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BEFORE THE WASHINGTON UTILITIES AND

2

TRANSPORTATION COMMISSION

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4 In the Matter of the Continued) Docket No. UT-003013
Costing and Pricing of)
5 Unbundled Network Elements and) Volume XXVII
Transport and Termination.) Pages 3300-3467
6 _____)

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A hearing in the above matter was

9

held on April 17, 2001, at 9:35 a.m., at 1300

10

Evergreen Park Drive Southwest, Olympia, Washington,

11

before Administrative Law Judge LAWRENCE BERG and

12

Chairwoman MARILYN SHOWALTER.

13

14

The parties were present as

follows:

15

16 QWEST, by Lisa A. Anderl, Attorney
at Law, 1600 Seventh Avenue, Room 3206, Seattle,
Washington 98191.

17

18 THE COMMISSION, by Mary M.
Tennyson, Assistant Attorney General, 1400 S.
Evergreen Park Drive, S.W., P.O. Box 40128, Olympia,
19 Washington 98504-0128.

20

21 XO, ELECTRIC LIGHTWAVE, INC., ATG,
FOCAL, AT&T and McLEOD, by Mary Steele, Attorney at
Law, Davis, Wright, Tremaine, LLP, 2600 Century
Square, 1501 Fourth Avenue, Seattle, Washington
22 98101-1688.

23

24 Barbara L. Nelson, CCR
Court Reporter

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03301

1 VERIZON, by Jennifer McClellan, W.
2 Jeffery Edwards, and Meredith Miles, Attorneys at
3 Law, Hunton & Williams, 951 E. Byrd Street, Richmond,
4 Virginia, 23219.

5
6 WORLDCOM, INC., by Ann E.
7 Hopfenbeck, Attorney at Law, 707 17th Street, Suite
8 3600, Denver, Colorado, 80202.

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P R O C E E D I N G S

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JUDGE BERG: We'll be on the record. This is a continued hearing in Docket Number UT-003013. We returned from a recess of one week. Today's date is April 17, 2001.

6

At this point, I would request that the reporter enter into the transcript record exhibit numbers and exhibit descriptions T-1240 through 1244, T-1250 through E-1252, T-1260 through T-1262, and T-1270 through 1276 from the exhibit list, which has been distributed and identified as Updated Exhibit List 4/17/01, as the date, as if read forth in their entirety.

14

Exhibit T-1240, supplemental direct testimony of Lauren A. Krauss adopting testimony of Paul G. Bobeczko; Exhibit CT-1241 and T-1241, testimony and confidential version of page seven of testimony (PGB-1T)(TGB-2C); Exhibit C-1242, analysis of UNE-P residential revenues & exp. (PGB-3C); revised 4/12/01; Exhibit 1243, WorldCom's response to Qwest's DR 16; Exhibit 1244, WorldCom's response to Qwest's DR 20.

23

Exhibit T-1250, direct testimony of Roy Lathrop (RL-2T); T-1251, response testimony of Roy Lathrop (RL-3T); 1252, principles for line splitting

24

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03307

1 having been first duly sworn, was called as a witness
2 herein and was examined and testified as follows:

3 JUDGE BERG: Thank you.

4

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

6 BY MS. HOPFENBECK:

7 Q. Ms. Krauss, will you please state your full
8 name for the record?

9 A. Lauren Ann Krauss.

10 Q. And will you spell your last name?

11 A. K-r-a-u-s-s.

12 Q. Do you have before you what has been marked
13 for identification as T-1240, the supplemental direct
14 testimony of Lauren A. Krauss, adopting testimony of
15 Paul G. Bobeczko?

16 A. Yes, I do.

17 Q. Do you also have before you what's been
18 marked for identification as CT-1241 and T-1241,
19 C-1242, that is the testimony and confidential
20 version of page seven of that testimony of Paul
21 Bobeczko, as well as PGB-3C, the analysis of UNE-P
22 residential revenues and expenses?

23 A. Yes, I do.

24 Q. If I were to ask you the same questions
25 that are contained in that testimony today, would

03308

1 your answers be the same?

2 A. Yes, they would.

3 MS. HOPFENBECK: I'd move the admission of
4 T-1240, CT-1241, T-1241 and C-1242.

5 MS. ANDERL: No objection.

6 JUDGE BERG: Hearing no objections, they
7 are admitted.

8 MS. HOPFENBECK: Ms. Krauss is now
9 available for cross-examination.

10 JUDGE BERG: Ms. Anderl.

11 MS. ANDERL: Thank you.

12

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

14 BY MS. ANDERL:

15 Q. Good morning, Ms. Krauss.

16 A. Good morning.

17 Q. I'm Lisa Anderl, and I represent Qwest. I
18 have a few questions for you this morning. Would you
19 turn, please, to Exhibit C-1242. The document that
20 I'm looking at indicates that it was revised on April
21 12th, 2001. Is that the same one that you have?

22 A. Yes.

23 Q. And is the only change that you made to
24 this document from the originally-filed C-1242 a
25 change in the loop price to reflect a 55-cent

03309

1 reduction in that loop price as a result of the loop
2 and port being purchased together?

3 A. Yes.

4 Q. Okay. And then that one change flowed out
5 into different results in the gross margin line?

6 A. Yes.

7 Q. Ms. Krauss, turning to T-1241, page eight,
8 lines 17 through 21, you state that Qwest's proposed
9 UNE-P recurring and nonrecurring rates are so high
10 relative to the prices of its retail product
11 offerings that if a CLEC sold local service to a
12 residential customer for the same price as Qwest, it
13 would not even make enough money to pay for the cost
14 of the elements it leases to provide that service.
15 Do you see that?

16 A. You had mentioned page seven?

17 Q. Eight.

18 A. Page eight.

19 Q. Lines 17 through 21.

20 A. Yes, I see that.

21 Q. Is that your testimony?

22 A. Yes, that is my testimony.

23 Q. If you would assume with me that Qwest's
24 UNE-P rates only recover its TELRIC and common costs,
25 would you agree that Qwest's residential service also

03310

1 does not make enough money to pay for the cost of the
2 elements used to provision the service?

3 A. Yes, I would say that.

4 Q. Are you aware that in assessing the
5 price-cost relationship of facilities used to
6 provision residential exchange service, this
7 Commission assumes that the cost of the loop is
8 shared by all services that utilize the loop,
9 including exchange service, switched access service,
10 vertical features and toll?

11 A. Yes.

12 Q. Now, Ms. Krauss, WorldCom is not proposing
13 in this phase of this docket that the Commission
14 reevaluate the loop cost, is it?

15 A. No.

16 Q. And you have not sponsored any cost study
17 in your testimony that would support a reevaluation
18 of the loop cost in this phase of this docket, have
19 you?

20 A. Can you repeat that question?

21 Q. You have not sponsored any cost study in
22 your testimony that would support a reevaluation of
23 the loop cost in this phase of this docket?

24 A. No, we have not, no.

25 Q. Assuming that the UNE rates that comprise

03311

1 the UNE platform are properly set at their TELRIC, is
2 it WorldCom's recommendation in this docket that the
3 Commission should consider raising the price of
4 residential exchange service in order to enable
5 WorldCom to compete for those customers?

6 A. No, what WorldCom is focused on at this
7 point is looking at the costs associated with UNE-P.

8 Q. Let's turn back to your Exhibit C-1242.

9 Ms. Krauss, did you perform that analysis or was it
10 performed at your direction?

11 A. I performed this analysis.

12 Q. Okay. And is it based on your familiarity
13 with WorldCom's local service offerings in other
14 states?

15 A. Yes.

16 Q. Is it based on anything else?

17 A. It would be based upon my understanding of
18 WorldCom's offerings in other states, coupled with
19 research and understanding of the offerings in the
20 state of Washington.

21 Q. Okay. Are you familiar with the -- well,
22 with WorldCom's offerings in the state of Washington
23 or with the incumbent's?

24 A. I'm familiar with the incumbent's
25 offerings.

03312

1 Q. Is WorldCom providing local service to
2 residential customers in the state of Washington?

3 A. No.

4 Q. When WorldCom provides local service to its
5 customers, does it also offer inter- and intraLATA
6 toll service to those customers?

7 A. Yes.

8 Q. Did you include any toll revenues in the
9 analysis in Exhibit C-1242?

10 A. Yes, we have included toll revenues. Those
11 can be seen in our -- in the line entitled Access
12 Revenue. What we've included in that line item is
13 both access revenue, as well as access savings. With
14 access savings, we -- WorldCom gets savings from a
15 WorldCom customer with local also having intraLATA.
16 So it's a cost savings as far as a telco savings for
17 intraLATA.

18 We have not included the margin for
19 intraLATA, meaning the revenue and the other telco,
20 because we believe that this is an incremental
21 analysis, meaning WorldCom currently, although it
22 does not offer local, is in the intraLATA market and
23 we have been very successful at selling in that
24 market. Therefore, we believe that this is a picture
25 of what we would obtain by selling local.

03313

1 Q. Okay. I don't understand what you included
2 and what you didn't include in the line designated as
3 access revenue, so let's go through it again.

4 A. Certainly.

5 Q. Is it your testimony that the figure that's
6 on the line labeled Access Revenue is the average
7 toll revenue plus -- well, is it the average toll
8 revenue that MCI WorldCom receives from its customers
9 in the state of Washington?

10 A. No.

11 Q. Is it -- what is it, then? Say it again,
12 because -- I'm sorry, I just didn't understand.

13 A. Okay. The access revenue line represents
14 both access revenue and access savings.

15 Q. Okay. And I don't mean to interrupt you.

16 A. Okay.

17 Q. But if I could stop you so we could break
18 it apart. Access revenue, when you say access
19 revenue, do you mean access revenue paid to WorldCom
20 by other carriers for, say, terminating a call to a
21 WorldCom local customer?

22 A. Yes, that's exactly what I mean.

23 Q. Okay. And is it also potentially access
24 revenue that is paid to WorldCom on an originating
25 basis if the WorldCom end user selects a carrier

03314

1 other than WorldCom?

2 A. Yes.

3 Q. When WorldCom has local customers, do they
4 -- does WorldCom let its local customers select
5 carriers other than WorldCom for long distance?

6 A. Yes, we do.

7 Q. Okay, okay. So it's originating and
8 terminating access. What else is it?

9 A. It's also the savings component, which --
10 what I mean by that is when a WorldCom local customer
11 selects WorldCom as their intraLATA or their
12 interLATA provider, then WorldCom has savings.
13 WorldCom would not have to pay in that case switched
14 access for those intraLATA calls. We would, in fact,
15 save that cost, and that is also in the access
16 revenue line.

17 Q. Okay. So are any of the revenues you
18 received from your end user customers for inter- or
19 intraLATA toll included on the access revenue line?

20 A. No.

21 Q. Does WorldCom offer vertical features to
22 its local service customers?

23 A. Yes, it does.

24 Q. Do you know what features WorldCom
25 typically offers?

03315

1 A. WorldCom typically offers the same features
2 that -- the same vertical features that a RBOC will
3 offer. For example, call waiting, caller ID, call
4 return, along those lines.

5 Q. Do you know how they're priced?

6 A. WorldCom's pricing strategy for vertical
7 features is to provide the same features at a slight
8 discount for the customer.

9 Q. A slight discount under the incumbent's
10 price?

11 A. That is correct.

12 Q. Does WorldCom offer DSL services to its
13 local end users?

14 A. No, it does not offer DSL.

15 Q. Does WorldCom partner with a data LEC to
16 offer DSL to its end users?

17 A. As far as I'm aware, no.

18 Q. Does WorldCom offer services such as voice
19 mail to its end users?

20 A. No, it does not.

21 Q. Okay. Have you done any study of
22 WorldCom's -- well, let's take -- let me back up
23 here. Your testimony indicates that you're providing
24 local service, or WorldCom is providing local service
25 to customers in New York; is that right?

03316

1 A. That is correct.
2 Q. And Texas?
3 A. Yes.
4 Q. And Pennsylvania?
5 A. Yes.
6 Q. And Illinois?
7 A. Yes.
8 Q. And Michigan?
9 A. Yes.
10 Q. Are there any others since that testimony
11 was filed?
12 A. We are planning to enter in Georgia in the
13 next couple months.
14 Q. Are you familiar with the customer
15 purchasing patterns in any of those five states in
16 which WorldCom is already providing service, the end
17 user customers?
18 A. Yes, I am.
19 Q. Do some of those customers purchase more
20 than one feature from you?
21 A. Yes, customers do purchase more than one
22 feature. However, on average, what we see, based on
23 our experience in those markets, is that customers
24 purchased one feature.
25 Q. Does WorldCom offer a bundle of features,

03317

1 like a package?

2 A. Yes, in several of our existing markets,
3 WorldCom does offer a variety of packages of vertical
4 features.

5 Q. Do those packages count, in your view, as
6 one feature or multiple features?

7 A. They count as multiple features.

8 MS. ANDERL: No more questions, Your Honor.

9

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

11 BY MR. EDWARDS:

12 Q. Good morning, Ms. Krauss. My name is Jeff
13 Edwards. I represent Verizon. Ms. Anderl asked
14 about WorldCom's entry into the local residential
15 market in several states, including New York, Texas,
16 Michigan, Pennsylvania, Illinois, and then I believe
17 you said Georgia is on the near horizon; is that
18 correct?

19 A. That is correct.

20 Q. In any of those states, does WorldCom offer
21 services generally throughout the state?

22 A. Yes, WorldCom -- in those states that you
23 mentioned, WorldCom is able to offer local service in
24 the same area as the incumbent offers service.

25 Q. So in New York or Pennsylvania, for

03318

1 example, Verizon is one of the incumbents there; is
2 that correct? Do you know?

3 A. WorldCom would be considered a competitor
4 to the incumbent.

5 Q. All right. And then -- let's take
6 Pennsylvania. Is it your testimony today that
7 WorldCom is offering residential local service
8 throughout the entire Verizon footprint in
9 Pennsylvania?

10 A. Yes, WorldCom is tariffed to offer service
11 throughout the footprint of Verizon in Pennsylvania.

12 Q. And when you say it's tariffed, does that
13 mean it is actively marketing throughout the entire
14 footprint for residential local service?

15 A. Yes, I would say that.

16 Q. And is it your testimony today that that is
17 also true in New York, that WorldCom is actively
18 marketing for local residential service throughout
19 the entire Verizon footprint?

20 A. Yes, I would say that.

21 MR. EDWARDS: I don't have any more
22 questions, Your Honor. Hold on a second. Maybe I
23 do. If I may?

24 JUDGE BERG: Yes, sir. Go ahead.

25 Q. Ms. Anderl asked you whether WorldCom

03319

1 provides DSL service, and I understood that her
2 question was specific to Washington. Does WorldCom
3 provide DSL service in either New York or
4 Pennsylvania?

5 A. No, as far as I'm aware, WorldCom does not.

6 Q. And does WorldCom partner with a DLEC in
7 either of those states to provide DSL service?

8 A. No, it does not.

9 MR. EDWARDS: I think that's it, Your
10 Honor. Thank you. Thank you, Ms. Krauss.

11 THE WITNESS: Certainly.

12 JUDGE BERG: Dr. Gabel.

13

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

15 BY DR. GABEL:

16 Q. Good morning, Ms. Krauss. I'm going to
17 follow up on the same line of questioning that Ms.
18 Anderl has asked you about. First, I believe you
19 just testified that you're familiar with the
20 purchasing decisions of customers in a few states
21 where MCI WorldCom provides local telephone service?

22 A. That is true.

23 Q. And that includes the purchasing practices
24 of residential customers?

25 A. Yes, I'm familiar with the purchasing of

03320

1 residential.

2 Q. You're also -- I see you're working on an
3 MBA, and so you're familiar with the term bundling?

4 A. Yes, I am.

5 Q. And in your readings as an MBA student, is
6 it the case that the literature on bundling talks
7 about how, with bundling, there's certain advantages
8 to firms? For example, customers might buy products
9 that otherwise they wouldn't buy if not for bundling?

10 A. Yes, that would be the case.

11 Q. Is it true or are you familiar with the
12 literature on bundling where maybe an author points
13 out that, because of bundling, there may be less
14 churn in the selling of products?

15 A. Yes, I would agree with that.

16 Q. All right. And so, for example, if
17 WorldCom were to bundle local service with long
18 distance service, there is the possibility that it
19 would reduce churn for the selling of its long
20 distance services?

21 A. Yes, that would be the case.

22 Q. All right. And in your analysis that is
23 marked as Exhibit 1242, have you identified any
24 financial benefits to WorldCom that would result from
25 reduced churn?

03321

1 A. No, we have not.

2 Q. Now, Ms. Krauss, I'd like to ask you to
3 turn to Exhibit T-1241, page nine, lines 9 to 11.
4 Here you state, with deaveraging, there is one
5 Washington rate zone that would yield a positive
6 gross margin. Now, looking at Exhibit 1242, could
7 you just identify that one zone and explain why there
8 aren't other zones that exhibit a positive gross
9 margin?

10 A. Yes. In Exhibit 1242, the zone that we are
11 referring to is zone one. The difference between, as
12 you go across this exhibit, from zone one through
13 zone five, the change that you will see is an
14 increase in the unbundled loop rate. Therefore, as
15 you go across the page, across the gross margin line,
16 the gross margin deteriorates as you move to the
17 right.

18 Q. But you stated at page nine that there's
19 only one zone with a positive gross margin. Why
20 isn't it that zone two and zone three also satisfy
21 the criteria of a positive gross margin?

22 A. In the testimony in Exhibit 1241, the line
23 you're speaking of, when it says yield a positive
24 gross margin, it is intended to mean that the gross
25 margin in zone one is a margin that we would deem an

03322

1 acceptable margin for UNE-P local service.

2 Q. So other zones, zones two and three, have
3 positive gross margins; it's just --

4 A. Yes, I would agree with that.

5 Q. So then -- so if the value in zone two
6 implies that you don't have -- you wouldn't earn a
7 satisfactory profit, but zone one's gross margin
8 indicates that you do have a satisfactory gross
9 margin, we could -- that might provide some sense of
10 what you believe to be WorldCom's internal cost,
11 somewhere in that range, or some -- well, let me
12 restate the question. No, let me just -- I'll just
13 withdraw that. I'm sorry.

14 Okay. Now, I want to also ask you about
15 some of your revenue numbers. First you used a SLC
16 number. That value, \$4.35, that's the current
17 subscriber line charge established by the FCC?

18 A. Yes, it is.

19 Q. Is it your understanding that that fee will
20 increase on July 1st, 2001?

21 A. Yes, that is my understanding.

22 Q. And the value will increase to \$5; is that
23 correct?

24 A. That is correct.

25 Q. Okay. And is there any particular reason

03323

1 why you used the \$4.35 number, rather than the \$5
2 number?

3 A. Yes, the reason for using the \$4.35 is
4 because this analysis reflects today.

5 Q. I'd now like to turn to two documents,
6 which I just handed you, I apologize, at the
7 beginning of this morning's hearing. And it's just
8 because I want to have a clearer understanding of
9 MCI's position on what are relevant revenues that
10 should be included in a financial analysis. First,
11 just at the outset, are you familiar with the concept
12 of the universal service fund?

13 A. Yes, I am.

14 Q. All right. And is it your understanding of
15 one way of measuring the required size of the
16 universal service fund is to make a comparison
17 between the cost of serving customers and the
18 revenues that are obtained from customers?

19 A. Yes, I am.

20 Q. Okay. And have you had -- I know brief --
21 but have you had an opportunity to review these two
22 documents?

23 A. Yes, I have read them.

24 Q. All right.

25 A. But may I take a moment to read them again?

03324

1 Q. Sure.

2 A. Okay.

3 Q. Okay. Would it be fair to, just as a
4 general characterization, to say that in the
5 Commission's universal service fund proceeding,
6 980311, that when the Commission was trying to
7 identify what type of revenues should be associated
8 with a revenue benchmark that would be used to
9 determine the size of universal service, that MCI
10 advocated including additional sources of revenues
11 than appear in your Exhibit 1242?

12 A. No, that would not be correct.

13 Q. Okay. And would you explain -- well, let
14 me just -- say, for example, if we turn to the MCI
15 response dated September 9th, 1998, there's -- this
16 is the last page of the document that I gave you.
17 There's a discussion about a revenue benchmark. Let
18 me read the paragraph to you.

