

02403

1                   BEFORE THE WASHINGTON UTILITIES AND  
2                   TRANSPORTATION COMMISSION

3 In the Matter of the Continued )  
4 Costing and Pricing of           ) Docket No. UT-003013  
5 Unbundled Network Elements and ) Volume XXI  
6 Transport and Termination.       ) Pages 2403 to 2538  
7 \_\_\_\_\_)

8                   A hearing in the above matter was held on  
9 March 30, 2001, at 9:30 a.m., at 1300 South Evergreen  
10 Park Drive Southwest, Room 206, Olympia, Washington,  
11 before Administrative Law Judge LAWRENCE BERG and  
12 Chairwoman MARILYN SHOWALTER and Commissioner RICHARD  
13 HEMSTAD and DR. DAVID GABEL.

14                   The parties were present as follows:

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18                   THE WASHINGTON UTILITIES AND TRANSPORTATION  
19 COMMISSION, by GREGORY J. TRAUTMAN and MARY TENNYSON,  
20 Assistant Attorneys General, 1400 South Evergreen Park  
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22 Washington, 98504-0128.

23                   QWEST CORPORATION, by LISA ANDERL, Attorney  
24 at Law, 1600 Seventh Avenue, Suite 3206, Seattle,  
25 Washington 98191, and by JOHN M. DEVANEY, Attorney at  
26 Law, Perkins Coie, LLP, 607 Fourteenth Street Northwest,  
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28                   VERIZON NORTHWEST, INC., by JENNIFER L.  
29 MCCLELLAN and MEREDITH B. MILES, Attorneys at Law,  
30 Hunton and Williams, 951 East Byrd Street, Richmond,  
31 Virginia 23219.

32                   Joan E. Kinn, CCR, RPR  
33 Court Reporter

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1 ELECTRIC LIGHTWAVE INC.; ADVANCED TELECOM  
2 GROUP, INC.; AT&T COMMUNICATIONS OF THE PACIFIC  
3 NORTHWEST, INC.; MCLEOD USA TELECOMMUNICATIONS SERVICES  
4 INC.; FOCAL COMMUNICATIONS CORPORATION OF WASHINGTON;  
5 AND XO WASHINGTON, INC.; by MARY E. STEELE, Attorney at  
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13 Street, Suite 5450, Seattle, Washington 98101.

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

2 JUDGE BERG: This is a continued hearing in  
3 Docket Number UT-003013. Today's date is March 30,  
4 2001. This morning we continue with the  
5 cross-examination and testimony of Ms. Kathryn Malone.

6 Ms. Malone, I will just remind you that you  
7 remain subject to the affirmation oath you took  
8 yesterday.

9 THE WITNESS: Thank you.

10 JUDGE BERG: All right, and Ms. Hopfenbeck, I  
11 believe that you were going to ask a few setup questions  
12 in order to pick up where we left off yesterday evening.

13

14 C R O S S - E X A M I N A T I O N

15 BY MS. HOPFENBECK:

16 Q. Good morning, Ms. Malone.

17 A. Good morning.

18 Q. Before we start, I wanted to ask you if you  
19 have before you the documents that we will be discussing  
20 initially, namely Exhibit C-1109?

21 A. Yes, I have that.

22 Q. And also Exhibit 1113 and C-1113?

23 A. Yes, I do.

24 Q. Okay. And as I recall from yesterday, what  
25 we had discussed was the fact that C-1113 reflects the

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1 methodology that was used to develop the minutes of use  
2 reflected on C-1109 attached to Mr. Brotherson's  
3 testimony that you have adopted; is that true?

4 A. That's true.

5 Q. Okay. And you would agree that C-1109 does  
6 not really reflect ISP minutes of use, but rather modem  
7 minutes of use; is that correct?

8 A. That's correct.

9 Q. Okay. Because what the methodology did was  
10 to essentially identify terminating telephone numbers  
11 that carried modem traffic as opposed to non-modem  
12 traffic; is that fair?

13 A. Yes, that's what it does.

14 Q. And it was not able to isolate ISP traffic  
15 from other modem traffic; is that true?

16 A. That's true. It -- what the modem identifier  
17 does is takes the algorithm that has the characteristics  
18 of ISP traffic or modem traffic and then further screens  
19 it to purify, like eliminating fax machines and that  
20 type of thing, and come up with a pure modem traffic  
21 identification.

22 Q. And I just wanted to walk you through that,  
23 the steps that were used to do this. Essentially what  
24 you did is you identified telephone numbers, and then in  
25 order to isolate modem traffic, and in particular



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1 traffic that you wanted to exclude from the reciprocal  
2 compensation obligation, you basically took telephone  
3 numbers and excluded those that didn't fit certain  
4 calling characteristics; is that fair?

5 A. That's correct.

6 Q. And the calling characteristics that you were  
7 attempting to identify here are calling characteristics  
8 that Qwest associates with what it believes is typically  
9 ISP type of traffic; is that right?

10 A. That's true.

11 Q. But it would certainly -- could also  
12 certainly include traffic to local area networks; isn't  
13 that fair?

14 A. That's true, that type of traffic could not  
15 be screened out, although all a CLEC would have to do  
16 would be provide us with the telephone numbers of their  
17 ISPs, which would be in complete confidentiality, and we  
18 could then eliminate and screen out LAN type telephone  
19 numbers to further purify our modem identification  
20 systems.

21 Q. Now does Qwest, I think you said yesterday  
22 that Qwest does not currently -- is not currently  
23 capable of measuring traffic to its ISPs; is that fair?

24 A. No, I didn't say they weren't capable. I  
25 said they don't measure it. They don't have a need to

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1 measure it.

2 Q. Is it Qwest's practice to identify the  
3 business that is being conducted by its customers at the  
4 time that a customer subscribes for service?

5 A. I'm not sure what you mean by that. Can you  
6 expand a little more?

7 Q. Well, I guess the question is is when a  
8 customer subscribes for service, does Qwest ask the  
9 customer whether they are an Internet service provider?

10 A. I wouldn't know that. I'm sure that they  
11 have an indication by the type of equipment they buy  
12 from Qwest.

13 Q. And I believe that Qwest conducted some  
14 discovery of WorldCom in this case. Did you review  
15 WorldCom's responses?

16 A. Yes, I did.

17 Q. And you would agree that WorldCom responded  
18 that it does not identify telephone numbers as being ISP  
19 telephone numbers; is that right?

20 A. That's correct.

21 Q. Now as I understand it, the methodology that  
22 you have reflected on Exhibit C-1109 and -- or the,  
23 excuse me. The methodology that's reflected at C-1113  
24 is also the methodology that Qwest is proposing to use  
25 to actually on a going forward basis use to accomplish

02413

1 its proposal in this case, that is accomplish billing of  
2 ISP traffic on a bill and keep basis; is that right?

3 A. That's true, but I kind of don't like the  
4 term so much bill and keep. Bill and keep essentially  
5 says that it's at a zero cost.

6 Q. That was the term that was used by  
7 Mr. Brotherson, right?

8 A. Yes.

9 Q. Okay.

10 A. But I mean I think if you don't mind, I would  
11 like to just expand a little bit on bill and keep. Bill  
12 and keep would maybe send the signal out that there are  
13 no costs involved, and I think we all recognize that  
14 there are costs associated with this type of traffic,  
15 but because of the access exemption on the ISPs, neither  
16 the CLEC nor Qwest has the availability of recovering  
17 its costs.

18 Q. At least from the perspective of this traffic  
19 being interstate; is that right?

20 A. That's true.

21 Q. Okay. Now in terms of using this methodology  
22 to compute the level of minutes that would be excluded,  
23 first of all I will ask you, yesterday when you were  
24 referring to the fact that this methodology was a  
25 conservative methodology, is it true that what you meant

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1 was that it was conservative to the extent that it  
2 tended to underinclude modem traffic instead of  
3 overincluding non-modem traffic?

4 A. That's true.

5 Q. Okay.

6 A. In --

7 Q. So you weren't trying to say that it was  
8 conservative in the sense that you were sure that it  
9 underincluded all ISP traffic; is that right? You  
10 really can't make that statement, right?

11 A. Let me clarify again. Now you said my  
12 statement was that it underincluded modem traffic?

13 Q. Yes.

14 A. And that's true, and the reason for that  
15 being --

16 Q. Excuse me, Ms. Malone, I didn't ask you for  
17 the reason. Your counsel can ask you to explain that if  
18 he thinks it's necessary.

19 MR. DEVANEY: Your Honor, I think she was  
20 just finishing an answer that was responsive, so I would  
21 ask that she have an opportunity to finish.

22 JUDGE BERG: Ms. Hopfenbeck, I think we have  
23 a consistent practice here at the Commission where if an  
24 answer calls for yes or no but requires an explanation,  
25 once the yes or no is given, we do allow an explanation

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1 be given up to a point. If we think the witness is, in  
2 fact, taking advantage to interject extraneous  
3 information into the response, we will look to limit  
4 that kind of a response. But it would be a lot more --

5 MS. HOPFENBECK: This seemed to be a pretty  
6 straightforward thing, and so that's why I cut her off.  
7 But that's fine, she can --

8 JUDGE BERG: It would be a lot more efficient  
9 than having this come back up on redirect, so long as  
10 there's a nexus between the additional information.

11 MS. HOPFENBECK: Sure.

12 JUDGE BERG: Sure.

13 THE WITNESS: And I'm sorry, now I have  
14 completely lost my train of thought.

15 JUDGE BERG: Can the reporter get the train  
16 back on track.

17 (Record read as requested.)

18 A. The reason for that being is because it could  
19 actually be modem traffic, but because of the call  
20 characteristics, it might not have fit into that  
21 pattern, so it would be dropped although it is actually  
22 modem traffic.

23 BY MS. HOPFENBECK:

24 Q. Now I was going to talk to you a little bit  
25 about how this methodology that's reflected in C-1113 is

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1 a methodology that you're proposing to use to figure out  
2 what Qwest owes to the CLECs and what the CLECs owe to  
3 Qwest; is that right?

4 A. No, this is used primarily for bill  
5 validation purposes. The CLEC would submit a bill to  
6 Qwest, and then Qwest would validate the bill using this  
7 and extrapolating anything that they believed to be ISP  
8 traffic. Would then give the CLEC, you know, the  
9 opportunity to provide supporting documentation to the  
10 differ if they were not in agreement with what we were  
11 subtracting as being ISP traffic.

12 Q. Now the data request that the joint  
13 intervenors made to Qwest that's reflected at 1113 asked  
14 Qwest to provide the methodology Qwest proposes to use  
15 to identify traffic to be excluded from reciprocal  
16 compensation payments and to provide all supporting  
17 documentation. The only thing that was provided was  
18 C-1113. Is there something else that reflects the  
19 methodology Qwest proposes to use to identify traffic to  
20 be excluded from reciprocal comp?

21 A. There's nothing that I'm aware of.

22 Q. Okay. Based on your last answer, I gather  
23 you are expecting that the CLECs would have to figure  
24 out a way to measure the traffic that is ISP traffic as  
25 opposed to other traffic; is that right?

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1           A.     No, I don't think a CLEC really needs to  
2 measure the traffic. I think you need to feel  
3 comfortable with what you're billing us, and we need to  
4 validate what's being billed. I don't think anybody is  
5 willing to just accept a bill and pay it not knowing  
6 what's included in that bill, and that's why there could  
7 be some discussion back and forth between the CLEC and  
8 Qwest as to what should or should not be included in the  
9 bill. But it's not our intention that the CLEC would  
10 need to measure their traffic.

11          Q.     In order to come up with a bill that would  
12 isolate -- that would be limited to traffic that's  
13 non-ISP traffic, I assume the CLEC is going to have to  
14 undertake something in order to try and isolate that  
15 traffic; is that fair?

16          A.     And I guess it would just be up to the  
17 individual CLEC. We feel very confident in this  
18 proposal that we have, and if the CLEC would want to  
19 initiate some type of a billing system, that would  
20 certainly be their choice.

21          Q.     Maybe I ought to take a step back. So Qwest  
22 does propose this methodology as one means of  
23 identifying that traffic, correct, for purposes of  
24 determining the billing that goes back and forth between  
25 the parties?

02418

1 A. That's correct.

2 Q. Okay, I had misunderstood an earlier answer.

3 All right, that's what I wanted to talk to you about is  
4 how we would use this methodology on a going forward  
5 basis. Now this methodology will require Qwest to do a  
6 study to identify numbers as modem numbers on sort of a  
7 monthly basis; is that right?

8 A. That's exactly right. And if you will refer  
9 back to the C-1109 exhibit, that's what this depicts on  
10 this exhibit. These are the monthly results of the  
11 process identified in C-1113.

12 Q. So each month could potentially include a  
13 different group of telephone numbers that are identified  
14 as appropriate numbers for exclusion from reciprocal  
15 compensation; is that right?

16 A. Exactly, because you're always going to have  
17 disconnects and new connects, so it does have to be run  
18 monthly.

19 Q. And this would be run monthly on a per CLEC  
20 basis?

21 A. That's correct.

22 Q. Okay. Now this study refers to an extensive  
23 effort taken to correctly classify these as modem or not  
24 modem, so does this require an extensive effort on a  
25 monthly basis?



02419

1 A. I am not sure how you want to capture  
2 extensive.

3 Q. Okay. I would like to now turn to your  
4 testimony at page 16. Oh, excuse me, I should identify  
5 it. It's Exhibit 1106, and that's the testimony that's  
6 the direct testimony of Larry Brotherson that you have  
7 adopted.

8 A. Yes, I have that.

9 Q. Beginning on line 17 at that testimony, you  
10 discuss how requiring payment of reciprocal compensation  
11 on ISP traffic impacts basic residential rates; do you  
12 see that testimony?

13 A. Yes, I do.

14 Q. That's what I would like to talk to you  
15 about. First of all --

16 MR. DEVANEY: I'm sorry, what page are you  
17 on?

18 MS. HOPFENBECK: Page 16.

19 MR. DEVANEY: Thank you.

20 BY MS. HOPFENBECK:

21 Q. As I understand this testimony, you have  
22 compared your monthly reciprocal compensation cost for  
23 assuming one hour of Internet usage per day to the basic  
24 residential rate; is that right?

25 A. That's correct.

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1 Q. Now when you were attempting to determine a  
2 cost as a -- I will just ask you this independently.

3 Has Qwest done any kind of a study to  
4 determine what percentage of the calling numbers that it  
5 has identified as calling numbers to ISPs are customers  
6 that have DSL service?

7 A. Not that I'm aware of.

8 Q. And the traffic that we're going to be  
9 excluding here is traffic of Qwest customers that  
10 terminates to a customer of the CLEC, correct?

11 A. That's correct.

12 Q. And if Qwest is providing DSL service to any  
13 of those customers, Qwest is receiving revenues  
14 associated with its DSL service in addition to the  
15 residential rates; is that right?

16 A. That's correct, but I don't believe we pay  
17 recip comp on DSL. That's why a separate study hasn't  
18 been done. This is for the purpose of compensating for  
19 local traffic that we need to identify the exclusion of  
20 modem traffic.

21 Q. Well, it would be true that Qwest, a Qwest  
22 residential customer that places -- is it your -- what  
23 you're trying to say is that you don't believe that a  
24 Qwest residential customer who has DSL service and uses  
25 that DSL service to place a call that terminates to an

02421

1 ISP that is a CLEC customer, you don't believe that  
2 Qwest pays for transport and termination associated with  
3 that call?

4 A. No, that's -- I'm sorry, I do not believe  
5 that they pay recip comp for that type of traffic.

6 Q. Is there anybody -- I mean I guess I would  
7 make a record request at this point to have -- because  
8 this witness has given testimony that I don't think  
9 she's certain of. She said she didn't believe she did,  
10 but I mean do you know for a fact?

11 A. I'm not absolutely certain.

12 MS. HOPFENBECK: I would like to make a  
13 record request at this point for confirmation yes or no  
14 on the answer to that question.

15 MR. DEVANEY: Your Honor, I will confess I'm  
16 not entirely familiar with the procedure of record  
17 requests in this forum, but I would say in my experience  
18 that this is the type of information and request that  
19 one would ask in discovery, and so I do have that  
20 concern. That's something that could have been asked  
21 for previously.

22 JUDGE BERG: This is also the type of  
23 information that I think parties could reasonably expect  
24 an expert to respond to, and I believe that it's  
25 appropriate, and we will approve the record request.

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1 But I would like to have the question clearly stated so  
2 that I can make a note of it.

3 MS. HOPFENBECK: Does Qwest pay a CLEC for  
4 transport and termination for calls originated by  
5 customers, by its customers that subscribe to its DSL  
6 service that terminate to a customer at the CLEC's that  
7 is an ISP customer, for example.

8 JUDGE BERG: So you're looking for --

9 MS. HOPFENBECK: And I will give you a  
10 hypothetical example of such a call would be that Qwest  
11 DSL -- I know Qwest DSL service is provided, and there  
12 are a limited number of ISPs, and I have no idea whether  
13 all of those ISPs that have arrangements with Qwest DSL  
14 service are Qwest customers. But I do know that  
15 customers can subscribe to Qwest DSL and Qwest.net, what  
16 was U S West.net, and still have AOL, for example, or  
17 another Internet service provider that they get to that  
18 may be a customer of the CLEC, and that's the question  
19 is whether Qwest pays reciprocal compensation in that  
20 kind of an example.

21 JUDGE BERG: All right, and I will let  
22 counsel consult with its other technical experts during  
23 the course of the proceeding, and if it's necessary to  
24 further clarify the records request, we will handle that  
25 later. And we will start the record request with a

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1 fresh numerical designation. This will be Record  
2 Request 101 in this proceeding.

3 MS. HOPFENBECK: Thank you.

4 JUDGE BERG: And I will also leave it to  
5 counsel to discuss off the record when that information  
6 can be made available and report back to me.

