, it could be enough, it could be too much.
17 But it's the difference between the price and the
18 incremental cost. And, when you had the two rate
19 elements in the earlier structure, you had two rate
20 elements that were far, far, far above incremental
21 cost. And, then, when you went to the post 002 rate
22 structure, the Commission took the switching and
23 transport elements, took those costs down to
24 incremental cost, which Verizon had proposed, and then

[Witness panel: Oyefusi|Nurse|Pfautz]

1 took all the other costs and dumped them on the common
2 carrier line rate element.

3 Q. And, I understand that part. My question, though, was
4 how did you conclude that all the contribution came
5 from local switching, as opposed to both local
6 switching and local transport?

7 A. (Nurse) I didn't conclude that. I said there were two
8 rate elements before, they were both substantially
9 above incremental costs. The Commission set the rates
10 at Verizon's proposal very low, squeezed all the
11 contribution out of local switching, local transport,
12 which made it very difficult to enter, because you had
13 to be very efficient at that point, pushed all the rest
14 of the money over towards common carrier line, and then
15 chopped some of it right off the top.

16 Q. So, then, let me see if I understand this. It is not
17 your testimony that all of the contribution assigned,
18 if you will, to carrier common line came from local
19 switching, it also came from local transport? That's
20 my question.

21 A. (Nurse) Yes. Because at the end, when they were done,
22 they were both at incremental. Local switching and
23 local transcript were both at incremental cost, and
24 common carrier line was the rest, after the Commission

[Witness panel: Oyefusi|Nurse|Pfautz]

1 -- after Verizon volunteered to chop some money off,

2 and the Commission chopped further money off.

3 Q. Thank you. There was also a question regarding a

4 similarity or comparison between Tariff 85,

5 Section 5.2.1.

6 A. (Nurse) I'm sorry, 5. --

7 Q. 2.1.

8 A. (Nurse) -- 2.1.

9 Q. And, Exhibit 15's language contained in Section 3.2.1.

10 A. (Nurse) Get the first one here. That is 5.2.1.A?

11 Q. Yes.

12 A. (Nurse) And, compared to what?

13 Q. To Section 3.2.1, I believe, of Exhibit 15, if I recall

14 correctly.

15 A. (Nurse) I don't have it marked as an exhibit, but I

16 think it's Tariff 78?

17 Q. Yes.

18 A. (Nurse) Section 3, Page 2 Original.

19 MR. DEL VECCHIO: We seem to have a

20 difference of numbering here. What's the correct number

21 on that?

22 MS. FABRIZIO: Fourteen.

23 WITNESS NURSE: Is that 14 or 15?

24 BY MR. DEL VECCHIO

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[Witness panel: Oyefusi|Nurse|Pfautz]

1 Q. And, my question, I guess --

2 CHAIRMAN GETZ: Well, let's clarify on
3 exhibits first. I believe we're up to Exhibit 13, but
4 there were two documents that Ms. Fabrizio referred to,
5 but did not ask that they be marked for identification.

6 MS. FABRIZIO: And, I should have asked
7 for identification of Exhibit 14, Section 3, Page 2, of
8 Tariff Number 78.

9 MS. O'MARRA: That would have been
10 Exhibit 13.

11 MS. FABRIZIO: Fourteen.

12 MS. O'MARRA: Oh.

13 MS. FABRIZIO: The first one was Exhibit
14 13. There are two pages. I asked to reserve Exhibit 13
15 for the first submission. Both are page tariffs --

16 CHAIRMAN GETZ: Let me try and make sure
17 I got it. So, Tariff Number 78, Section 4, Switched
18 Access, is Exhibit 13?

19 MS. FABRIZIO: Yes.

20 CHAIRMAN GETZ: And, Tariff 78,
21 Section 3, Common Carrier Line Access Service?

22 MS. FABRIZIO: Exhibit 14, yes.

23 CHAIRMAN GETZ: Exhibit 14.

24 (The documents, as described, were

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[Witness panel: Oyefusi|Nurse|Pfautz]

1 herewith marked as Exhibit 13,
2 previously reserved, and Exhibit 14,
3 respectively, for identification.)

4 MR. DEL VECCHIO: Thank you, Mr.
5 Chairman, for clarifying that. And, I would strike that
6 question then, Mr. Nurse, because I was uncertain as to
7 which exhibit we were talking about.

8 BY MR. DEL VECCHIO

9 Q. So, let me -- let me refer you to the AT&T Exhibit 10,
10 I hope, which is the flow chart, Mr. Pfautz?

11 A. (Pfautz) Uh-huh.

12 Q. And, I'm look at the Call Flow Number 5.

13 A. (Pfautz) Uh-huh.

14 Q. And, referring back to, let's say, the early 1990s.
15 Was it possible to complete a call, such as set forth
16 on Call Flow 5 of Exhibit 10, if we were to assume that
17 there was a wireless end-user on one end?