19 AT&T and MCI generally agree with the
20 categories of revenues the Commission has included in
21 the definition of the revenue benchmark. Other
22 categories of revenue that should be available for
23 inclusion in the definition of the revenue benchmark
24 include White Pages, Yellow Pages, directory
25 assistance, operator services, and other nonregulated

03325

1 revenues.

2 Now, with that paragraph in front of us,
3 could you explain your response to my prior question?

4 A. Certainly. The cost that you have listed
5 here as components of the revenue benchmark are costs
6 that WorldCom had considered to include in such a
7 price squeeze analysis as you're speaking of.
8 However, these components that you have mentioned
9 also incur costs -- they have costs associated with
10 them that are very close to the retail revenues that
11 we could collect.

12 Q. But it is your -- is it your contention
13 that price is equal to cost or that -- or is it your
14 belief that WorldCom is earning a positive margin on
15 these other services?

16 A. Can you define other services?

17 Q. The items that I've just identified, White
18 Pages, Yellow Pages, directory assistance, operator
19 services, and other nonregulated revenues?

20 A. WorldCom does collect revenue for those
21 items that you've mentioned. What I am asserting is
22 that WorldCom also does incur costs that are very
23 close to the revenue that we're able to collect.

24 Q. I asked you, I believe earlier, if you were
25 familiar with the idea of the universal service fund.

03326

1 Are you familiar with the benchmark revenue value
2 that MCI advocated be used for quantifying the size
3 of the fund? You know, that MCI said that the
4 typical revenue is X dollars. Do you know the value
5 of those dollars, of that amount, X?

6 A. Is that pertaining to a particular --

7 Q. Either Washington or before the Federal
8 Communications Commission?

9 A. No, I'm not familiar with the exact
10 numbers. However, I am familiar with the components.

11 DR. GABEL: Thank you. I have no further
12 questions.

13 THE WITNESS: Thank you.

14

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

16 BY CHAIRWOMAN SHOWALTER:

17 Q. In Exhibit 1241, page nine, on line 14,
18 there's -- it says, See Confidential Exhibit PGB-3,
19 page two. That's, I think, in support of the
20 sentence before it, that zone one, I believe is your
21 reference, has an insufficient number of potential
22 customers. Can you point to me where PGB-3, page two
23 is? I'm just looking for it in the book and can't
24 find it.

25 A. Okay. Certainly. I believe that that

03327

1 would be Exhibit 1242.

2 MS. HOPFENBECK: Let me clear something up
3 here. I think this was an error in the testimony.
4 There was not a page two and this analysis was not
5 done, because we didn't get it done before filing the
6 testimony. And I think it's not in your book,
7 Chairwoman Showalter. I just wanted to clarify that.

8 CHAIRWOMAN SHOWALTER: Okay. So it's
9 simply not here. It's not page one?

10 MS. HOPFENBECK: No, it's not page one.

11 CHAIRWOMAN SHOWALTER: There would have
12 been or might have been a page two, but we don't have
13 that page two.

14 MS. HOPFENBECK: That's right. And
15 obviously, that reference got eliminated.

16 CHAIRWOMAN SHOWALTER: Okay. Well, I guess
17 I'm wondering -- you offer support in your testimony
18 for the statement in the testimony.

19 MS. HOPFENBECK: I'm sorry. I guess the
20 thing is that it is Confidential Exhibit PGB-3.
21 There's just not a page two to it. I was thinking of
22 another analysis which actually showed what percent
23 of that less than six percent was residential, which
24 is not there.

25 CHAIRWOMAN SHOWALTER: Well, that's exactly

03328

1 what I had expected to find when I went to -- because
2 it seems to me that is what the sentence preceding
3 this reference says, so I turned to see what the
4 breakout was, and it doesn't seem to me that Exhibit
5 1242, which is PGB-3, page one, that the chart we've
6 been looking at particularly substantiates the point
7 in the testimony. And I shouldn't be arguing with
8 you. I should be talking with the witness.

9 MS. HOPFENBECK: Right. But I just wanted
10 to clarify what the exhibit does and doesn't show.

11 CHAIRWOMAN SHOWALTER: All right.

12 Q. Well, then, if there is no page two, would
13 I be correct that your testimony, the sentence now on
14 lines 11 to 14 stands unsubstantiated by an exhibit
15 in the record. It's simply a stand-alone sentence.
16 It's not that it's substantiated by page one. Am I
17 right on that?

18 A. Yes, you are correct.

19 CHAIRWOMAN SHOWALTER: Okay. Thank you. I
20 have no further questions.

21 JUDGE BERG: Any further cross?

22 MS. ANDERL: No.

23 MR. EDWARDS: No questions.

24 JUDGE BERG: Redirect, Ms. Hopfenbeck.

25

03329

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

2 BY MS. HOPFENBECK:

3 Q. Ms. Krauss, going to the line of
4 questioning that the Chairwoman was discussing with
5 you most recently, at page nine of your testimony,
6 you reference the fact that less than six percent of
7 Qwest's access lines are included in zone one, and
8 make the remark that it's reasonable to believe that
9 a significant percent of those are business lines, as
10 opposed to residential lines.

11 Since this testimony was filed, have you
12 seen any analysis that's been done by WorldCom that
13 indicates what percentage of the lines in zone one
14 are residential lines?

15 MS. ANDERL: I object, Your Honor. That's
16 not appropriate redirect. The witness and her
17 counsel just got done describing that the analysis
18 referenced had not been done for Washington, and I
19 don't believe it's appropriate to be getting some
20 more in that on redirect.

21 MS. HOPFENBECK: Your Honor, I'm basically
22 asking her whether she's seen such an analysis. I
23 mean, this -- she has made a statement in her
24 testimony about that it is reasonable to believe that
25 a significant percent of those are business lines, as

03330

1 opposed to residential lines. I'm just simply -- I'm
2 not going to explore what -- I won't go further to
3 ask her what that analysis shows, but basically am
4 just laying out the basis for the opinions that's
5 stated in her testimony.

6 JUDGE BERG: For that limited purpose, the
7 question will be allowed. Objection overruled.

8 Q. Have you seen any such analysis?

9 A. Yes, I have seen analysis.

10 Q. And do you continue to -- has anything
11 about that analysis changed what you would state in
12 page 11, at lines 11 through 14 of your testimony
13 filed?

14 A. No, the testimony would hold that it is
15 true that we believe that a significant portion of
16 the six percent of Qwest's access lines mentioned in
17 zone one are, in fact, business lines.

18 Q. What's your understanding of where zone one
19 is in Washington?

20 A. My understanding would be that it
21 represents the most urban areas, such as Seattle.

22 Q. Okay. Now, Ms. Anderl asked you a few
23 questions that I'd like to ask you about. First of
24 all, can you elaborate on why WorldCom did not
25 include their toll margins in the analysis that's

03331

1 reflected in Exhibit 1242?

2 A. Yes. The reason why WorldCom did not
3 include the toll margins in this analysis is because
4 currently WorldCom does offer intraLATA or local toll
5 service in the state of Washington, and in fact, we
6 have been quite successful in selling intraLATA to
7 WorldCom's customers in the state of Washington.
8 Therefore, for that reason, we deemed it unnecessary
9 to include it in this analysis. With that said, as I
10 had explained prior, there was a component of
11 intraLATA that we did feel was merited to be included
12 in this analysis, and that was the component within
13 access revenue.

14 Q. Now, Ms. Krauss, Ms. Anderl also asked you
15 questions about whether WorldCom is providing DSL
16 service to their customers. Were your answers
17 limited to what WorldCom is doing in providing
18 residential service?

19 A. Yes, they were.

20 Q. Finally, Ms. Anderl asked you whether
21 WorldCom provides voice mail service. Can you
22 explain the limitation on WorldCom's ability to
23 provide voice mail to its customers?

24 A. Yes. The voice mail service is not
25 considered to be a unbundled network element.

03332

1 Therefore, as a UNE-P carrier, WorldCom is not able
2 to offer voice mail to its local customers. Because
3 of that fact, WorldCom has certainly looked into
4 other options for WorldCom to be able to offer voice
5 mail, as it is a high-growth feature and a source of
6 revenue; however, our analysis has concluded that
7 doing such a thing would incur substantial costs that
8 would offset the revenue that we would be able to
9 collect.

10 Q. Ms. Krauss, does WorldCom publish a Yellow
11 Pages directory?

12 A. No, it does not.

13 Q. And does it publish White Pages in any of
14 the states in which it's offering service,
15 residential service?

16 A. No, it does not publish White Pages.

17 MS. HOPFENBECK: I have nothing further.

18 Thank you.

19 MS. ANDERL: Just a few questions, Your

20 Honor.

21

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

23 BY MS. ANDERL:

24 Q. Does WorldCom offer directory assistance to
25 its local service customers?

03333

1 A. Yes, directory assistance is considered to
2 be a unbundled network element. Therefore, we are
3 able to offer directory assistance.

4 Q. How about operator services? Does WorldCom
5 offer operator services to its local service
6 customers?

7 A. Yes, WorldCom is able to offer operator
8 services similar to directory assistance. What
9 WorldCom is able to do is rebrand the RBOC directory
10 assistance or operator services.

11 Q. You didn't include any revenues from either
12 of those types of services in your Exhibit C-1242,
13 did you?

14 A. No, those are not included.

15 Q. Ms. Hopfenbeck asked you a question about
16 your answers in connection with the DSL questions,
17 and you clarified that your answers about WorldCom
18 not providing DSL were limited to the residential
19 market. Do you recall that?

20 A. Yes, I recall that.

21 Q. Does WorldCom offer DSL service to its
22 business customers?

23 A. As far as I'm aware, I'm not -- I'm not an
24 expert in that area, so I don't feel comfortable
25 answering that question. Simply, I don't know the

03334

1 answer to that.

2 Q. And would your answer be the same if I
3 asked you if WorldCom partnered with a data LEC to
4 offer DSL services?

5 A. That would be my same answer.

6 Q. Do you know if Mr. Lathrop can answer that
7 question?

8 A. You can ask that question to Mr. Lathrop.

9 Q. I know that. Do you know if he can answer
10 the question?

11 A. It would be an assumption on my part to say
12 yes to that.

13 MS. ANDERL: Thank you, Ms. Krauss.

14 Nothing further.

15 MS. HOPFENBECK: I just have one other
16 question.

17 JUDGE BERG: One second, Ms. Hopfenbeck.

18 We'll come back around to you.

19 MS. HOPFENBECK: Oh, sorry.

20 MS. McCLELLAN: We don't have any
21 questions, Your Honor.

22 JUDGE BERG: Thank you for waiting, Ms.
23 Hopfenbeck.

24 MS. HOPFENBECK: That's all right.

25

03335

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

2 BY MS. HOPFENBECK:

3 Q. Ms. Krauss, just to clarify the question,
4 does WorldCom currently offer local service to any
5 business customers in any of the states in which it
6 has entered the local market to business customers,
7 small business large customers, using UNE-P?

8 A. No, WorldCom does not use UNE-P to offer
9 local service to small business customers.

10 MS. HOPFENBECK: Thank you.

11 JUDGE BERG: Mr. Edwards.

12

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

14 BY MR. EDWARDS:

15 Q. We're sort of creeping along here. If
16 WorldCom's not using the UNE-P to offer local service
17 to business customers, what product is it using?
18 What architecture is it using?

19 A. I am familiar that WorldCom is not using
20 UNE-P to offer local service to small businesses. I
21 am familiar that there are -- that we do offer
22 services to small business. And if I was to answer
23 that question, I would be making an assumption.

24 Q. Do you know whether WorldCom's not using
25 the UNE-P to offer service to local business

03336

1 customers because it is offering a DSL product as
2 part of its marketing?

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

4 MR. EDWARDS: No further questions.

5

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

7 BY MS. HOPFENBECK:

8 Q. Ms. Krauss, do you know whether WorldCom's
9 using UNEs to provide service to any business
10 customers?

11 A. WorldCom does not use UNEs to provide
12 service to any small business customers. I am aware
13 that there are some restraints on -- or some
14 constraints on being able to offer UNE-P to small
15 business customers.

16 MS. HOPFENBECK: I have nothing further.

17 MS. ANDERL: If Ms. Hopfenbeck had only
18 stopped.

19

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

21 BY MS. ANDERL:

22 Q. What are those constraints?

23 A. I am familiar with the fact that it has not
24 been decided as to the -- or I am familiar with the
25 fact, I should say, that there is a limit to the

03337

1 number of lines that can be -- or small business
2 lines that can be serviced by UNE-P.

3 Q. What does that mean?

4 A. It would mean that it is possible for
5 WorldCom to offer small business via UNE-P, but we
6 would be restricted to the number of lines that we
7 could serve a small business customer with.

8 Q. Who would place that restriction on
9 WorldCom and what would the restriction be?

10 A. As far as I'm aware, there's -- as I had
11 said, there -- it is my understanding that there is a
12 restriction to the number of lines a small business
13 could have. It is my understanding that it has not
14 -- I guess the ruling hasn't been finalized for the
15 number of lines that can be carried via UNE-P for
16 small businesses.

17 Q. Who would place the restriction on WorldCom
18 regarding the number of lines?

19 A. I believe that it would be an entity such
20 as the FCC.

21 Q. And is the restriction that you're
22 referring to the ruling that ILECs do not have to
23 offer unbundled switching in certain wire centers to
24 businesses with more than a certain number of lines?

25 A. Yes, I'm familiar with that, yes.

03338

1 Q. Is that the restriction you're referring
2 to?

3 A. Yes.

4 Q. Do you know how many wire centers are
5 involved in that -- potentially involved in that
6 limitation in Washington?

7 A. No, I don't know that number off the top of
8 my head.

9 Q. Now, as I understand it, you testified, in
10 response to Ms. Hopfenbeck's question, that WorldCom
11 is not using UNEs to provide service to its business
12 customers; is that correct?

13 A. That is correct.

14 Q. Okay. So they're not using UNEs. How do
15 you know that?

16 A. As an employee of WorldCom, within the
17 business analysis group, through the experience that
18 I have at WorldCom, it is my knowledge. That's where
19 I gained that knowledge.

20 Q. Okay. Is WorldCom providing service to
21 business customers through resale?

22 A. Again, I'm not an expert in the small
23 business area, but yes, I would say that in some
24 states WorldCom is providing small business services
25 via resale.

03339

1 Q. Do you know what states those are?

2 A. No, I do not.

3 Q. Is WorldCom providing service to business
4 customers -- and I'm not limiting my question to
5 small businesses -- but to business customers over
6 its own facilities in some states?

7 A. Yes, WorldCom is.

8 Q. Do you know of any other manner in which
9 WorldCom might be providing local service to business
10 customers, other than the ones we've just discussed?

11 A. No, I'm not aware of any other methods.

12 MS. ANDERL: That's all I have. Thank you.

13 MR. EDWARDS: No questions.

14 JUDGE BERG: All right, Ms. Krauss. Thank
15 you very much for being here and testifying today.
16 It's almost electrifying to hear a witness who can
17 answer yes and no. At this point, you are excused
18 from the hearing.

19 THE WITNESS: Thank you.

20 JUDGE BERG: We'll be off the record.

21 (Discussion off the record.)

22 JUDGE BERG: We'll be back on the record.

23 Mr. Lathrop, if you'll please raise your right hand.

24 Whereupon,

25 ROY LATHROP,

03340

1 having been first duly sworn, was called as a witness
2 herein and was examined and testified as follows:

3

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

5 BY MS. HOPFENBECK:

6 Q. Mr. Lathrop, please state your full name
7 for the record.

8 A. Roy Lathrop.

9 Q. Mr. Lathrop, do you have before you what
10 has been previously marked for identification as
11 T-1250, the direct testimony of Roy Lathrop; T-1251,
12 the response testimony of Roy Lathrop; 1252,
13 principles for line splitting OSS; and E-1252, the
14 errata to principles for line splitting OSS?

15 A. I have all but the last.

16 Q. The E-1252, are you aware of what that
17 errata does to your testimony?

18 A. Yes. I only had it electronically.

19 MS. TENNYSON: I've got an extra one.

20 JUDGE BERG: Counsel, I do have an extra
21 copy here that I'll just pass over to the witness.

22 MS. TENNYSON: I've given her an extra one.

23 THE WITNESS: Thank you, Your Honor.

24 JUDGE BERG: You're welcome.

25 Q. Are there any additional corrections or

03341

1 changes that you need to make to that testimony, Mr.
2 Lathrop?

3 A. Yes, just one, to Exhibit T-1250. At page
4 10, line 23, I'd like to change the word
5 "provisioning" to the word "manner." So the sentence
6 ends with the phrase, "in a timely and efficient
7 manner."

8 MS. HOPFENBECK: I would just ask the
9 Bench, would you like me to prepare an errata that
10 reflects that change, Your Honor?

11 JUDGE BERG: I think we need that just to
12 maintain the standards and practices we've started.

13 MS. HOPFENBECK: I'll do that. I'm sorry
14 we didn't do that in advance. We weren't aware of
15 that need for that change.

16 JUDGE BERG: Thank you. I understand.
17 We'll identify that as E-1250, and it will be
18 inclusive between 1250 and E-1252.

19 Q. Now, with that change, Mr. Lathrop, if I
20 were to ask you the questions that are contained in
21 your testimony today, would your answers be the same?

22 A. Yes, they would.

23 MS. HOPFENBECK: I'd now move the admission
24 of Exhibits T-1250, T-1251, 1252, and both the
25 erratas, E-1252 and E-1250.

03342

1 JUDGE BERG: Hearing no objection, they're
2 admitted.

3 MS. HOPFENBECK: Mr. Lathrop is now
4 available for cross.

5 JUDGE BERG: Ms. McClellan.

6 MS. McCLELLAN: Thank you.

7

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

9 BY MS. McCLELLAN:

10 Q. Good morning, Mr. Lathrop.

11 A. Good morning.

12 Q. I'm Jennifer McClellan, and I represent
13 Verizon. And departing from my script a little bit,
14 I'm going to follow-up on some questions that were
15 asked to Ms. Krauss. I believe you were in the room
16 when Ms. Krauss was asked about how WorldCom provides
17 service to business customers?

18 A. Yes, I was in the room.

19 Q. And are you familiar with how WorldCom
20 provides services to its business customers?

21 A. Generally, yes.

22 Q. Okay. Are you familiar with -- well, let
23 me start with does WorldCom provide DSL services to
24 any of its customers anywhere in the United States?

25 A. Yes, they do.

03343

1 Q. And does WorldCom provide that service
2 itself or does it partner with a DLEC to provide that
3 service?

4 A. I think it uses both methods.

5 Q. Okay. And can you tell me which states --
6 well, is WorldCom providing DSL service in the state
7 of Washington?

8 A. I do not know.

9 Q. Do you know which states it is?

10 A. No, I do not.

11 Q. Okay. And does WorldCom use UNEs to
12 provide service to its large business customers?

13 A. Yes, I believe so, in some instances. If,
14 by UNEs, you mean things like an unbundled loop?

15 Q. That's right. Okay. Now I'm going to go
16 back to familiar territory. First I just want to ask
17 a preliminary question. You're not a lawyer;
18 correct?

19 A. That's correct.

20 Q. Okay. Have you ever provisioned a line
21 sharing order?

22 A. No, I have not.

23 Q. Have you ever seen a line sharing order
24 provisioned in a central office?

25 A. No, I have not.

03344

1 Q. Okay. Have you ever personally ordered
2 one?

3 A. No.

4 Q. And if I asked you the same questions
5 related to line splitting, would your answers be the
6 same?

7 A. Yes, they would. I don't know that anyone
8 has provisioned any line splitting orders.

9 Q. Okay. In your direct testimony, Exhibit
10 1250, I believe my pagination might be a little
11 different from yours, but at page six, where you have
12 a question and answer about whether Verizon or Qwest
13 has agreed to allow line splitting over UNE-P, do you
14 see that?

15 A. Yes.

16 Q. Okay. Are you aware that Verizon has
17 announced that it will permit CLECs to order line
18 splitting over UNE-P?

19 A. Yes, and I address that in my response
20 testimony. The direct was filed last October.

21 Q. Okay. And line splitting that Verizon will
22 permit is based -- is it your understanding that it's
23 based on the service descriptions that developed in a
24 New York collaborative?