7 BY MS. HOPFENBECK:

8 Q. Now, Ms. Malone, you would agree that if we  
9 were to roll back the clock and assume for a moment that  
10 the Telecommunications Act of 1996 and the state  
11 statutes that opened the markets to competition had  
12 never been passed so that Qwest retained its monopoly,  
13 that the ISP -- but we assume that all else is equal,  
14 that Internet traffic is growing as it is now, that the  
15 ISP customers that are currently being served by the  
16 CLECs would have been served by Qwest; do you agree?

17 A. That's true.

18 Q. And in that event, Qwest would incur costs,  
19 if Qwest were originating the traffic because its  
20 customers were originating traffic to those ISPs and  
21 then carrying the traffic to those ISPs, Qwest would  
22 incur transport and termination associated with those  
23 calls; is that right?

24 A. That's true.

25 Q. Now the fact that the CLECs serve those ISP

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1 customers means that Qwest avoids the cost of transport  
2 and termination of those calls; isn't that right?

3 A. I can't agree with that in total. There's  
4 kind of two parts to the equation. If it's an  
5 intraoffice call, no costs are avoided. The call is  
6 still within the local calling area, and Qwest still has  
7 the same type of calls. If it's an interoffice call,  
8 which is about 67% of our traffic, then there are some  
9 casts that are avoided. We would avoid the interoffice  
10 facility in the tandem office, but we pick up additional  
11 costs that we have to pay as a result of the CLEC  
12 providing that, and that would be an end office  
13 switching charge, a tandem charge, an entrance facility,  
14 anything that would -- any interoffice facility  
15 associated with the tandem. And then in some instances,  
16 we could even have stranded investment in our PRI that  
17 we had sold to the ISP originally. So to just say that  
18 we avoid costs, you need the whole equation to realize  
19 that there's very little cost avoided, and we do incur  
20 additional costs that we can't recover.

21 Q. Well, I would like to talk to you about some  
22 of the things that you mentioned because I, you know, I  
23 don't want to -- I want to understand to what extent  
24 that you incur these additional costs, and I think it's  
25 important to understand that. First of all, let's just

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1 break it down a little bit. First of all, you referred  
2 to an intraoffice call, and that would be a situation  
3 where the ISP was located in the same serving wire  
4 center as the customer; is that right?

5 A. That would only be if the customer is calling  
6 the ISP's like business office that it would truly be a  
7 local call. Those are what we would refer to as an  
8 intraoffice call. When they're calling the ISP for the  
9 purpose of accessing Internet, that then becomes an  
10 interoffice call, because it is no longer remains within  
11 our local calling area.

12 Q. Okay. And I think in this case somewhere in  
13 the testimony, you indicated that the call of a customer  
14 to the ISP's business office, assuming the business  
15 office is being served as a customer of the CLEC, would  
16 appropriately be recovered as part of reciprocal  
17 compensation, because that's a local call, correct?

18 A. That's correct.

19 Q. Okay. What I would like to talk about is the  
20 cost that you incur for the calls from Qwest customers  
21 to ISPs acting as ISPs to access the Internet.

22 A. Okay.

23 Q. And I think you just testified that all of  
24 those calls would be interoffice calls; is that right?

25 A. That's correct.

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1 Q. And if Qwest was serving that ISP, Qwest  
2 would transport the call from the serving wire center,  
3 the end user serving wire center, to the wire center  
4 that serves the ISP; is that right?

5 A. That's correct.

6 Q. And then Qwest would switch that call in  
7 order to carry it to the ISP's point of presence, right?

8 A. Yeah, I'm not sure if switching would be  
9 required, but let's say yes, switching is required.

10 Q. So that transport and termination function  
11 would be handled by Qwest?

12 A. That's correct, those are the costs, like I  
13 said, the interoffice facility. To get from the Qwest  
14 wire center to the other location is the interoffice  
15 facility that we would avoid and the end office  
16 termination that we would avoid. Those are the costs  
17 that would be avoided.

18 Q. So you avoid those costs, and instead you pay  
19 the CLEC for transporting and terminating that call,  
20 correct?

21 A. If we would be required to pay for ISP  
22 traffic, that's correct. We would have to pick up their  
23 entrance facility, their tandem switching, their end  
24 office switching, and like I said, any other interoffice  
25 that might be associated with getting to that tandem.



02427

1 Q. Now just so the record is clear, when you say  
2 we're going to have to pick up that end office, that  
3 entrance facility, essentially what you're referring to  
4 is the fact that the entrance facility, which is the  
5 facility that runs between the CLEC's wire center or  
6 central office and the closest Qwest --

7 A. Serving wires.

8 Q. -- serving wire center, that facility,  
9 essentially the carriers pay for that facility in  
10 proportion to the traffic that runs back and forth on  
11 that facility; is that right?

12 A. That's correct, but again --

13 Q. Is that --

14 A. I'm sorry, again, if you're compensating for  
15 ISP over that facility, if it's paid on a usage  
16 sensitive basis, there would probably be 90% of the cost  
17 that Qwest would incur because of the one way flow of  
18 the traffic.

19 Q. Okay.

20 A. Associated with ISPs.

21 Q. But I want to make sure that we don't confuse  
22 things, because that payment is part of interconnection,  
23 isn't it, not reciprocal? That's really not considered  
24 part of reciprocal compensation, but rather a  
25 methodology that's used to determine what carriers pay

02428

1 for interconnection; is that right?

2 A. Yeah, but I still think it's associated with  
3 reciprocal compensation. It is an element that falls  
4 under recip comp.

5 Q. Okay. Well, I know it's Qwest's position, I  
6 just want to get clear about what we're talking about  
7 here.

8 A. You want to keep it to just the transport and  
9 termination?

10 Q. Right.

11 A. Okay.

12 Q. I mean that's really what's addressed in your  
13 testimony, isn't it?

14 A. That's true.

15 Q. Okay. And that's what the proposals that  
16 you're talking about in this proceeding relate to; is  
17 that right?

18 A. Yes, we're primarily talking about the call  
19 termination elements.

20 Q. And it's I understand you're dealing with the  
21 interconnection aspect of that in the 003022 docket; is  
22 that right?

23 A. That's correct.

24 Q. Okay. So I think with that clarification, I  
25 will move on to another area and talk to you about

02429

1 tandem switching for a moment. You are familiar with  
2 the FCC's Rule 51.711 discussing the circumstances under  
3 which it's appropriate for a CLEC to pay the LEC's  
4 tandem interconnection rate?

5 A. Yes, I am.

6 Q. Okay. Now when Qwest -- when traffic is  
7 exchanged at the Qwest tandem, Qwest charges both an end  
8 office and a tandem switching rate; is that right?

9 A. If their tandem was accessed, yes, they would  
10 charge both tandem switching and end office elements.

11 Q. And that's a function of the way Qwest's  
12 network has been constructed; would you agree?

13 A. Correct.

14 Q. So that a call that goes through the tandem  
15 on Qwest's network because of the hub and spoke  
16 configuration always also transits an end office; isn't  
17 that right?

18 A. That's correct, this has been in place too  
19 for many years. The network hasn't changed with the  
20 inception of the Telecommunications Act. This has  
21 always been the network configuration.

22 Q. Right. But the new networks that are being  
23 built by the CLECs are networks that employ different  
24 architectures than the hub and spoke, or hub and spoke  
25 is probably not right, than the tree branch architecture

02430

1 that Qwest employs; would that be fair?

2 A. That's fair, they probably don't have near as  
3 many end offices. They might just have their switch  
4 with one or two major customers behind that switch.

5 Q. Now it's true that there are limitations on  
6 when a CLEC is entitled to recover from Qwest the  
7 incumbent LEC's tandem interconnection rate for  
8 switching calls at its central office, right?

9 A. Right, and that's the rule that you referred  
10 to earlier.

11 Q. And that's, I mean it has -- that CLEC switch  
12 has to serve a geographic area that's comparable to the  
13 area served by the incumbent LEC's tandem switch; is  
14 that right?

15 A. That's correct.

16 Q. Okay. Now would you agree that in that  
17 particular hypothetical situation where a CLEC switch is  
18 serving a geographic area comparable to Qwest's switch,  
19 that the transmission -- and only has one central office  
20 as opposed to a tandem and a number of end offices, you  
21 would agree that that CLEC has a -- has much longer  
22 loops essentially than Qwest does in carrying its calls  
23 to its end use customers; is that fair?

24 A. That could be true.

25 MS. HOPFENBECK: Okay, I don't think I have

02431

1 anything else for you, but just let me check my notes  
2 first.

3 I think that's it, I'm finished, thank you.

4 JUDGE BERG: Thank you.

5 Ms. Steele.

6

7 C R O S S - E X A M I N A T I O N

8 BY MS. STEELE:

9 Q. Good morning, Ms. Malone.

10 A. Good morning.

11 Q. You will be happy to know that Ms. Hopfenbeck  
12 covered much of the ground I intended to cover, so we  
13 will be short. I have a few questions for you, and then  
14 I would like you to identify some of the exhibits that I  
15 think are in front of you.

16 A. Okay.

17 Q. First of all, is it Qwest's contention in  
18 this proceeding that ISPs are telecommunications  
19 carriers that are subject to regulation by the FCC or by  
20 this Commission?

21 A. ISPs fall more under the enhanced service  
22 provider, and that's why the FCC had included them in  
23 the access exemptions.

24 Q. Now I'm familiar with U S West.net, is there  
25 now a Qwest.net?

02432

1 A. Yes, there is.

2 Q. So Qwest itself provides ISP services; is  
3 that correct?

4 A. That's correct.

5 Q. Is it Qwest's contention that when it acts as  
6 an ISP that it is providing interstate  
7 telecommunications services?

8 A. No, Qwest does not actually carry the ISP  
9 itself. They have another carrier that handles that  
10 function for them.

11 Q. Now do you have in front of you Exhibit 1112?

12 A. Yes, I do.

13 Q. And this is a response by Qwest to a data  
14 request by the joint intervenors; is that correct?

15 A. That's correct.

16 Q. Is there anything in this data request that  
17 is inaccurate?

18 A. Not to my knowledge, no.

19 Q. Then I would like you to look at Exhibit  
20 1114. This is also a data request response by Qwest to  
21 a joint intervenor data request; is that correct?

22 A. That's correct.

23 Q. And is there anything inaccurate about this  
24 response?

25 A. Not to my knowledge, there isn't.

02433

1 Q. And I have the same questions for Exhibit  
2 1115, this is a Qwest response to a data request by XO  
3 Washington, Inc.; is that correct?

4 A. That's correct.

5 Q. Is there anything inaccurate about this  
6 response?

7 A. Not to my knowledge.

8 Q. And on Exhibit 1116, this is a response by  
9 Qwest to a data request from XO Washington, Inc.; is  
10 that correct?

11 A. That's correct.

12 Q. And is this also accurate?

13 A. Yes, to my knowledge, it is.

14 MS. STEELE: I would like to request the  
15 admission of data requests, I'm sorry, Exhibits 1112,  
16 1114, 1115, and 1116.

17 MR. DEVANEY: No objection.

18 JUDGE BERG: So admitted.

19 MS. STEELE: That's all I have for you, thank  
20 you.

21 JUDGE BERG: Mr. Trautman.

22 MR. TRAUTMAN: Staff has no questions.

23 JUDGE BERG: Dr. Gabel.

24

25

E X A M I N A T I O N

02434

1 BY DR. GABEL:

2 Q. Good morning, Ms. Malone. I would like to  
3 begin by, for my own edification, try to have a better  
4 understanding of the dialogue that you just had with  
5 Ms. Hopfenbeck regarding entrance facilities, and are  
6 entrance facilities considered to be reciprocal -- part  
7 of reciprocal compensation or not, okay?

8 A. Okay.

9 Q. First, do you have before you a copy of the  
10 First Report and Order of the FCC in Docket 96-98?

11 A. Yes, I do.

12 Q. All right. May I ask you to turn to  
13 Paragraph 1039 on page 498.

14 A. Yes, I have that.

15 Q. All right. The second sentence of that  
16 paragraph reads:

17 We define transport for purposes of  
18 Section 251(b)(5) as the transmission of  
19 terminating traffic that is subject to  
20 Section 251(b)(5) from the  
21 interconnection point between the two  
22 carriers to the terminating carrier's  
23 end office switch that directly serves  
24 the called party or equivalent facility  
25 provided by a non-incumbent carrier.



02435

1                   So my question is, could you, given the FCC's  
2 definition of transport, could you explain why entrance  
3 facilities would or would not be considered part of  
4 reciprocal compensation?

5           A.       And I guess maybe it's just broadly for  
6 comparison when Ms. Hopfenbeck asked me about what costs  
7 would we avoid, and that's why I include everything that  
8 we would pick up additionally, so that you would have  
9 the true picture of everything that was involved. To  
10 me, when I think of recip comp, the only thing I really  
11 think of is call termination, which is transport and  
12 termination.

13       Q.       Okay.

14       A.       So you're kind of comparing apples and  
15 oranges. We're picking up additional costs, that being  
16 reciprocal compensation elements as well as some  
17 entrance facility.

18       Q.       Reciprocal compensation, does it apply to  
19 both the transport and termination of traffic?

20       A.       Yes, it does.

21       Q.       Okay.

22       A.       Of local traffic.

23       Q.       Of local traffic. And why wouldn't the  
24 entrance facility or is the entrance facility considered  
25 a portion of the transport of local traffic?

02436

1           A.     Not really.  It has a separate title called  
2 entrance facility.  But without the entrance facility  
3 piece, you don't really have the connection to the CLEC.  
4 And they do pay for that, like I said, based on usage  
5 sensitive.  That's how it's paid for.  So you actually  
6 need that piece in order to complete the termination of  
7 a local call.

8           Q.     So --

9           A.     That's how they interconnect with us.  If  
10 they didn't have that piece, they would not have an  
11 interconnection to us.

12          Q.     When the interconnection occurs, when a call  
13 originates on the Qwest network and it terminates on the  
14 CLEC's network, a transport rate is paid.  I'm having a  
15 hard time understanding when we're talking about  
16 reciprocal compensation for ISP traffic, what rate  
17 element is included in transport for termination of ISP  
18 traffic?

19          A.     If the -- there would be the tandem switching  
20 element, and a transport element.  So you wouldn't  
21 actually in the payment of reciprocal compensation  
22 include the entrance facility.  That payment is in a  
23 separate pot, if you will.

24          Q.     So the transport might be something like  
25 shared transport or --

02437

1           A.     Right.  
2           Q.     -- for direct?  
3           A.     There's also a direct trunk transport.  
4           Q.     Okay.  
5           A.     Where the tandem facility is not used.  
6           Q.     Okay. All right, now I would like to ask you  
7 to turn to Exhibit 1110, which is the rebuttal testimony  
8 of Larry Brotherson, page 5.  
9           A.     Yes, I have that.  
10          Q.     Lines 6 through 14.  
11          A.     Yes.  
12          Q.     All right. Here you're responding to the  
13 question:  
14                 If the WUTC should determine that  
15                 reciprocal compensation is appropriate  
16                 for Internet bound traffic, how should  
17                 the reciprocal compensation rate be  
18                 calculated.  
19                 And I would like to have a better  
20 understanding of what Qwest's proposal is in this  
21 proceeding about what should be the new rate. First, I  
22 guess, are you proposing any new rate in this  
23 proceeding?  
24          A.     No, we're not.  
25          Q.     And --

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1           A.     We believe that the rate that is in effect  
2 for reciprocal compensation is the appropriate rate for  
3 compensating local traffic.

4           Q.     And so if the commissioners do not find that  
5 -- well, let me start again.

6                     If the commissioners find that reciprocal  
7 compensation should be paid for Internet bound traffic,  
8 is Qwest proposing any change in the level of  
9 compensation?

10          A.     Not that I am aware of at this time. Not in  
11 this proceeding, they are not.

12          Q.     In another proceeding?

13          A.     Not that I am aware of.

14          Q.     Okay.

15          A.     And that's due to our belief that it's  
16 interstate traffic and not local, and doesn't fall under  
17 the guise of reciprocal compensation.

18          Q.     So at lines 10 to 11 where you're talking  
19 about whether the reciprocal compensation rate -- that  
20 you're in agreement with Mr. Blackman that the ISP  
21 reciprocal compensation rate should be based upon the  
22 cost of the CLEC or ILEC to provide the trunk to trunk  
23 switching to the ISP. Qwest hasn't presented in this  
24 proceeding any proposal regarding what is the cost  
25 associated with trunk to trunk switching?

02439

1           A.     No, they have not.  It's not that we don't  
2 agree with Dr. Blackman's principle.  He does have a  
3 sound principle and foundation.  It just goes back to  
4 our belief that it's not appropriate because of the  
5 nature of the traffic being interstate.

6           Q.     And am I correct, I'm trying to think of  
7 where I saw that, in your direct testimony, do you  
8 recall doing a numerical example about the amount of  
9 compensation that Qwest pays a CLEC, and in that  
10 example, you used data from the MFS arbitration  
11 decision?

12          A.     Yes, when we're coming up with the  
13 terminating rate?

14          Q.     Yes.

15          A.     Yes, I do.

16          Q.     All right.  Why when you did that example did  
17 you use a rate established in the MFS arbitration as  
18 opposed to the rates that were established in the last  
19 generic cost docket?

20          A.     I would assume that it was the same rate.  I  
21 can't say for a fact.  I don't know whether it is the  
22 same rate or not.

23          Q.     Okay.  Lastly, do you recall in your direct  
24 testimony where you discussed a customer using net to  
25 phone to make a call from Seattle to Chicago?

02440

1 A. Yes.

2 Q. And you used that as an example to highlight  
3 how the Internet could be used to place a voice call but  
4 you wouldn't receive any access charges?