18 A. (Pfautz) When you say "such a call" -- I'm sorry, when
19 you all say a call --

20 Q. Sorry. Go ahead.

21 A. (Pfautz) When you say "such a call", could you just
22 clarify that?

23 Q. I'm referring to the transmission of the call,
24 actually, as you've depicted in Call Flow 5, only

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[Witness panel: Oyefusi|Nurse|Pfautz]

1 assume that there's a wireless end-user on one end,
2 instead of a BayRing customer.

3 A. (Pfautz) And the time frame was?

4 Q. The early 1990s, around the time of docket 90-002.

5 A. (Pfautz) Yes. Yes.

6 Q. Now, directing your attention to Page 9 of your direct,
7 Lines 14 and 15.

8 A. (Nurse) So, you're assuming that a CLEC existed at that
9 time?

10 A. (Pfautz) Wireless.

11 A. (Nurse) Wireless.

12 Q. No, "wireless" I think I said.

13 A. (Nurse) Oh.

14 A. (Pfautz) Excuse me, which page did you say of the
15 testimony?

16 Q. Page 9, Lines 14 to 15. And, I think this goes without
17 saying, but I just want to clarify for the record,
18 given the testimony you have. You state in your direct
19 that "Verizon's application of the CCL is not permitted
20 by a tariff or other legal authority", and that
21 "neither Tariff 85 nor other legal authority permits
22 Verizon" to charge for either terminating or
23 originating access in the disputed call instances.
24 And, I take it that none of you are opining as to legal

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[Witness panel: Oyefusi|Nurse|Pfautz]

1 rights? You're not lawyers, are you?

2 A. (Nurse) That's on advice of counsel.

3 Q. I see. So, you're not -- this was not your opinion,
4 you're not lawyers?

5 A. (Oyefusi) No.

6 A. (Pfautz) No.

7 A. (Nurse) No. That testimony is based on our advice of
8 counsel and our understanding of it.

9 Q. Page 12 of your testimony, Lines 17-23. You testified
10 that Section 5.1.1.A.1 of the tariff "requires", I
11 believe that's what you said, that Verizon provide
12 common lines before it can charge CCL, is that correct?

13 A. (Oyefusi) Yes.

14 Q. And, can you direct the Commission's attention to where
15 in Section 5.1.1 under the tariff, the tariff expressly
16 states that the common line is "required" before
17 Verizon can charge a CCL rate element?

18 A. (Nurse) Sure. In --

19 A. (Oyefusi) Well, the Section 5.1.1.A reads "Carrier
20 common line access provides for the use of end-users'
21 Telephone Company provided common lines". There is a
22 presumption here that Verizon, according to your
23 tariff, is defined as the "Telephone Company", will
24 provide its common line before you can charge CCL,

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[Witness panel: Oyefusi|Nurse|Pfautz]

1 according to this section. So, that's how we reach
2 that conclusion.

3 A. (Nurse) And, I would add onto that, in 5.1.1.A.1, the
4 next paragraph, it's "The Telephone Company will
5 provide", not "may provide", "will provide". And, that
6 means you have to provide, not you will "make it
7 available" or you "might do it", or "maybe yes", "maybe
8 no". "Will provide".

9 Q. Will provide a carrier common line?

10 A. (Nurse) It will provide a carrier common line.

11 Q. My question, though, is where does it say in that
12 section that "Verizon must provide the common line
13 before, and Verizon is required to do so, before it can
14 impose a Carrier Common Line Charge"?

15 A. (Nurse) That's what "will provide" means. I mean, this
16 is like "what's the definition of "is" is." I mean,
17 "will provide", the plain meaning of that is "you will
18 provide it". Obviously, a fair business transaction,
19 if you provide it, you pay for it. Your tariff
20 requires you to provide it. You certainly cannot
21 charge me for everything else in your tariff that I
22 don't get just because you have a rate for it. Offer,
23 acceptance, consideration; you have to offer it, I have
24 to take it, and then I owe you the money. And, if you

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[Witness panel: Oyefusi|Nurse|Pfautz]

1 don't provide it, you don't get the pay.

2 Q. "Offer", "consideration", and what?

3 A. (Nurse) "Offer, acceptance, consideration." You're
4 offering to provide me common carrier line service. If
5 you provide the common carrier line to me and I take
6 it, I owe you the money. If you don't provide it, I
7 don't owe you the money. That's what "will provide"
8 means.

9 Q. Do you owe Verizon money for the use of Verizon's
10 network in connection with the transmission of calls
11 over your disputed call flows?

12 A. (Nurse) I owe you money pursuant to the terms of your
13 tariff. And, your tariff requires that you will
14 provide it. And, if you will provide it, I will pay
15 you.