25 A. Yes, and in fact, that was generally the

03345

1 basis for the principles for line splitting OSS that
2 I attached to my reply testimony.

3 Q. Okay. And WorldCom participated in that
4 proceeding, did it not?

5 A. Yes.

6 Q. Okay. Is WorldCom's only disagreement with
7 Verizon over its implementation of line splitting
8 related to who will own the splitter?

9 A. It is at least that. And I'll add it may
10 -- we may also have a difference in that, in my
11 testimony, I claim that a splitter is part of the
12 definition of a loop, and I do not know whether
13 Verizon addressed that. But at a minimum, I make the
14 claim that Verizon and ILECs should be required to
15 provide splitters because that is the means by which
16 the incumbent LECs are able to provide the
17 capabilities of a loop, and the incumbents are
18 required to provide all the features, functions, and
19 capabilities of unbundled network elements.

20 Q. All right. Well, let's explore that a
21 little bit. Isn't it true that if WorldCom purchases
22 a loop, that it can use all the capabilities of that
23 loop once a splitter is installed, as a technical
24 matter?

25 A. Yes, generally.

03346

1 Q. Okay. Before a splitter is installed, can
2 a stand-alone loop be used to provide data services?

3 A. Yes, under certain conditions. For
4 example, if no voice is being used, if that
5 stand-alone loop does not also provide voice service.

6 Q. Okay. And backing up just a little bit,
7 when you said that, as a technical matter, WorldCom
8 could use all the capabilities of the loop, you said
9 generally?

10 A. Yes.

11 Q. What did you mean by that?

12 A. There's enough variations in which there
13 might be a circumstance that the loop would not be
14 able to provide data, and as an example, sort of an
15 analogy, there are circumstances under which the
16 ILECs must add load coils or repeaters to loops
17 simply for that loop to be able to provide voice
18 service and to provide the quality of voice service
19 they're required to provide.

20 I can agree with the statement that with a
21 stand-alone loop, if you add a splitter, then that
22 will permit that loop to be able to provide data, but
23 there may be other technical, you know, engineering
24 circumstances in which it may not. For example, if
25 you want to use it for voice and data, there's

03347

1 circumstances in which the loop would not be able to
2 provide both.

3 Q. Okay. But assuming that you have a loop
4 that does not have any load coils or repeaters or
5 bridge taps, and that the loop by itself is capable
6 of providing data services, once a splitter is
7 installed, WorldCom can use all the functions and
8 features of that loop; correct?

9 A. Yes.

10 Q. Okay. Now, WorldCom filed a petition for
11 reconsideration with the FCC for the UNE remand order
12 and the line sharing order relating to this issue,
13 didn't it?

14 A. I know that WorldCom filed petitions. I'm
15 not familiar with all the details.

16 Q. Okay. Has WorldCom made the argument that
17 you've just made on the stand, that you make in your
18 testimony, that a splitter is part of the features
19 and functionalities of the loop? Has WorldCom made
20 that argument before the FCC before?

21 A. I do not know.

22 MS. McCLELLAN: Okay. Well, I didn't
23 intend to go into the Texas 271 proceeding order, but
24 I might need to, during the break, make copies of
25 that and provide it to the witness.

03348

1 Q. Okay. You've read and are familiar with
2 the UNE remand order; right?

3 A. Generally, yes.

4 Q. Okay.

5 CHAIRWOMAN SHOWALTER: Can you identify
6 what docket?

7 MS. McCLELLAN: I'm sorry, the UNE remand
8 order is FCC Docket 96-98, CC Docket 96-98, the Third
9 Report and Order and Fourth Further Notice of
10 Proposed Rule-making released November 5th, 1999.

11 Q. And isn't it true that the only mention of
12 a splitter contained in that order is in a discussion
13 of network element packet switching?

14 A. I don't know. It's a very big order.

15 Q. All right. Well, let's turn to it. All
16 right. If you could turn to paragraph 303 and 304.
17 Well, actually, before we go there, let's go to
18 paragraph 175. Actually, now I can't find the
19 paragraph where I want to refer to, so we'll come
20 back to that. Do you agree that a splitter is often
21 part of a DSLAM?

22 A. No, there are a variety of manufacturers of
23 both splitters and DSLAMS, and both stand-alone
24 splitters, but I do agree that there are companies
25 that make DSLAMS with integrated splitters.

03349

1 Q. Does a splitter perform the same function
2 as a DSLAM, a stand-alone splitter perform the same
3 function as a DSLAM?

4 A. No, and in fact, in paragraph 303 of that
5 UNE remand order, the FCC mischaracterizes the
6 function of a DSLAM, saying it splits the voice. But
7 the two can be separate pieces of equipment and
8 perform different functions.

9 Q. And in that paragraph, the FCC also says
10 that DSLAM equipment sometimes includes a splitter,
11 and if not, a separate splitter device separates
12 voice and data traffic?

13 A. That's correct. That's what it says in
14 this paragraph.

15 Q. All right. Now, the UNE remand order also
16 defines the local loop, does it not?

17 A. I believe so.

18 Q. And at paragraph 167 is where they modify
19 the definition of a local loop. Do you have that?

20 A. Yes.

21 Q. And they expressly exclude from the
22 definition attached electronics used for the
23 provision of advanced services, such as a DSLAM;
24 right?

25 A. Yes, and the FCC, in a more recent order,

03350

1 in January, stated that it is -- the issue of whether
2 a splitter should be -- the ownership issue of
3 splitters and whether it's part of a loop is still
4 pending.

5 Q. Did they say it's still pending or did they
6 say they're reconsidering it?

7 A. They say at paragraph 25 that, Finally, we
8 note that we expect to further address issues closely
9 associated with line splitting, including splitter
10 ownership, in upcoming proceedings where the record
11 better reflects these complex issues.

12 Q. All right. Let's turn to paragraph 19 of
13 that.

14 JUDGE BERG: Excuse me. Are we talking now
15 about the UNE remand order?

16 MS. McCLELLAN: No, I'm sorry.

17 CHAIRWOMAN SHOWALTER: What paragraph 25
18 was that out of?

19 THE WITNESS: That last quote was from what
20 is sometimes called the Line Splitting Order or Line
21 Sharing Recon Order in CC Docket Numbers 98-147 and
22 96-98.

23 JUDGE BERG: And what is the further
24 caption?

25 THE WITNESS: The Third Report and Order on

03351

1 Reconsideration in CC Docket Number 98-147, Fourth
2 Report and Order on Reconsideration in CC Docket
3 Number 96-98, Third Further Notice of Proposed
4 Rule-making in CC Docket Number 98-147, Sixth Further
5 Notice of Proposed Rule-making in CC Docket Number
6 96-98.

7 JUDGE BERG: All right, thank you. And
8 that, Ms. McClellan, is what we're going to
9 generically refer to as the Line Sharing
10 Reconsideration Order?

11 MS. McCLELLAN: Yes, sir.

12 JUDGE BERG: All right, thank you.

13 CHAIRWOMAN SHOWALTER: Just to make it easy
14 to identify, I think it's the release date that makes
15 it easy. The release date is January 19th, 2001. Am
16 I right on that?

17 THE WITNESS: Yes.

18 Q. Okay. If you turn to paragraph 19 of that
19 Line Sharing Reconsideration Order, there the FCC
20 limited an ILEC's obligation to permit line splitting
21 over a UNE-P to where the competing carrier purchases
22 the entire loop and provides its own splitter; is
23 that right?

24 A. Yes, that's what it states in paragraph 19.

25 Q. Okay. And in your testimony, you point to

03352

1 three state Commission orders that you say require an
2 ILEC to provide a splitter, and those are Texas,
3 Indiana and Wisconsin; is that right?

4 A. Yes.

5 Q. And those orders involved Ameritech and
6 Southwestern Bell; is that right?

7 A. Yes.

8 Q. And those companies have now merged and are
9 essentially the same; right?

10 A. Yes.

11 Q. Okay. Do those companies voluntarily
12 provide a splitter in a line sharing arrangement?

13 A. It was not clear from my reading of the two
14 Ameritech -- the Indiana and Wisconsin decisions. I
15 think, in some circumstances, Ameritech may, but I'm
16 just not sure.

17 Q. Would you accept, subject to check, that
18 Ameritech does offer an Ameritech-owned splitter in a
19 line sharing configuration?

20 A. Only if you can provide me a way that I can
21 check that.

22 Q. Does WorldCom participate in proceedings
23 with Ameritech in the Indiana, Wisconsin, and
24 Illinois states?

25 A. What we do, these were cases that were

03353

1 arbitrations between AT&T and Ameritech.

2 JUDGE BERG: Excuse me, Ms. McClellan. Let
3 me just affirm for the parties that when parties seek
4 to establish a record of a fact on the basis of a
5 subject to check, this Commission expects that that
6 will be a fact that can be determined from the record
7 that has been established in this proceeding.
8 Otherwise, it may be necessary to make some kind of
9 record requisition request or approach it from some
10 other angle.

11 MS. McCLELLAN: Okay.

12 JUDGE BERG: Would it be all right if we
13 took our morning break at this time?

14 MS. McCLELLAN: Sure.

15 JUDGE BERG: All right. We'll be recessed
16 till 11:05.

17 (Recess taken.)

18 JUDGE BERG: With that, I think we're ready
19 to resume. Be back on the record.

20 Q. Okay. Mr. Lathrop, when we left off, I was
21 asking you about the three orders that you reference
22 in your testimony, from Texas, Indiana and Wisconsin,
23 and you agreed that those involved Southwestern Bell
24 and Ameritech. I believe you said that it was
25 unclear from reading the Indiana and Wisconsin orders

03354

1 whether or not Ameritech provided a splitter in a
2 line sharing scenario. Do you remember?

3 A. Yes.

4 Q. Okay. And what about the Texas decision?

5 Were you able to tell, from reading that decision,
6 whether or not Southwestern Bell voluntarily provides
7 a splitter in a line sharing scenario?

8 A. Yeah, Southwestern Bell in Texas did, at
9 least in some instances, provide splitters.

10 Q. Okay. Do you know the procedural status of
11 the three orders that you referenced?

12 A. No, I do not.

13 Q. Okay. Are you familiar with any other
14 state commissions that have ordered an ILEC to
15 provide a splitter in a line sharing or a line
16 splitting scenario, other than those three?

17 A. No.

18 Q. All right. And you were a witness in Phase
19 A of this proceeding; right?

20 A. Yes.

21 Q. And this issue was also litigated and ruled
22 on by the Commission in Phase A?

23 A. Yes.

24 Q. The splitter ownership issue?

25 A. Yes, I believe so.

03355

1 Q. Okay. Would you agree that when an end
2 user customer shifts from a line sharing
3 configuration to -- well, let me back up. Would you
4 agree that where Verizon converts a line sharing
5 configuration to a line splitting configuration over
6 a UNE-P, that the loop must be moved from one
7 provider to another?

8 A. I can't answer that yes or no. The loop
9 moves in the sense of an information change, but
10 there's no physical work that is necessary to be done
11 at the central office, so there's no physical move
12 required.

13 Q. Okay. Would you agree with me that a
14 splitter is a physical piece of equipment?

15 A. Yes.

16 Q. And that it is used in the provision of a
17 telecommunications service?

18 A. Yes.

19 Q. All right. In your testimony, Exhibit
20 T-1251, page four, you state that the FCC requires
21 ILECs to perform central office work needed to
22 connect loops and ports to splitters as part of a
23 line splitting scenario.

24 A. Yes.

25 Q. Are you referring to the FCC's line sharing

03356

1 reconsideration order at paragraph 20 when you make
2 that statement, the January 19th order?

3 A. At least that paragraph.

4 Q. Is there another paragraph you're referring
5 to?

6 A. Well, I did not cite that order in making
7 this statement. The order may address the issue
8 elsewhere that -- the concern was that because, in
9 some instances, work would need to be done in the
10 central office, that if the ILEC is not required to
11 do that work, an ILEC would be able to foreclose the
12 possibility of line splitting. So I believe in this
13 order there may be other places where the FCC
14 addresses various architectural scenarios that should
15 be addressed by the ILECs and the CLECs.

16 Q. So you were just making a general statement
17 there?

18 A. Yes.

19 Q. Okay. Could you look at paragraph 20,
20 please, of the January 19th order? Isn't it true
21 that the FCC says that the ILEC must perform central
22 office work to deliver unbundled loops and switching
23 to a CLEC's physically or virtually collocated
24 splitter?

25 A. Yes.

03357

1 Q. Okay. Turn in your direct testimony,
2 Exhibit T-1250, page four. You state that line
3 splitting permits a voice CLEC using the UNE-P to
4 offer a full suite of features and services to end
5 users without having to collocate. Do you see that?

6 A. Yes.

7 Q. And then, on page eight, you recommend that
8 the Commission clarify that, under those
9 circumstances, an ILEC require a voice CLEC to
10 collocate in a line splitting scenario. Is that your
11 recommendation?

12 A. Yes, and again, this testimony is generally
13 superseded. And at this point in time, I am not
14 aware of any incumbent LECs that would impose a
15 collocation requirement on a voice CLEC for line
16 splitting.

17 Q. Okay. And would you agree that if one
18 company were to provide both voice and data service,
19 that it would have to collocate a DSLAM?

20 A. Yes.

21 Q. Okay, okay. And are you aware that Verizon
22 Northwest, the ILEC, does not provide DSL services
23 itself, but that an affiliate provides it?

24 A. An affiliate of Verizon Northwest?

25 Q. Mm-hmm.

03358

1 A. Yes.

2 Q. Okay. And you recommended in your
3 testimony that the Commission require Verizon's
4 affiliate to continue providing data service. Is
5 that your recommendation?

6 A. Yes, in a situation where a customer who is
7 taking both voice and data from Verizon wishes to
8 change only their voice to another provider.

9 Q. Is it your contention that Verizon's
10 affiliate has refused to continue to provide services
11 in that situation?

12 A. I don't know about Verizon. I know that
13 Qwest has refused to provide that, although last
14 Thursday, on a conference call with Qwest, they
15 reaffirmed that that was the situation, that the
16 customer's data service in that instance would be
17 disconnected.

18 MS. McCLELLAN: Okay. I don't have any
19 further questions. Thank you.

20 THE WITNESS: Thank you.

21 MS. ANDERL: Your Honor, I neglected to
22 move the admission of two cross exhibits through Ms.
23 Krauss, for which I did not have any questions, but
24 if Ms. Hopfenbeck is willing, we can either recall
25 the witness, or if WorldCom is willing to stipulate

03359

1 to 1243 and 1244, I would move those into the record.

2 MS. HOPFENBECK: No problem. I'll
3 stipulate to the authenticity of those exhibits. I
4 have no objection to their admission.

5 JUDGE BERG: All right. They are so
6 admitted.

7 MS. ANDERL: I apologize, Your Honor, for
8 that oversight.

9 JUDGE BERG: Well, I thought of calling it
10 to your attention, but then you made no reference to
11 the exhibit at all. It didn't seem like it was
12 necessary.

13 MS. ANDERL: Well, I could have gone either
14 way, I guess.

15

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

17 BY MS. ANDERL:

18 Q. Good morning, Mr. Lathrop.

19 A. Good morning.

20 Q. I'm Lisa Anderl, representing Qwest. I
21 have questions for you on two different areas, line
22 splitting over UNE-P and your OSS recommendations.
23 And let me start with the line splitting over UNE-P
24 area. Do you generally understand line splitting to
25 be line sharing between CLECs? Is that a fair

03360

1 characterization?

2 A. No, because line sharing is a term used to
3 indicate that a -- that the voice service is provided
4 by the incumbent LEC, and line splitting -- so they
5 can't be used in the way you use them, in my mind.
6 Line splitting is voice and data provided over the
7 same loop, where voice is not provided by the
8 incumbent. So it could be by one CLEC or it could be
9 by two different CLECs.

10 Q. So it's your testimony that if a single
11 CLEC provides voice and data over a single loop, that
12 CLEC is performing line splitting?

13 A. Yes.

14 Q. And who are they splitting a line with?

15 A. Themselves. But the way the terminology
16 developed was that providing voice and data on one
17 line was, you know, recently seemingly relatively
18 unique. And the FCC required -- needed to
19 distinguish those instances where the ILEC was
20 providing voice service. So there's no restriction
21 from line splitting, which may have initially been
22 voice and data provided by two CLECs. There's no
23 restriction that two different CLECs must be
24 performing those functions.

25 Q. Does your testimony generally contemplate a

03361

1 situation where line splitting is accomplished
2 through one CLEC providing voice over UNE-P and
3 another CLEC providing the data service?

4 A. Generally, yes, but I don't think anything
5 -- it restricts it in that way. The things I say, I
6 think, would apply to one -- if it was one CLEC,
7 also.

8 Q. So that we are clear, unless I ask my
9 questions with a specific other phrasing, when I talk
10 about line splitting to you today, I always mean a
11 voice CLEC and a data CLEC, and I always mean UNE-P.
12 Do you have that in mind?

13 A. Yes.

14 Q. And is that at least one construct that you
15 believe is a way that line splitting can be
16 performed?

17 A. Yes.

18 Q. I want to make sure I understand your
19 recommendation. Let me go to a situation where Qwest
20 currently serves an end user customer and provides
21 voice and DSL service to that end user. Do you have
22 that in mind?

23 A. Yes.

24 Q. Is it WorldCom's recommendation in this
25 docket that if WorldCom wants to obtain the customer

03362

1 for the purpose of providing voice service to that
2 customer, that WorldCom should be permitted to lease
3 the UNE-P from Qwest to provide voice service and
4 that Qwest should be required to continue to provide
5 DSL service to that customer?

6 A. Yes, and the reason is because if we look
7 at it from the customer's perspective, if the
8 customer chooses a different voice provider, there's
9 no reason that they should need to have their data
10 service disconnected.

11 Q. I lost my order here. In the January 19th
12 reconsideration order, if you could turn to paragraph
13 16 of that order. Is it correct that in that
14 paragraph the FCC discusses AT&T's request that the
15 incumbent LECs must continue to provide xDSL services
16 in the event that customers choose to obtain voice
17 service from a competing carrier on the same line?

18 A. Yes.

19 Q. And is it correct that the FCC states there
20 that AT&T's request is denied?

21 A. Yes.

22 Q. Okay. If you were -- if WorldCom were to
23 prevail in its recommendation to this Commission,
24 notwithstanding the FCC's ruling, would WorldCom
25 lease the entire -- well, what would WorldCom propose

03363

1 to pay Qwest for the unbundled loop portion of the
2 UNE-P that it would lease from Qwest in the
3 circumstance where WorldCom obtains a Qwest end user
4 customer for voice and Qwest is required to continue
5 to provide the DSL service?

6 A. WorldCom would pay the tariffed UNE-P rate
7 from the contract.

8 Q. Does WorldCom propose to charge Qwest for
9 Qwest's use of the high frequency portion of the loop
10 in that circumstance?

11 A. I don't address that issue in my testimony,
12 and as yet, there's been no agreement by incumbent
13 LECs to -- that would be willing to continue
14 providing data service. So the issue of pricing
15 hasn't arisen.

16 Q. But you're asking -- well, let me see if I
17 understand your recommendation. Isn't it correct
18 that you are asking this Commission to compel that
19 outcome?

20 A. Yes, in the same way that I asked Qwest in
21 their call, wouldn't Qwest want to continue making
22 money from that customer by selling the data service.
23 And Qwest's response in that forum was it's a retail
24 policy decision, not up to the folks I was speaking
25 to then. And at this point, I do not have a pricing

03364

1 proposal for, if the Commission were to require that,
2 whether WorldCom would charge Qwest anything at all,
3 or if so, something for using the data portion of the
4 loop.

5 Q. And would Qwest still be the branded
6 provider of DSL service in your scenario?

7 A. Presumably. Again, I haven't addressed
8 that in the testimony, but presumably so, but not
9 necessarily.

10 Q. And where would the DSL revenues go in your
11 scenario?

12 A. What DSL revenues?

13 Q. From the end user customer. Assuming that
14 the end user customer pays for the DSL service that
15 it receives, to whom would those revenues be
16 remitted?