5 A. That's correct.

6 Q. All right. Is there any FCC order that says  
7 that when a business uses Internet for voice calls that  
8 at that point it is appropriate to charge that company  
9 access fees?

10 A. You're asking me is there an FCC rule, I  
11 don't believe a rule has been defined for that type of a  
12 service.

13 DR. GABEL: Okay, all right, thank you, I  
14 have no further questions.

15

16 E X A M I N A T I O N

17 BY JUDGE BERG:

18 Q. Ms. Malone, I have one question. You  
19 discussed with Ms. Hopfenbeck Exhibit C-1109, and this  
20 is the study based on Washington data for five months,  
21 January through May of 2000. And my question is whether  
22 the population of numbers identified as carrying ISP  
23 traffic changed from month to month. I understand that  
24 there was a purification done to determine which  
25 numbers, telephone numbers, in fact were carrying ISP

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1 bound traffic, and I can see how the volume of traffic  
2 varies from month to month. But I'm curious whether the  
3 actual number of telephone numbers identified as  
4 carrying ISP traffic varies from month to month in this  
5 study.

6 A. I don't have that information available.

7 JUDGE BERG: All right, I would like to make  
8 a record request, actually this will be a Bench request,  
9 and I believe this would be Bench Request 30. And that  
10 would be for those separate months of January, February,  
11 March, and April, to identify the number of telephone  
12 numbers that were identified as carrying ISP bound  
13 traffic under the parameters of Qwest's study or  
14 methodology.

15 MS. HOPFENBECK: Your Honor, are you also  
16 seeking, it sounded from your question like you were  
17 also interested -- the way you phrased it initially was  
18 that you wanted to know whether the population of  
19 numbers changed from month to month. It seems possible  
20 that the same number of telephone numbers might be  
21 identified by happenstance, but they would be different  
22 telephone numbers than were in the study the previous  
23 month, and I didn't know if you wanted to capture that  
24 information as well.

25 JUDGE BERG: No, I'm just looking for whether

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1 the gross population, but I would like to see the  
2 numbers as they exist, not necessarily the telephone  
3 number by telephone number, but the population number  
4 for each of the months that the data analysis is  
5 performed.

6

7

E X A M I N A T I O N

8 BY CHAIRWOMAN SHOWALTER:

9 Q. I would like to ask you just to go back on  
10 this page 5 of Exhibit 1110, and I'm focused on the same  
11 lines 10 to 14. They're just a bit cryptic to me. I  
12 understand that you disagree with Dr. Blackman's basic  
13 premise that he begins from. But then this question is,  
14 if the UTC decides to order reciprocal compensation,  
15 then how should it be calculated. And as I understand  
16 Dr. Blackman's proposal, it's that it should be the  
17 avoided cost of the ILEC. Is that generally your  
18 understanding as well?

19 A. Well, Dr. Blackman talked somewhat about call  
20 duration and setup and peak and off peak and the  
21 switching costs, and I don't know specifically if I can  
22 say what his total plan was, but it is trying to  
23 identify the costs associated with the longer duration  
24 times that you would have for ISP traffic. And we do  
25 agree with the principle, where he's coming from in



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1 trying to separate the two. Our only contention, like  
2 you said, is that we believe it's interstate traffic.

3 Q. Right, and I understand that point  
4 completely. I just want to -- well, really what I'm  
5 trying to understand is line 11. Are you agreeing or  
6 disagreeing with Dr. Blackman at this point of the  
7 decision tree? And if you're distinguishing your  
8 position from Dr. Blackman, how is it that you are? Or  
9 is your only difference with him back up at the basic  
10 point of to order recip comp or not?

11 A. I would think that's our basic difference.

12 Q. Okay.

13 A. I do believe that Dr. Blackman had some good  
14 suggestions of how a lower rate should be calculated if  
15 that's what's ordered by this Commission.

16 CHAIRWOMAN SHOWALTER: All right, thank you.

17

18 E X A M I N A T I O N

19 BY COMMISSIONER HEMSTAD:

20 Q. I want to get clear, well, first, would you  
21 succinctly describe with regard to this issue we have  
22 been discussing here what solution Qwest desires?

23 A. Well, I guess I would have to give you a  
24 number one and a number two.

25 Q. All right.

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1           A.     Number one would be that because of the  
2 nature of the traffic, which we firmly believe and which  
3 the FCC has stated that it's interstate traffic, we  
4 don't believe that local reciprocal compensation is  
5 appropriate. We do acknowledge the fact that there are  
6 costs associated with delivering this traffic. Because  
7 of the access charge exemption, neither Qwest nor the  
8 CLEC can recover the cost it incurs, and we don't  
9 believe it's appropriate to order a compensation rate  
10 that allows the CLEC to recover that cost. There are  
11 costs associated, and neither party should be recovering  
12 those costs.

13                     And then my second --

14           Q.     And that in translation is the bill and keep  
15 solution?

16           A.     That's true, because, you know, and like I  
17 tried to differentiate earlier, bill and keep would give  
18 you a sense that, you know, there are no costs, that  
19 it's a zero and everything is in balance, and that's not  
20 a true statement. There are costs associated with  
21 delivering this traffic, and if it wasn't for the access  
22 charge exemption, the parties could recover those costs  
23 through access charges.

24                     Then if this Commission were to order that it  
25 is appropriate to pay local reciprocal compensation for

02445

1 this type of traffic, then we would be in agreement with  
2 Dr. Blackman, that it should be at a lower rate, because  
3 of the call setup and duration and the different things  
4 that he expounded on in his testimony are appropriate.

5 Q. Okay. Focusing on the bill and keep  
6 solution, your preferred remedy here, if under the  
7 current regime the CLECs are, from your perspective,  
8 obtaining substantial revenues, if that were to be  
9 ended, that they would now be incurring presumptively  
10 substantial costs that they will have to recover  
11 somewhere, what will be the consequence? How will the  
12 CLECs respond if we were to order bill and keep? What  
13 is your sense of how they will respond?

14 A. Well, I'm sure they wouldn't be in favor of  
15 it, and if --

16 Q. No, no, I mean if we ordered it.

17 A. Right. If you ordered bill and keep, how  
18 would they respond? When it's been ordered in Colorado,  
19 it's something that the Commission ordered, and they  
20 have to accept the fact that local reciprocal  
21 compensation wasn't appropriate for this type of  
22 traffic.

23 Q. I understand, but what I'm trying to get to  
24 is what will be the end game here? They will have to  
25 recover those costs somewhere, so what will they do?

02446

1           A.     A form of recovery that they could use would  
2 be through the rate that they charge for their PRIs.  
3 Maybe it would put the burdon on them to develop a cost  
4 study to actually show what their costs are since the  
5 costs would be lower for the portion that they handle in  
6 delivering this call to the ISP.

7           Q.     And when you say PRI?

8           A.     That's the primary rate interface that is  
9 purchased between the ISP and the CLEC for providing  
10 service.

11          Q.     So they would increase their rates to the  
12 ISPs?

13          A.     Yes, they could through that. I mean they  
14 would have that option of doing it.

15                 COMMISSIONER HEMSTAD: That's all I have.

16                 JUDGE BERG: Any other questions?

17                 Ms. Hopfenbeck.

18                 MS. HOPFENBECK: I have one follow up to  
19 Commissioner Hemstad's questions.

20

21                 R E C R O S S - E X A M I N A T I O N

22 BY MS. HOPFENBECK:

23          Q.     Has Qwest adjusted the rates that it charges  
24 its ISP customers?

25          A.     Not that I am aware of.

02447

1 Q. It charges its ISP customers the same rate  
2 for the facility they purchase or the service that they  
3 purchase as it charges any large business customer; is  
4 that fair?

5 A. I would have to say I believe that's the  
6 fact, but I really don't know whether that rate has  
7 changed.

8 MS. HOPFENBECK: That's all I have.

9 JUDGE BERG: Redirect, Mr. Devaney.

10 MR. DEVANEY: Thank you.

11

12 R E D I R E C T E X A M I N A T I O N

13 BY MR. DEVANEY:

14 Q. Ms. Malone, I just have a few follow ups for  
15 you, and one follow up relates to a question that  
16 WorldCom's counsel asked you yesterday. And I think the  
17 question was whether with an ISP call, the CLEC  
18 functions as a local provider. Do you recall that  
19 question?

20 A. Yes, I do.

21 Q. And you responded yes, the CLEC functions  
22 like a local provider in that circumstance, and you  
23 didn't explain further as to what you meant by that.  
24 And I would like you to please elaborate, and explain in  
25 what context the CLEC does act as a local provider in

02448

1 that situation. And I know that you have prepared a  
2 diagram to demonstrate this.

3 THE WITNESS: Yes, is it okay if I --

4 JUDGE BERG: Yes, would you slip the  
5 microphone I believe toward you out of the holder, and  
6 see if that will reach around the table. Does that work  
7 all right?

8 THE WITNESS: It sure does.

9 JUDGE BERG: Thank you.

10 A. I just thought for clarification purposes,  
11 and please don't judge it on my tackey drawing here, but  
12 it kind of clarifies what we were talking about  
13 yesterday in the fact that a call to an ISP is analogous  
14 to a switched access intrastate toll call. Here we  
15 would have a LEC, a local exchange carrier, here in  
16 Washington, let's use for example Century Telephone that  
17 interconnects to Qwest and does not have a point of  
18 presence with an IXC in their territory, so they used  
19 the facility of Qwest to get to that IXC, and then that  
20 IXC takes them out to the interexchange access. This is  
21 what a true switched access call depicts.

22 Then in this second scenario, it's Qwest  
23 here, and it's a CLEC, and going out to the ISP it's  
24 actually no different than this scenario up here. Qwest  
25 is a carrier that handles the call, hands it off to the

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1 CLEC, delivers it to the CLEC, and then the CLEC takes  
2 it out to the ISP. It's the same principle where you  
3 have a primary carrier and a secondary carrier taking a  
4 call and terminating it out as an interstate call.

5           And that's -- I just thought maybe the  
6 drawing might make that a little bit clearer. It is  
7 true that the CLEC is a local provider, but when it's  
8 relating to an ISP call, it becomes an interstate call,  
9 and that's how it's analogous to a switched access call.

10           MR. DEVANEY: Thank you Ms. Malone.

11           Your Honor, we would ask that we be able to  
12 mark this as I guess it would be Exhibit 1117.

13           JUDGE BERG: Could Qwest prepare a one page 8  
14 1/2 by 11 diagram that would depict this very same  
15 illustrative exhibit for that purpose?

16           MR. DEVANEY: We will do that. And I guess  
17 we would ask for admission of this exhibit with the  
18 understanding that we would submit it in that 8 1/2 by  
19 11 format.

20           JUDGE BERG: Let me just, if any party has an  
21 objection, speak up, otherwise.

22           All right, hearing no objection, Exhibit  
23 1117, an 8 1/2 by 11 replication of the illustrative  
24 exhibit drawn in the hearing room, will be admitted. At  
25 the time that it's distributed, if any party feels that

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1 there's a material difference from the illustrative  
2 exhibit, please let the Bench know.

3 MR. DEVANEY: Thank you.

4 JUDGE BERG: And just ball park, when do you  
5 think that might be distributed to the parties?

6 MR. DEVANEY: I would think we could do it by  
7 Tuesday or so of next week.

8 JUDGE BERG: All right.

9 MR. DEVANEY: If that's acceptable.

10 JUDGE BERG: All right, good, we will check  
11 back with you then if it hasn't been distributed.

12 MR. DEVANEY: Thank you.

13 JUDGE BERG: You're welcome.

14 BY MR. DEVANEY:

15 Q. Ms. Malone, I just have a couple of questions  
16 about the ESP exemption which you discussed in various  
17 answers to cross questions. And let me just first ask  
18 you generally, what is the effect on Qwest's ability to  
19 recover costs associated with Internet calls that  
20 results from the ESP exemption?

21 A. There are several things that the ESP  
22 exemption has caused, and one is it really doesn't  
23 support broad competition within the state. It supports  
24 more in nature of CLECs wanting to only serve ISPs  
25 rather than serving businesses and residential customers



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1 because of the windfall profit that they receive from  
2 this. It creates significant public policy issues, and  
3 eventually these costs that Qwest -- if Qwest would be  
4 required to pay reciprocal compensation is going to have  
5 to recover, and that's an impact on the rate payer.  
6 That's the only other alternative Qwest has other than  
7 you can only charge so much if you were to increase a  
8 PRI rate, but increasing our PRI rates is not the  
9 problem here or the issue. It's our local end user that  
10 is accessing the Internet through the CLEC that's  
11 creating the expense. So really to say that to increase  
12 our PRI rate, that's not a solution. And you're going  
13 to have to increase the rate probably and spread it over  
14 all rate payers rather than identifying those that use  
15 the Internet and those that don't, which seems unfair to  
16 customers that do not use the Internet. And those are  
17 some of the main reasons that --

18 Q. With respect though to both Qwest's ability  
19 to recover its costs associated with ISP calls and the  
20 CLEC's ability to recover their costs associated with  
21 those calls, what effect does the ESP exemption have on  
22 both the CLECs and Qwest?

23 A. The effect of the ESP exemption is that  
24 neither the CLEC nor Qwest has a recovery mechanism for  
25 those costs.

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1 Q. And if the CLECs are permitted reciprocal  
2 compensation, how does that effect of the ESP exemption  
3 change for the CLECs versus Qwest?

4 A. Qwest would have to pay the CLECs, so they're  
5 getting cost recovery, and Qwest would not have any  
6 recovery for the additional expenses that they incur, so  
7 it's not -- it's not fair to have one carrier make up  
8 for what another carrier can't collect. We are both in  
9 the same situation with the ESP exemption, that neither  
10 party has a cost recovery mechanism.

11 Q. I want to follow up on just a couple of  
12 questions that WorldCom's counsel asked you about  
13 Qwest's ability to identify high speed modem traffic.  
14 Do you recall that line of questioning?

15 A. Yes, I do.

16 Q. Let me just first ask you, why does Qwest  
17 focus on high speed modem traffic as a means for  
18 attempting to identify Internet traffic? What is the  
19 correlation?

20 A. The correlation is the high speed modem  
21 traffic is how -- the best way to identify ISPs. The,  
22 you know, like I said, the modem identifier can  
23 eliminate fax machines and that type of thing, and it  
24 actually validates and purifies what we believe to be  
25 ISP traffic.

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1 Q. Okay. Now I want to just be sure that the  
2 record is clear about that final step that involves use  
3 of the modem identifier. You have explained how Qwest  
4 uses an algorithm to identify numbers that appear to  
5 meet the characteristics of ISP traffic. And then  
6 there's this final step of a modem identifier. Could  
7 you just explain exactly what that is, the modem  
8 identifier?

9 A. Yes, I can, and, you know, I, in looking  
10 through this exhibit, I also noticed that Ms. Hopfenbeck  
11 had me read the caution that was associated with this  
12 study, but then there's another paragraph that really  
13 does describe the modem identifier and cautions again  
14 there that it is most important to continue on with the  
15 process and use the modem identifier. And if you bear  
16 with me for just a minute.

17 I'm sorry, I can't locate it. I don't know  
18 where I read that, but I -- it could be in another  
19 document that I had made available, but it does caution  
20 that you also run the modem identifier, because that  
21 takes the calls and minutes of use that were identified  
22 as being potentially ISP and purifies that so that it  
23 validates the accuracy. It takes the minutes that met  
24 the characteristics of ISP calls being the duration, the  
25 hold times, how many times one number is accessed in

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1 that given month. And it takes those characteristics,  
2 it then spits out what we believe to be modem traffic,  
3 and then it goes another step and actually does a dial  
4 up and purifies the minutes that we have already  
5 identified as modem traffic.

6 It then eliminates the fax traffic, the no  
7 answers, the hang ups, the -- if there would be a voice  
8 call that for some reason, let's say a teenager stayed  
9 on the line all night, it would eliminate that type of a  
10 call as soon as it had a voice message. So the main  
11 intention in running the modem identifier is to validate  
12 and purify the study of identifying modem traffic for  
13 the purposes of identifying ISPs.

14 Q. Let's just be clear that that modem  
15 identifier is a machine of some kind that actually calls  
16 up these numbers; is that correct?

17 A. That's correct, it calls each and every  
18 number that was identified.

19 Q. Okay. And you testified in response to  
20 WorldCom's questions that the methodology Qwest has used  
21 to measure this traffic is conservative in that it  
22 underincludes in all likelihood modem traffic; do you  
23 recall saying that?

24 A. Yes, I do.

25 Q. Does it follow from that therefore that the

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1 results Qwest is reporting would tend to underinclude  
2 Internet traffic?

3 A. That's correct.

4 Q. I think the record is clear on this, but I  
5 want to be sure that it is. If the Commission were to  
6 order reciprocal compensation for Internet traffic, is  
7 it Qwest's position that a lower rate for that traffic  
8 as compared to voice traffic would be appropriate?

9 A. Yes, it is.

10 Q. And you have endorsed the economic concepts  
11 of Dr. Blackman that he has put forth with respect to  
12 reasons for a lower rate for Internet traffic. Are  
13 there any administrative concerns that you're aware of  
14 that flow from billing the type of different rate  
15 elements that Dr. Blackman has identified?

16 A. Yes, one of our concerns with Dr. Blackman's  
17 proposals when he's discussing peak and off type peak  
18 measurements, we wouldn't know at this point in time  
19 what would be involved in that and if we would have to  
20 implement some type of a measurement system to now try  
21 to capture peak and off peak. We're just a little bit  
22 unsure what would be involved in his proposal.

23 Q. In response to a question from Dr. Gabel, I  
24 just want to clarify something. Would you turn to  
25 Mr. Brotherson's direct testimony, which is Exhibit

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1 1106, and actually I'm going to ask you to take a look  
2 at the confidential portion, it's page 19.