16 Q. Has Verizon provided tandem switching?

17 A. (Nurse) We're not -- This is the Common Carrier Line
18 section. We're not talking about that. In Section 5,
19 Common Carrier Line --

20 Q. No, Mr. Nurse --

21 MR. DEL VECCHIO: Mr. Chairman, I ask
22 that the witness be directed to answer my questions, as
23 opposed to going off on narrative responses.

24 BY THE WITNESS:

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[Witness panel: Oyefusi|Nurse|Pfautz]

1 A. (Nurse) If you provide tandem switches, we will pay.

2 MR. DEL VECCHIO: Excuse me, Mr.

3 Chairman.

4 CHAIRMAN GETZ: Mr. Nurse, we'll give --
5 answer the question, and you can explain.

6 WITNESS NURSE: Yes.

7 CHAIRMAN GETZ: And, gentlemen, let's
8 question, answer, and let's make sure that the court
9 reporter can get this all down.

10 BY THE WITNESS:

11 A. (Nurse) Yes. The critical distinction is any of the
12 items in Section 6, any of the tariff rates that start
13 with "L", if you provide those, and they can be
14 provided on a stand-alone basis or in combination, we
15 pay the associated rates for those Section 6 items,
16 which are available on a stand-alone basis. That is
17 clear and distinct from Section 5 item, which is common
18 carrier line, which is not available on a stand-alone
19 basis. It's only available in conjunction with the
20 Section 6 items.

21 BY MR. DEL VECCHIO

22 Q. I understood that. But my question is, are you paying
23 for the tandem switched access and transfer facilities,
24 the LTTS, LTF and the LTT, I guess it was, currently in

[Witness panel: Oyefusi|Nurse|Pfautz]

1 the disputed call flows?

2 A. (Pfautz) Yes.

3 A. (Oyefusi) Yes. According to Mr. Pfautz here, we
4 recognize some of the elements, depending on the call
5 flow, that Verizon was actually providing, and there
6 was no dispute that AT&T owed you the money for those
7 elements. So, he already admitted during his testimony
8 that you are providing those elements for those
9 specific call flows, and AT&T is glad to pay you for
10 those elements.

11 Q. You're glad to pay us for those elements, to Verizon?

12 A. (Nurse) Well, I mean, it's a fair point. We're -- You
13 know, we can't come in and say that "we want free
14 access", because we have like 40 million lines of
15 access. And, you know, we have to be internally
16 consistent, and, as a very large access provider, we
17 don't charge for access when we don't provide it. And,
18 as an access purchaser from Verizon, we don't expect to
19 pay for it when we don't get it.

20 Q. Directing your attention to Page 13, Line 7-10. You
21 state that Section 5 of the tariff "unequivocally
22 imposes a requirement that the call actually route
23 through the end-office switch and traverse the end-user
24 common line before Verizon can assess its CCL." Now,

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[Witness panel: Oyefusi|Nurse|Pfautz]

- 1 again, is there anything in Section 5 wherein the
2 tariff provides "unequivocally" or states
3 "unequivocally" the transaction is as you described it?
- 4 A. (Oyefusi) Yes.
- 5 A. (Nurse) Yes. We just covered that exactly.
- 6 Q. Where does it say "unequivocally"?
- 7 A. (Nurse) "Will provide".
- 8 Q. And, so, that -- Let me see if I understand it. The
9 basis of your conclusion that there's a requirement and
10 that it's "unequivocal" solely rests with the words
11 "will provide".
- 12 A. (Nurse) No.
- 13 Q. Is that the case?
- 14 A. (Nurse) No. That is sufficient, that "will provide" is
15 sufficient in its own right, because "will provide"
16 means "will provide". You know, it's that
17 straightforward. There are other terms of the tariff
18 which reinforce those. We laid each of those out in
19 the tariff. Basically, it's when the tariff says
20 "provide", "provide" means "provide". When it says
21 "use", "use" means "use".
- 22 Q. All right. And, let's continue. You say on Page 14,
23 in Lines 29-31, that "Essentially, Verizon's switched
24 access service involves the provision of continuous and

[Witness panel: Oyefusi|Nurse|Pfautz]

1 complete transmission path", is that correct?

2 A. (Nurse) Yes.

3 Q. And, why did you say "essentially", whoever wrote that
4 language?

5 A. (Oyefusi) What line again?

6 Q. 29 through 31.

7 A. (Nurse) It's a simplification. All these call flows,
8 for example, haven't covered any of the SS7 network,
9 which is all involved in the call setup. And, there
10 are some tariff rate elements for SS7. And, all of
11 that has nothing to do with this, because those rate
12 elements and those terms and conditions are not in
13 dispute. So, that's a simplification and a reservation
14 that there are a few tangential things that are
15 irrelevant to the dispute that are also, you know,
16 floating around in the tariff.