17 A. Well, interestingly, Qwest, at this point,
18 asserts that there should -- that Qwest will only
19 deal with one customer of record, and that customer
20 being the voice provider.

21 Q. Let me --

22 A. So my testimony doesn't address the sharing
23 of revenues.

24 Q. Mr. Lathrop, I'm asking you in each
25 question about your scenario that you proposed, the

03365

1 outcome that you propose this Commission order, which
2 is where the incumbent is required to continue to
3 provide DSL service on a voice line even if they
4 don't want to, if they're no longer the voice
5 provider. I'm simply trying to explore with you the
6 details of that proposal. So my question to you is
7 where would the revenues from the DSL service go
8 under your proposal?

9 A. And I don't have an explicit proposal.
10 They could go to the voice provider and then there
11 could be a negotiation between the voice and data
12 provider for division of those revenues.

13 Q. So you're proposing that WorldCom would
14 retain some of the DSL revenues?

15 A. That's a possibility.

16 Q. What would they receive those revenues for?

17 A. Owning the loop or controlling the loop
18 that is leased from the incumbent.

19 Q. Okay. So that goes back to my question of
20 whether or not WorldCom proposes to charge the
21 incumbent for the incumbent's use of the high
22 frequency portion of the loop if WorldCom prevails in
23 its advocacy and compels the incumbent to continue to
24 provide DSL over a voice loop. So is your testimony
25 that WorldCom does propose to assess a charge on the

03366

1 incumbent for that?

2 A. I don't know. That would be subject to
3 negotiation in the same way that the revenues from
4 the DSL could be.

5 Q. Mr. Lathrop, do you know what a DSLAM is?

6 A. Generally, yes.

7 Q. Can you describe one?

8 A. A DSLAM packetizes a -- takes a data
9 signal, packetizes it, and delivers it to a circuit
10 -- or a noncircuit switched network, a data network.

11 Q. A packet switched network is one example of
12 that?

13 A. Yes.

14 Q. Do you know what a splitter is?

15 A. Yes.

16 Q. Can you tell me?

17 A. A splitter separates a voice and data
18 signal when they are on the same loop, so that
19 there's one input to the splitter and two outputs,
20 one with the data output and one with the voice
21 output.

22 Q. Is it your understanding that Qwest's own
23 DSL service is provided through an integrated DSLAM
24 which has a splitter in it?

25 A. Yes, that's my understanding from Qwest's

03367

1 testimony.

2 Q. Now, going back to line sharing for just a
3 minute, is it your understanding that, under the
4 FCC's requirements for line sharing, the ILEC always
5 provides the voice and the CLEC always provides the
6 data?

7 A. Yes.

8 Q. And in your Exhibit 1251, or I'm sorry,
9 1250, page two, the last line on that page, going
10 over to the first line on page three, you say that
11 line splitting is functionally the same product as
12 line sharing and should be provisioned in exactly the
13 same way. Is that correct, that that's your
14 testimony?

15 A. Yes, and by that I meant the network
16 configuration of line sharing is the same as that for
17 line splitting.

18 Q. You're familiar with the Commission's 13th
19 Supplemental Order in this docket regarding line
20 sharing, aren't you?

21 A. Yes.

22 Q. Under line sharing architectures requested
23 by the DLECs in that order and approved by the
24 Commission, is there any architecture where Qwest
25 provides the splitter?

03368

1 A. I do not believe so.

2 Q. Now, in your proposal for line splitting,
3 you would require Qwest to provide the splitter in
4 two separate scenarios, if I understand it correctly.
5 And let me ask you about each of them and you can
6 tell me if I'm right, so that it's not a compound
7 question.

8 Would you require Qwest to provide the
9 splitter where two CLECs are involved in the line
10 splitting arrangement?

11 A. Possibly, if requested.

12 Q. Would Qwest have an option to say no under
13 your recommendation?

14 A. No.

15 Q. And you would also require Qwest to offer
16 the splitter and continue to also provide DSL service
17 over a loop where UNE platform voice is provided by a
18 CLEC over the same loop?

19 A. Yes.

20 Q. And then, actually, as I ask you these
21 questions, a third scenario comes to mind. If the --
22 and let me see if this is also correct. If there's a
23 CLEC who wants to provide voice over UNE-P and also
24 wants data service, wants to provide data service,
25 would you require Qwest to provide the splitter in

03369

1 that circumstance?

2 A. Yes, if the CLEC requests.

3 Q. And would the CLEC, if it were trying to
4 provide voice and data by itself, without a partner,
5 without a DLEC partner, but with a Qwest-provided
6 splitter, wouldn't that CLEC still need a DSLAM?

7 A. Yes, and you can imagine a CLEC having
8 collocated a DSLAM prior to line sharing and having
9 to get an additional line, maybe using unbundled
10 loops and having a separate line to provide DSL
11 service. And so the CLEC may have a splitter without
12 an integrated -- I'm sorry, a DSLAM without an
13 integrated splitter, and therefore would need a
14 splitter to provide service in the way you described.

15 Q. Could the CLEC also have collocated an
16 integrated DSLAM splitter?

17 A. That's a possibility, yes.

18 Q. In the scenario number two, which I
19 described to you, which is that WorldCom's
20 recommendation is accepted and the incumbent Qwest is
21 compelled to offer DSL over a loop leased by a CLEC
22 for UNE-P, in your mind, does that mean that the CLEC
23 essentially has access to Qwest's DSLAM?

24 A. No, not necessarily. If Qwest was
25 providing the service in its totality and the

03370

1 customer chooses a different voice provider serving
2 over UNE-P, there's no work needed. There's no Qwest
3 or CLEC technician that needs access to anything.
4 It's a simple record change.

5 Q. Under your recommendation, Qwest would not
6 be permitted to refuse service to that end user
7 customer for DSL; is that right?

8 A. Yes.

9 Q. And the capacity that we just used on
10 Qwest's integrated DSLAM splitter for that customer
11 would not be available for any other customer; is
12 that correct?

13 A. Yes, although, as we talked about before,
14 that would be, in a sense, a shared customer of
15 Qwest. It would remain a customer of Qwest's, in
16 some sense.

17 Q. You were asked a few questions by Ms.
18 McClellan about WorldCom's provision of DSL services.
19 Does WorldCom currently provide DSL services to any
20 customers?

21 A. Yes.

22 Q. And I believe you stated that WorldCom does
23 that both through their own facilities and through
24 partnering with a DLEC?

25 A. That's my understanding, yes.

03371

1 Q. Do you know who the DLEC is?

2 A. I know of one. I do not know whether it's
3 public information or not.

4 Q. Is that here in Washington?

5 A. I do not know.

6 Q. Do you know if that DLEC collocates
7 splitters in incumbents' central offices for the
8 purposes of providing its DSL service?

9 A. I don't know that, either. It's a question
10 unrelated to the previous -- or at least my answer
11 would be unrelated, because the responses I had been
12 giving were not related to line sharing or line
13 splitting that require a splitter.

14 Q. Well, how does WorldCom -- so, well, let me
15 back up, then. Is it your testimony that when
16 WorldCom provides DSL service to a customer, it's not
17 providing voice over the same line?

18 A. Yes, in some offerings.

19 Q. In some offerings it is, and in some, it's
20 not?

21 A. No, I think -- I don't know of any
22 circumstances in which WorldCom is providing line
23 sharing. It may; I just -- I'm not sure if they are
24 or not. Some of my information about the services
25 and the questions you asked predate line splitting

03372

1 and essentially predate line sharing requirements.

2 Q. Well, let's go back. Does WorldCom provide
3 DSL service to any of its customers?

4 A. Yes.

5 Q. Okay. And how does it do that?

6 A. One of the ways, I believe, is using its
7 own facilities. It may, but I'm not sure if it uses
8 unbundled loops. I believe it does, so using its own
9 collocated DSLAMS, and not providing voice in that
10 scenario.

11 Q. And is there any other way of which you're
12 aware that WorldCom provides DSL service?

13 A. Yes, using a data CLEC to provide the
14 service, which predates line sharing. And what I
15 don't know is whether that arrangement has continued
16 and if that data CLEC is providing service using line
17 sharing.

18 Q. Are you aware of which companies or vendors
19 supply DSLAMS?

20 A. I know there are several.

21 Q. What about splitters?

22 A. Yes, the same answer. There are at least a
23 few different companies.

24 Q. And what about an integrated DSLAM
25 splitter?

03373

1 A. I believe the answer is the same. There
2 are at least two or three companies that provide
3 integrated splitters in their DSLAMS.

4 Q. Do you know how much any of those pieces of
5 equipment cost?

6 A. No, I do not.

7 Q. Do you know how many Qwest central offices
8 in Washington -- strike that. I didn't want to end a
9 sentence with a preposition, but I don't know if I
10 can ask it any other way.

11 Do you know how many Qwest central offices
12 WorldCom is collocated in in Washington?

13 A. No, I do not.

14 Q. Do you know if WorldCom is collocated in
15 any Qwest central offices in Washington?

16 A. I believe so.

17 Q. You were one of the collocation witnesses
18 in Part A, weren't you?

19 A. Yes.

20 Q. You've talked about your recommendations
21 for OSS for line splitting, and I'm going to change
22 topics now and ask you some questions about that.
23 And let's go back to something that you mentioned
24 just a couple of times a few minutes ago. You
25 mentioned a conference call on Thursday, April 12th,

03374

1 with Qwest; is that correct?
2 A. Yes.
3 Q. And was that a conference call in order to
4 discuss OSS for line splitting requirements?
5 A. Yes.
6 Q. Did you attend?
7 A. By conference call, yes.
8 Q. Were other attendees from WorldCom also
9 present?
10 A. Yes.
11 Q. Was there, in fact, an actual meeting or
12 was the whole conference by conference call?
13 A. I do not know if there was an actual
14 meeting.
15 Q. Do you know how many other CLECs attended?
16 A. There were at least two or three others.
17 Q. Can you identify who those were?
18 A. At least Sprint and McLeod. There were
19 other people that didn't -- that could have been with
20 the same company that didn't identify their company.
21 Q. Was AT&T there?
22 A. I believe so. I'm not sure.
23 Q. Mr. Lathrop, have you ever designed a
24 modification to an operational support system for a
25 large telecommunications company?

03375

1 A. No, I have not.
2 Q. Have you ever implemented a modification to
3 an OSS for a large telecommunications company?
4 A. No.
5 Q. Have you ever performed any cost analysis
6 on the costs of OSS modifications in general?
7 A. Generally, yes.
8 Q. Did you perform any cost analysis with
9 regard to the cost for OSS modifications for line
10 splitting?
11 A. I don't recall that any had been offered.
12 Q. Did you --
13 A. So the answer would be no.
14 Q. Do you agree that Qwest's OSS are an
15 unbundled network element, or UNE?
16 A. Yes.
17 Q. Can you identify the Qwest OSS to which
18 CLECs are permitted access?
19 A. There were some mentioned in a Qwest
20 testimony, but I cannot identify all of them.
21 Q. Pre-order, the ordering function?
22 A. Yes. I thought you were asking about
23 specific databases.
24 Q. Oh, no. The ordering function?
25 A. Yes.

03376

1 Q. Provisioning?

2 A. Yes.

3 Q. Maintenance?

4 A. Yes.

5 Q. Repair?

6 A. Yes.

7 Q. Billing?

8 A. Yes.

9 Q. Okay. Is it correct that in each case
10 Qwest's systems must accurately reflect both the CLEC
11 and the service in any particular case on a given
12 line or a circuit?

13 A. Yes.

14 Q. Now, in your testimony that is marked as
15 Exhibit 1251, the response testimony, you make a
16 recommendation with regard to Qwest's line splitting
17 OSS modifications. It's Exhibit 1251, page three,
18 lines one through four. Does this testimony mean
19 that you believe that OSS modifications will, in
20 fact, be necessary to enable line splitting?

21 A. Yes.

22 Q. Is it correct that the conference call on
23 April 12th could be correctly characterized as an
24 industry meeting in order to help develop the OSS
25 requirements that will be necessary to enable line

03377

1 splitting?

2 A. Yes.

3 Q. In your Exhibit 1252, your principles for
4 line splitting and the errata that you filed, is it
5 correct that the modification that you proposed in
6 E-1252 -- well, what's the result of that
7 modification? Maybe you should tell me. How does it
8 change your recommendation?

9 A. You're asking about how the errata changes
10 my recommendation?

11 Q. Well, yeah. I mean, I'm asking you to kind
12 of summarize for me, if you can, in a sentence, what
13 this change to strike most of that paragraph, what
14 that means?

15 A. That means that the incumbent would not
16 need to track who the advanced services provider is
17 in a line splitting situation, but that a data CLEC
18 would be able to act as an agent for the voice
19 provider. That data CLEC would be able to submit
20 orders directly to Qwest to, for example, add data to
21 an existing voice UNE-P loop. And this is a -- the
22 correction was made to have the testimony and my
23 recommendation reflect the way the system, as I
24 understand it, has been used with Verizon and the
25 industry in New York.

03378

1 Q. Now, you state that the change, then, that
2 you made eliminates the need for Qwest, at least in
3 that instance, or the ILEC in that instance to track
4 the advanced services provider; is that correct?

5 A. Yes, and by track, I mean to ensure that
6 that advanced services provider has been authorized
7 by the voice provider. There's no need for that
8 tracking.

9 Q. Ah. Would there still be other reasons why
10 the incumbent would have to track both the voice
11 provider and the advanced services provider in a line
12 splitting environment?

13 A. Yes.

14 Q. For example, for purpose of billing,
15 perhaps?

16 A. Yes, that's one example.

17 Q. For purposes of correctly directing repair
18 calls?

19 A. Yes.

20 Q. If your recommendation with regard to
21 splitter ownership were adopted, the incumbent would
22 also have to track the advanced services provider for
23 purposes of splitter assignment and use?

24 A. Yes.

25 Q. Does your testimony and your principles for

03379

1 line splitting OSS, does that always contemplate that
2 the UNE-P voice provider obtains the loop first
3 before the advanced services are placed on the loop?

4 A. Not necessarily. It could be the case that
5 an existing line sharing arrangement exists, and that
6 would be just transferred to line splitting.

7 Q. What if there's a loop that's being
8 provisioned for purposes of data only at this point
9 and the advanced services provider wants to add voice
10 to that loop through UNE-P. Does your testimony and
11 do your principles contemplate that scenario?

12 A. They do. Unfortunately, where I address
13 this at page four, it's not very clear, but that's
14 exactly the concept that I wanted to convey, that a
15 data CLEC that may have been providing data using a
16 stand-alone loop may have a customer that says, Well,
17 now I want to add voice and have voice and data on
18 the same line. My recommendation addressed this is a
19 scenario that should be accepted. And in the
20 conference call last Thursday, Qwest did not include
21 that in its initial list of various scenarios, but
22 Qwest did say that it was willing to entertain that,
23 developing a process for that. And Sprint, I
24 believe, said that that exists quite a bit in one of
25 its territories.

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1 MS. ANDERL: Your Honor, if I might just
2 have a moment, I think that that completes my
3 questions. Thank you, Mr. Lathrop. No further
4 questions.

5 JUDGE BERG: All right. We're going to
6 break for lunch at this time. We'll be back on the
7 bench at 1:30.

8 (Lunch recess taken.)

9 JUDGE BERG: Why don't we be back on the
10 record. Mr. Lathrop, I'll remind you that you remain
11 subject to the affirmation oath you took this
12 morning. Madam Chairwoman, do you have some
13 questions that you would like to direct to this
14 witness?

15 CHAIRWOMAN SHOWALTER: All right.

16

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

18 BY CHAIRWOMAN SHOWALTER:

19 Q. Well, I guess I have just a general
20 question. You are advocating that we require the
21 ILEC to accommodate line splitting by providing
22 splitters and also, I guess, to provide data services
23 if the data service drops off, if a CLEC data service
24 drops off or voice services if the voice service
25 drops off, in the event where there are two CLECs

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1 providing those; am I right on that?

2 A. Not quite on the latter.

3 Q. Okay.

4 A. The big picture for you, I think, is when I
5 was preparing testimony for this in other
6 jurisdictions last summer, we probably envisioned a
7 much more vibrant data provider community than is
8 going to exist today and in the near future. And the
9 main part of my testimony was to ask the Commission
10 to require the ILECs to provide UNE-P line splitting
11 so that the way in which we have entered the market
12 in various states, relying on UNE-P for voice, we
13 would also be able to provide data to that customer
14 on the same line.

15 Q. Okay. But I guess my question is why
16 shouldn't we leave the arrangements whereby a voice
17 LEC can arrange a general partnership with a data LEC
18 and data LECs can arrange general partnership
19 arrangements with voice LECs, such that they provide
20 these two services together, or if they're providing
21 only one of them and the ILEC is providing the other
22 and somebody drops off, then someone else can step
23 in. In other words, in essence, why isn't this left
24 to the private arrangements of the voice LEC or the
25 data LEC in terms of how they provide both services

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1 versus the default or the backup requirement that the
2 ILEC provided?

3 A. Well, that's generally what my testimony
4 would say. If I said that, in writing my testimony,
5 what I described a moment ago was sort of 100
6 percent. What's happened, in the wake of the line
7 sharing recon order, is that there are now a couple
8 of things that are relatively less important to the
9 big picture, and that has ended up being the focus.

10 The reason that I recommended the -- is
11 from a customer -- the customer's perspective. If
12 there's a customer who has voice and data, and now
13 that would probably be with the ILEC, and they want
14 to change their voice service, what we found in other
15 states is that customers were tempted to -- had
16 chosen to migrate their voice service and their data
17 was disconnected. And often it was that they failed
18 to tell the new voice provider I have data, also.

19 So what that means to a customer is that
20 if, say, Qwest is providing voice and data and the
21 customer chooses to change their voice provider,
22 without some other arrangement, they will not be able
23 to get voice and data without some interruption of
24 service, which can take multiple months.

25 Now, I recognize in my testimony that the

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1 FCC has not made this requirement, and I guess the --
2 I mean, this Commission hasn't, and it's more from --
3 and the reason I make it is the customer's
4 perspective is one of the OSS implementation
5 approaches I wanted to -- or I thought the customer
6 should be recognized that we should minimize the
7 opportunity for them to be disconnected. Without
8 that, the customers will just stay with the
9 incumbent. And that is the existing default that, as
10 a competitive provider of voice services, that's what
11 we have to face.

12 Q. But if your concern were only the
13 disruption and just the interim arrangements until
14 some other arrangement were made, then it would seem
15 like your recommendation would be more limited than
16 what it is, because it seems that it's broader than
17 that. You want the ILEC to be there permanently,
18 more or less. I mean, the answer you just gave
19 seemed to focus on the suddenness of losing service,
20 which is a temporal problem, which is a narrower
21 problem than who is ultimately and more or less
22 permanently responsible for providing service or
23 backup service?

24 A. Well, then, somehow there was something
25 misconstrued, because I did not recommend the sort of

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1 reverse. If a new customer were to choose WorldCom
2 as their voice provider, I did not recommend that the
3 incumbent should be a fallback data provider. So
4 it's really only in the instance when a customer
5 would otherwise choose to migrate their voice
6 service, but because they would be out of service,
7 out of data service, they would not. And our
8 experience in other states is those customers don't
9 want to undergo trying to get a new data provider.
10 It's simpler for them to just migrate back and stay
11 with the incumbent.

12 Q. Okay. But then, what is it that you want
13 to be done about that situation?

14 A. That in those instances where the customer
15 has both voice and data from the incumbent and/or its
16 affiliated company, if the customer chooses to
17 migrate their voice service, that the ILEC also
18 provide data service if the customer -- would
19 continue to provide data service if the customer so
20 wishes.

21 Q. For how long?

22 A. Until the customer chooses to do something
23 else.

24 Q. But then -- well, then, but then that
25 answer, it seems to me, goes beyond an interim

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1 problem.

2 A. I guess the -- you know, as it is now, the
3 customer chooses how long they wish to take data
4 service from the incumbent. The only other thing
5 that would change -- so they can choose to drop one
6 or the other's services. The only thing that I can
7 think that would change is that if the customer then
8 chose to move from Voice Provider A to Voice Provider
9 B, and then wanted to maintain the same data
10 provider, they -- it's not a temporary problem in the
11 sense that they might want to keep the data provider
12 until they get another data provider ready. It's
13 just that that migration of one data provider to
14 another has the potential to leave them out of
15 service for some period of time.