3 A. Yes, I have that.

4 Q. And there is a footnote there that says in  
5 reference to the termination rate that was used, it  
6 says:

7 This rate was established in UT-960323,  
8 the MFS arbitration, and reflects the  
9 current billing rate pending a decision  
10 in this cost docket.

11 Do you see that?

12 A. Yes, I do.

13 Q. Does that suggest to you that at the time  
14 Qwest used the MFS rate, a rate had not been finally  
15 ordered in the cost docket?

16 A. Yes, it does.

17 Q. Okay, thank you. WorldCom also asked you  
18 some questions about the issue of charging for tandem  
19 versus end office switching; do you recall that?

20 A. Yes, I do.

21 Q. Does Qwest agree with Dr. Blackman's proposal  
22 with regard to the elimination of the tandem switch  
23 element for direct trunk traffic?

24 A. Yes, Qwest does agree with Dr. Blackman's  
25 proposal. What Dr. Blackman suggests is when a direct

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1 trunk transport facility is established between the two  
2 parties, the CLEC and Qwest, when Qwest terminates  
3 traffic to the CLEC, they just charge direct trunk  
4 transport. That's the only element that's charged. And  
5 for the symmetrical rate principle to apply when the  
6 CLEC terminates traffic to Qwest over direct trunks,  
7 they should also be allowed to only charge the direct  
8 trunk transport element.

9 MR. DEVANEY: Your Honor, may I have one  
10 moment to confer. Thank you, I'm just about done.

11 BY MR. DEVANEY:

12 Q. Ms. Malone, just one final question. You  
13 spoke in your responses to cross questions about the  
14 issue of cost avoidance; do you recall that?

15 A. Yes, I do.

16 Q. And I think you said that when the ISP is  
17 served -- let me backtrack.

18 If Qwest is serving the ISP and the ISP is  
19 served out of the same end office as the end user, that  
20 for business and administrative calls, there's only  
21 essentially one switching function; do you recall that?

22 A. Yes, I do.

23 Q. Isn't it also true that if the end user is  
24 seeking to place a call that would result in an Internet  
25 connection when the ISP is served out of the same office

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1 as the end user that there still would also only be one  
2 switching function?

3 A. Yes, that's true.

4 MR. DEVANEY: Thank you, that's all I have.

5 JUDGE BERG: Anything further,

6 Ms. Hopfenbeck?

7 MS. HOPFENBECK: I have a few.

8

9 R E C R O S S - E X A M I N A T I O N

10 BY MS. HOPFENBECK:

11 Q. In discussing the ESP exemption with your  
12 counsel, you referenced payments received from the CLECs  
13 which you termed windfall profits.

14 A. That's correct.

15 Q. You would agree that the standard that the  
16 Commission is to employ in establishing the rate for  
17 reciprocal compensation is a cost standard; is that  
18 right?

19 A. That's correct.

20 Q. Now you also discussed the problem of Qwest  
21 and the CLECs' inability to recover various costs  
22 associated with Internet usage, and I would like to talk  
23 to you about that for just a second. Isn't it true that  
24 Qwest's local rate for basic exchange service is set  
25 with an assumption as to an average usage, that that's



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1 one of the factors that's taken into consideration in  
2 setting that rate and determining whether it covers  
3 costs for local calling; is that right?

4 A. I can only agree if I can expand on it a  
5 little bit.

6 Q. Please do.

7 A. Yes, that's true, it's covered on an average  
8 rate, that average being though one of the most  
9 significant things when we're dealing, I'm not a cost  
10 witness, but in the fact when we're dealing with the  
11 difference between a voice call and an Internet call is  
12 the duration of the call. That has a large impact on  
13 what and how that local basic exchange rate was  
14 developed. Here in Washington, and I'm not sure of the  
15 date the last time the rate was established but at  
16 \$12.65, and it's been established long enough ago that  
17 the volumes of Internet traffic did not exist at the  
18 time the \$12.65 rate was established. So there's no way  
19 that the local rate could absorb the costs associated  
20 with paying the CLEC for Internet traffic.

21 Q. Essentially average usage has tended to  
22 increase substantially as a consequence of the increase  
23 in Internet usage; isn't that right?

24 A. I'm sorry, what has increased?

25 Q. Average usage.

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1 A. Yes.

2 Q. And Qwest does have the ability to come in  
3 and ask for rate increase if it does not believe it's  
4 recovering its costs; is that right?

5 A. That's correct.

6 Q. And if Qwest can establish to the  
7 Commission's satisfaction that it is not recovering its  
8 revenue requirement, then the Commission is bound to  
9 allow you to increase your rates; is that right?

10 A. That's correct. What seems unfair and what  
11 Qwest is struggling with is, like I mentioned before  
12 when I discussed how we could recover costs, does it  
13 really seem fair to have end users, rate payers here in  
14 Washington, paying for a cost that the CLEC incurs if  
15 they don't even use an Internet.

16 Q. I think you referred to the fact, didn't you,  
17 that I mean it's -- what gives rise to these payments is  
18 Qwest local users, Qwest end user customers, making  
19 calls to an Internet service provider; is that right?

20 A. But in this instance, yes, it's Qwest local  
21 end user customers, but when you're talking about an  
22 Internet call, they're actually the customer of the ISP.  
23 If the ISP didn't offer the service, Qwest customers  
24 wouldn't be calling. So again, it's the CLEC that gets  
25 to have the windfall profit. And I mean I don't think

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1 anybody that's read the testimony, and I'm sure everyone  
2 here has read it, the significant amount of minutes that  
3 are being delivered to the CLECs and the percent of that  
4 that we believe is ISP traffic is -- it calculates to a  
5 windfall profit if Qwest is required to pay reciprocal  
6 compensation for those minutes of use.

7 Q. And just we will get off this line right now,  
8 but you would agree that the CLEC who is delivering  
9 those calls to the ISP is terminating and transporting  
10 that traffic, correct? That's what they're being  
11 compensated for?

12 A. But I don't believe they're compensating --  
13 they're being compensated at what their costs are.

14 Q. Okay, we can leave that aside.

15 Okay, next, modem identifier you talked about  
16 with Mr. Devaney.

17 JUDGE BERG: Excuse me, Ms. Hopfenbeck, how  
18 much longer do you plan?

19 MS. HOPFENBECK: I have probably two more  
20 questions, one more question.

21 JUDGE BERG: All right.

22 And then, Mr. Devaney, redirect?

23 MR. DEVANEY: I have not so far.

24 JUDGE BERG: All right, let's finish with  
25 this witness.

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1 BY MS. HOPFENBECK:

2 Q. To make sure on this, you referred a number  
3 of times in answer to Mr. Devaney's question to the fact  
4 that the modem identifier is used to purify the minutes.  
5 It's purifying the minutes to ensure that the only thing  
6 that's being captured is modem traffic; is that right?

7 A. That's correct.

8 Q. Okay. It can't distinguish between Internet  
9 modem traffic and local area network modem traffic,  
10 right?

11 A. No, but we believe that the validation  
12 process that takes place, we are very accurate in what  
13 we are capturing as ISP modem traffic.

14 MS. HOPFENBECK: Okay, I have nothing  
15 further.

16 JUDGE BERG: Mr. Devaney?

17 MR. DEVANEY: Your Honor, in response to  
18 WorldCom's record requisition, Mr. Reynolds was kind  
19 enough to go out during the cross-examination and come  
20 back with a response to that, so I thought I might  
21 suggest if it's appropriate to read the response into  
22 the record.

23 JUDGE BERG: Yes, please.

24 MR. DEVANEY: (Reading.)

25 All Qwest DSL traffic is routed over

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1 direct links between the Qwest host DSL  
2 ATM switch and the ISP. None of the  
3 traffic generates terminating  
4 compensation payments even in the event  
5 where traffic may be routed over high  
6 capacity facilities leased from the  
7 CLEC.  
8 So I hope that's responsive.  
9 JUDGE BERG: All right, thank you.  
10 MR. DEVANEY: And, Your Honor, one point of  
11 clarification, Ms. Malone I think testified that the  
12 basic exchange rate in Washington \$12.65. I have been  
13 handed a note it's \$12.50, just so the record is clear  
14 on that.  
15 THE WITNESS: Sorry, \$12.50.  
16 JUDGE BERG: All right, thank you,  
17 Mr. Devaney.  
18 Ms. Malone, with that, your testimony here is  
19 concluded, you're excused from the hearing. Thank you  
20 very much.  
21 THE WITNESS: Thank you.  
22 JUDGE BERG: We will take our morning break  
23 now and return at 11:15.  
24 (Recess taken.)  
25 JUDGE BERG: Ms. McClellan, I understand that

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1 there are some Verizon responses to Bench requests that  
2 would be due on April the 2nd, 2001.

3 MS. MCCLELLAN: Yes, Your Honor, Bench  
4 Request Number 18, which asked for a copy of a Bench  
5 Request answer in Phase I of 960369. Upon review, once  
6 we obtained a copy of that original response, we  
7 discovered that the Bench request identified the wrong  
8 original Bench request. Now that we know which one we  
9 need to reprovide but we also need to update it, and we  
10 just received all of that information today, so we will  
11 need an extension on our response to Bench Request  
12 Number 18.

13 JUDGE BERG: One moment.  
14 What would be a reasonable time to expect  
15 that?

16 MS. MCCLELLAN: I will have to confer with my  
17 client, but I believe we will need about a week.

18 JUDGE BERG: All right, so if we were to say  
19 April the 6th, would that be acceptable?

20 MS. MCCLELLAN: Yes, Your Honor.

21 JUDGE BERG: All right, and if you learn that  
22 that is still a problem, let me know.

23 MS. MCCLELLAN: Yes, Your Honor.

24 JUDGE BERG: And, Ms. Anderl, I understand  
25 that Qwest also has some responses to Bench requests due

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1 on April the 2nd.

2 MS. ANDERL: Yes, and, Your Honor, we would  
3 simply like a one day extension in order to give me time  
4 to review the physical documents that have been produced  
5 and in some cases printed down from E-mail or  
6 overnighted to my office. Some of them are voluminous,  
7 and I don't know if they're page numbered. I just want  
8 to go into the office over the weekend and confirm that  
9 the information is something that's in shape to be  
10 submitted, and then it will be copied on Monday in my  
11 office. I think we will be able to submit it on  
12 Tuesday.

13 JUDGE BERG: And this is relating to all of  
14 those Bench requests that were on that notice that was  
15 served on parties?

16 MS. ANDERL: Yes.

17 JUDGE BERG: All right, April the 3rd?

18 MS. ANDERL: Yes.

19 JUDGE BERG: All right, if you detect some  
20 problem over the weekend, let me know first thing on  
21 Monday morning, April the 2nd.

22 MS. ANDERL: Thank you.

23 JUDGE BERG: All right. Anything further  
24 from the parties?

25 I will indicate to the parties that in

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1 advance Commission Staff has distributed a cross exhibit  
2 for Mr. Collins, a three page excerpt from Exhibit  
3 C-1171. That exhibit will be numbered C-1175. And I  
4 will have a revised updated exhibit list for the parties  
5 on Monday.

6           At this time, I would ask that the reporter  
7 insert the exhibit number and exhibit description of  
8 Exhibits T-1130 through Exhibit 1143 as listed in the  
9 exhibit list as if read forth in their entirety.

10  
11           (The following exhibits were identified in  
12 conjunction with the testimony of R. KIRK LEE.)

13           Exhibit T-1130 is Direct Testimony of R. Kirk  
14 Lee dated 8/4/01 (RKL-1T). Exhibit T-1131 is Supplement  
15 and Response Direct Testimony dated 10/19/01 (RLK-2T).  
16 Exhibit 1132 is Service Descriptions for Line Splitting.  
17 Exhibit T-1133 is Second Supplemental Direct Testimony  
18 dated 1/8/01. Exhibit 1134 is Revised Supplemental  
19 Direct and Responsive Direct Exhibit (RKL-3). Exhibit  
20 1135 is Second Supplemental Direct Exhibit (RKL-5).  
21 Exhibit T-1136 is Supplemental Response and Rebuttal  
22 Testimony dated 2/7/01 (RKL-6T). Exhibit 1137 is  
23 Supplemental Responsive and Rebuttal Exhibit (RKL-7).  
24 Exhibit 1138 is Supplemental Responsive and Rebuttal  
25 Exhibit (RKL-8). Exhibit 1139 is Supplemental



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1 Responsive and Rebuttal Exhibit (RKL-9). Exhibit T-1140  
2 is Supplemental Rebuttal Testimony dated 2/28/01  
3 (RKL-10T). Exhibit 1141 is Supplemental Rebuttal  
4 Exhibit (RKL-11). Exhibit 1142 is Verizon Response to  
5 WCOM DR No. 6. Exhibit 1143 is Verizon Response to WCOM  
6 DR No. 7.

7

8 JUDGE BERG: Mr. Lee, if you would please  
9 stand and raise your right hand.

10

11 Whereupon,

12

13 R. KIRK LEE,  
14 having been first duly sworn, was called as a witness  
15 herein and was examined and testified as follows:

15

16 JUDGE BERG: Thank you, sir.

17

Ms. McClellan.

18

MS. MCCLELLAN: Thank you, Your Honor.

19

20 D I R E C T E X A M I N A T I O N

21

MS. MCCLELLAN:

22

Q. Good morning, Mr. Lee.

23

A. Good morning.

24

Q. Could you please state your name and business

25

address for the record.

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1           A.     My name is R. Kirk Lee, my business address  
2 has changed from my pre-filed testimony. It is now 1800  
3 - 41st Street, Everett, Washington 98201.

4           Q.     And by whom are you employed?

5           A.     I'm employed by Verizon Communications.

6           Q.     Did you prepare or cause to be prepared the  
7 exhibits that have been marked in this proceeding as  
8 T-1131 through 1141?

9           A.     Yes, I did.

10          Q.     Do you have any changes or corrections to  
11 make to those exhibits?

12          A.     No corrections other than to indicate that  
13 Exhibit Number 1134 needs to replace Exhibit Number 1132  
14 in its entirety.

15          Q.     So Verizon intends to withdraw Exhibit 1132?

16          A.     Yes, that's correct.

17          Q.     And --

18          A.     This document is the revised -- my revised  
19 Exhibit RKL-3, which is the draft service description  
20 for line splitting based on the results of the New York  
21 collaborative process.

22          Q.     And do you have any other corrections?

23          A.     Beg pardon?

24          Q.     Do you have any other corrections?

25          A.     No, I do not.

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1 Q. Has your job title changed since you filed  
2 your testimony?

3 A. Oh, excuse me, yes, I will correct that. I  
4 recently or I am still in the process of moving to a new  
5 position as a project manager located in the Everett  
6 offices here at Verizon, and I'm moving back to God's  
7 country.

8 MS. MCCLELLAN: And with that, we would like  
9 to move for the admission of Exhibits T-1130 through  
10 1141 with the exception of Exhibit 1132.

11 JUDGE BERG: Hearing no objections, Exhibit  
12 T-1130 through T-1131 and Exhibits T-1133 through 1141  
13 are admitted.

14 MS. MCCLELLAN: And with that, Mr. Lee is  
15 available for cross.

16 JUDGE BERG: Ms. Hopfenbeck.

17

18 C R O S S - E X A M I N A T I O N

19 BY MS. HOPFENBECK:

20 Q. Good morning, Mr. Lee. I just have a few  
21 areas to talk to you about. Mr. Lee, I would first like  
22 to discuss with you your testimony at page 12 of Exhibit  
23 T-1130. Actually, this testimony begins on page 11 and  
24 continues on to page 12. At that point, you indicate  
25 that Verizon does not intend to provide switching as an

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1 unbundled element in a number of Washington, well,  
2 switching as part of the UNE platform in a number of  
3 Washington wire centers where it will be providing EELs  
4 in accordance with some FCC orders; is that right?

5 A. That's correct, for customers with four or  
6 more lines in specific exchanges.

7 Q. Okay. In calculating four or more lines, I  
8 was -- I wanted to clarify, does this exception apply  
9 only to customers with four or more lines in one  
10 location in Verizon's view?

11 A. In Verizon's view, that should be the  
12 definition. From an administrative standpoint, it's  
13 difficult to actually determine what those line counts  
14 are, so we are treating that as a per customer location,  
15 physical address.

16 Q. Okay. So that if the same customer had three  
17 locations and only -- and had two lines in each one of  
18 those three locations, Verizon would be willing to  
19 provide the platform in those circumstances?

20 A. That's correct.

21 Q. Okay. Is Verizon willing to provide the  
22 platform but at a different rate, namely a rate that  
23 would assess the switching rate at a market rate as  
24 opposed to a TELRIC rate in these wire centers?

25 A. That's an initiative that we are evaluating

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1 currently, but we have not made a decision to go forth  
2 with that.

3 Q. Okay. Now I understand that this exception  
4 applies in Verizon's view because Verizon intends to  
5 provide EELs to these wire centers; is that correct?

6 A. That's correct, per the FCC's UNE Remand  
7 Order.

8 Q. But I also note that in your testimony at  
9 page 18 of Exhibit T-1130, Verizon has expressed its  
10 view that it has no obligation to build EELs where  
11 facilities are not available; is that true?

12 A. That's correct.

13 Q. Now in the event -- in the event that  
14 facilities are not available for a CLEC to order EELs to  
15 one of the exchanges identified or wire centers  
16 identified on page 12, will Verizon be willing to  
17 provide the platform to customers who have four or more  
18 lines?

19 A. My understanding of the order is that Verizon  
20 is not required to in those instances either, so we  
21 would not provide a UNE platform in that instance.