17 Q. Does the switched access tariff require that all of the
18 elements be purchased if a carrier wishes to purchase
19 only certain of the elements of switched access?

20 A. (Nurse) Well, you got to be careful with switched
21 access and what do you mean by that, because, you know,
22 there's sort of a general idea, there's a term of art.
23 The simple way to look at it for the Tariff 85, so that
24 the record will be clear as to the wording, you can buy

[Witness panel: Oyefusi|Nurse|Pfautz]

1 the Section 6 tariff items, and you can buy those on a
2 stand-alone basis. You don't have to buy the common
3 carrier line, Section 5, to buy Section 6. But it's
4 not true in the other direction. You cannot buy
5 Section 5, Common Carrier Line Service, on a
6 stand-alone basis. It's an oxymoron. But, if you have
7 previously bought the Section 6 items as your
8 precondition, you can then add onto that the Section 5
9 common carrier line, and Verizon's tariff page calls
10 that a "complete" -- a "complete access arrangement".

11 Q. So, when you say that you "can buy the Section 6 items
12 on a stand-alone basis", those are the local transport
13 tandem switching, local transport termination, local
14 transport facilities, etcetera, as contained in
15 Section 6.2 that we discussed earlier with BayRing?

16 A. (Nurse) Yes.

17 Q. Is that fair?

18 A. (Witness Nurse nodding affirmatively).

19 Q. And, what actually do you call it when you purchase
20 less than a continuous transmission path? That is,
21 when you purchase elements out of Section 6, which is a
22 switched access tariff, on a stand-alone basis, what do
23 you call the purchase of those services?

24 A. (Oyefusi) According to the tariff, I mean, if you

[Witness panel: Oyefusi|Nurse|Pfautz]

1 purchase transport, it is called "transport" in the
2 tariff. And, there are terms and conditions in that
3 section of Section 6, some provisions in Section 6 that
4 actually defines how you will charge for that
5 transport. And, if you buy switching without anything
6 else, it is just "local switching" that you purchase.
7 And, you will, according to the tariff, pay a certain
8 amount of money for that local switching element. So,
9 it is just all you're buying in that Section 6 is the
10 specific element as described.

11 Q. And, those Section 6 elements are switched access
12 elements, is that correct?

13 A. (Oyefusi) They are categories, according to your
14 tariff, they are labeled as "rate categories of
15 switched access services".

16 Q. And, directing your attention to Page 15, Line 17
17 through 19. In your caption to this section, you state
18 that "the three network elements that, if combined,
19 make up the switched access service". Did I capture
20 that correctly?

21 A. (Oyefusi) Yes.

22 Q. So, in your view then, --

23 A. (Nurse) For clarification, that probably should say
24 "complete switched access service".

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[Witness panel: Oyefusi|Nurse|Pfautz]

1 Q. Okay. But it says "the switched access service", and
2 that's my question.

3 A. (Oyefusi) Yes.

4 A. (Nurse) Right.

5 Q. And, my question is, since this is how you define "the
6 switched access service", what, in your view, is the
7 purchase of less than a combination of all three
8 network elements?

9 A. (Nurse) No. We need -- We need to correct that,
10 because that refers to the exhibit below, which is the
11 picture. And, the picture is described as the
12 "complete switched access service". So, that should
13 say "complete switched access service", as it does in
14 the referenced exhibit.

15 Q. Are there any other corrections to your testimony that
16 you would like to bring to the Commission's attention
17 before we conclude today?

18 A. (Nurse) No. Thank you for pointing that one out.

19 Q. Page 17, Lines 17-19, you make reference to a prior PUC
20 order, is that correct?

21 A. (Nurse) 17? Page 17?

22 Q. Lines 19 through 23.

23 A. (Nurse) Thank you. Yes.

24 Q. And, you make, I think, the assertion that "switched

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[Witness panel: Oyefusi|Nurse|Pfautz]

1 access originating or terminating charges apply only to
2 messages which make use of switched access subject to
3 this tariff." Is that correct?

4 A. (Oyefusi) Yes, I would emphasize the phrase "make use".

5 Q. And, Mr. Oyefusi, is tandem switching provided from
6 Verizon an element or component which carriers use in
7 completing the transmission of a call?

8 A. (Nurse) Could you go through it again, please.

9 Q. Sure. I stated, and I said "Mr. Oyefusi", and I hope
10 that I pronounced that correctly, and I apologize if I
11 didn't, "is tandem switching provided by Verizon an
12 element or component which carriers use in completing
13 the transmission of calls?