16 Q. Well, yes, but it seems like if you were
17 worried about the disruption in the short period of
18 time, you would be wanting to fashion some kind of
19 remedy that a customer wouldn't get dropped, you
20 know, for some period of time during which the CLEC
21 who remains, or who would remain, would go and find a
22 replacement, in essence. But I think your proposal
23 seems to go further than that, which is that you
24 don't want to lose your business.

25 A. In a sense, yes, from -- on the voice side,

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1 and Qwest would -- I guess is banking on the fact
2 that the customer would come back to them.
3 Otherwise, they would want to make some money from
4 providing the data service. I mean, by maintaining
5 the incumbent as the data provider, they under -- you
6 know, one of the scenarios that could result is the
7 one the Commission required for line sharing, that
8 the data provider would pay -- I think it's \$4 to the
9 voice provider, and then retain all the DSL related
10 revenue.

11 So I mean, there's -- I guess what the
12 incumbents, in fighting this, are looking at, is, you
13 know, we might give up some revenue if we could just
14 migrate over, but we might stand to retain more
15 revenue if we say no, we shouldn't migrate over, and
16 the FCC hasn't required it, and then those voice
17 customers won't leave, so we'll be able to keep more
18 of the pie that way.

19 Q. And I guess what I'm trying to think
20 through is what are the relative responsibilities of
21 ILECs and CLECs, or what should they be, and in the
22 end, is it better to put more pressure, I suppose, on
23 data LECs and voice LECs, et cetera, essentially to
24 come up with packages that would replace the ILEC, or
25 is it better to require, in effect, a default

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1 provider?

2 A. Well, I guess an idea of maybe sort of the
3 complexity, Qwest provided in this, as a precursor to
4 the conference call last week, 11 different
5 scenarios, and there are probably more than that.

6 WorldCom had initially -- has initially
7 thought of just the sort of market-based arrangements
8 that you're referring to, that we would partner with
9 data CLECs to provide the full suite of services.
10 There may be instances where we might do it all
11 ourselves, but in any event, the easiest thing to
12 think of is we provide the voice through UNE-P, they
13 provide the data.

14 That does not address the issue of -- and
15 maybe it's a minor issue, but today the customers
16 typically will have an incumbent for both voice and
17 data, and if it's not easy to migrate, I think that's
18 been the beauty of sort of long distance competition,
19 what we fought for in local competition, is ease of
20 migration. Because when customers are out of
21 service, their competition does no good. It's easier
22 to just go back to the incumbent.

23 So in those -- you know, I don't know what
24 percentage, but in some instances where a customer
25 just wishes to change their voice provider, those are

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1 the ones that I'm talking about, because we are
2 working on sort of a -- WorldCom, as a voice
3 provider, are working on arrangements with partnering
4 with data CLECs.

5 So I guess there are -- for example, the
6 main or first scenario being examined in New York, I
7 believe, is a customer who has voice only and they
8 want to add data. And that's sort of simple, and I'm
9 not proposing that the incumbents be required to
10 provide data. They may need to resell their service,
11 but I'm not suggesting in this testimony that they be
12 one of the entities required, and I guess if a
13 customer enlists us as their voice provider and says,
14 I want the incumbent as a data provider, we probably
15 have to say, you know, at this stage, Well, we can't
16 do that on the same line. You know, you're going to
17 have to either get another line or go to them and get
18 both on one line from them.

19 Q. But then -- but the third alternative is
20 that you'd be saying, Well, yeah, but have I got a
21 deal for you. We happen to have a partner, and
22 together we can give you voice and data for this
23 price. Isn't that where things ought to go, in your
24 view?

25 A. Yes, if it were a seamless transition. If

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1 we say, Well, to be honest, our experience is most
2 customers get reconnected with their data in less
3 than a month. And I say that hypothetically. I
4 don't know how long it takes.

5 Q. What do you mean reconnected with their
6 data?

7 A. To transfer to a new voice provider's easy,
8 but voice and data at the same time to a new data
9 provider is not something where -- it means that the
10 customer will be out of service. You will get your
11 voice service okay, but you'll be out of -- you won't
12 get Qwest data and you won't be able to connect our
13 new data provider for some period of time.

14 Q. And why is that? Why -- let's say you had
15 a partnership arrangement with a data provider kind
16 of ready to step in and maybe your bill stuffers
17 alert customers to that fact and what the arrangement
18 would look like should they elect it. If they do
19 elect it, if they did in that hypothetical situation,
20 what would be the delay or the cause for the
21 disruption?

22 A. There's probably many. A few of the
23 easiest are that a connection needs to be made in the
24 central office from the existing arrangement the
25 customer has to the new provider, and that's

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1 something that we request that the ILEC to do, and so
2 how long it takes them to do it is uncertain.

3 The customers -- the equipment the customer
4 has, which often, in the sort of promotional
5 relatively new services, may have been provided by
6 the incumbent, may be different than the type of
7 equipment that our partner data service has in the
8 central office. They may need to change that out.
9 They may need to reconfigure their computer system
10 and attach a splitter at home, and that, in some
11 respects, has been one of the downfalls of the data
12 CLEC DSL industry, is that it's been very difficult
13 to get things provisioned quickly. There are horror
14 stories about how long it takes.

15 So I can't give you a time period, but it
16 may be that the service representative for WorldCom,
17 in saying, Oh, yes, we've got a deal for you, now I
18 need to know what kind of computer system you have.
19 And that's --

20 Q. But then, to the extent there are horror
21 stories, it takes a while to work it out, aren't we
22 describing still some kind of temporal problem? I
23 mean, supposing there were a requirement that the
24 ILEC couldn't drop the customer for 90 days, I don't
25 know, but does that get at your issue? That is, is

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1 the issue one of not being disrupted and allowing
2 enough time for a customer to elect someone, or is it
3 really just that you want that incumbent there, you
4 know, more or less permanently should the customer
5 not elect someone?

6 A. I guess we don't really want them there.
7 It's the concern that a customer may not want to be
8 out of service. And not knowing -- I think that idea
9 may work that, you know, retaining their service for
10 some period of time, but there's still uncertainty on
11 the configuration and at the customer premise. I
12 would say that, to a large extent, what's most
13 important for us is the UNE-P line splitting, because
14 even without the scenario we're describing, if we
15 wait long enough, the DSL providers, those data
16 providers we're partnering with, will all be out of
17 business and we won't have to worry about that
18 anymore; we'll just need to partner with the
19 incumbents.

20 Q. And by wait long enough, what did you mean?

21 A. If, you know, for several months or so,
22 however long until more of the data CLECs file for
23 bankruptcy and their assets perhaps are acquired by
24 the incumbents, then we're not talking about much of
25 a capability for the sort of UNE-P CLECs to partner

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1 with data providers. The ability to provide voice
2 and data on one line will rest with the incumbent.

3 Q. Because there won't be any data providers
4 to be a partner with; is that what you mean?

5 A. Right.

6 Q. Is this a prediction you're making? Do you
7 think that it's inevitable? I mean, should we be
8 planning for that eventuality or should we be
9 planning for the likelihood that there will be some
10 data LECs out and about?

11 A. I think you should plan for the largest
12 nationwide providers, Covad, NorthPoint and Rhythms,
13 to probably be out of business. One has filed for
14 bankruptcy, one is probably going to file for
15 bankruptcy very soon. I'm a little bit less familiar
16 with the smaller regional DSL providers, and I don't
17 know the scope of McLeod's operations, for example,
18 but, you know, sort of daily we read in the trade
19 press that more sort of dot.com and data provider
20 companies are having layoffs, so I think it's -- it
21 would be -- I'm not a financial adviser, but I
22 wouldn't recommend buying stock in any of those
23 companies. So I think not expecting them to be
24 around long is a safe bet.

25 Q. So what does that mean? That you think

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1 only incumbent -- only current big incumbents are
2 going to be around to provide data services?

3 A. And some -- WorldCom provides data through
4 its own facilities. The ability to get data on a
5 mass markets basis may be more limited to where there
6 are smaller regional providers or -- WorldCom and
7 AT&T, AT&T has purchased, I think, most of the assets
8 of one of the data providers, and they may be able to
9 sort of -- it's more of a self-partnering then.

10 But I guess my fundamental point is it's
11 probably less important to focus on -- the one
12 scenario we were discussing is should the ILEC be
13 required to continue providing data if the customer
14 switches voice. If -- I guess, looking out into the
15 future and thinking that the main reason I had filed
16 this testimony, I think, was a lot of it was
17 accomplished by the line sharing reconsideration
18 order requiring UNE-P line splitting, you know, has
19 been accomplished. And the next most important thing
20 to me is probably that Qwest implement OSS changes in
21 much the way Verizon has and the industry has in New
22 York in a way that permits UNE-P CLECs to actually
23 take advantage of it, of the OSS developments.

24 CHAIRWOMAN SHOWALTER: Okay. Thank you.
25

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

2 BY JUDGE BERG:

3 Q. Mr. Lathrop, I want to ask just a few
4 questions as a follow-up to better understand some of
5 the policies behind this concept of the incumbent
6 being required or obligated to continue providing
7 service. And I'm going to try and set up a couple
8 scenarios.

9 One is where a residential customer
10 receives both voice and data over UNE-P from Ace
11 Telecommunications, and then that customer decides to
12 change both voice and data to Beta
13 Telecommunications.

14 Is it going to take any less time to
15 transfer the data service from Ace to Beta than from
16 an incumbent to a CLEC under the scenario you were
17 previously discussing? Is it still the problem of
18 changing -- possibly raising the specter of a
19 disconnect or -- because of the delay in provisioning
20 and changing over between CLECs offering UNE-P, as
21 between an incumbent and a CLEC?

22 A. Those same problems for changing the data
23 still exist between two, from Ace to Beta.

24 Q. All right. And in a situation where that
25 same customer has voice and data with Ace, now

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1 WorldCom comes into the picture and wants that
2 residential voice business, but doesn't provide the
3 data portion, where there are other data providers
4 out there, should Ace be required to continue
5 providing data service to the customer if it is not
6 otherwise contractually obligated and if it chooses
7 not to do so because of the same considerations?

8 A. No, there I think the situation's a little
9 bit different in that it would be in WorldCom's
10 interest to have arrangements with the various data
11 providers. And I would say that my view of the role
12 of regulation is not that we need to regulate the
13 arrangements between various competitors so much as
14 the first situation where the easiest answer for a
15 customer is just to stay with the incumbent.

16 Q. Well, it seems that if you had a customer
17 that was getting voice and data from a CLEC, that the
18 same impetus to stay with that provider would still
19 be there if, in fact, there's going to be a risk of
20 being out of service for a month. For example, you
21 know, maybe the customer gets a great promotional
22 changeover today to get the voice deal, but your data
23 -- they'll change your data over, but it's going to
24 take a month for that to occur.

25 I'm just trying to envision the competitive

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1 situations that arise. If we have the focus on the
2 consumer and we're trying to protect the consumer
3 from some sort of secondary impact from trying to
4 take advantage of a competitive marketplace or one
5 service fallout on another, it seems that's the same
6 consideration. If, in fact, the customer -- consumer
7 is going to be out of data business for a month, it
8 would be no different if it was a CLEC-to-CLEC
9 transfer than an ILEC-to-CLEC transfer.

10 A. That's true in terms of the time, you know,
11 but I think the scenarios are a little bit different.
12 Presumably the customer in your hypothetical could
13 choose to change the voice and retain the same data
14 provider. And as a voice provider, with the interest
15 in having deals with all the different data
16 providers, if the customer changed from a different
17 voice provider to WorldCom, we would want to have a
18 deal with that data provider so that the customer
19 would not -- you know, there's no reason that they
20 wouldn't be able and want to keep that same data
21 provider.

22 If they, for some reason, want to move
23 both, then the customer -- you know, it should be
24 explained to the customer that you run these risks
25 without knowing more of how long they may be out of

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1 service.

2 Q. So in effect, what you're saying is there's
3 no reason why the incumbent would not want to keep
4 that data customer, other than to use it as some kind
5 of leverage for retaining their voice business?

6 A. Generally, yes.

7

8

E X A M I N A T I O N

9 BY DR. GABEL:

10 Q. Good afternoon, Mr. Lathrop. I also have a
11 few follow-up questions. First, in response to
12 questions from Chairwoman Showalter, you talked about
13 the incumbents, and I just want to be clear. When
14 you use that, you were referring to both Verizon and
15 Qwest; is that correct?

16 A. Yes.

17 Q. All right. So the problem that you were
18 discussing with the Chairwoman, where a customer
19 would have both voice and data services from the
20 incumbent, WorldCom has an equal concern that if you
21 win the voice service, using the UNE platform, you
22 have an equal concern that Verizon's VADI separate
23 data subsidiary will disconnect data service? You
24 have the same concern about VADI that you have for
25 Qwest?

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1 A. Yes, I have the same concern. I'm not sure
2 whether VAD has agreed to continue to provide the
3 data service.

4 Q. And you seem very familiar with
5 developments in New York. You're not aware if this
6 issue has been worked out in New York for VADI's
7 operations in that state?

8 A. I'm pretty sure we've asked. I don't know
9 whether we have an answer. I would think that the
10 default would be that they do not want to, you know.
11 And certainly we can read the FCC order that says
12 they're not required to continue providing data.

13 Q. Now, I know you're not a lawyer, but I just
14 want to explore that one paragraph for a minute.

15 CHAIRWOMAN SHOWALTER: Which paragraph?

16 DR. GABEL: Which was the paragraph -- was
17 it 19?

18 CHAIRWOMAN SHOWALTER: Of which order?

19 THE WITNESS: Line Sharing Recon.

20 JUDGE BERG: Might be 16.

21 Q. All right. Now, and you may want to pass
22 on this, and this may just be something which the
23 lawyers want to brief, but the question I had in my
24 mind when I was hearing the discussion that you had
25 earlier today on this paragraph 19, it says, at

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1 paragraph 19, AT&T and WorldCom contend incumbent
2 LECs have an obligation to permit competing carriers
3 to engage in line splitting using the UNE platform
4 where the competing carrier purchased the entire loop
5 and provides its own splitter.

6 Now, my question is, in the case of VADI,
7 when the FCC wrote this order, is it your
8 understanding that the FCC did not consider VADI an
9 incumbent LEC?

10 A. I don't know.

11 Q. Okay. So -- all right. Well, let me just
12 explore this hypothetical. If VADI was not -- well,
13 I'll just -- I'll just leave it. All right. We can
14 move on to the next question.

15 Also, I want to follow up a comment on a
16 comment you made to the Chairwoman regarding a
17 customer who switches to WorldCom subscribing to the
18 UNE platform, and you said that that customer may
19 lose data service because WorldCom was not aware that
20 that customer had DSL service. Do you recall that
21 response?

22 A. Yes.

23 Q. All right. Now, am I correct that, under
24 the preprovisioning OSS arrangements, that once a
25 customer indicates that they're interested in

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1 switching to WorldCom, that WorldCom can look in the
2 OSS of the incumbent and identify all the services
3 that the customer currently has with the incumbent?

4 A. I'm not sure. I know that the scenario I
5 described had happened, and I'm not sure whether it
6 happened with the OSS or if the customer failed to
7 tell the service representative, but there were
8 customers with voice and data, migrated to voice,
9 lost data, and then requested to be migrated back to
10 the incumbent, where they could maintain both voice
11 and data.

12 Q. Okay. Wouldn't there be an equal concern,
13 just for voice services, that a customer might have
14 call forwarding, call waiting, and they switch to
15 WorldCom, you would want to know if that customer
16 currently has call forwarding and call waiting. That
17 would be a concern of WorldCom?

18 A. Yes.

19 Q. And do you know if OSS has been set up so
20 that you can evaluate the services that the customer
21 has to make sure that no voice services are lost when
22 a customer switches to the UNE platform?

23 A. Yes, and that may be the distinction, that
24 in a sort of migrate as-is approach, that it works
25 for voice and voice-related services and perhaps not

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1 for data.

2 Q. And lastly, there's this discussion in this
3 proceeding about the possibility that a customer
4 who's currently obtaining DSL service from an
5 incumbent, perhaps they could switch and obtain DSL
6 service from a competitor of the incumbent's data
7 service.

8 The question I have for you, Mr. Lathrop,
9 do you know the percentage of the offices where the
10 incumbent is the only provider of DSL service in
11 Washington?

12 A. No, I do not.

13 Q. Do you know, are there offices in
14 Washington where the incumbent is the only provider
15 of DSL service?

16 A. No, I do not know.

17 DR. GABEL: As a request from the bench of
18 Verizon and Qwest, we would like to know the
19 percentage of your offices in Washington where you
20 are the only provider of DSL service. So
21 specifically the interest would be would there be
22 areas in the state where if the customer isn't
23 obtaining DSL service from you, there are no
24 alternatives available.

25 JUDGE BERG: Dr. Gabel, are you looking for

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1 a situation where other providers are technically
2 unable to implement or provide DSL or just where
3 they've chosen not to?

4 DR. GABEL: Where they've chosen not to.
5 So I'm interested in an office where Qwest or Verizon
6 has chosen to provide DSL service, but no other DLEC
7 is currently providing service.

8 MS. ANDERL: Okay. May I respond? We
9 provided, in response to a Staff data request, a list
10 of all of the offices in which Qwest provides DSL,
11 identified by central office name, and a list of all
12 of the central offices where DLECs have splitters
13 collocated.

14 We don't know, in every single instance,
15 whether the DLEC is providing service via that
16 splitter, but if we can use that as a proxy, we would
17 be happy to undertake the analysis and identify from
18 those two documents whether there are any where Qwest
19 is providing DSL and no one else has DSL equipment
20 collocated, and then we can also do a percentage
21 calculation, you know, relative to our total central
22 offices, if that would be acceptable.

23 JUDGE BERG: That would be very helpful,
24 but we'd also, to the extent that that information
25 about those specific wire centers can also be made

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1 available, of what those wire centers are.

2 MS. ANDERL: We'll give you the underlying
3 data, too. We won't just give you the conclusion.

4 JUDGE BERG: That's right. And this would
5 be Bench Request 44. And we will take some other
6 follow-up information. But to the extent that you
7 could refer to some other document as partially
8 satisfying the request is certainly acceptable.

9 MS. ANDERL: Okay. I guess the only other
10 thing that I would point out, Mr. Reynolds just
11 reminded me, and in the conversation I had with Mr.
12 Lathrop earlier, he pointed it out, as well, that
13 sometimes a data LEC provides DSL and it's DSL only
14 over that loop. It's neither line sharing nor line
15 splitting. And we don't really know that, so we're
16 probably just going to, again, have to use the
17 central offices where data LECs have equipment
18 collocated as kind of a proxy for us to be able to
19 tell.

20 JUDGE BERG: In that situation, would there
21 be a splitter?

22 MS. ANDERL: There wouldn't need to be a
23 splitter if they're providing the DSL only, but they
24 might have a splitter, but we don't know what
25 services and whether they're doing DSL only or DSL

03404

1 and voice.

2 JUDGE BERG: All right. We'll look at that
3 as a separate layer.

4 MS. ANDERL: We'll get you as much detail
5 as we can.

6 MS. HOPFENBECK: I just had a question
7 about the request. I mean, I don't know if this is
8 occurring in Washington. I'm aware that it's
9 occurring in other states, that the data LECs, some
10 of the data LECs that have been collocated up till
11 now have pretty recently either notified ILECs that
12 they're pulling their collocations or -- I mean, I
13 guess it occurs to me that in order for this
14 information to be meaningful, it's sort of important
15 to know sort of the current status. I mean, some of
16 that collocated equipment -- would you only be
17 reporting collocations that are currently active, I
18 guess is one of my questions?

19 CHAIRWOMAN SHOWALTER: Well, why don't you
20 make it as current as you can, and also tell us what
21 the date is.

22 MS. ANDERL: We'll do that. I think the
23 information we provided in the data request to Staff
24 was as of several weeks ago, so we'll make sure that
25 that information is clear in the response.