22 Q. And with respect to the support for Verizon's  
23 no build view of the world, that it doesn't have an  
24 obligation to build under that circumstance, you have  
25 only cited the Eighth Circuit's order and discussion

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1 about sort of existing versus hypothetical networks; is  
2 that right?

3 A. It's not existing versus hypothetical. It's  
4 really the existing versus the as yet unbuilt network.

5 Q. And you didn't understand that portion of the  
6 Eighth Circuit order as to being referred to sort of a  
7 network that has got sort of future idealized technology  
8 in it?

9 A. No, absolutely not.

10 Q. Okay.

11 A. And the Eighth Circuit has reiterated their  
12 point in their order of July of 2000.

13 Q. Okay. I just wanted to clarify a couple of  
14 things. Page 13 of your direct testimony, you indicate  
15 that additional charges may apply for vertical services.

16 A. Yes, that's correct.

17 Q. Now you're aware that this Commission has  
18 established rates for switching that includes vertical  
19 services?

20 A. I have not examined the current pricing on  
21 vertical services. This generally describes Verizon's  
22 product offering in general is that vertical services  
23 are an incremental cost, they're added on. So where  
24 allowed, they would be charged. If this Commission has  
25 included them in the unbundled core charge, if you will,

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1 or the per minute of use rate, there would not be  
2 vertical charges.

3 Q. Thank you. Now in your initial testimony on  
4 line splitting, which was filed on October 19th, and  
5 that has been admitted into the evidence as T-1131, you  
6 indicated on page nine that the voice provider should be  
7 the point of contact for facilitating line splitting on  
8 loops where voice service is provided by a carrier other  
9 than Verizon. Verizon has changed their position on  
10 that and will allow a data LEC to act on behalf of a  
11 voice provider; is that right?

12 A. Yes, and I did discuss that in subsequent  
13 testimony. I can't remember which piece of testimony  
14 here, but that was agreed to between Verizon and the  
15 CLECs and DLECs in the New York collaborative.

16 JUDGE BERG: Counsel, I will just ask when  
17 you are making reference to a specific place in  
18 testimony, even though it may be for a single response,  
19 the commissioners will be looking for that place as soon  
20 as you mention it, so that if you ask your question too  
21 soon thereafter, the Bench may be trying to be in two  
22 places at one time.

23 MS. HOPFENBECK: Sorry.

24 JUDGE BERG: That's all right. So even  
25 though you give a reference, it may be a really simple

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1 question, give a pause so we can find the right place,  
2 and then you will have our full attention.

3 MS. HOPFENBECK: Okay.

4 A. If I may clarify that answer also. I just  
5 wanted to point out that although a data LEC can also  
6 submit an order to add data to an existing UNE-P  
7 service, if only the voice LEC or CLEC can initiate  
8 voice service, so if it's -- in other words, if it's a  
9 line sharing scenario today that's going to migrate to a  
10 UNE-P or an existing UNE-P line splitting arrangement,  
11 the DLEC can not submit an order to change the voice  
12 provider.

13 MS. HOPFENBECK: Okay, nothing further for  
14 you, Mr. Lee. Thank you very much.

15 THE WITNESS: Thank you.

16 JUDGE BERG: Ms. Steele.

17 MS. HOPFENBECK: Oh, actually, I'm sorry, I  
18 forgot to identify a couple of exhibits and move them,  
19 so can I?

20 JUDGE BERG: Sure, let's do that now.

21 BY MS. HOPFENBECK:

22 Q. Mr. Lee, I would ask do you have before you  
23 what's been marked for identification as Exhibits 1142  
24 and 1143?

25 A. Yes, I do.



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1 Q. And do you recognize 1142 as Verizon's  
2 response to WorldCom Data Request Number 6?  
3 A. Yes.  
4 Q. And is Exhibit 1142 an accurate copy of that  
5 response?  
6 A. Excuse me?  
7 Q. Is it an accurate response today?  
8 A. To the best of my knowledge, yes.  
9 Q. Okay.  
10 A. There has been no change to the response.  
11 Q. And do you recognize Exhibit 1143 as  
12 Verizon's response to WorldCom Data Request Number 7?  
13 A. Yes.  
14 Q. And is that an accurate response to the  
15 question that was asked?  
16 A. Yes, it is. Again, to the best of my  
17 knowledge, there has been no changes.  
18 MS. HOPFENBECK: Okay, thank you.  
19 I would move the admission of Exhibits 1142  
20 and 1143.  
21 MS. MCCLELLAN: No objection.  
22 JUDGE BERG: So admitted.  
23 MS. HOPFENBECK: Now I am finished, thank  
24 you.  
25 JUDGE BERG: Thank you, Ms. Hopfenbeck.

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1

2

C R O S S - E X A M I N A T I O N

3

BY MS. STEELE:

4

Q. Good morning, Mr. Lee, I'm Mary Steele.

5

A. Good morning.

6

Q. I would like to first talk with you about unbundled dark fiber, which is -- you weren't with us yesterday when Mr. Hubbard was talking about that on behalf of Qwest, were you?

10

A. No, I wasn't.

11

Q. Okay. Now my understanding of Verizon's position on unbundled dark fiber is that dark fiber is available only if it terminates at a fiber patch panel or its functional equivalent; is that correct?

15

A. Yes, that's correct. That is a point in the network where the fiber is rarely accessible and doesn't require any additional build out to make it accessible to a CLEC.

19

Q. Now does Verizon have any standard engineering practices regarding when fiber will, in fact, be terminated at a fiber patch panel?

22

A. Again, I'm not an engineering person, so I can't really speak to that.

24

Q. Is there a Verizon witness who would be able to address that issue?

25

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1           A.     I don't believe we have a technical witness  
2 of that nature in this proceeding.

3           Q.     So you couldn't tell me how likely it is  
4 that, in fact, fiber will be terminated at a fiber patch  
5 panel and available; is that correct?

6           A.     I can't, but my understanding is that it's  
7 general practice to terminate, you know, as much of the  
8 fiber to a fiber patch panel as is possible.

9           Q.     Now Mr. Hubbard yesterday referred to  
10 something -- referred to dead fiber in the ground, and  
11 he referred to that as fiber that was not spliced back  
12 to the central office. Does the term dead fiber mean  
13 anything to you?

14          A.     Not particularly.

15          Q.     Is it Verizon's position that fiber that is  
16 in the ground but not spliced back to the central office  
17 would be unavailable to the CLECs?

18          A.     That's correct, because again, it would  
19 require construction to splice it and attach connectors  
20 and, you know, extend it to a termination point where it  
21 could be accessed.

22          Q.     And Verizon would not then permit a CLEC to  
23 pull fiber to a patch panel in order to gain access; is  
24 that correct?

25          A.     That's correct.

02478

1 Q. My understanding is that in order for a CLEC  
2 to order dark fiber, that the CLEC must first pay  
3 Verizon to determine whether that dark fiber is  
4 available; is that correct?

5 A. That's correct. The up front process is a  
6 service inquiry, and there is a charge associated with  
7 that, because it's primarily a manual investigation  
8 process to determine where and how much fiber is in the  
9 network based on where they are requesting it.

10 Q. And is this because Verizon does not have  
11 inventory records of its dark fiber?

12 A. That's correct.

13 Q. Another proposal that is made in your  
14 testimony is that Verizon seeks to retain the ability to  
15 take back dark fiber on 12 months notice; is that  
16 correct?

17 A. That's correct, with the Commission's  
18 approval.

19 Q. And have you proposed a process under which  
20 Verizon would obtain Commission approval for taking back  
21 dark fiber?

22 A. We haven't proposed a specific process to do  
23 that, no.

24 Q. And have you proposed what kind of showing  
25 Verizon would have to make in order to take back the

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1 dark fiber?

2 A. No, we have not proposed it to that level of  
3 detail other than, you know, the concept that that  
4 position would need to be supported by demand and  
5 estimates of customer growth in specific areas and so  
6 forth.

7 Q. So your anticipation would be that there  
8 would be some showing of need on the part of Verizon in  
9 order to take back the dark fiber; is that correct?

10 A. Yes, from Verizon's standpoint, I believe we  
11 have the burdon to prove that.

12 Q. I want to take a look at page 1136, I'm  
13 sorry, not page, Exhibit 1136, page 15, in which you  
14 discuss this proposal.

15 MS. MCCLELLAN: I'm sorry, what was that page  
16 again?

17 MS. STEELE: Page 15.

18 MS. MCCLELLAN: Thank you.

19 BY MS. STEELE:

20 Q. And in the question beginning on line eight,  
21 in the response you indicate that the CLEC would have  
22 time to migrate its services to another provider or to  
23 Verizon's tariffed special access services. Now in  
24 order for the CLEC to migrate to a Verizon tariffed  
25 special access service, Verizon would actually have to

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1 have capacity on that route; is that correct?

2 A. That's correct.

3 Q. And it is --

4 A. With the take back of the fiber, you would  
5 presume that there would be additional capacity  
6 available.

7 Q. So what you would propose is that the CLEC  
8 would give the fiber back to Verizon and then be  
9 required to obtain it again from Verizon as a special  
10 access service; is that correct?

11 A. Not at all. That would be one option.

12 Q. I would like to move on and discuss another  
13 issue with you, and that would be the UNE combination or  
14 UNE platform issue. My understanding of Verizon's  
15 initial position in this proceeding is that Verizon had  
16 agreed that it would offer new combinations where there  
17 were facilities already in place and construction is not  
18 required; is that correct?

19 A. That's correct.

20 Q. And --

21 A. That was a former GTE position, yes.

22 Q. Okay. And you have essentially taken back  
23 that proposal, and Verizon is now proposing that it will  
24 not make new combinations available even when the  
25 facilities are in place; is that correct?

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1           A.     That's correct. One of the ways that we look  
2 at this now is that unless there is a working service on  
3 it that it is really not an existing combination that's  
4 available.

5           Q.     Does the term warm dial tone mean anything to  
6 you?

7           A.     Yes.

8           Q.     Could you explain that to me?

9           A.     In the Verizon west vernacular, we refer to  
10 that as express dial tone, but it basically is the  
11 limited function of a line at a customer location where  
12 a customer moving into a house can pick up, plug in a  
13 phone and pick it up and essentially order full blown  
14 telephone service from Verizon. That line does not have  
15 the full functionality or service for working service  
16 capabilities of a customer that we actually are  
17 providing service to.

18          Q.     But in that instance where there is warm dial  
19 tone, the loop and the switch are actually still  
20 connected; is that true?

21          A.     There's a physical connection there, but  
22 without the software enabler. It's not a fully combined  
23 working service.

24          Q.     And is it Verizon's position in this  
25 proceeding that where there is warm dial tone or express

02482

1 dial tone as you have indicated, that that would not be  
2 an existing service that would be available to be  
3 ordered as a UNE combination?

4 A. That's correct.

5 Q. So if a customer in that instance wanted to  
6 obtain service from a CLEC where the CLEC did not have  
7 facilities, one way for the customer to do that would be  
8 to first order service from Verizon and then convert it  
9 to the CLEC; is that correct?

10 A. That is one potential way that CLECs could  
11 bypass the rules. We're asking the Commission here to  
12 prevent that type of abuse of the rules, however.

13 Q. Well, in that instance, it wouldn't be the  
14 CLEC who was abusing the rules, but rather the end use  
15 customer; isn't that correct, to use your terminology?

16 A. Yes, to the extent that the end user  
17 initiated it, yes, that's correct.

18 Q. But would you in this instance propose that  
19 there be some kind of penalty imposed on the CLEC?

20 A. I would not propose a penalty per se other  
21 than to the extent that that type of activity causes  
22 additional costs on Verizon. What I would propose is  
23 that there be a reasonable period of delay between when  
24 service is ordered from Verizon and when it's converted  
25 to a CLEC use.



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1 Q. And one of the -- along those same lines, one  
2 of the things that Verizon is proposing in this  
3 proceeding is that there be termination penalties  
4 imposed when special access services are converted to  
5 combinations; is that correct?

6 A. Only to the extent that the CLEC ordered  
7 those services under term and volume plans in the  
8 tariffs where termination liabilities are applicable.  
9 If they're purchasing these services from us today on a  
10 month to month basis, there is no termination  
11 liabilities that would apply, so it would apply under  
12 the terms of the tariff.

13 Q. And one of the reasons that you contend that  
14 the termination penalties should be applicable is that  
15 it's you have -- you have expressed a concern that CLECs  
16 are using the -- are ordering special access to avoid  
17 Verizon's no build rule; is that correct?

18 A. That's correct.

19 Q. Now the --

20 A. I would like to differentiate though that  
21 it's not Verizon's no build rule. Again, this is the  
22 interpretation of the Eighth Circuit Court as it  
23 pertains to the Telecom Act.

24 Q. And it's Verizon's interpretation of that?

25 A. No, it's the Circuit Court's interpretation.

02484

1 Q. I suppose we will be arguing about that for a  
2 long time.

3 A. We could.

4 Q. Now your concern is that the CLEC could order  
5 special access, if there were no facilities available,  
6 Verizon would then build facilities, and then the CLEC  
7 would convert to the UNE combination; is that correct?

8 A. That's correct, that is a concern.

9 Q. Now the procedures in place for ordering  
10 special access have been in place for quite a bit longer  
11 than the procedures for ordering combinations; isn't  
12 that correct?

13 A. That's correct, yes.

14 Q. And it is possible that a CLEC may have  
15 ordered special access simply because the procedures  
16 were in place, whereas the procedures to order the  
17 combination were not in place; isn't that correct?

18 A. Well, the CLEC could have also ordered those  
19 facilities as UNE dedicated transport, which has also  
20 been available for quite some time.

21 Q. There are, however, reasons that a CLEC may  
22 order special access that have nothing to do with the no  
23 build rule; isn't that correct?

24 A. I'm not specifically aware of what CLECs'  
25 reasons might be for using it. There's a number of

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1 purposes, interconnection, to help fill out their  
2 network, various other reasons.

3 Q. I want to explore a little bit the  
4 application of the no build rule that is proposed here.  
5 Assume that a customer wants to obtain service from  
6 let's say AT&T. The customer approaches AT&T, AT&T does  
7 not have facilities, therefore AT&T approaches Verizon  
8 and requests to obtain those facilities on an unbundled  
9 basis. Okay, do you have the scenario?

10 A. Okay.

11 Q. And Verizon, if there are no facilities  
12 available, Verizon's response then to AT&T would be  
13 simply there are no facilities; is that correct?

14 A. That's correct, unless again, AT&T is taking  
15 a customer already served by Verizon and using the  
16 facilities that that customer is currently using,  
17 converting them over to the UNE.

18 Q. So the only way AT&T could then obtain  
19 unbundled elements to serve a customer of Verizon is if  
20 Verizon is presently serving that customer; isn't that  
21 your position?

22 A. That's correct, anything else would  
23 constitute a build, which Verizon is not required to do  
24 by the Act.

25 Q. But if the same customer came to Verizon,

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1 Verizon would serve the customer; is that correct?

2 A. Yes, under the terms of doing business here  
3 in the state of Washington, it's required to as a  
4 carrier of last resort.

5 JUDGE BERG: Ms. Steele, why don't you pick  
6 your own break point.

7 MS. STEELE: I have one more question.

8 JUDGE BERG: All right.

9 MS. STEELE: I timed it perfectly.

10 JUDGE BERG: All right.

11 BY MS. STEELE:

12 Q. I would like you to turn in Exhibit 1136 to  
13 page 13.

14 A. (Complies.)

15 Q. And you make a statement at lines 11 through  
16 13 of your testimony, you state that:

17 It appears that XO would prefer to hitch  
18 a ride on Verizon's network forever and  
19 never have any incentive to build new  
20 technologies to benefit customers.

21 Do you see that testimony?

22 A. Yes.

23 Q. Do you know the extent of XO's facilities in  
24 Washington?

25 A. I'm not specifically aware, no.

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1 Q. And do you have any knowledge of the extent  
2 to which XO presently uses any Verizon facilities in the  
3 state of Washington?

4 A. I am not aware of the extent they order our  
5 facilities at this point, no.

6 MS. STEELE: I have no further questions.

7 JUDGE BERG: All right, this seems like a  
8 good place to take our lunch break. We will resume at  
9 1:30.

10 We will be off the record.

11 (Luncheon recess taken at 12:00 p.m.)

12

13 A F T E R N O O N S E S S I O N

14 (1:30 p.m.)

15

16 JUDGE BERG: Mr. Lee, I will just remind you  
17 as I have other witnesses in this proceeding that you  
18 remain subject to the affirming oath you took this  
19 morning.

20 THE WITNESS: Yes.

21 JUDGE BERG: Any questions, Mr. Harlow?

22 MR. HARLOW: Just a few, Your Honor.

23 JUDGE BERG: All right.

24

25 C R O S S - E X A M I N A T I O N

02488

1 BY MR. HARLOW:

2 Q. Good afternoon, Mr. Lee. My name is Brooks  
3 Harlow, I represent Covad Communications.

4 A. Good afternoon.

5 Q. Were you here the other day when Mr. Buckley  
6 testified about what he called the dead fiber?

7 A. No, I was not.

8 Q. Okay. Well, on cross-examination, he  
9 indicated that there would be instances in Qwest's  
10 existing network in Washington where there is fiber  
11 brought into a splice point in the network, and it's  
12 sitting in a splice case, but it's not physically  
13 spliced to another fiber going out the other side. Is  
14 the same -- would the same be true for Verizon?

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

16 Q. Who would know the answer to that that's a  
17 witness in this proceeding?

18 A. I don't know that we -- we don't have a  
19 technical witness here or an engineering type person as  
20 a witness, so.

21 Q. Well, let me ask you hypothetically. If  
22 there were such a situation where fiber were coming in  
23 and sitting in a splice case but it wasn't spliced to  
24 anywhere else and Verizon wanted to use that fiber for  
25 itself, do you know how it would use that fiber for

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1 itself?