14 A. (Oyefusi) Yes.

15 A. (Nurse) But, to clarify on that, this is --

16 MR. DEL VECCHIO: Mr. Chairman, I didn't
17 ask Mr. Nurse a question.

18 BY THE WITNESS:

19 A. (Nurse) The problem I have is that --

20 CHAIRMAN GETZ: Well, but he asked a
21 direct question to the witness. If you've got things that
22 you need to follow up on, I'm sure you'll get the
23 opportunity in redirect. If he's going to throw a
24 jump-ball, then --

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1 WITNESS NURSE: Okay.

2 CHAIRMAN GETZ: -- go ahead.

3 BY MR. DEL VECCHIO

4 Q. On Page 17, Lines 19-23 -- I'm sorry, moving on. I was
5 referring to Page 19, my apologies, Lines 15-16. Here,
6 and I assume this is you, Mr. Nurse, just so there's no
7 jumping too far, you quote from an FCC order, is that
8 correct?

9 A. (Nurse) That's an FCC order that's quoted.

10 Q. Okay. And, it says that "Common line charges obviously
11 should reflect common line usage", and that was your
12 emphasis there or was that emphasis originally?

13 A. (Nurse) No, this is a statement, at Line 16, that
14 emphasis was added.

15 Q. And, can you direct our attention to a New Hampshire
16 Commission order that says something similar, that
17 "obviously common line charges should reflect common
18 line usage"? Is there a reason why you went to the
19 FCC, rather than the New Hampshire Public Utilities
20 Commission for that?

21 A. (Nurse) We think that the tariff itself was clear, but,
22 to provide additional sources, which may be informative
23 to the Commission, we went to (a) to other states, and
24 found no practices that were consistent with Verizon's

[Witness panel: Oyefusi|Nurse|Pfautz]

1 New Hampshire one. You cited an example that applies
2 only to wireless in New York. We provided the other
3 sites for how this issue is treated at the FCC. The
4 Commission could decide to issue entirely on New
5 Hampshire law and New Hampshire orders, that's fine.
6 If those additional sites are of informative value to
7 the Commission, that's good.

8 Q. And, I appreciate that. But my question, sir, is
9 actually can you direct this Commission's attention to
10 any New Hampshire Commission orders that state the same
11 thing or words to that effect?

12 A. (Nurse) Yes. Yes, because these rates are permanent
13 rates. Permanent rates, all the rates in the order
14 approving the stipulation are permanent rates, and
15 permanent rates are obviously usage rates. The more
16 minutes you use, the more money you pay.

17 MR. DEL VECCHIO: Mr. Chairman, I'm
18 sorry. I didn't think I was unclear in my last question.
19 I asked him "whether he could direct our attention to a
20 Commission order?" I think the answer is "no"?

21 WITNESS NURSE: Yes -- No, I directed
22 you to the Commission order approving the stipulation --

23 CHAIRMAN GETZ: Well, maybe I can cut
24 through this. You're asking "is the word "obviously" used

[Witness panel: Oyefusi|Nurse|Pfautz]

1 in any orders?"

2 MR. DEL VECCHIO: Or words to that
3 effect. And, I think the answer is --

4 WITNESS NURSE: It is obvious --

5 CHAIRMAN GETZ: Well, excuse me, Mr.
6 Nurse. Your answer is "no", the word "obvious" is not
7 used, but you infer, based on --

8 WITNESS NURSE: Yes.

9 CHAIRMAN GETZ: -- certain rates in the
10 orders that it should be obvious?

11 WITNESS NURSE: Yes.

12 MR. DEL VECCHIO: Thank you, Mr.

13 Chairman.

14 BY MR. DEL VECCHIO

15 Q. Directing your attention to Page 20, Lines 10 through
16 13. Here, again, you're making reference to some
17 additional orders. And, I would ask a similar series
18 of questions, hopefully with easier and less effort,
19 and that is, essentially, can you direct our attention
20 to any Commission orders in which the Commission has
21 expressly stated that CCL charge is conditioned on
22 "actual common line use", or words to that effect?

23 A. (Nurse) The order that would have approved the prior
24 Verizon tariff, which set rate elements up as usage,

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[Witness panel: Oyefusi|Nurse|Pfautz]

1 and the order that approved the Verizon compliance
2 tariff, which set these rates up on a per minute of use
3 basis, approved these as usage rates.

4 Q. And, is that --

5 A. (Nurse) Including carrier common line as a usage rate
6 in New Hampshire.

7 Q. And, that's the basis for your conclusion that the
8 Commission used words to that effect?

9 A. (Nurse) The totality of all these examples, all these
10 cites, everywhere it says "use", everywhere it says
11 "will provide", everywhere it says "per minute", the
12 totality of those is quite, quite clear.

13 Q. I see. And, does the Commission say "it's quite clear"
14 in any of its orders, sir? I'm not asking whether it's
15 quite clear to you.