03405

1 JUDGE BERG: So it looks like, in essence,
2 there will be some kind of a range, you know, the
3 maximum number of CLECs who could be providing DSL or
4 those CLECs with collocated, and then there's the
5 other presumption that if a splitter is installed,
6 that they are DSL capable.

7 MS. McCLELLAN: Your Honor, just to be
8 clear, if -- I mean, within the normal deadline of
9 when a bench request was due, would, for purposes of
10 your question, it be sufficient if we know that there
11 is a data provider who, for example, has ordered DS1
12 loops, but we don't know whether or not they have the
13 equipment in their collocation cage, and we probably
14 won't be able to figure out within 10 business days
15 whether they have the equipment necessary, like a
16 DSLAM or anything -- because we just wouldn't keep
17 those records. If all they're ordering is a DS1 or
18 DS3 loop, we give it to them and we don't keep any
19 records of what else they've got.

20 So for purposes of your bench request,
21 would it be sufficient to just say, you know, in X
22 central offices, we have these carriers who have
23 ordered digital capable loops that could be used to
24 provide data services?

25 DR. GABEL: You just said digital capable

03406

1 loops, but earlier, Ms. McClellan, you talked about
2 ordering DS1, which I assumed you meant by that
3 intraoffice connections, so --

4 MS. McCLELLAN: Well I guess a
5 high-capacity loop. Maybe I misspoke, but there are
6 some high-capacity loops that DLECs have ordered for
7 the specific purpose of providing data, and I used
8 DS1 because that's what I assumed it would be. I
9 might be wrong. But in those situations, we assume
10 that they're using them to provide data service, but
11 we have no way of knowing that.

12 DR. GABEL: So you do not have in your
13 record system an inventory of how many central
14 offices have DSLAMS that have been collocated?

15 MS. McCLELLAN: I'm not sure whether we do
16 or not. I guess, as I sit here today, I can't think
17 of any particular reason why -- if a particular CLEC
18 has ordered a DS1 or a DS3, I can't think of why
19 Verizon would need to know what equipment they have
20 in their central office if all they're saying is give
21 us this loop. So -- and I'm concerned that if my
22 suspicion is correct that they don't have a need to
23 have that information, then it would be very
24 difficult to go in those central offices and figure
25 out, okay, which ones do have DSLAM equipment

03407

1 collocated and which ones don't.

2 JUDGE BERG: One second, parties. We're
3 tracking down a source here to see if the Bench
4 request needs to be narrowed in scope or otherwise
5 provide some further direction to the parties.

6 DR. GABEL: It's my understanding that in
7 the document called NECA Tariff Four, there is a code
8 which identifies -- it's code TJ, which is called
9 digital -- which is defined as digital subscriber
10 line using asymmetrical bit rates. And in the NECA
11 Tariff Four glossary, it defines it as a wire center
12 that provides digital access line with upstream and
13 downstream bit rates or different bit rates may vary
14 by loop condition and length. It may allow
15 simultaneous use of a telephone channel.

16 That's a published document which -- and
17 I've never used it, but I'm turning to you, as the
18 telephone companies who actually submit the
19 information to NECA. Perhaps you could look into the
20 possibility that you do have this information and you
21 do provide it to NECA, that, as I understand it, NECA
22 Tariff Four has information for both the CLECs and
23 the ILECs. So just suggesting.

24 CHAIRWOMAN SHOWALTER: Well, maybe we
25 should just leave it. I think they know what the

03408

1 request is. If it turns out that you can't comply
2 with the request for some reason, you can tell us
3 that, but maybe you can.

4 MS. McCLELLAN: Okay.

5 JUDGE BERG: Then you can just accept Dr.
6 Gabel's reference to the NECA tariff as guidance as
7 to a source that may provide the Commission with some
8 more relevant or reliable data. If you can include
9 that in your consideration of information to submit
10 to the Commission, I think the parties know what
11 we're after, and certainly you can include some
12 narrative about the way in which the response was
13 developed.

14 DR. GABEL: May I just also suggest you
15 look at possibilities of source in the NECA Tariff
16 Four, there's an acronym T3 and T4, that may or may
17 not be helpful here. The T3 is a wire center that
18 collects customer data for many DSL access lines and
19 provides for the concentration and connection of DSL
20 data traffic to special access service.

21 CHAIRWOMAN SHOWALTER: I'm surprised I
22 didn't think of that, Dr. Gabel.

23 JUDGE BERG: We'll turn back to the parties
24 for additional cross-examination before redirect.
25 Ms. McClellan.

03409

1 MS. McCLELLAN: Yeah, just two quick
2 follow-up questions.

3

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

5 BY MS. McCLELLAN:

6 Q. Suppose -- following up to the discussion
7 you had with Chairwoman Showalter and Dr. Gabel and
8 Judge Berg, if there's a situation in Washington
9 where an end user is receiving voice from Verizon and
10 data from Covad through a line sharing scenario, and
11 that customer now wants to move to WorldCom and
12 you're going to provide voice on a UNE-P, and suppose
13 Covad, for whatever reason, does not have any kind of
14 relationship with WorldCom and doesn't want to have a
15 relationship with WorldCom to continue to provide
16 data on that service, for whatever reason, would it
17 also be your position that Covad should be required
18 to provide data over that -- to continue to provide
19 data over that line to address your concerns about
20 whether or not you can compete for that customer?

21 A. No. Even given the hypothetical, with
22 which I disagree, I don't think it's the role of
23 regulation to focus on the parties who could
24 otherwise reach some sort of commercial arrangement.

25 Q. Well, why would that be different from a

03410

1 situation where you're having trouble competing
2 because a customer who receives data from VADI, if,
3 for whatever reason, VADI decided they didn't want to
4 continue to provide service, why is that a different
5 situation?

6 A. Because in one instance, it's the incumbent
7 and it's the other -- a competitor, and other than
8 being -- I disagree with the hypothetical, because I
9 think the UNE-P CLECs have in their interest to reach
10 agreements with all the data providers, and if they
11 do not, then they're subject to that problem,
12 regardless of whether the customer was initially in
13 the initial circumstance.

14 I mean, what that means is, using the same
15 hypothetical, if we have a customer for voice and
16 they want to add data, they say they want to add
17 Covad, we have no interest in saying, well, no, we
18 don't deal with Covad.

19 Q. My hypothetical is not that WorldCom
20 wouldn't want to have a partnership with Covad; it's
21 the opposite. Suppose Covad doesn't want to have a
22 relationship with WorldCom. And would that -- would
23 your concern about your ability to compete for that
24 voice customer be the same, in that, in both
25 situations, the voice customer has the potential to

03411

1 lose its DSL service, so they may not want to switch
2 their voice. I mean, that's the underlying concern;
3 right?

4 A. No, not really. It's combined with the
5 incumbent providing both, and in a sense, tying both
6 services.

7 Q. Are you aware that Verizon's relationship
8 with its data affiliate, VADI, is, from Verizon's
9 perspective, the same as its relationship with any
10 other data provider?

11 A. I've heard that said, yes, but they're both
12 in the same, you know, financial entity.

13 Q. But you didn't -- under the FCC's merger
14 conditions for the Bell Atlantic-GTE merger, wasn't
15 Verizon required to treat its data affiliate as
16 separate, a completely separate business entity that
17 is not funded, if you will, in the same way as -- or
18 does not receive the same stream of revenues as
19 Verizon, the ILEC, would?

20 A. I know the merger conditions placed some
21 requirement on maintaining some sense, and I'm not
22 sure of the details, of the separation of VADI.
23 That's why I don't know whether VADI may be willing
24 to continue providing data if a customer wants to
25 change their voice service.

03412

1 Q. And I understand that, but, again, if --
2 okay. WorldCom participated in the New York
3 collaborative; right? I think you agreed with that?

4 A. Yes, we continue to do so.

5 Q. And are you fairly familiar with what's
6 gone on in that collaborative?

7 A. Generally, yes. Not enough to answer that
8 previous question.

9 Q. Are you aware enough to know generally
10 whether there have been disagreements between
11 traditional voice providers, such as AT&T and
12 WorldCom, and traditional data providers, such as
13 Covad and Rhythms, over certain issues, such as who
14 owns the loop, who has the end user relationship with
15 the customer, things of that nature?

16 A. Yes.

17 Q. Okay. So suppose, in a line sharing
18 scenario, Covad has a relationship with the end user.
19 It is a Covad-branded data service. And that
20 customer wanted to switch over its voice to WorldCom.
21 Would WorldCom continue to permit Covad to be the
22 branded data provider and continue to have the
23 billing and the day-to-day interaction with the end
24 use customer through the data side?

25 A. It's possible. I can imagine a situation

03413

1 in which the arrangement between Covad and Verizon
2 that existed before the customer changed their voice
3 service might continue to be the same arrangement
4 when the customer migrated to WorldCom's voice
5 service.

6 Q. Okay. So -- but you said it's possible.
7 So it's also possible that WorldCom would want to
8 have the end user relationship -- the day-to-day
9 relationship with the end user. They would want a
10 branded WorldCom bundled service. I mean, that's a
11 possibility; right?

12 A. Yes, and one can imagine that possibility
13 arising if the customer first has WorldCom for voice,
14 and then later wants to add data and comes to
15 WorldCom, that may have an arrangement with Covad,
16 that agrees to provide data through line splitting as
17 a service to WorldCom and it's a WorldCom-branded
18 product.

19 Q. Okay. So going back to my original
20 hypothetical. If you have a situation where an end
21 user currently receives voice from Verizon and its
22 data from Covad through branded Covad DSL service,
23 and as far as the customer knows, they're receiving
24 two separate things, there could be a disagreement
25 between WorldCom, if WorldCom is trying to get that

03414

1 customer for voice. There could be a disagreement
2 between WorldCom and Covad as to how Covad's
3 relationship with that customer will continue; right?

4 A. Yes, which wouldn't interfere with a
5 negotiated outcome in which WorldCom says, If you,
6 Covad, had the customer relationship first and they
7 want to change their voice, we will honor that and we
8 will have a different set of financial circumstances
9 in that case, as compared with the case where we get
10 the customer and have that relationship first.

11 Q. Okay. So can you think of any situation
12 under which Covad would say, you know what, I don't
13 want to play with WorldCom?

14 A. No.

15 Q. All right. Well, supposing -- in your
16 conversation with Chairwoman Showalter, you said that
17 you envisioned a day where most data -- separate
18 non-ILEC data providers may go out of business. Do
19 you recall that?

20 A. Yes.

21 Q. If that were to happen, is there any reason
22 why WorldCom could not step in and fill that data
23 provider void?

24 A. Not that I can think of right now, no.

25 MS. McCLELLAN: Okay. No further

03415

1 questions. Thank you.

2

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

4 BY MS. ANDERL:

5 Q. Mr. Lathrop, just a couple of follow-ups.

6 You talked in response to some questions from the
7 Chairwoman about the ILEC's ability to delay the
8 setting up of the data service for the CLECs. Do you
9 recall that?

10 A. Yes, I don't think I characterized it as
11 intentional.

12 Q. Neither did I. Are you aware that Qwest
13 has agreed to permit in its central offices
14 CLEC-to-CLEC cross connections?

15 A. Yes, I'm aware of that.

16 Q. Okay. And if a data LEC had chosen to
17 collocate an integrated DSLAM and splitter in their
18 collocation space, wouldn't the data LEC be
19 responsible for the interval for setting up the data
20 service, as opposed to the ILEC?

21 A. Not necessarily, if the data CLEC needs a
22 connection from the DSLAM in their collocation
23 arrangement to a point of termination on the ILEC's
24 network.

25 Q. Would that be the case in each instance?

03416

1 A. What do you mean by each instance?

2 Q. For each customer. Would that be the case
3 that the data LEC would need a point of termination
4 on the ILEC's network that the ILEC had to
5 accomplish?

6 A. Yes, although sometimes the data provider
7 will pre-provision, you know, say a 100-pair cable
8 from their arrangement to one point, and then, as
9 each customer -- as they win each customer, a
10 cross-connect or another connection needs to be made,
11 so there's sort of yes and no, they do need to make
12 those connections on an individual customer basis.

13 Q. Couldn't the data LEC do that?

14 A. I believe -- no, I believe Qwest does not
15 permit other entities to do work on their main
16 distribution frame.

17 Q. Okay. It's your testimony that there would
18 have to be a physical move of the circuit on Qwest's
19 main distribution frame each time that the data LEC
20 and the voice LEC got a new customer?

21 A. I may have lost sight of the hypothetical.
22 Can you remind me of what the starting point was?

23 Q. Well, I think the starting point was -- and
24 that's a fair question -- is that the voice CLEC
25 wants to obtain a customer from Qwest and Qwest is

03417

1 currently provisioning voice or voice and data. The
2 voice CLEC says, We would like to purchase UNE-P to
3 provide voice service and we'd like our partner data
4 LEC here to do the data service.

5 So what I'm trying to explore with you is
6 whether and to what extent the data LEC controls the
7 intervals for provisioning the new data service if
8 the data LEC has the DSLAM, integrated DSLAM and
9 splitter collocated in their own collocation space?

10 A. I think in the most optimistic scenario,
11 the UNE-P conversion would take place relatively
12 quickly, within a few days. The data to transfer
13 from Qwest's equipment and DSLAM to a data provider's
14 DSLAM, if no additional capacity needed to be
15 arranged, there would still need to be an individual
16 cross-connect. And that work, I believe, is only
17 done by the incumbent, by Qwest, and I'm not sure
18 what those intervals are.

19 Q. Well, so that gets back to the instance
20 where the CLEC can pre-provision the individual
21 terminations?

22 A. No, I assumed that. The pre-provisioning
23 goes to some intermediate point, because they're not
24 yet connected with the customer. The customer needs
25 to change data providers in your hypothetical. They

03418

1 need to change where those connections go.

2 Q. Do you know what Qwest's standard interval
3 for accomplishing the final cross-connect would be?

4 A. No, but at this point, I don't -- no, I
5 don't.

6 Q. Let me ask you about the data LEC with
7 which WorldCom is partnering to provide DSL service.
8 Did I understand correctly that that is not a line
9 splitting arrangement?

10 A. That's correct.

11 MS. ANDERL: Okay. Could I ask, as a
12 record requisition, for the identity of that data LEC
13 and whether or not the partnership arrangement exists
14 in the state of Washington? Did I say record
15 requisition?

16 JUDGE BERG: You did. That would be Record
17 Requisition 108.

18 MS. HOPFENBECK: I would only add that it
19 may be necessary -- I don't know how confidential
20 this information is. It may be necessary to seek
21 protection beyond what exists in the current
22 protective order, depending on what the agreement is
23 between that data LEC and WorldCom.

24 I just haven't -- one, I don't know if it
25 exists for purposes of the state of Washington, and

03419

1 two, I don't know what the terms of that relationship
2 are. I'm just sort of putting a placeholder in the
3 event I need to seek additional protection.

4 JUDGE BERG: Ms. Anderl, does it accomplish
5 the same purpose if you know whether or not it's in
6 the state of Washington without knowing the identity?

7 MS. ANDERL: No, Your Honor, not entirely.
8 I do ask it as a record requisition in order that
9 WorldCom can make a confidential response, and so
10 that we don't have to do it on the record here and
11 seal the transcript.

12 JUDGE BERG: Just help remind me with
13 regards to some of the other confidential exhibits
14 that have been identified in this proceeding. Are
15 there other exhibits already identified that also
16 contain the identities of other LECs in various data
17 centers, for example? Have we got some precedent, in
18 terms of the --

19 MS. ANDERL: I don't know -- well, Your
20 Honor, I think in Part One, or Part A, rather, there
21 was certainly identification by some of the CLECs as
22 to -- or DLECs as to whether and to what extent they
23 wanted to collocate for purposes of providing line
24 sharing.

25 JUDGE BERG: All right. That's fine. I

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1 understand that Ms. Hopfenbeck is not raising that
2 issue now. I just wanted to just check with you to
3 make some notes in my book at this point in time.

4 MS. HOPFENBECK: I'd just note that I think
5 the concern is similar to the concern that I believe
6 Qwest raised when -- with respect to the bench
7 request or record requisition request, I can't
8 remember which, that asked them to identify those
9 CLECs that were actually collocated in their central
10 office, and they were concerned about revealing the
11 identity of those CLECs. And so the decision was
12 made not to reveal the identity of those CLECs, I
13 believe.

14 MS. ANDERL: We're not asking for WorldCom
15 to produce wire center-specific information. We're
16 simply asking for the identity of the partner and
17 whether or not the relationship exists in the state
18 of Washington, both of which I think are pretty
19 general. I understand they may still be
20 confidential. And if Ms. Hopfenbeck wants to seek
21 highly confidential treatment of that data, we're
22 certainly happy to cooperate with her.

23 JUDGE BERG: All right. We'll take that up
24 at that point in time. Thank you.

25 Q. One more question, then, Mr. Lathrop. You

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1 describe that WorldCom does partner with a DLEC to
2 provide DSL service, but that the arrangement is not
3 a line splitting arrangement. In that circumstance,
4 if the DLEC is providing DSL service, what is
5 WorldCom doing?

6 A. WorldCom, in that circumstance, is
7 providing branded DSL -- WorldCom-branded DSL service
8 and employs the data CLEC to provide its services as
9 an input to the DSL service.

10 Q. And those are data-only services? No
11 voice?

12 A. I believe in the earlier discussion I said
13 that this arrangement predated the line sharing
14 order, so whether that arrangement has been modified
15 to incorporate any changes, I don't know.

16 Q. Well, Mr. Lathrop, whether the arrangement
17 predates the line sharing order, how does that impact
18 whether WorldCom is providing voice and data over the
19 same service -- or voice and data over the same line,
20 rather?

21 A. Let's assume -- because that service can be
22 provided over the data -- DSL service can be provided
23 over a separate line. Whatever the financial
24 arrangements are, with which I'm unfamiliar, let's
25 say now that there's line sharing in a state that

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1 requires the data provider to pay \$4 to a voice
2 provider. It may change, you know, that
3 relationship.

4 Q. Yes, but -- I understand what you just
5 said, but my question is how does the line sharing
6 obligation on the ILEC or the line splitting order
7 impact whether WorldCom could have independently
8 provided voice and data over the same line prior to
9 either one of those orders?

10 A. I was thinking of one particular way in
11 which WorldCom was providing data, and in that way,
12 it's my understanding that separate lines were being
13 used. And before a -- and that the data CLEC leased
14 a line from the incumbent. There is no handoff for
15 that line to go to the switch, so before any
16 requirement of line sharing, there was no line
17 sharing. There was -- WorldCom was not providing
18 voice, which would have required a handoff of that
19 circuit somehow to a voice switch.

20 I'm not sure that answers your question,
21 but at that -- for the agreement that we're talking
22 about, my understanding is voice is not part of the
23 arrangement.

24 Q. So I guess my final question is are you
25 aware of whether WorldCom has an arrangement with a

03423

1 data LEC to provide line splitting DSL?

2 A. No, I'm not aware of an arrangement.

3 MS. ANDERL: Could I ask, as either part of
4 the prior record requisition or a new record
5 requisition, Your Honor, for an answer to the
6 question of whether WorldCom currently has an
7 arrangement with a data LEC to provide line splitting
8 DSL?

9 JUDGE BERG: In the state of Washington?

10 MS. ANDERL: In any state, and whether or
11 not it is in the state of Washington.

12 MS. HOPFENBECK: I guess, with respect to
13 this one, I mean, the last record requisition request
14 seemed to me to be a request that grew out of
15 testimony that had been provided here today that
16 really was somewhat beyond the scope of what Mr.
17 Lathrop had originally testified about.

18 In this particular case, with respect to
19 whether WorldCom has a relationship to partner with a
20 line splitter, that seems to be -- you know, fall
21 clearly within the scope of the original testimony,
22 and I don't know why that wouldn't have been asked in
23 discovery in the first instance. And for that
24 reason, I'd object to this record request.

25 MS. ANDERL: Well, Your Honor, I guess if

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1 the only objection is that the request is untimely, I
2 would just state that it grew directly out of some of
3 the conversations that Mr. Lathrop had with the
4 Chairwoman and others today in connection with the
5 difficulty that WorldCom might have in competing for
6 a customer because of potential difficulties
7 associated with making sure that customer either got
8 or retained a data service.