2 A. A work order would have to be issued to  
3 perform the work on that to open up the splice case, do  
4 any necessary splicing or extending of the fiber to make  
5 it accessible to make it usable.

6 Q. And where would the fiber go to make it  
7 usable?

8 A. I guess it depends on where that splice point  
9 is that you're talking about.

10 Q. Well --

11 A. For instance, say if it's in a cable vault or  
12 something like that, it would need to be extended to a  
13 fiber distribution frame within the central office so  
14 that facilities could be jumpered to it.

15 Q. Is a fiber distribution frame and a fiber  
16 distribution panel, is that the same thing as you have  
17 referred to in your testimony as a patch panel?

18 A. Yes, I use them interchangeably.

19 Q. Okay. So again, taking this hypothetical  
20 forward then, it would be spliced to another fiber which  
21 ultimately would terminate on a fiber distribution  
22 panel?

23 A. Yes, that's correct.

24 Q. And are there situations where these splice  
25 points are located at or near a central office or a

02490

1 remote terminal?

2 A. They could be.

3 Q. And could it be that there is existing fiber  
4 between the splice point and the remote that also may be  
5 sitting in the splice case, but it isn't connected yet  
6 because Verizon hasn't needed it?

7 A. Again, these are all possibilities, but I  
8 don't have firsthand knowledge of what might be there.

9 Q. As I understand your testimony, Verizon is  
10 unwilling to splice together the two existing fibers in  
11 that hypothetical in order that the fiber would, in  
12 fact, terminate at a fiber distribution panel where it  
13 could be accessed by a CLEC?

14 A. Yes, that's correct. The FCC's order does  
15 not require Verizon and other ILECs to perform that type  
16 of construction activity to extend it to a readily  
17 accessible terminal.

18 Q. At page nine of your August testimony,  
19 T-1130, you describe the Verizon take back terms for  
20 unbundled dark fiber. Do you recall that testimony or  
21 have it in front of you?

22 A. Yes.

23 Q. And are you aware that Qwest has changed its  
24 position on that take back of unbundled dark fiber?

25 A. No, I'm not aware of that.



02491

1 Q. Does Verizon have under consideration any  
2 plans or thoughts that it might be willing to modify its  
3 conditions so that it would not attempt to take back  
4 fiber that a CLEC is, in fact, using?

5 A. I'm not aware of any plans that are currently  
6 under consideration to that respect.

7 Q. Now you testified in response to Ms. Steele  
8 that one option in the event Verizon were to take back  
9 unbundled dark fiber would be for the CLEC to switch  
10 that service. Presumably there would now be more  
11 capacity, and the CLEC could switch the service to  
12 unbundled or interoffice transport?

13 A. Yes.

14 Q. Some kind of transport?

15 A. Yes, that is one option.

16 Q. All right. And in order to make that happen,  
17 however, the optronics or the electrooptical equipment  
18 that the CLEC had on the fiber would have to come off,  
19 and then Verizon would have to put its optronics on the  
20 fiber to make it work; isn't that correct?

21 A. Yes, that's correct.

22 Q. So that would involve an interruption in  
23 service to the CLEC?

24 A. Any time you move a jumper, there's  
25 interruption in service.

02492

1 Q. It's more than moving a jumper, you have to  
2 actually remove equipment and install new equipment,  
3 don't you?

4 A. The equipment could remain in place.  
5 Certainly Verizon would have to install new equipment if  
6 it didn't have it already in place, but, you know,  
7 jumpers would have to be slung over from one set of  
8 equipment to the other. But that would be done under a  
9 coordinated conversion to reduce or eliminate the out of  
10 service condition or minimize it as much as possible.

11 Q. But it would certainly take some time and  
12 involve an interruption?

13 A. That's correct. Like I said, you know, any  
14 type of movement of a jumper like that would happen.

15 Q. Are you familiar with the term interruptible  
16 service perhaps used in conjunction with natural gas  
17 service?

18 A. I have not heard that term before.

19 Q. Do you know what the assumed fill factor that  
20 went into the dark fiber rates, excuse me, well, yes,  
21 went into the dark fiber rates was?

22 A. No, I don't. I believe our cost witness  
23 could answer that question.

24 Q. Would that be Mr. Trimble?

25 A. Mr. Collins should be able to answer that

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1 one.

2 Q. Saved us some time folks.

3 I'm referring in this next question to

4 Exhibit T-1133, pages three to four, and you talk about  
5 the scenarios in the line splitting scenario. Referring  
6 to diagram 2 of a DLEC that "migrates to a VLEC". Do  
7 you have that line splitting scenario in mind?

8 A. Yes.

9 Q. Okay. You don't specify it in your  
10 testimony, so I would like to clarify. Would this  
11 scenario and this diagram apply only to UNE-P or maybe  
12 call it UNE-C, or could it also apply to services that  
13 the VLEC is reselling?

14 A. Well, this specific instance contemplates a  
15 scenario where there is line sharing in place and it  
16 migrates to line splitting under UNE-P. But Verizon, to  
17 answer your question, Verizon will allow a similar type  
18 of line sharing or line splitting arrangement on resold  
19 lines.

20 Q. Thank you. At page four, you refer to  
21 diagram 3, and you talk about the scenario where a VLEC  
22 currently using UNE-P subsequently adds a DLEC to the  
23 line to provide data to the end user. Do you have that  
24 scenario in mind?

25 A. Yes.

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1 Q. Could the reverse be true; could a loop  
2 that's being used only for DSL have UNE-P or resold  
3 voice services added to be provided by a voice LEC or a  
4 VLEC as you term it?

5 A. I guess as a line splitting scenario, our  
6 service description excludes that scenario. The reason  
7 being is that in order for line splitting to occur, all  
8 the parties that were part of our collaborative have  
9 agreed to the, I guess in terms of the timing of events,  
10 that there has to be voice service on the line first  
11 before you can effect a line splitting scenario.

12 Q. Is there any technical reason for that  
13 requirement?

14 A. I'm not aware of any technical requirement.  
15 I think it's more legal.

16 Q. So it would be technically feasible to have  
17 the service transition in that way, in other words,  
18 start with a DSL loop and then add the voice service?

19 A. It's technically feasible, yes.

20 Q. And if you had a customer hypothetically that  
21 was a DSL customer, I guess let's assume that they get  
22 their voice over a different loop rather than that  
23 they're just not talking to anyone.

24 A. So are you saying they have a second line,  
25 dedicated data line only?

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1 Q. They have a dedicated data line, and they  
2 have a dedicated voice line. And assume they want to  
3 take advantage of the efficiencies of line sharing or  
4 line splitting, and assume I guess initially that  
5 they're a Verizon voice customer. How would they go  
6 about collapsing those two lines into a single line  
7 split scenario from the two dedicated lines under  
8 Verizon's position?

9 MS. MCCLELLAN: Can I just ask for  
10 clarification, when you say that they're a Verizon  
11 customer, are they a Verizon voice customer or a Verizon  
12 data customer?

13 Q. They are a Verizon voice customer and a DLEC  
14 data customer.

15 MS. MCCLELLAN: Okay, thank you.

16 A. In that instance, the DLEC would essentially  
17 have to move their facilities off the second line,  
18 cancel, in other words, cancel the service they're  
19 providing. They would be purchasing a stand alone UNE  
20 loop. They would no longer need that and put in an  
21 order to line share on the other facility going to that  
22 end user customer.

23 Q. And would another -- well, I guess you  
24 wouldn't allow it to go the other way, you wouldn't  
25 allow them to cancel their Verizon voice service and add

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1 the voice service to the existing data line?

2 A. Well, no, the voice service is the  
3 controlling service in this case.

4 Q. Turn to page five of Exhibit 1133.

5 A. (Complies.)

6 Q. And at lines six to eight, you identify two  
7 out of three permutations. How does permutation number  
8 two differ from permutation number one?

9 A. It's just a matter of who is submitting the  
10 order.

11 Q. So does number two also assume the VLEC is in  
12 control, but the DLEC can submit the order on behalf of  
13 the VLEC?

14 A. Yes, under the service description, if you  
15 actually read further on here in these changes, the DLEC  
16 can place the order for the data service, but it assumes  
17 they have a working relationship with the voice LEC, an  
18 agreement to share the line. And, in fact, they on the  
19 LSR that they submit in the comments section, they  
20 actually use the AECN code of the voice LEC as a cross  
21 reference, which indicates that that voice LEC concurs  
22 in the order.

23 Q. Is it possible then in Verizon's view for the  
24 VLEC to act on behalf of the DLEC?

25 A. Yes.

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1 Q. And so the DLEC could be in control with the  
2 VLEC acting on its behalf?

3 A. Could you please repeat that?

4 Q. Well, I'm just trying to kind of flip it  
5 around.

6 A. Mm-hm.

7 Q. I guess one and two are not mutually  
8 exclusive, so could you have a situation where the DLEC  
9 would be in control, and the VLEC would then act on  
10 behalf of the DLEC?

11 A. Well, I guess the best way to look at it is  
12 that either the VLEC or the DLEC can add data service to  
13 the line. Only the VLEC is allowed to add voice  
14 service.

15 Q. Thank you for that clarification. Next I  
16 would like to direct your attention to Exhibit 1136,  
17 T-1136, which is your February 7 testimony. And at page  
18 17, you were discussing provision of line sharing over  
19 digital loop carrier, and you have also attached a  
20 couple of exhibits illustrating two different  
21 architectures, and those are Exhibits 1137 and 1138.  
22 And perhaps we could just start out by asking you to  
23 describe, you actually use the term next generation  
24 digital loop carrier or NGDLC in your testimony, could  
25 you please describe what that term refers to?

02498

1           A.     Well, this is -- it's referring to the -- the  
2 technology that, depending on which company you're  
3 talking about, introduces different products.  It's an  
4 integrated rolling card solution at a remote terminal  
5 that has splitter and DSLAM functionality in that card  
6 as well as voice capabilities.  And, for example, SBC is  
7 deploying this type of technology in their project  
8 Pronto, which some people may be familiar with.

9           Q.     And what are -- do you see some advantages to  
10 NGDLC technology?

11          A.     I guess advantages, there are potential  
12 advantages I guess associated with deploying the new  
13 technologies so that perhaps you don't have to have as  
14 many stand alone DSLAMs, splitters, because that  
15 functionality is integrated now.  And that's a  
16 technology that Verizon currently does not have deployed  
17 in its network but is examining for the future and has  
18 actually held a couple of meetings with CLEC partners to  
19 start discussing those options.

20          Q.     And I take it that Exhibit 1137 to 1136  
21 illustrates -- try one more time.

22                     Exhibit 1138 illustrates how NGDLC technology  
23 avoids the use of the separate or stand alone DSLAM at  
24 the remote as is shown in Exhibit 1137?

25          A.     Yes, this is I guess one configuration, not



02499

1 necessarily how we would roll it out, because we haven't  
2 defined that product yet, but.

3 Q. And is the NGDLC technology then something  
4 that could enable CLECs or more specifically data LECs  
5 to share the loop between the CO and customer premise in  
6 a situation where there is digital loop carrier in the  
7 loop?

8 A. Yes, it's a technology that allows -- that  
9 would allow that to happen, yes.

10 Q. And are there additional costs associated  
11 with NGDLC that you wouldn't find in the scenario shown  
12 in 1137?

13 A. Certainly there are network costs associated  
14 with this architecture, hardware and software costs and,  
15 you know, the installation of those facilities.

16 Q. Does Verizon have any DLC equipment deployed  
17 that can be upgraded to NGDLC and provide the  
18 functionality shown in Exhibit 1138 without having to  
19 completely replace the existing DLC equipment?

20 A. If they do, I am not aware of it. The  
21 current plan is, as we're looking at this, is not to  
22 upgrade existing facilities, but I think the target  
23 markets of interest to the CLECs and DLECs and, you  
24 know, look where capacity can be -- needs to be added.

25 Q. So would you say that because of the

02500

1 advantages of not having to locate a stand alone DSLAM  
2 at remote terminals that the NGDLC equipment may be the  
3 preferred technology going forward?

4       A.     Again, I wouldn't say it's the preferred  
5 technology, because as in any technology, there's a cost  
6 to deploy it.  And, you know, to the extent that Verizon  
7 is able to deploy it and make it available to its  
8 customers and recover its costs that, you know, then,  
9 you know, it becomes a desirable technology to deploy.

10       Q.     Would your decision on whether or not to  
11 deploy NGDLC at any particular remote hinge in part on  
12 the historic network, what kind of equipment is already  
13 there?

14       A.     Again, I don't know the answer to that  
15 question.  I think the, you know, process we're going  
16 through that we started with the CLECs and DLECs at the  
17 meetings in New York, the first one we had on February  
18 6, started that process and just identifying issues, the  
19 things that need to be looked at.

20       Q.     Do you have any understanding as to the  
21 CLECs' position in general, if they're at least  
22 consistent in their views?

23             MS. MCCLELLAN:  I'm going to object to that,  
24 because this is an ILEC witness, of course, and you  
25 being the -- Mr. Harlow being the CLEC attorney would

02501

1 know better what the CLEC view is, and in particular,  
2 his client's views would be, which I think this is an  
3 indirect way to ask Verizon's witness what Covad wants.

4 MR. HARLOW: Well, I hadn't finished my  
5 question, but I will respond nevertheless. And I  
6 started out asking him his understanding, and so he may  
7 well not have an understanding and may defer to the  
8 CLECs. But if he's involved in these collaboratives and  
9 knowledgeable about them, I assume he's hearing what the  
10 CLECs are demanding.

11 MS. MCCLELLAN: I think maybe you should ask  
12 him first if he's involved in the collaboratives. I  
13 think so far he has only testified that Verizon has had  
14 collaboratives.

15 MR. HARLOW: It will take us a little longer,  
16 but I will withdraw and proceed that way.

17 BY MR. HARLOW:

18 Q. Are you either involved in the collaboratives  
19 that you discussed in your testimony, or have you been  
20 informed as to the parties' positions?

21 A. I don't have -- I have not attended these  
22 sessions in person, so I don't have firsthand knowledge  
23 as to discussions with parties that have. I can just  
24 state in general that I know CLECs are in favor of this  
25 type of technology just reading the testimony in this

02502

1 proceeding.

2 Q. By this type of technology, you mean the next  
3 generation digital loop carrier?

4 A. Yes.

5 Q. And do you have any understanding as to why  
6 they would be in favor of that?

7 A. No, not particular.

8 Q. Why is Verizon willing to consider deploying  
9 this type of technology?

10 A. Well, I think Verizon sees some benefit for  
11 its own customers in deploying this type of technology  
12 potentially.

13 Q. Do you know if Verizon's data affiliate plans  
14 to offer DSL over DLC service loops?

15 A. Right now they don't. You know, we don't --  
16 Verizon the ILEC does not provide that service, does not  
17 have the network in place capable of doing that. So  
18 once, if and when we do make that decision, VADI,  
19 V-A-D-I, which is our data affiliate, would have the  
20 same opportunity on an equal footing as any other DLEC  
21 to utilize those services.

22 Q. Does Verizon the ILEC have any plans to make  
23 available services to be able to provide DSL over  
24 digital loop carrier using the architecture illustrated  
25 in Exhibit 1137?

02503

1 A. No, there's no current plans.

2 Q. So in effect then, if Verizon does proceed to  
3 deploy NGDLC and make it available to DLECs, then that  
4 should be made available to Verizon's data affiliate and  
5 the competitive DLECs at the same time?

6 A. That's correct.

7 Q. Based on that, I guess I'm having a hard time  
8 understanding what your objection is to Dr. Cabe's  
9 recommendation.

10 A. Can you point to a place in my testimony that  
11 you're referring to?

12 Q. I believe it would be in the same exhibit we  
13 were looking at, 1136. And the question is on the  
14 bottom of page 18, and your response is at the top, the  
15 top half of page 19. You start out with the answer no,  
16 but then your narrative doesn't really describe the  
17 basis for that objection to Mr. Cabe's recommendation.

18 A. Let me elaborate a little bit here. Mr. Cabe  
19 is asking for TELRIC based rates on a service that's not  
20 a UNE, has not been identified by the FCC as a UNE, and,  
21 in fact, the FCC is still addressing this whole issue  
22 right now in a separate proceeding. That's what we  
23 disagree with, that and the fact that Mr. Cabe wants  
24 this addressed now when we don't even have a network in  
25 place or specific plans to put that network in place.

02504

1 Q. So your objection doesn't go so much to the  
2 timing as who is first or whether there's parity, but  
3 rather the absolute timing, whether it be addressed now  
4 versus later?

5 A. That and the rates that need to be charged  
6 for it.

7 Q. Let's try to clarify what you understand  
8 Mr. Cabe is referring to, and I think maybe the hint is  
9 in line 3 on page 19 where you refer to the integrated  
10 line card solution. What do you mean by that integrated  
11 line card solution?

12 A. That was what I described up front when you  
13 asked about NGDLC.

14 Q. Okay. So if that solution weren't applied,  
15 what solution do you think Verizon would agree to?

16 A. Well, we have an offering currently in place  
17 that enables the CLECs or DLECs to subloop line share at  
18 remote terminals, and that is in, oh, which exhibit  
19 number was that one, I believe it was 1137, was it 1137,  
20 yes, 1137, that can be done today. And that's the most  
21 efficient way of doing it at this point in time given  
22 the network that Verizon has in place.

23 Q. So if Verizon implements or installs I guess  
24 NGDLC, nothing would change, the DLECs would continue to  
25 have to provide service with stand alone DSLAMs as

02505

1 illustrated in Exhibit 1137?

2 A. No, not at all. At the time that that  
3 service was introduced, that would become an option  
4 available to all CLECs and DLECs as well.