16 A. (Nurse) Yes. The Commission said it's -- it's
17 obviously clear that this was a usage rate, because
18 when you filed your compliance tariff, you filed it on
19 a per minute basis. If you didn't think it was a usage
20 rate, you would have made it on a per month basis. So,
21 the Commission's order was clear to the Commission.
22 Your actions show that you thought it was a usage rate,
23 that's why you tariffed it as a per minute rate.

24 MR. DEL VECCHIO: And, I apologize. One

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[Witness panel: Oyefusi|Nurse|Pfautz]

1 last try, Mr. Chairman.

2 CHAIRMAN GETZ: And, Mr. Nurse, I think
3 it's -- let's answer the question and make your argument
4 after it. I think Mr. Del Vecchio is asking a fair series
5 of questions of "whether this kind of language is used in
6 New Hampshire orders?" And, if the answer --

7 WITNESS NURSE: No, these orders come
8 out of disputes about the language. Essentially, a case
9 like this, the Commission's order out of this case I would
10 expect would have language like this when you rule on what
11 the tariff means. So, it would be premature for the
12 Commission to have, before there was a dispute about what
13 the language means, ruled what the language means, and say
14 "obviously "will provide" means "will provide". So, I
15 wouldn't expect that order to be here, because it's not
16 ripe yet.

17 MR. DEL VECCHIO: Thank you, Mr.
18 Chairman. Thank you, Mr. Nurse.

19 BY MR. DEL VECCHIO

20 Q. Page 10 of your rebuttal testimony, gentlemen, I think
21 Line 20, through Page 11, Lines 1 through 6.

22 A. (Nurse) Page 10 --

23 Q. Through Page 11, Mr. Nurse of rebuttal.

24 A. (Nurse) Starting on what line.

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[Witness panel: Oyefusi|Nurse|Pfautz]

- 1 Q. Of rebuttal.
- 2 A. (Nurse) This is the rebuttal, starting on Page 10.
- 3 Q. Yes.
- 4 A. (Nurse) Starting at what line?
- 5 Q. Line 20.
- 6 A. (Nurse) Line 20, yes.
- 7 Q. And, I'm not sure which of you gentlemen were
- 8 responsible for this, so I guess this is a toss-ball.
- 9 Now, you state that "to the extent CCL recovers
- 10 contribution, it is, in fact, recovering the portion of
- 11 loop costs allocated to toll related services." And
- 12 that "therefore, it is to be assessed only on calls
- 13 that traverse the Verizon loop." Is that correct?
- 14 A. (Oyefusi) Yes.
- 15 Q. And, in this section of your testimony, you're
- 16 discussing the Commission's actions in docket 89-010
- 17 and 90-002, is that correct?
- 18 A. (Oyefusi) Yes.
- 19 Q. And, can you direct the Commission's attention to where
- 20 those orders -- where in orders from either of those
- 21 two dockets the Commission expressly stated that
- 22 "carrier common line charges would be assessed only on
- 23 calls that traverse the Verizon loop"?

24 MR. GRUBER: Can you give the witness a

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[Witness panel: Oyefusi|Nurse|Pfautz]

1 copy of the orders, so he can respond to the question?

2 MR. DEL VECCHIO: No. I'm referring to
3 sections of the orders -- sections of the dockets, I
4 should say, that they're referring to in their testimony.
5 I'm simply asking a follow-up. I don't have copies of the
6 orders in front of me. I'm wondering if they know.

7 BY THE WITNESS:

8 A. (Nurse) All right. Just so we get the lines right.
9 You're starting on the last line on -- Line 20, on Page
10 10. And, then, I think you skipped a bit to pick up
11 the "conversely", starting on Line 5, on Page 11?

12 BY MR. DEL VECCHIO

13 Q. Approximately. I'm sorry. So, my questions were, as I
14 think I asked earlier, are there New Hampshire orders
15 to you which you confer in those dockets?

16 A. (Nurse) It's not a simple answer, but the -- because it
17 spans a number of cases, but you came out of 89-010 and
18 you had a chunk of the -- a quarter of the loop costs
19 that were not specifically allocated. You had a very
20 high -- well, you got allocated toll. You had a very
21 high, in toll, you had a very high access rate that at
22 least covered that. You went through the 89-010
23 litigation and stipulation, and then they came in with
24 a first year 16 cent rate, going down to 8 cents in the

[Witness panel: Oyefusi|Nurse|Pfautz]

1 toll rate. And, those rates had to cover the carrier
2 common line. When you were done, there was no other
3 rate that picked up the quarter of a loop cost that was
4 left over from 89-010. And, as we covered, it couldn't
5 be any of the rates that start with "L", any of the
6 local switching or local transport rates, because those
7 rates were set at incremental cost, and those -- they
8 were set at incremental cost, by definition, there was
9 no contribution there. So, you had the quarter of the
10 loop costs, where were they going, and then you had
11 contribution, which was in the common carrier line rate
12 element.