9 And so I don't think it's untimely, and I
10 think it's highly relevant to the conversations we've
11 had today.

12 MS. HOPFENBECK: Well, maybe if it were
13 limited to Washington, that seems to be the case, but
14 beyond Washington, I question the relevance.

15 MS. ANDERL: I guess, Your Honor, the
16 extent to which they can partner anywhere certainly
17 would have an impact on the testimony that he's given
18 for Washington. Whether they have an arrangement in
19 Washington is a sub-issue. But their ability to
20 contract or make arrangements in other states is
21 relevant to, I think, their ability to do so
22 anywhere.

23 MS. HOPFENBECK: Your Honor, I'm going to
24 withdraw my objection. We'll respond to the record
25 requisition request.

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1 JUDGE BERG: Thank you, Ms. Hopfenbeck.
2 Would you have a preference whether that was part of
3 108, or would you rather see this dealt with as a
4 separate --

5 MS. HOPFENBECK: I think it's more
6 appropriately as a separate request.

7 JUDGE BERG: This would be Record Request
8 109.

9 MS. HOPFENBECK: As I understand, the
10 request is -- the initial question is whether
11 WorldCom has entered into a partnership relationship
12 with any data LEC for purposes of allowing WorldCom
13 to provide line splitting, and if so, whether that
14 partnership arrangement extends to the state of
15 Washington.

16 MS. ANDERL: Yes, that's fair.

17 JUDGE BERG: Anything else?

18 MS. ANDERL: No, that completes my
19 questions, as well.

20 JUDGE BERG: Ms. Tennyson.

21 MS. TENNYSON: Thank you.

22

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

24 BY MS. TENNYSON:

25 Q. Mr. Lathrop, my name is Mary Tennyson. I'm

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1 representing Commission Staff in this proceeding. I
2 just had a question to follow up on some of the
3 questions that others have asked. You had some
4 discussions about VADI and Qwest providing data
5 service. Do you know whether or not VADI or Qwest
6 files a DSL tariff in the state of Washington or
7 whether that's only an FCC filing?

8 A. I don't know.

9 MS. TENNYSON: Okay. Thank you.

10 JUDGE BERG: Ms. Hopfenbeck?

11

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

13 BY MS. HOPFENBECK:

14 Q. Mr. Lathrop, I only have a little bit of
15 redirect. In your most recent discussion with Ms.
16 McClellan, she inquired as to whether if we were to
17 assume that the data LECs were no longer in a
18 position to provide the facilities or the services
19 that would enable WorldCom to offer a bundled voice
20 and data product, could WorldCom step into the role
21 of data provider.

22 And I just wanted to ask you, first of all,
23 is WorldCom currently capable of providing data
24 service over UNE-P to residential customers in any of
25 the territories where it's providing local service?

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1 A. No, it's not.

2 Q. And what steps does WorldCom -- would
3 WorldCom have to take in order to be capable of
4 providing on its own a bundled voice and data product
5 in those markets?

6 A. It would have to essentially start up a new
7 data CLEC business, acquire the equipment, acquire
8 collocations, place the equipment in central offices,
9 place all of the cross-connects, and conceivably, it
10 might buy assets from a bankrupt CLEC, but it would
11 -- that would be one way to acquire all those assets
12 and put itself in the same position.

13 Q. You had a number of -- you had a lot of
14 discussion about WorldCom's recommendation that this
15 Commission should direct the incumbent LECs to
16 continue to provide their data service to WorldCom,
17 as the voice provider, in the scenario where the
18 customer is migrating only its voice service to
19 WorldCom or another voice provider and it is also
20 being served with data by the incumbent. Do you
21 recall those questions?

22 A. Yes.

23 Q. Why should -- can you explain why the
24 Commission should step in and exert its regulatory
25 authority in the scenario where the incumbent was

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1 originally the voice and data CLEC, but should not
2 step in and exercise the similar regulatory authority
3 in the circumstance where a data LEC is the data
4 provider and the voice is being handled either by the
5 ILEC or another voice provider? What distinguishes
6 those circumstances?

7 A. Well, there's a couple of things. One is
8 that the market for providing these data services are
9 multiple providers, and voice providers have this
10 incentive to make the various arrangements with them.
11 Either customers have left an existing incumbent
12 arrangement to get these providers and could
13 conceivably go back, or maybe they got them anew.

14 But one is that it's in the voice
15 providers', as competitors, interest to make
16 arrangements. That's why I don't think there are
17 circumstances that -- in which our company would not
18 make arrangements with the data providers. The other
19 has to do with my view of the role of regulation is
20 not to necessarily constrain the competitive
21 companies, but instead, the traditional monopolists.

22 Now, there's a potential concern for the
23 end user, which my concern began with the end user
24 not be out of service. And Chairwoman, you suggested
25 things that the industry might use to minimize the

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1 amount of time with which a customer would be out of
2 service.

3 And as a small business owner, I know that
4 this maybe -- I think this relates to residential.
5 There's no way in which you ever want to be out of
6 service, so I think it's a very big disincentive that
7 customers may be willing to switch, but in one
8 instance, they know changing data providers may cause
9 that, and our experience in the market has been
10 customers have not known that when they're leaving
11 the monopoly service, the incumbent's service.

12 Q. One more question, Mr. Lathrop. Why -- if,
13 as you suggest, that a voice provider, such as
14 WorldCom, has an incentive to enter into arrangements
15 with all data providers, why is the regulatory
16 authority of this Commission necessary to assist you
17 with respect to entering into a relationship with the
18 incumbent?

19 A. Could you repeat the question?

20 Q. Why isn't it sufficient to allow the
21 incumbent and WorldCom or any other voice provider --
22 why isn't it sufficient to allow them to work that
23 arrangement out contractually?

24 A. Because the incumbent can use the situation
25 as leverage to, as the judge mentioned, to trade off

03430

1 essentially the revenues that they would otherwise
2 earn if they continued providing data service. And
3 rather than continue to earn those revenues, when a
4 customer moves their voice, they can choose not to
5 provide the service in the hopes that the customer
6 will stay with them for all their services.

7 MS. HOPFENBECK: Thank you. I don't have
8 anything further.

9 JUDGE BERG: All right. Thank you, Mr.
10 Lathrop. That concludes your testimony. Thank you
11 very much for being here. You're excused from the
12 hearing at this time. Why don't we go ahead and take
13 a 15-minute break before beginning with Mr. Gillan.
14 We will want to start close to 3:10, and I'll remind
15 the parties that we're only going till 4:00 this
16 afternoon.

17 MS. STEELE: Mr. Gillan has interrupted his
18 vacation, essentially, to be here. If there's any
19 chance that we can finish with him today --

20 JUDGE BERG: We'll be off the record.

21 (Recess taken.)

22 JUDGE BERG: We'll be back on the record.

23 Mr. Gillan, will you please stand and raise your
24 right hand.

25 Whereupon,

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1 JOSEPH GILLAN,
2 having been first duly sworn, was called as a witness
3 herein and was examined and testified as follows:

4
5 D I R E C T E X A M I N A T I O N

6 BY MS. STEELE:

7 Q. Sir, will you state your full name and your
8 address for the record, please?

9 A. Joseph Gillan, P.O. Box 541038, Orlando,
10 Florida, 32854.

11 Q. And do you have in front of you exhibits
12 that have been marked T-1260, the Part B supplemental
13 direct testimony of Joseph Gillan, T-1261, the Part B
14 rebuttal testimony, and T-1262, the Part B
15 supplemental rebuttal testimony of Joseph Gillan?

16 A. Yes.

17 Q. And did you prepare those documents?

18 A. Yes.

19 Q. And if I were to ask you the same questions
20 today, would your answers be the same?

21 A. Yes.

22 MS. STEELE: I'd like to move for the
23 admission of Exhibits T-1260, 1261 and 1262.

24 JUDGE BERG: Hearing no objection, they are
25 admitted.

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1 MS. STEELE: Mr. Gillan is available for
2 cross-examination.

3 JUDGE BERG: Ms. McClellan.

4 MS. McCLELLAN: Thank you.

5

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

7 BY MS. McCLELLAN:

8 Q. Good afternoon, Mr. Gillan.

9 A. Good afternoon.

10 Q. I'm Jennifer McClellan. I represent
11 Verizon.

12 CHAIRWOMAN SHOWALTER: Could you use the
13 microphone?

14 Q. I'm sorry. Just a couple of preliminary
15 questions. You're not a lawyer; right?

16 A. No, I'm not.

17 Q. Okay. Have you ever provisioned a line
18 sharing order?

19 A. No.

20 Q. Or seen one in place in a central office?

21 A. You mean see one get implemented in a
22 central office?

23 Q. Right.

24 A. No.

25 Q. And is that also true for line splitting?

03433

1 A. Yes.

2 Q. Okay. AT&T raised the issue of line
3 splitting in several proceedings before the FCC;
4 correct?

5 A. Yes, that's correct.

6 Q. And one of them was the Southwestern Bell
7 Texas 271 proceeding?

8 A. That's my understanding, yes.

9 Q. And they also raised the issue of line
10 splitting and splitter ownership in an application
11 for reconsideration of the UNE remand order?

12 A. Yes, I believe that's correct.

13 Q. And I'm sorry, AT&T has filed several ex
14 partes with the FCC on the issue of line splitting;
15 is that correct?

16 A. I assume that to be true. I haven't seen
17 them.

18 Q. Okay. And since you filed your first two
19 rounds of testimonies, you're aware that Verizon has
20 agreed to permit a UNE-P provider to provide both
21 voice and data over a loop where it provides a
22 splitter; right?

23 A. That's my understanding. I was always
24 amazed that there was a dispute over that.

25 Q. Well, I'm not sure that there was, but we

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1 won't go into that. Does AT&T provide DSL service to
2 any end users in the United States?

3 A. I don't know. I'm not an AT&T employee;
4 I'm a consultant. My testimony's been written from
5 the perspective of what will it take to make this a
6 competitive marketplace. Fortunately, AT&T is
7 interested in that outcome, and so they've agreed to
8 sponsor it, but I'm not really in a very good
9 position to answer questions specific to AT&T's
10 business operations, other than what I would know
11 from general information.

12 Q. Did AT&T present a witness in this
13 proceeding that is familiar with its plans relating
14 to marketing or provisioning of advanced services to
15 end users?

16 A. AT&T is sponsoring the testimony of Natalie
17 Baker. Whether she is familiar with those specific
18 questions or not, you'll have to ask her, but she is
19 an AT&T employee.

20 Q. That shortened my cross quite a bit.

21 A. Well, that wasn't my intent, but --

22 Q. All right. Let's turn to Exhibit T-1260,
23 which I believe is your supplemental direct
24 testimony. On page six, you claim that Verizon took
25 the position that an ILEC-owned splitter was the most

03435

1 efficient. Is that a fair characterization of your
2 testimony there?

3 A. It's a reasonable characterization.

4 Q. Is that not what you meant?

5 A. Well, no, I think what Verizon said, and I
6 would agree with it, is that the most efficient place
7 to put splitters is in a central office -- is as a
8 common pool in the central office that could be used
9 by everybody.

10 I recognize that your witness is trying
11 draw the line that says, No, that's only the most
12 efficient place to put them if we have to own them,
13 if we, the ILEC, have to own them. But it seems to
14 me if that's the most efficient place to put them if
15 you, the ILEC, own them, then that must also be the
16 most efficient place to put them if anyone owns them.
17 So it's hard for me to understand why it would be the
18 most efficient place to put them if you own them, but
19 not the most efficient place to put them just as a
20 general rule.

21 Q. You were a witness in Phase A of this
22 proceeding; is that right?

23 A. Yes, I was.

24 Q. And did AT&T provide any testimony in that
25 phase on the issue of splitter ownership?

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1 A. I cannot recall specifically --

2 Q. Okay.

3 A. -- one way or the other. In fact, I may
4 have been recommending it. I just can't recall the
5 testimony that clearly. It was last year.

6 Q. In preparing your testimony for Phase B,
7 did you conduct any market surveys or studies of end
8 user customers in Washington relating to advanced
9 services?

10 A. No.

11 Q. So you didn't do any studies to determine
12 the total number of end users in Washington receiving
13 DSL services from any provider?

14 A. No, it wouldn't have been relevant to my
15 testimony, that I can think of. I mean, at the very
16 -- what we're trying to do here is establish the
17 conditions in which competition will develop in this
18 industry, in this market.

19 Q. So you were not trying to make any
20 statement or offer any testimony on current market
21 demand?

22 A. No, I think at this point it's pretty clear
23 that a prominent DSL industry has arisen, it's
24 reached crisis proportion. When you look at the
25 numbers now, which, you know, I filed later in the

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1 testimony, the ILECs are taking a commanding share of
2 this market. You're adding lines, you're growing
3 rapidly, and the people you compete against are going
4 bankrupt. And you know, you take those trends out,
5 you see that, fundamentally, there's a market failure
6 here.

7 Q. But did you do any kind of analysis to see
8 whether the conditions that you discussed in your
9 testimony comparing the ILEC DSL services to
10 competitive DSL services, you didn't do any kind of
11 market analysis to figure out what the current market
12 conditions are in Washington, did you?

13 A. I didn't have any data specific to
14 Washington; I just had the national data. And let's
15 face it. We all -- when you follow Covad and Rhythms
16 and NorthPoint and their financial collapse, there's
17 nothing there that indicates that they're doing okay
18 in some parts of the country and then really bad in
19 other parts of country; they're basically crashing
20 across the board. So I have no reason to believe
21 that Washington is somehow atypical to the entire
22 nation.

23 Q. Have you done any kind of analysis to
24 determine the factors behind those companies'
25 financial difficulties?

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1 A. Specific analysis or -- no. Have I read
2 the analysts' reports, have I followed why this is
3 happening and what is generally causing it, yeah.

4 Q. AT&T is in the process of purchasing assets
5 of one of those companies, specifically NorthPoint;
6 is that correct?

7 A. Yes.

8 Q. And do you know whether that includes
9 NorthPoint's assets in Washington?

10 A. My understanding is it's their national
11 assets, but I don't have anything other than their
12 general press announcements.

13 Q. Okay. In your Exhibit T-1260 -- forgive
14 me. I did not mark the page. I may not need one.
15 But you contend that a splitter is no different from
16 other investments made by an ILEC to fulfill their
17 obligations. Do you recall that testimony?

18 A. Yes.

19 Q. Can you give me an example of what other
20 investment you're referring to there?

21 A. The investments in the OSS to enable you to
22 sell and provision network elements, investments in
23 implementing number portability, investments in --
24 well, in you and the person to your left and the
25 person to your right in all these proceedings to

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1 implement or not implement your responsibilities.

2 So I mean, there's a whole -- there's a
3 wide number of things that you've had to do in order
4 to make network elements available. Now, we'll
5 obviously disagree as to whether you've done enough
6 and who you should charge for that, but I don't think
7 there's any disagreement that you've taken some
8 steps.

9 Q. Do you agree with me that the FCC has
10 specifically identified OSS as a network element that
11 ILECs must provide unbundled access to?

12 A. Yes.

13 Q. Has the FCC made that ruling in
14 relationship to splitters?

15 A. You know, it's unclear what they've done
16 with respect to splitters, other than to punt it. I
17 mean, I think that fundamentally it's going to come
18 down to what states do, because the FCC -- I think on
19 the one hand I can go at an argument that it's part
20 of the electronics. On the other hand, you can have
21 an argument that says, no, it's been excluded.

22 And when the issue was presented to the
23 FCC, it basically issued an order that says, We're
24 going to look at this in another proceeding. So I
25 think, fundamentally, at the FCC, as to what -- all

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1 we can say is to what they've done is not answer the
2 question to either my satisfaction or your
3 satisfaction.

4 Q. But haven't they, so far in their order,
5 said that an ILEC does not have a current obligation
6 to purchase a splitter for a CLEC?

7 A. Yeah, I think they've said that.

8 Q. And would you agree that, going back to
9 your OSS analogy, would you agree that a CLEC does
10 not have any method of obtaining access to an ILEC's
11 OSS or the information contained in that OSS unless
12 the ILEC were to make the investments that you
13 discussed to make that access available? Let me
14 start that question over.

15 A. Okay.

16 Q. Okay. We agree that the FCC has required
17 ILECs to provide unbundled access to OSS
18 functionalities; right?

19 A. Yes.

20 Q. And they did that because they believed
21 that there's no other way for a CLEC to obtain that
22 functionality unless the ILEC make it available;
23 right?

24 A. I mean, they did it for a lot of reasons.

25 Q. But that's one of them; right?

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1 A. I suppose that's one of them.

2 Q. Okay. And OSS are currently a part of or
3 an existing part of an ILEC's network; right?

4 A. There are things that the ILEC has that are
5 called OSS. It's not necessarily the same things
6 that the ILEC has to create in order for -- that the
7 CLECs use. I don't want to get into a semantic
8 battle with you. I'll agree with you that the FCC
9 has not said that the ILEC must provision a splitter.
10 What I won't agree with is that they've actually gone
11 so far as to say that a state can't or that they
12 won't in the future say that a splitter is part of
13 the electronics on a loop and order that it be made
14 available via that vehicle.

15 Q. I understand that. I'm trying to explore
16 something slightly different, though. Does AT&T have
17 the ability today to purchase a splitter from a third
18 party vendor?

19 A. Oh, yeah. As an abstract concept, can they
20 go down to Bob's Splitters Are Us and buy a splitter,
21 yes. Does that mean that they can actually use
22 splitters in a way that enables them to provision
23 advanced services in a UNE-P environment, absolutely
24 not.

25 There's this giant gap between being able

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1 to go buy the piece of equipment and having it
2 installed and operational in 23,000 end offices
3 across America. And in that gap is where my
4 testimony addresses why it's important for the ILEC
5 to make some of this available.

6 Q. Have you read or are you familiar with the
7 line splitting service descriptions that were
8 included with Kirk Lee's testimony in this
9 proceeding?

10 A. Generally. I read the testimony.

11 Q. Okay. Are you aware that there are
12 circumstances under which an ILEC, and specifically
13 Verizon, might take a splitter that a CLEC provides
14 to them and install it for them in order to split the
15 high and low frequency of the loop?

16 A. I can't recall that with any specificity.

17 Q. Okay. If it were true that an ILEC would
18 take a splitter that's provided by a CLEC and install
19 it for them in a UNE-P arrangement, then wouldn't
20 that CLEC have the ability to provide advanced
21 services in the manner that you described?

22 A. No, I don't think so. I think what you
23 have to understand here is that when we talk about
24 UNE-P, we're talking about a business strategy that
25 is fundamentally designed to come into a market and

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1 have a very broad geographic footprint and be used to
2 serve smaller customers. While it's theoretically
3 true I could go buy the splitters, hand them to you,
4 and perhaps in some of these instances, you would
5 agree to install them; some of the times, you
6 wouldn't.

7 What my testimony went to is if you want to
8 have the types of efficiencies you need to serve the
9 market that UNE-P is used to serve, the small
10 business, the residential customer, where you're
11 looking for something that isn't going to work for
12 just a few isolated circumstances or some end offices
13 or some end users, but you want this giant broad
14 footprint, I think the most efficient way to do that
15 is to have a single set of splitters installed and
16 run by the ILEC that's then available to everybody.

17 Now, I guess I also want to make sure that
18 I'm clear on this. Like Mr. Lathrop said earlier,
19 the reality here is I came up with those
20 recommendations at a time when I thought there would
21 be an opportunity to have DSL providers emerge in a
22 market and UNE-P providers emerge in the market, and
23 that you had this common set of splitters that were
24 available to either and all, then customers could
25 easily choose between different voice providers and

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1 different data providers.

2 And I think the reality now is that the
3 DLEC market, the data marketplace, has crashed, and
4 it's much more critical at this juncture in this
5 proceeding to make sure that UNE-P providers have an
6 opportunity to line share with the surviving data
7 provider, which is the incumbent, than it is to at
8 this point worry so much about creating conditions
9 for them to be able to line share with an industry
10 segment that appears to have, you know, disappeared.