5 Q. You said that, you mean the option that  
6 Mr. Cabe is recommending now?

7 A. Yes.

8 Q. Okay. So you're not disagreeing for all  
9 time, you're just saying it has to wait?

10 A. It has to wait. I mean you can't -- you  
11 can't -- in other words, Mr. Cabe would have us build  
12 out this network and make it available immediately, and  
13 we have no requirement to do so.

14 Q. Does the architecture illustrated in Exhibit  
15 1137 accomplish the same functionality as the  
16 architecture illustrated in Exhibit 1138?

17 A. To the best of my knowledge, yes, it serves  
18 the same functionality.

19 Q. But it does so at a higher cost to the CLEC,  
20 because the CLEC must position a stand alone DSLAM at  
21 the Verizon remote terminal?

22 A. There would certainly be some costs  
23 associated with establishing that interconnection point  
24 there, yes.

25 Q. To your knowledge, is the project Pronto

02506

1 technology that you referred to a few minutes ago  
2 working currently?

3 A. As far as SBC goes?

4 Q. Yes.

5 A. I believe that they have deployed it in some  
6 places. They have not, from what I have read, they  
7 haven't launched it full scale like they anticipated.

8 MR. HARLOW: Thank you, Mr. Lee, that's all I  
9 have.

10 JUDGE BERG: Mr. Butler.

11 MR. BUTLER: Thank you.

12

13 C R O S S - E X A M I N A T I O N

14 BY MR. BUTLER:

15 Q. I believe most of my questions have already  
16 been asked. I only have two brief clarifying questions.  
17 The first, if you could turn to Exhibit 1130 at page 9,  
18 line 19.

19 A. (Complies.)

20 Q. Do you have that?

21 A. Yes, I have that, thank you.

22 Q. You make reference there to the limitation  
23 that Verizon would impose on the use of dark fiber,  
24 which would be a limit on a CLEC, an 82 year period,  
25 from leasing more than 25% of the dark fiber in a given



02507

1 segment of the network; do you see that?

2 A. Yes.

3 Q. Can you explain to me what you mean by  
4 segment of the network? Specifically, does that apply  
5 to a specific loop to an end user location, or are you  
6 talking about a broader category?

7 A. It could be other than a loop, because  
8 remember dark fiber is available in interoffice network  
9 as well. So it could be between a network segment  
10 that's central office A and central office B, or it  
11 could be from central office A out to the end user, or  
12 it could be from central office A out to a remote  
13 terminal, for instance.

14 Q. But is this 25% limitation a gross  
15 limitation, or is it to be applied on a specific say  
16 central office to end user location loop basis? Does it  
17 apply on each loop, or does it apply overall?

18 A. Well, it applies to each network segment,  
19 what's available in the terms of unused fiber in that  
20 network segment. So, for instance, on the interoffice  
21 segment that I mentioned before between office A and B,  
22 there are 8 unused fibers. 25% of that would be 2  
23 fibers. That is what a CLEC could order at that point  
24 in time given that there are 8 fibers available.

25 Q. Okay. But in the specific example of a loop

02508

1 to an end user location, you would apply the same 25%  
2 limitation? In other words, the CLEC could utilize only  
3 25% of the dark fibers to that particular location; is  
4 that your position?

5 A. That's correct, yes.

6 Q. Okay. Can you turn to Exhibit 1136, page 15,  
7 line 18.

8 A. (Complies.)

9 Q. I'm sure there are other references here, but  
10 there you're referring to Verizon meeting its carrier of  
11 last resort obligations.

12 A. Yes.

13 Q. My question is, in Verizon's view, do its  
14 carrier of last resort obligations extend to the  
15 provision of high capacity services, DS1 and above?

16 A. I believe the carrier of the last resort  
17 obligations, my understanding is that it's for basic  
18 telephone service.

19 Q. So you would --

20 A. It would not include a high cap or advanced  
21 type of services.

22 Q. Am I correct in concluding from that response  
23 that you would not propose then to take back dark fiber  
24 that's utilized by a CLEC to provide high capacity  
25 services to an end user customer?

02509

1           A.     It's not what the CLEC is using it for.  It's  
2 what Verizon must use it for.  If that piece of fiber is  
3 needed to handle traffic to serve, you know, local  
4 customers, local exchange customers, that's the driver.

5           Q.     Take, for example, purely hypothetical, say  
6 that Boeing wants to order a high capacity service from  
7 a CLEC to serve one of its end user locations, so the  
8 dark -- and the CLEC would be utilizing Verizon's dark  
9 fiber from the loop extending to the Boeing location.  
10 Absent some demand from Boeing at that location for  
11 basic telecommunications service, am I correct then from  
12 your answer that you would not be exercising a take back  
13 provision for that dark fiber?

14          A.     I believe you're referring to a situation  
15 where there's no alternative use for that fiber because  
16 it just -- it only goes to that customer location.  You  
17 know, in that instance where the fiber can't be --

18          Q.     No basic service use for that fiber.

19          A.     No basic service use for that.  Where there  
20 is no alternative use for it like that, I don't see any  
21 reason that we would try to reclaim it.

22                 MR. BUTLER:  Thank you, that's all I have.

23                 JUDGE BERG:  Ms. Tennyson.

24                 MS. TENNYSON:  Thank you.

25

02510

1 C R O S S - E X A M I N A T I O N

2 BY MS. TENNYSON:

3 Q. Good afternoon, Mr. Lee. My name is Mary  
4 Tennyson, and I'm representing Commission Staff in this  
5 proceeding.

6 A. Good afternoon.

7 Q. In your Exhibit T-1140, your supplemental  
8 rebuttal testimony, I'm going to refer first to page 2,  
9 line 14, starting at line 14. And there you state that  
10 the implementation of a line splitting product in  
11 Washington will be consistent with the time frame, terms  
12 and conditions and the guidelines agreed upon in the New  
13 York collaborative. You have also provided us in  
14 Exhibit 1134 a January 4th version of the terms,  
15 conditions, guidelines. Do you have a more updated one  
16 at this point?

17 A. Actually, although that particular exhibit  
18 still says draft on it, it has become pretty static.  
19 There might have been some minor changes to it here and  
20 there, but the service description has been fairly  
21 settled since that point in time.

22 Q. So am I hearing you don't have a more updated  
23 one you could provide us at this time?

24 A. No, and if I did, it wouldn't be  
25 significantly different.

02511

1 Q. Okay, thank you. And going on to page 3 of  
2 that same testimony at lines 6 through 8, you refer to  
3 the local service ordering guide version 5 or LSOG 5?

4 A. Yes, LSOG 5.

5 Q. I'm amazed how we all try to make these  
6 acronyms something we can pronounce.

7 A. Yes.

8 Q. Is the release of that guide to be only after  
9 the New York collaborative is concluded? I mean is it  
10 coincident with that, or would there need to be more  
11 discussions before that is released and implemented?

12 A. My understanding is that LSOG 5 is already  
13 scheduled for release in that time frame. What they're  
14 doing is taking the results of the collaborative and  
15 trying to fold it into that release.

16 Q. Now that time frame, the time frame  
17 referenced on this page is October 2001; is that what  
18 you're referring to?

19 A. Yes.

20 Q. Now Qwest is not a participant in the New  
21 York collaboratives, are they?

22 A. I do not believe so, no.

23 Q. Do you believe the Commission should  
24 establish the same policy terms and conditions regarding  
25 line splitting for both Verizon and Qwest in Washington?

02512

1           A.     I wouldn't want to pose another ILECs  
2 requirements on someone else. They may have a different  
3 idea of a product description than Verizon does that may  
4 be equally effective but different.

5           Q.     Now you do have -- there is various CLECs  
6 that are participating in the collaborative; is it  
7 possible that certain CLECs are operating only in some  
8 states including Washington but not in New York?

9           A.     That's certainly possible, yes.

10          Q.     Then I mean if they weren't operating in New  
11 York, they're not participating in the New York  
12 discussions, are they?

13          A.     Probably not.

14          Q.     Do you know, can you identify the CLECs that  
15 are mentioned in your testimony as participating in the  
16 New York proceeding? You have WorldCom, AT&T, and other  
17 CLECs and data LECs, but you don't define them further.

18          A.     I can provide you some additional ones. And  
19 again, this is just based on the distribution list of an  
20 E-mail that went out to the group.

21          Q.     Okay.

22          A.     And because it's based on E-mail addresses,  
23 I'm just trying to guess on the names here, but Mettel,  
24 Covad, Rhythms, we mentioned AT&T and WorldCom, Choice  
25 One Comm., North Point, DSL.NET, Z-Tel, Sprint, Global

02513

1 Crossing, Digital Broadband, Allegiance Telecom,  
2 Nextlink, Broadview.net, Teljet, Epics. I think those  
3 are the main ones that I picked out of this list that  
4 were the participants. There may be some others that  
5 have been added.

6 MS. MCCLELLAN: At the risk of not trying to  
7 offer testimony but just as a point of clarification,  
8 there is a participants list for that collaborative on  
9 the New York Public Utility Commission web site.

10 MS. TENNYSON: Thank you very much.

11 BY MS. TENNYSON:

12 Q. Do you agree or don't you agree that the  
13 Commission should require all interested parties in this  
14 case to take advantage of the benefit and progress made  
15 in the New York collaborative to start a workshop  
16 discussion relating to implementation of a line  
17 splitting product in Washington?

18 A. No, I disagree with that recommendation,  
19 basically because it would be duplicative of efforts  
20 that have already been accomplished and/or are underway.  
21 I don't think it would be efficient use of the parties'  
22 resources or the Commission's resources.

23 Q. For Verizon then you're saying you're  
24 essentially proposing that this Commission take what's  
25 done in New York and adopt it as it comes out of final

02514

1 product out of New York collaborative?

2 A. Yes.

3 Q. And yet earlier in your response to my  
4 earlier question, I understood you to say you did not  
5 believe that should be the case for Qwest, you shouldn't  
6 impose the same terms and conditions?

7 A. Well, I can't recommend what the Commission  
8 should do for Qwest or any other company. I'm just  
9 recommending what is appropriate for Verizon. We have a  
10 collaborative effort that developed the service  
11 description for Verizon specific, and so we would like  
12 to see the Commission adopt that proposal.

13 MS. TENNYSON: Thank you, I don't have any  
14 further questions.

15 JUDGE BERG: All right, we will be off the  
16 record.

17 (Recess taken.)

18 JUDGE BERG: Dr. Gabel, do you have some  
19 questions for this witness?

20 DR. GABEL: Yes, I do.

21

22 E X A M I N A T I O N

23 BY DR. GABEL:

24 Q. Good afternoon, Mr. Lee. I would like to ask  
25 you to first turn to Exhibit 1130, your direct



02515

1 testimony.

2 A. Okay.

3 Q. Page 10, line 15. You state here:  
4 CLECs purchasing Verizon's dark fiber  
5 may not resell it to third parties.

6 A. Yes.

7 Q. Why do you feel it's appropriate to establish  
8 that restriction on the use of the dark fiber?

9 A. First of all, let me clarify, by not resell  
10 it is that I mean not resell it as dark fiber, and  
11 that's basically the Telecom Act provides that UNEs may  
12 be used for one purpose, and that's to provide  
13 telecommunications services to end users. So selling it  
14 or turning around and reselling it to another provider  
15 is not a use of UNEs.

16 Q. Earlier this morning, Ms. Hopfenbeck asked  
17 you about Verizon's pricing proposal for vertical  
18 features. Do you recall that line of questioning?

19 A. Yes.

20 Q. And I understood you to respond that if the  
21 Commission included the cost of vertical features in the  
22 price of the ports, Verizon would not propose to charge  
23 an implemental rate for the use of vertical services.  
24 Did I understand that to be your testimony?

25 A. That's correct.

02516

1 Q. In this proceeding, has Verizon proposed a  
2 change in the port rate that was established in the last  
3 generic cost docket?

4 A. I am not aware of any proposed change. You  
5 might want to ask Mr. Trimble that question though.

6 Q. Also you were asked this morning by  
7 Ms. Singer about warm dial tone, and I wanted to make  
8 sure that I understand that issue. If I move into a new  
9 house, warm dial tone allows me to plug in my phone and  
10 connect with Verizon in order that I can order services;  
11 is that correct?

12 A. Yes.

13 Q. And in order to make sure that the warm dial  
14 tone is functioning, Verizon would -- would Verizon  
15 regularly conduct the same kind of testing on the warm  
16 dial tone line that it does on ordinary POTS lines?

17 A. Well, I am not aware of any reason that we  
18 would exclude those from the testing, the automatic  
19 testing systems.

20 Q. Is there a difference in the procedures that  
21 are used -- when a UNE platform combination is ordered  
22 by a CLEC, is there any kind of special testing that is  
23 done on that line that would be different than the kind  
24 of testing that would be done when a retail customer  
25 uses a warm dial tone to order the line for the first

02517

1 time?

2 A. Well, in a UNE-P ordering scenario, we're  
3 talking about a migration, so there is an existing  
4 working service on it already that's working. There is  
5 no change to the physical connections at all. It's  
6 essentially billing change. The way I see it, there  
7 wouldn't be any additional testing required because of  
8 that.

9 Q. Isn't there a physical connection with warm  
10 dial tone with the exception of the services that can be  
11 accessed by the end user?

12 A. In terms there's a loop connected to the  
13 switch?

14 Q. Yes.

15 A. Yes, that is true.

16 Q. And, in fact, didn't you testify this morning  
17 that when the warm dial or did I understand correctly  
18 that when a warm dial tone is converted to a functioning  
19 line, the way in which full functionality is achieved is  
20 through a change in the software associated with that  
21 line?

22 A. That's correct, plus there's additional  
23 functionality that needs to be added on a UNE-P basis,  
24 because that's a measured service always, so we have to  
25 add measurement capability to that line as well as any

02518

1 features or so forth that the end user wants.

2 Q. Would it also be the case that if a -- well,  
3 how would that differ from when a customer first orders  
4 telephone services? In both cases wouldn't you need to  
5 turn on certain services?

6 A. That's correct, but there's additional work  
7 required with UNE-P.

8 Q. And that's because of the measured service?

9 A. Yes.

10 Q. Okay. And is there measured service offered  
11 in the Verizon tariff to end retail users?

12 A. It's not in every state. A lot of  
13 commissions require flat rated service. Sometimes a  
14 local measured service is an optional service that a  
15 customer can subscribe to.

16 Q. And for the state of Washington, is measured  
17 service available to retail customers?

18 A. I am not familiar with the retail tariffs.

19 Q. All right. Now I would like to turn to  
20 Exhibit 1136, which is your supplemental responsive  
21 testimony and your rebuttal testimony of February 7. At  
22 page six and seven, you mention a collaborative  
23 processes in California and New York.

24 A. Yes.

25 Q. And I was just curious why Verizon is relying

02519

1 on the outcome from New York rather than California?

2       A.     I would say to some extent that California is  
3 also tied to New York and that we're trying to roll out  
4 a single nationwide product, if you will. The  
5 California Commission has been kind of the head of the  
6 game for line splitting in terms of the states that we  
7 operate in in the former GTE territories, so we have  
8 been working the same issues back through that group,  
9 again, but without trying to redefine the product, if  
10 you will.

11       Q.     So in California, you would be using  
12 essentially the same product definition that was  
13 established in New York?

14       A.     Yes, there could be some jurisdictional  
15 differences, you know, which you have to allow for,  
16 because certain state commissions might not like one  
17 thing you're doing, and others might want something  
18 different. And we will have that from state to state,  
19 but the primary product offering is intended to be  
20 nationwide.

21       Q.     I would like you now, if you would, sir, turn  
22 to page 12 of this same exhibit.

23       A.     (Complies.)

24       Q.     Line 7, am I correct that in this portion of  
25 the testimony, you're talking about what would be the

02520

1 impact if a CLEC converts from existing retail rates to  
2 UNE rates?

3 A. That's correct, yes.

4 Q. Okay. And at line 7, you speak of that  
5 Verizon may incur stranded costs?

6 A. Yes.

7 Q. Would you explain why such a conversion could  
8 lead to stranded costs?

9 A. Essentially the stranded costs are created by  
10 conversion to services that aren't compensatory to  
11 Verizon, and this goes back to the whole issue of TELRIC  
12 based costs based on hypothetical forward looking  
13 network that we don't have in place, which is another  
14 issue before the courts that has been remanded back to  
15 the FCC to look at.

16 So this again just refers to the fact that  
17 when we put in a tariffed service, we incur a lot of up  
18 front costs that under those tariffed services in a lot  
19 of cases we're able to recover immediately. Under UNE  
20 rates, we're not able to recover those up front costs in  
21 the rate structure. It's recovered through monthly  
22 recurring costs which are spread over a significant  
23 amount of time and at rates that are based on a  
24 hypothetical network that's not in place.

25 Q. If I understood your response correctly,

02521

1 Mr. Lee, you talked about the advantage in your retail  
2 rates that you can recover certain costs up front. And  
3 as I read your testimony at page 12, you're talking  
4 about an existing retail service being converted to a  
5 UNE, so wouldn't that mean that these costs have already  
6 been recovered up front?

7 A. Again, it depends on the timing here that  
8 we're talking about. If a CLEC is going to abuse the  
9 system, they're going to order special access and have  
10 the facilities put in place. And before they probably  
11 ever get their first bill, they're going to submit an  
12 order to convert that to UNEs. The facilities are  
13 already in place, then, you know, they cancel their  
14 other order, we've already committed the resources and  
15 the expense to put the facilities in place, they turn  
16 around and order it as a UNE.

17 Q. And they would do that because the  
18 nonrecurring charge would be lower for the UNE than it  
19 would be for the retail service?

20 A. That's one reason. The other reason is  
21 because we didn't have facilities available before, and  
22 there's no requirement for ILECs to build UNEs. If you  
23 order on the tariff, essentially the ILEC is obligated  
24 to provide those services as soon as it can.