13 Those are the only, at the end of the
14 day, those are the only two things left that match up.
15 If the one didn't go to the other, then you would have
16 had no way to recover a quarter of your loop costs.
17 And, I'm sure that would have been confiscatory and you
18 would have been in here complaining. Obviously, that
19 common carrier line cost is how you recovered the last
20 quarter of your loop cost left over.

21 Q. And, I apologize for speaking or seeming argumentative,
22 but is your answer to my question that "there is no
23 specific language that you're aware of in these two
24 dockets wherein the Commission stated that "CCL charges

[Witness panel: Oyefusi|Nurse|Pfautz]

1 would be assessed only on calls that traverse the
2 Verizon loop", or words to that effect?
3 A. (Oyefusi) If I may answer? The Commission order did
4 not specifically go over every element in your tariff
5 and suggest how each rate element would apply. You
6 presented a tariff, and that accurately described how
7 each rate element, the local switching, local
8 transport, CCL would apply and conditioned on the rates
9 you're charging. Everybody reviewed that. And, the
10 Commission will issue an order that address specific
11 issues in the case, did not go line by line on every
12 item, approved your tariff as modified or as
13 stipulated, and you filed a compliance filing to that
14 Commission order. So, it is conceivable that you will
15 not find, in every order, that this is how CCL should
16 apply or this is how local switching should apply.
17 But, at the end of the day, the approval that you got
18 in 90-002 approved a tariff that you filed, and that
19 tariff is today probably became Tariff 85. And, the
20 words in that tariff I believe reflected an approval
21 from the Commission, and that is the only thing that we
22 have to rely on when we try to figure out what actually
23 happened in the past. But, if you're looking for
24 specific language in the order about any particular

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[Witness panel: Oyefusi|Nurse|Pfautz]

1 item, it is not there. I will tell you now, it is not
2 there. We did not see anything like that there. But
3 we reach our conclusion based on reading the events
4 that led to the conclusion the Commission reached in
5 90-002.

6 And, if you look at your proposal, okay,
7 in 90-002, the CCL rate element, you started from an
8 MTS rate, which was initially approved in 89-010, and
9 that MTS rate, if you recall, you had actually
10 allocated, based on the Commission's previous order,
11 you have allocated a portion of the loop to that rate,
12 and that development, if you follow the chronology of
13 the development, you will see how the loop costs
14 actually ended up in the CCL rate that you presented
15 and developed for 90-002. So, yes, it is -- reasonable
16 to conclude that the CCL rate that was developed in
17 90-002 was actually based on some loop costs that was
18 allocated to toll in 89-010.

19 MR. DEL VECCHIO: Thank you, Mr.

20 Oyefusi. Mr. Chairman, no further questions.

21 CHAIRMAN GETZ: Redirect? Or, actually,
22 jumping ahead.

23 CMSR. BELOW: I do have some questions.

24 BY CMSR. BELOW

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[Witness panel: Oyefusi|Nurse|Pfautz]

1 Q. In your Exhibit 10 -- well, wait, before we go to that,
2 do you have access to Tariff 85, 6.1, Section 6,
3 Page 1?

4 A. (Nurse) Yes.

5 Q. Section 6.1.2, Service Structure, Subsection (b), could
6 you describe what that says?

7 A. (Nurse) It says "B", and it has three parts: "The rate
8 categories which apply to switched access services are
9 as follows: Local transport (described in
10 Section 6.2.1), local switching (described in Sections
11 6.2.2 and 6.2.3), carrier common line (described in
12 Section 5)."

13 Q. Okay. And, those match the three sections of the
14 diagram that's on the next page, 6.1.2. In Exhibit 10,
15 you presented a situation where, in the first call
16 flow, would you say that you ordered or are provided by
17 Verizon with switched access service that includes
18 charges in all three rate categories?

19 A. (Pfautz) Yes. And, we don't indeed dispute any of
20 those, because all the corresponding network elements
21 are indeed provided to us in Call Flow 1.

22 Q. In Call Flow 7, in that type of situation, where a call
23 starts with a CLEC end-user and ends with a different
24 CLEC end-user, but you're the intrastate toll provider,

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[Witness panel: Oyefusi|Nurse|Pfautz]

1 in that case, are you purchasing services and is
2 Verizon providing them under switched access service?

3 A. (Oyefusi) Under that scenario, under that scenario,
4 Verizon is only providing local transport service,
5 including the tandem. So, local transport includes
6 tandem. So, they are providing some service element
7 under Section 6 of this tariff, and that would be sub
8 6.2.1.B.1, which says local transport. And, the rate
9 categories that Mr. Nurse just raised to you, the
10 category that says "local transport (described in
11 Section 6.2.1)". So, Section 6.2.1 will have the terms
12 and conditions under which we will buy that local
13 transport element.