25 Q. Now, Mr. Lee, would you turn to page 14,

02522

1 lines 9 to 17.

2 A. (Complies.)

3 Q. Am I correct, Mr. Lee, that in this portion  
4 of your testimony, you're outlining Verizon's position  
5 that it will only provide dark fiber that terminates at  
6 a fiber patch panel?

7 A. Yes, that's correct, and that's again based  
8 on what the FCC said in their UNE Remand Order about  
9 what are readily accessible access points for dark  
10 fiber.

11 Q. I would like to ask you to consider the  
12 following hypothetical situation. If a copper cable  
13 terminated in the manhole outside the central office  
14 rather than at the main distribution frame; do you have  
15 that situation in mind? Right now there's a copper  
16 cable that doesn't run to the main distribution frame,  
17 but it terminates at manhole zero.

18 A. Okay.

19 Q. If a CLEC wanted to rent some of the pairs on  
20 that copper cable, is it also Verizon's position that it  
21 would not install a connection between manhole zero and  
22 the MDF so that the CLEC would have access to that  
23 copper cable?

24 A. Again, that's a scenario that would require a  
25 work order to be issued and construction activity to be



02523

1 started to extend that facility to make it available,  
2 and as I said before, under the Act, we're not required  
3 to build UNEs for the use of CLECs.

4 Q. Now I would like to ask you to turn to page  
5 19 of this same exhibit, line 4. Earlier you were  
6 cross-examined about this testimony by Mr. Harlow, and I  
7 just want to have a clear understanding of what is meant  
8 by a wholesale offering versus a TELRIC based UNE  
9 offering. What do you mean by a wholesale offering?

10 A. A wholesale offering would be one that is at  
11 non-TELRIC rates. It's based on a market based offering  
12 for those types of services, you know, in other words,  
13 what the market would bear.

14 Q. And who would be making the wholesale  
15 offering; would it be the ILEC, or would it be VADI,  
16 your data subsidiary or your data affiliate, I'm sorry?

17 A. Right, right, in this case it's the ILEC,  
18 because the wholesale offering we're talking about here  
19 is this integrated line card solution with the next  
20 generation digital loop carrier technology, which would  
21 be wholly owned by the ILEC. So we would be offering  
22 that under the same terms and conditions to VADI as well  
23 as the other CLECs and DLECs.

24 Q. And why is it your position that such an  
25 offering is not an item where the price should be

02524

1 established using the TELRIC based standards established  
2 by the FCC?

3 A. The primary reason is the FCC has not  
4 designated this arrangement as an unbundled network  
5 element. In fact, they're currently examining, you  
6 know, the issues around this service right now, and we  
7 filed comments along with the other companies as well.  
8 But they have not addressed it as a UNE nor attempted to  
9 justify any sort of necessary impair standard around it  
10 to justify it as a UNE, and at this point in time, it is  
11 still not a UNE.

12 Q. I would like to now backtrack in the same  
13 document to page five.

14 COMMISSIONER HEMSTAD: Which exhibit are you  
15 in?

16 DR. GABEL: Exhibit 1136, this is Mr. Lee's  
17 February 7 testimony.

18 THE WITNESS: Which page?

19 DR. GABEL: 5.

20 THE WITNESS: Thank you.

21 BY DR. GABEL:

22 Q. At the bottom of page 5, lines 20 and 21, you  
23 point out that with the completion of the Bell Atlantic  
24 GTE merger, Verizon has been required to form a separate  
25 data affiliate, Verizon Advance Data or VADI for the

02525

1 provision of advanced services such as xDSL.

2 A. Yes.

3 Q. And then carrying over to page 6, you point  
4 out that it is VADI, not Verizon Northwest, that  
5 purchases and owns the DSLAM and splitter equipment.

6 A. That's correct.

7 Q. Are you familiar with the United States Court  
8 of Appeals decision in Case 99-1441? It's the  
9 Association of Communication Enterprises versus FCC?

10 A. I'm aware of it.

11 Q. Okay. And could you just briefly outline  
12 your understanding of the order and how it does or does  
13 not affect operations of VADI?

14 A. Well, first of all, this was an appeal of the  
15 Federal or the FCC Communications orders in the SBC  
16 Ameritech merger, which required the creation of a  
17 separate data affiliate similar to what happened with  
18 Verizon in its merger. And the -- as I understand it,  
19 the court overturned the FCC's order for that  
20 requirement, because it allowed them to I guess bypass  
21 the resale requirements of the Telecom Act.

22 And as far as an impact on Verizon, I know  
23 that our legal staff -- and it's still evaluating at  
24 this point. We got the same bulletin that probably went  
25 public as well saying the same type of thing, and there

02526

1 has been no further internal communication to employees  
2 anyway as far as a decision one way or another about how  
3 we're going to approach our own affiliate at this point.

4 Q. Lastly, could I ask you to turn to two  
5 diagrams, can I ask you to turn to two diagrams that you  
6 discussed this morning, they're Exhibits 1137 and 1138.

7 A. I'm there.

8 Q. I just need a little help with two acronyms.  
9 One acronym is LGX, can you define that, please?

10 A. I believe that stands for light guide cross  
11 connect. It would be the equivalent of like the fiber  
12 patch panel or a fiber distribution panel that I  
13 discussed before in relation to dark fiber.

14 Q. And on Exhibit 1138, the acronym DSX?

15 A. A DSX panel is I guess the equivalent of an  
16 LGX panel, but it is used for the termination and cross  
17 connect of copper facilities as opposed to fiber  
18 facilities.

19 Q. I just want to return to the warm dial tone  
20 for one last question, and that is could or does Verizon  
21 ever use the warm dial tone to call the subscriber  
22 before service is officially turned on?

23 A. Not that I'm aware. I think it's only a one  
24 way service, to the best of my knowledge, and it just  
25 goes to one location. It's very limited.

02527

1 DR. GABEL: Thank you, Mr. Lee.

2 THE WITNESS: Okay.

3

4 E X A M I N A T I O N

5 BY COMMISSIONER HEMSTAD:

6 Q. I really have only one question. I think it  
7 was your testimony that Verizon doesn't keep an  
8 inventory of the dark fiber that it has deployed.

9 A. Yes, that's correct.

10 Q. Well, I'm curious, why, why don't you have an  
11 inventory of that kind of an asset?

12 A. Well, primarily because we don't offer it as  
13 a product. We're offering dark fiber in this instance  
14 because we have been mandated to do so, but we're not in  
15 the business of providing underlying transport  
16 facilities. We sell tariff transport services, not dark  
17 fiber. So the existing systems that we have to query  
18 and compare, you know, are sufficient for planning needs  
19 internally as they are at this point in time.

20 Q. But wouldn't it be more efficient when you  
21 deploy it to know the quantity of fiber that's in any  
22 location so you wouldn't have to go back later and do an  
23 on-site inspection to determine whether you have any  
24 capacity?

25 A. Well, at a given point in time when it's

02528

1 deployed, you know, there's a capacity associated with  
2 that. But over time, that gets assigned and used. So  
3 that another system is where those circuits that are  
4 being used are recorded. So at any given time, you  
5 know, it's a moving number, the inventory number. So we  
6 can go and query one system which has cable sizes and  
7 locations of those cables, but it doesn't tell us which  
8 of those cables are being used. We then have to go to  
9 another system which tells us which of those fibers has  
10 been assigned for use and compare the records  
11 essentially.

12 Q. When you say another system, you mean an  
13 assigned system to a CLEC?

14 A. No, I meant an inventory type of system that  
15 will tell us, you know, circuit, the number of circuits  
16 that are being used on a given facility.

17 COMMISSIONER HEMSTAD: That's all I have.

18 THE WITNESS: Okay.

19

20 E X A M I N A T I O N

21 BY DR. GABEL:

22 Q. Just to follow up on that, Mr. Lee, why  
23 wouldn't you just directly go to this second system that  
24 tells you which of the fibers are in use on a particular  
25 route? What's the need for the first system?

02529

1           A.     The first system tells you the size of the  
2 cable, so it might say, okay, there's 100 fibers. The  
3 second system says there are 20 fibers being used on  
4 this route. It doesn't tell you the size of the cable.

5           DR. GABEL:   Okay, thank you.

6           JUDGE BERG:   Any other cross-examination?

7           MR. HARLOW:   Yes.

8

9                   R E C R O S S - E X A M I N A T I O N

10 BY MR. HARLOW:

11          Q.     I have an area of follow up to one of  
12 Dr. Gabel's questions. It was regarding Exhibit T-1136  
13 at page 19, the sentence beginning on line 3:

14                 The integrated line card solution that  
15                 Mr. Cabe is referring to if offered by  
16                 Verizon should be viewed as a wholesale  
17                 offering and not a TELRIC based UNE  
18                 offering.

19                 Do you have that testimony?

20          A.     Yes.

21          Q.     What would the wholesale service be?

22          A.     Well, it would -- it might consist of several  
23 rate elements, but it's going to include the subloop  
24 distribution either on a shared basis or on a wholly  
25 purchased basis, data only. It's going to include the

02530

1 functionality of that integrated card we discussed  
2 earlier. It's going to include transport back to a  
3 central office location. And there's also a need for an  
4 optical concentration device back in the central office  
5 location to enable that data to be passed off to the  
6 CLEC's collocation arrangement.

7 Q. And apparently you're saying that should not  
8 be priced on the TELRIC basis?

9 A. That's correct, the FCC has not designated  
10 this arrangement as an unbundled network element.

11 Q. How would it be priced?

12 A. As I discussed earlier, it would be a  
13 wholesale market based offering.

14 Q. Verizon would propose to price it at  
15 Verizon's determined price?

16 A. Cost plus a markup, you know, based on, you  
17 know, what the market will bear.

18 Q. And your proposal would be there would be no  
19 Commission supervision over that price?

20 A. To the extent that the Commission requires it  
21 to be tariffed, which we wouldn't recommend, there would  
22 be Commission supervision over that.

23 Q. If it were tariffed, would it be tariffed as  
24 a resale or a retail service then with a wholesale  
25 discount, or would it be simply tariffed as a wholesale



02531

1 service?

2 A. This would be a wholesale offering.

3 Q. And this offering would be intended to meet  
4 Verizon's obligation to offer line sharing?

5 A. No, there's no obligation to offer line  
6 sharing over fiberfed DLC facilities at this point in  
7 time.

8 Q. Would you agree that line sharing is defined  
9 as a UNE?

10 A. Yeah, line sharing is defined as line sharing  
11 over copper facilities though at this point in time.

12 MR. HARLOW: That's all I have, thank you.

13 JUDGE BERG: Redirect, Ms. McClellan?

14 MS. MCCLELLAN: Yes, just a little bit.

15

16 R E D I R E C T E X A M I N A T I O N

17 BY MS. MCCLELLAN:

18 Q. I would just like to follow up first on some  
19 questions from Commissioner Hemstad where he asked you  
20 about whether Verizon --

21 CHAIRWOMAN SHOWALTER: Ms. McClellan, can you  
22 put the microphone between you and the witness.

23 MS. MCCLELLAN: Sure, I'm sorry.

24 BY MS. MCCLELLAN:

25 Q. Do you recall some questions from

02532

1 Commissioner Hemstad and I think originally from  
2 Ms. Steele about whether or not Verizon has inventory  
3 records of dark fiber?

4 A. Yes.

5 Q. And I believe you testified that Verizon has  
6 never needed to inventory dark fiber?

7 A. That's correct, because we don't offer it as  
8 a product and haven't been until mandated to do so by  
9 the FCC.

10 Q. And I believe you testified or the current  
11 system that Verizon used for itself to inventory that  
12 dark fiber was sufficient for Verizon's internal  
13 planning?

14 A. That's correct, and what we're offering is  
15 parity with what we provide to ourselves. It's the same  
16 manual process that we go through to determine where  
17 dark fiber is in our network.

18 Q. And do you recall you got some questions from  
19 Ms. Tennyson about the New York collaborative service  
20 description contained in Exhibit 1134?

21 A. Yes.

22 Q. And she asked you if we had anything more  
23 current?

24 A. Yes.

25 Q. Is it your understanding that this service

02533

1 description is pretty much final today?

2 A. Yes, that's my understanding. The focus of  
3 the New York collaborative has shifted away now from the  
4 service description, and they're really spending all of  
5 their resource time on a pilot in New York which is set  
6 to commence in June.

7 Q. And then after that pilot, they will  
8 reevaluate to see if the service descriptions are  
9 satisfactory to all parties?

10 A. If there's fine tuning to the service  
11 description at that point, it would be done then. I see  
12 that the pilot is more of an opportunity to fine tune  
13 processes.

14 Q. Okay.

15 A. And make sure that they're working.

16 Q. And do you remember Dr. Gabel asked you some  
17 questions about the collaborative process in California.  
18 I believe you answered him, but I just wanted to make  
19 sure that your answer was clear. The service  
20 description that Verizon proposes in California is the  
21 same as in New York; is that correct?

22 A. Yes, it is.

23 Q. And do you have any familiarity with at what  
24 stage that California proceeding is at this time?

25 A. No, I haven't been involved in those

02534

1 proceedings.

2 Q. And when you said that there might be  
3 jurisdictional differences between California and New  
4 York; do you remember that?

5 A. Yes.

6 Q. Would some of those differences include the  
7 OSS modifications or service ordering processes  
8 resulting from OSS differences between California and  
9 New York?

10 A. Certainly that could be one thing. The  
11 systems used by the former Bell Atlantic companies are  
12 still separate and different from those used by the  
13 former GTE companies. So because of those differences  
14 in OSS, that it would require some differentiation  
15 between the two to some extent.

16 Q. And you received some questions from  
17 Dr. Gabel about the impact of the D.C. Circuit's opinion  
18 in association with Communications Enterprises versus  
19 FCC.

20 A. Yes.

21 Q. As of today, is Verizon still required to  
22 offer -- let me rephrase.

23 As of today, is Verizon the ILEC permitted to  
24 provide advanced services itself?

25 A. No, we're still under a business as usual

02535

1 scenario with VADI, our separate data affiliate,  
2 providing those services.

3 MS. MCCLELLAN: I have no further questions.

4

5 E X A M I N A T I O N

6 BY DR. GABEL:

7 Q. Mr. Lee, I would like to make sure first I  
8 understood correctly your response you offered to  
9 Mr. Harlow. Did you say that there's no -- did I  
10 understand correctly that you stated that there's no FCC  
11 requirement that there be line splitting on fiberfed  
12 loops?

13 A. Line splitting or line sharing. The  
14 definition of line sharing is over a copper facility.  
15 It's the high frequency portion of a loop of a two wire  
16 copper facility.

17 Q. I apologize for not being able to hand you  
18 this order, but you could look on my computer if you  
19 would like. This is FCC Docket 01-26.

20 A. Okay.

21 Q. Which is the Third Report and Order on  
22 Reconsideration in Common Carrier Docket 98-147. And  
23 the first thing under the executive summary says:

24 We clarify that the requirement to  
25 provide line sharing applies to the

02536

1           entire loop even where the incumbent LEC  
2           has deployed fiber in the loop.

3           A.     Right, they have clarified that, yes, but  
4 they also open up an NPRM to address all the issues  
5 around that and have sought comment from the parties,  
6 and that separate proceeding is still in progress. So  
7 even though they have included that as I guess an  
8 overall requirement, they had not addressed any rules or  
9 anything surrounding it at this point. And I think it  
10 would be a mistake for this Commission to jump ahead of  
11 the FCC in what they're doing in determining the  
12 parameters around providing that service in the future.

13          Q.     All right. And also in response to a  
14 question from Ms. McClellan, you clarified the degree to  
15 which GTE Verizon keeps an inventory of dark fiber. Do  
16 you recall that question?

17          A.     Yes.

18          Q.     You were a participant in the earlier generic  
19 cost docket that this Commission started to hear and has  
20 completed, UT-960369?

21          A.     Yes, I was.

22          Q.     And are you aware that in that proceeding  
23 there was discussions about what are the appropriate  
24 fill factors to use in cost studies?

25          A.     I don't recall the specifics of what those

02537

1 were.

2 Q. Okay. Well, would you agree, Mr. Lee, that  
3 as a regular job of an outside plant engineer is to  
4 observe the inventory facilities, to track when the  
5 inventory reaches a certain level of utilization, and at  
6 that point it's appropriate to say, well, we need to  
7 make a new investment because we're almost reached the  
8 point where we have exhausted the amount of spare  
9 capacity?

10 A. Yes, that would be reasonable.

11 Q. Okay. Well, in the process of your outside  
12 plant engineers doing that type of review, is it the  
13 case they have -- they go through the same steps that  
14 you believe need to be undertaken when a CLEC orders  
15 dark fiber, that is, that your engineers have to go to  
16 two systems, they first go to one system where they find  
17 out the capacity of the cables, and then they go to a  
18 second system, and then they figure out of that capacity  
19 how many of the fibers are in use?

20 A. Yes.

21 DR. GABEL: Thank you.

22 JUDGE BERG: Any further redirect,

23 Ms. McClellan?

24 MS. MCCLELLAN: Just one more question.

25

02538

1 R E D I R E C T E X A M I N A T I O N

2 BY MS. MCCLELLAN:

3 Q. Has the FCC defined next generation digital  
4 loop here as a UNE?

5 A. No, they have not.

6 MS. MCCLELLAN: Thank you.

7 JUDGE BERG: All right, then that would  
8 conclude your cross-examination and testimony here  
9 today, Mr. Lee. Thank you very much for being present.  
10 You are excused from the hearing.

11 And counsel have any matters that need to be  
12 made of record before we adjourn?

13 Hearing nothing, the hearing will be  
14 adjourned until Monday morning, April the 2nd, at 9:30.  
15 Off the record.

16 (Hearing adjourned at 3:30 p.m.)

17

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