14 Q. Right. But, as you understand it, you're buying it out
15 of this Tariff 85, --

16 A. (Oyefusi) Yes.

17 Q. -- under 6, switched access service?

18 A. (Pfautz) That's correct.

19 Q. And, as you understand it, you're only -- you're not
20 being billed for at least one of these elements, which
21 is local switching, is that correct?

22 A. (Pfautz) That's correct.

23 A. (Nurse) But no local switching is being provided to us
24 by Verizon. We're being billed two local switchings by

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1 to two CLECs, BayRing on the left and CLEC Number 2 on
2 the right. And, so, they are both providing local
3 switching, and so we are paying both of them the local
4 switching. And, overall, that's sort of the issue is,
5 when you have these transitions and Verizon stops
6 providing local switching and a CLEC provides local
7 switching, since the CLEC cost comes on, we expect the
8 Verizon costs to go off.

9 CMSR. BELOW: Right. I guess that's
10 all.

11 CHAIRMAN GETZ: Mr. Gruber?

12 REDIRECT EXAMINATION

13 BY MR. GRUBER

14 Q. I'd like to follow up on the Commissioner's question
15 just then, with regard to -- the Commissioner was
16 asking you about Call Flow Number 7.

17 A. (Oyefusi) Yes.

18 A. (Pfautz) Yes.

19 Q. If we can all turn to that. And, Mr. Oyefusi, I think
20 it was you that said that "we'll find the rates, terms
21 and conditions for the Verizon tandem and local
22 transport service that we see in the box, we'll find
23 that under Section 6"?

24 A. (Oyefusi) Yes, it will be in, for local transport, will

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[Witness panel: Oyefusi|Nurse|Pfautz]

1 be in Section 6.2.1. That's where the tariff describes
2 the terms and conditions for local transport.

3 Q. And, let me ask you this. Does the -- Do the terms and
4 conditions for local transport provide for charging the
5 carrier common line charge?

6 A. (Oyefusi) No.

7 Q. Is there anything in Section 6 that --

8 A. (Oyefusi) No.

9 Q. -- provides for charging the carrier common line
10 charge?

11 A. (Oyefusi) No. No.

12 Q. And, do you have to purchase, I think we said this, but
13 just to make it clear, and you don't have to purchase
14 the Carrier Common Line Charge in order to purchase
15 Section 6 services, do you?

16 A. (Oyefusi) There is no such restriction in this tariff.
17 You don't have to, according to this tariff, you can
18 purchase local transport as a separate element on a
19 stand-alone basis, without attaching it to anything
20 else.

21 Q. So, there would be no reason to go look at any of the
22 provisions in Section 5, which you're not buying, in
23 order to understand what the terms and conditions are
24 for your Section 6 elements, is that right?

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1 A. (Oyefusi) No.

2 Q. You're agreeing --

3 A. (Oyefusi) There would be no reason to do that.

4 MR. GRUBER: Okay. One more minute.

5 (Short pause.)

6 MR. GRUBER: All right. That's -- Hold
7 on, just one second.

8 (Short pause.)

9 MR. GRUBER: Okay. That's all I have.

10 Thank you.

11 CHAIRMAN GETZ: Okay. Then, the
12 witnesses are excused. Thank you very much, gentlemen.

13 WITNESS PFAUTZ: Thank you.

14 CHAIRMAN GETZ: Is there anything else
15 we should address this afternoon? Yes.

16 MS. GEIGER: Mr. Chairman, just quickly.

17 I think the secretarial letter that we all received
18 indicated that the joint request of AT&T and BayRing
19 concerning the filing of post hearing briefs had been
20 granted by the Commission. And, therefore, just wanted
21 clarification, for purposes of planning tomorrow, that the
22 Commission would not expect any kind of lengthy closing
23 statements on the parts of any parties, and, therefore, we
24 should not be preparing those for you, and instead should

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1 be deferring to whatever is in the written post hearing
2 brief?

3 CHAIRMAN GETZ: That would be my
4 expectation. And, my fervent hope, is there any argument
5 or objection by any of the other parties that there's a
6 pressing need for lengthy closings, given that we will be
7 having a briefing schedule?

8 MR. DEL VECCHIO: No pressing need, Mr.
9 Chairman.

10 CHAIRMAN GETZ: Okay. Then, we will
11 recess the hearing for today and resume tomorrow morning
12 at 9:00 a.m. Thank you.

13 (Hearing adjourned at 4:35 p.m. and the
14 hearing to resume on July 11, 2007,
15 commencing at 9:00 a.m.)

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