11 Q. Are you --

12 A. My priorities have changed considerably
13 from the time this was originally filed and now.

14 Q. Are you aware of AT&T's position on the
15 line splitting scenarios that were attached to Kirk
16 Lee's testimony?

17 A. I did not talk to AT&T about those specific
18 scenarios.

19 Q. Does AT&T have a witness in this proceeding
20 who does have a policy position on those service
21 descriptions?

22 A. Those specific service descriptions?

23 Q. Mm-hmm. Let me --

24 A. Let me put it this way. If you want to
25 hand me his testimony, I could go through them and

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1 tell you everywhere I know that I can represent what
2 AT&T's position is, because I've discussed with them.
3 That may prove to be, you know, the complete list.
4 But since I haven't done that exercise, I can't
5 represent that now.

6 Q. Let me see if I could short-circuit this,
7 since you'd like to get out of here today.

8 A. Don't worry about that anymore.

9 Q. Can you tell me whether or not AT&T opposes
10 the line splitting service descriptions that Verizon
11 is proposing to implement as a result of the New York
12 collaborative?

13 A. I don't know if they oppose the ones that
14 you're proposing. I do believe that they're
15 insufficient. They're not inclusive of all the
16 arrangements, because, as I understand it, those
17 scenarios would not include the ILEC continuing to
18 provide data service to the CLEC's customer when the
19 CLEC becomes the voice provider.

20 Q. And the only argument that -- or the only
21 disagreement that you know of today, then, is over
22 whether or not Verizon would provide a splitter or
23 whether or not -- well, we'll leave it at that.

24 A. Well, I know that there's the gap that I
25 just referenced, which is the most important one.

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1 What happens when the ILEC is the data provider and a
2 UNE-P provider wins the voice.

3 Q. Are you aware --

4 A. Then the question turns to, in order for me
5 to answer the rest of your question specifically, you
6 would have to hand me Mr. Lee's testimony so that I
7 can refresh my memory and go through each one of
8 those scenarios with you.

9 Q. Okay. In Exhibit T-1261, page nine.

10 A. I apologize. I didn't number them. Which
11 one is T-12 --

12 Q. Your rebuttal testimony, dated October
13 23rd.

14 A. Thank you very much.

15 Q. You discussed competitive markets for dark
16 fiber that typically involve lease agreements of 20
17 years or more?

18 A. Yes.

19 Q. Do competitive fiber providers have a
20 choice of whether or not to provide fiber in any
21 given market?

22 A. Yes.

23 Q. Do competitive providers have a choice as
24 to what rates they will charge for fiber?

25 A. Choice in a sense that it's not set by the

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1 regulator. They have other constraints, however,
2 from the market. So they don't have free will. They
3 are faced with a market situation.

4 Q. Okay. Are those competitive providers
5 generally telephone companies?

6 A. Generally, yes.

7 Q. Are they generally local exchange
8 providers?

9 A. They can be. They may not be -- they're
10 generally not incumbent local exchange carriers, but
11 they can be local exchange carriers, depending on the
12 nature of the fiber.

13 Q. So if, in general, they are not incumbent
14 local exchange companies, then they do not have any
15 carrier of last resort requirements or any regulatory
16 requirements that they provide service to any
17 particular end users?

18 A. No, they generally don't.

19 Q. Okay. And you contend in your testimony,
20 in general, that absent the line splitting
21 arrangement that AT&T is seeking, that AT&T cannot
22 effectively compete for end user customers. Have I
23 characterized your view --

24 A. Well --

25 Q. -- accurately?

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1 A. I'm hesitating because you put the
2 testimony in the narrow context of AT&T. And the
3 testimony's really from the perspective of what is it
4 going to take to enable people to use UNE-P and serve
5 markets where people are increasingly wanting voice
6 and data.

7 Q. That's fair enough.

8 A. And in order for that to happen, yes, I
9 believe that at this point it's pretty clear, given
10 the ILEC's dominance of the data side now, that if a
11 UNE-P provider's going to be able to compete for
12 voice data customers, they're going to need the
13 access -- they're going to need the policies that I'm
14 recommending.

15 Q. Can a telecommunications provider provide
16 voice and data services to an end user through any
17 other means, other than through access to an ILEC's
18 network?

19 A. I don't think so, on a commercially viable
20 way. I mean, there are some other alternatives that
21 some carriers are trying for some purposes. But,
22 again, I want to take you back to my testimony
23 addressed what is the typical UNE-P provider.

24 Q. I understand. I'm going to ask you --

25 A. Well, let me finish.

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1 Q. No, I'm going to ask --

2 A. A typical UNE-P provider --

3 JUDGE BERG: Wait a minute. Stop. This
4 isn't going to be very productive to have the parties
5 or the counsel and the witness cross-talking. And I
6 understand that there's a specific place you want to
7 go that this witness may not be taking you.

8 MS. McCLELLAN: Well, no, he actually -- I
9 was just going to say, he's already answered the
10 question that I asked and --

11 JUDGE BERG: Well, obviously, he feels he
12 hadn't finished his statement, so what I hear you
13 saying is that you're objecting to any further
14 answer, and I'll accept it as that, and I'll turn to
15 Ms. Steele and get a response as to whether or not
16 this witness should be entitled to finish responding
17 in the fashion he was intending to do so.

18 MS. STEELE: And my response would be that
19 clearly the witness does not believe he's completed
20 answering the question and he should be permitted to
21 respond.

22 JUDGE BERG: Is there anything further
23 about this response that you think is inappropriate,
24 Ms. McClellan?

25 MS. McCLELLAN: Well, I guess my objection

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1 is that several times I've asked a pretty narrow
2 question that he's -- I've allowed him to just go on
3 and on and answer something that was not necessarily
4 what I asked, and I guess I'm trying to prevent that.

5 CHAIRWOMAN SHOWALTER: I think the witness
6 should keep his answers within the scope of the
7 question.

8 JUDGE BERG: Mr. Gillan, I think you've
9 become familiar with the Commission's practices,
10 where there is a yes or no answer and a further
11 response that's necessary for clarification. You
12 should go ahead and clarify your response.

13 To the extent that there are other
14 positions that you think are relevant that are in
15 your testimony, we have your testimony, and your
16 counsel can also ask other questions on redirect.
17 But it may be that that's the most efficient way to
18 go. I don't mean to discourage you from providing
19 clarifications to a direct response, but I think you
20 should try and stay on top. It can help counsel
21 follow her line of questioning, even if it may be
22 premised on a position that you don't completely
23 support.

24 THE WITNESS: Thanks, Your Honor.

25 MS. McCLELLAN: Thank you, Your Honor.

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1 Q. Isn't it true that cable service providers
2 can provide both voice telephone service and data
3 service over a cable line?

4 A. In some circumstances, yes.

5 Q. Would you agree with me that AT&T is one of
6 the largest cable service providers in the United
7 States?

8 A. That's my understanding.

9 Q. And would you agree that AT&T provides
10 cable service in the state of Washington?

11 A. I don't know.

12 Q. Do you know whether AT&T intends to use its
13 cable services to provide both voice telephony and
14 high-speed Internet access?

15 A. At one time, it did. It now intends to
16 divest itself of those cable properties, and whether
17 or not those divested entities will continue to try
18 and pursue that business strategy is unclear.

19 Q. So is it your testimony that today AT&T has
20 not or is not undertaking any marketing activities to
21 attract telephone and advanced high-speed data
22 service customers through its cable services?

23 A. No, my testimony is simply that the entity
24 that we know of as AT&T has made the decision to
25 effectively spin out those properties, and while

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1 today it is pursuing telephony on some of them, and
2 it may be in Washington, I don't know, is very
3 unclear as to what business strategy those
4 stand-alone companies will pursue in the future.

5 MS. McCLELLAN: I have no further
6 questions. Thank you.

7 JUDGE BERG: Thank you, Ms. McClellan. Ms.
8 Anderl.

9 MS. ANDERL: I think I can do it.

10

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

12 BY MS. ANDERL:

13 Q. Good afternoon, Mr. Gillan. I'm Lisa
14 Anderl, representing Qwest. I only have a few
15 questions for you, and they all concern your
16 testimony in T-1262, your February 7th testimony.

17 A. Thank you.

18 Q. Were you in the room today during Mr.
19 Lathrop's cross-examination?

20 A. For most of it, yes.

21 Q. Okay. Did you hear some discussions with
22 him, and specifically discussions about a bench
23 request asking for a comparison of the deployment of
24 incumbent DSL and DLEC DSL services in the Qwest and
25 Verizon central offices?

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1 A. Yes, I did.

2 Q. Would you accept, Mr. Gillan, subject to
3 check, that the data request already produced by
4 Qwest -- or the data request response already
5 produced by Qwest and the bench request response that
6 it will produce will show a DLEC deployment of
7 splitter equipment in at least 50 of Qwest's central
8 offices in the state of Washington?

9 A. It may or may not. I don't think it
10 actually answers the points in my testimony about
11 whether UNE-P providers require access to -- or
12 require the ability to provide voice to the customers
13 to whom Qwest is a data provider, but the data
14 request will show whatever it shows.

15 Q. Okay. If you would operate on the premise
16 with me that there's DLEC splitter deployment in at
17 least 50 Qwest central offices, I would like to ask
18 you about those splitters. Are you familiar with the
19 splitter configurations and capacities, generally?

20 A. In very general terms.

21 Q. Are you aware that there are small 16-port
22 splitters that can be placed on a main distribution
23 frame?

24 A. Generally, yes.

25 Q. And are you also familiar with 96-line

03454

1 capacity splitters that are often housed in equipment
2 bays on single shelves?

3 A. Yes.

4 Q. Okay. Now, to the extent that those
5 splitters currently exist in Qwest's central offices,
6 is it your understanding, based on your prior
7 experience in this docket, that they are owned by
8 CLECs or DLECs?

9 A. That's my -- my understanding from your
10 premise was that you're telling me that in these 50
11 central offices, they are splitters owned by DLECs,
12 right. So I'm accepting, subject to check, that that
13 is who owns these splitters.

14 Q. Okay. And your experience in this docket
15 has not led you to believe that there are any
16 Qwest-owned stand-alone splitters in Qwest central
17 offices, has it?

18 A. No, but I'm also not entirely clear, when
19 you use the phrase integrated DSLAM, what you -- the
20 extent to which those splitters are really, quote,
21 integrated versus stand-alone. Sometimes a term is
22 used to describe pieces of equipment that are
23 matched, if you will, but they can be used by
24 different carriers.

25 Q. Keeping in mind the CLEC-owned splitters,

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1 let's go to page one of your Exhibit T-1262. And
2 there on lines 12 through 14, you state that treating
3 the splitter -- I believe you mean as a common
4 resource -- most efficiently promotes competition.
5 Is that your testimony?

6 A. Yes.

7 Q. And then you go on to state that it's -- if
8 the splitter functionality is deployed once on a
9 line, it can be reused by multiple providers. Is
10 that also correct?

11 A. Yes.

12 Q. Okay. Can you explain to me how you would
13 have the Commission treat the existing splitters in
14 Qwest central offices that are currently owned by
15 CLECs as a common resource?

16 A. I wasn't recommending that they do.

17 Q. So it would be only on a going forward
18 basis?

19 A. Yes, with the following caveat. The
20 testimony focused on the single best way to implement
21 this is a set of splitters that any set of carriers
22 can use, Qwest or anyone else. Admittedly, I think
23 time has kind of moved past that and that the larger
24 issue at this point is making sure that, when you're
25 the data provider, that the CLEC could still be the

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1 voice provider, given the way the market has evolved
2 in the time since the testimony was written.

3 Q. Well, this testimony that we're talking
4 about here, that's only a couple of months old.

5 A. Yeah, but in the time since this testimony
6 was written, Rhythms' stock has dropped another 90
7 percent, Covad's stock has dropped another 70
8 percent. Rhythms has informed the FCC that there's a
9 substantial likelihood that it's not going to be able
10 to continue in business. Covad has analysts
11 breathing down its neck and large questions to
12 whether -- its sustainability. So yeah, it's only
13 been a couple months, but to tell you the truth,
14 things are even much worse now than they were in
15 February.

16 Q. You're not recommending, though, that the
17 incumbent be required to purchase the existing
18 splitters from the data LECs, or are you?

19 A. No, I wouldn't recommend that.

20 Q. Then, I guess, on the next page, you talk
21 about a recommendation at lines 17 and 18 about
22 customers being able to change voice providers
23 without disrupting their data service. And Ms.
24 McClellan explored that area with Mr. Lathrop a
25 little bit, and I guess I would have the same

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1 question for you, which is if the data provider is
2 someone other than the incumbent, would your
3 recommendation be that the data provider be required
4 to continue to provision service on the line to the
5 end user regardless of who the voice CLEC is, or
6 voice LEC is?

7 A. I'm sorry, could you -- it was long. Can
8 you try it one more time?

9 Q. Sure. Are you recommending that this
10 Commission require -- and I'm going to break it up
11 into a couple of questions, so it's not going to be
12 the same question.

13 Are you recommending that this Commission
14 require the incumbent to continue to provide data
15 services on a line to an end user customer if a CLEC
16 purchases the underlying UNE-P?

17 A. Yes, that the incumbent will continue to
18 provide it, yes.

19 Q. And if an end user customer is receiving
20 service from a CLEC through UNE-P and a data LEC for
21 data, two separate providers --

22 A. Okay. So this is a different scenario?

23 Q. Yes, different scenario. And the customer
24 wants to change voice providers, but retain the data
25 provider, and for some reason the data provider does

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1 not want to have a relationship with the underlying
2 voice provider, would your recommendation be the same
3 in that instance as it is when the ILEC is the data
4 provider?

5 A. No, I don't think there needs to be any
6 regulatory issue addressed there at this point. The
7 difference here is that the ILEC is dominating this
8 market and continues to -- you know, the data shows
9 it's getting even stronger while the DLECs are going
10 out of business, and that's why I believe it's so
11 critical for the rules to apply to you. Now, the
12 data LECs -- and maybe five years from now, maybe 10
13 years from now, maybe if there's still a data LEC
14 alive next year, there might be issues, but given the
15 fact that they have minuscule market penetration and
16 given the fact that their natural incentive is to
17 find people to partner with and work with, I don't
18 think the Commission needs to get involved.

19 But on the incumbent's side, there's
20 clearly a problem here. And that's why the
21 Commission needs to get involved there.

22 Q. Do you know what AT&T's plans are with
23 regard to the assets it's purchased from NorthPoint?

24 A. Not specifically. I can -- I can assume
25 they're going to try and use them.

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1 MS. ANDERL: That's all I have.

2 CHAIRWOMAN SHOWALTER: Can we go off the
3 record for a second?

4 JUDGE BERG: Off the record.
5 (Discussion off the record.)
6

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

8 BY DR. GABEL:

9 Q. My first question is just -- I'd like to
10 have you clarify something in Exhibit 1261, which is
11 your rebuttal testimony of October 23rd, page six.
12 Here you're discussing Verizon's view on combining
13 network elements. And could you just explain for me
14 a little bit more fully about how Verizon's position
15 on combining network elements would impede a CLEC's
16 ability to serve a business customer's new lines?

17 A. Yes. Just to be clear, the predicate here
18 is UNE-P, which means we're talking about small
19 business customers and somebody's probably offering
20 service throughout the entire state, if not certainly
21 the entire city.

22 If you're a UNE-P provider, you have a
23 business customer, he wants to add another line. The
24 way you're providing service is via this device of
25 the line being connected to switching capacity that

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1 you're leasing from Verizon, as I understand
2 Verizon's position. Because that loop is not yet
3 connected to that port, or as I understand -- it's
4 been represented to me that they've actually expanded
5 it so that even if the loop was connected to the
6 switch port, but that it's just warm dial tone and
7 there's no service on it yet, Verizon would refuse to
8 provide that line to you.

9 So now, as the entrant, you're stuck with
10 basically three choices. You can tell the customer,
11 I'd like your business, you want to buy more from me,
12 but I can't sell you any, which is not the best
13 position to be in. Or you can change your entire
14 business strategy to try and figure out, okay, how am
15 I going to buy this loop from Verizon, buy this
16 switch port, and perhaps they're already connected,
17 and now we have to go in and Verizon has to tear it
18 apart and then deliver them to someplace for me to
19 reconnect them, which comes with costs and delay. Or
20 you use resale, and you order it as a retail service
21 and then convert it to UNEs, which Verizon describes
22 as illicit, I believe.

23 When you're dealing with a business
24 strategy like UNE-P, where you're trying to reach out
25 to as many customers as possible, one of the key

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1 characteristics of a business strategy has to be that
2 things operate relatively smoothly. And if you get
3 backed into a position where every time one of your
4 customers wants to add a line or move a location,
5 that you've got to start going through all these
6 unnecessary steps and procedures, that's very
7 disruptive to a business plan.

8 It sounds crazy, but you're just as likely
9 to start telling the customer I can't offer it,
10 because to do so, you're going to have to create all
11 these other systems and processes to handle it. And
12 it's actually a very large issue. I looked at the
13 data for Washington this morning, and roughly, just
14 based on Census data, roughly 25 percent of the
15 business establishments or the locations open and
16 closed in a given year. So you're talking about a
17 marketplace that has all kinds of adds, deletions,
18 plus openings and closings. And a UNE-P provider
19 needs to be able to handle those efficiently.

20 Q. Thank you. Now in that same testimony, I'd
21 like to ask you turn to page nine, line 15. You use
22 an acronym, IRU. First, could you just define what
23 that acronym represents?

24 A. It stands for irrevocable right of use.
25 It's the equivalent of a long-term lease. The thing

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1 that makes an IRU sort of special is, the way the
2 accountants approach it, it allows the person that's
3 purchasing the IRU to treat it as though they had
4 acquired a capital asset and they can book it and
5 depreciate it. That's what makes it sort of unique.

6 Q. Is this term used for both domestic fiber
7 or domestic and international or only international
8 fiberoptic cables?

9 A. It was born out of the trans-Atlantic cable
10 industry and the international fiber industry and
11 then the system got imported into the U.S. It's the
12 typical way a carrier that buys dark fiber -- or
13 there's even, in today's market, some DS3 levels of
14 capacity. You purchase under an IRU that gives you
15 this ability to capitalize and depreciate. And it
16 gives you the certainty you need, particularly in
17 dark fiber, so that you take the capital risk of
18 putting electronics on either end.

19 Q. Lastly, I'd just like to ask you a general
20 question. First, it's my understanding that it's
21 your testimony that you would like this Commission to
22 order an ILEC to continue to provide data services
23 over a loop that is shared with a CLEC who's using
24 the UNE platform; is that correct?

25 A. That's correct.

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1 Q. And am I correct that the provision of the
2 data service has been classified by the Federal
3 Communications Commission as an interstate service?
4 And I have in mind where the DSL tariffs of GTE were
5 filed before the FCC a few years ago. Are you
6 familiar with that tariff filing?

7 A. Yes.

8 Q. And in that tariff filing, did the FCC take
9 jurisdiction over the provision of DSL service?

10 A. I think so, but to be honest, I haven't
11 followed it very closely since then.

12 Q. All right. Well, let me just ask you to
13 assume that the FCC has classified the provision of
14 DSL service as an interstate jurisdiction. I
15 recognize that you're not a lawyer and you're making
16 policy recommendations here, but I just would like,
17 if you could, to address the degree to which you
18 think this Commission has the authority to tell an
19 incumbent how they should provide a service which, if
20 you accept my subject to check, has been classified
21 as an interstate service?

22 A. That falls in the category of excellent
23 questions that need to be handled on brief, because
24 as I sit here today, I actually hadn't thought
25 through that particular dimension of it. I've been

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1 more focused on the market problem and what do you do
2 to solve the market problem. I had not thought about
3 the jurisdictional line.

4 Although I would say this. I think that
5 the FCC, particularly this FCC, would accede to any
6 state action that it felt was leading towards more
7 competition and, perhaps just as importantly, took
8 another issue off of its plate.

9 DR. GABEL: Thank you. I have no further
10 questions.

11 JUDGE BERG: We'll be off the record for a
12 moment.

13 (Discussion off the record.)

14 JUDGE BERG: Back on the record.

15

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

17 BY MS. STEELE:

18 Q. Mr. Gillan, in response to a questioning by
19 Ms. McClellan, you indicated that you believe the
20 proposals you have made are necessary to allow a
21 UNE-P provider to compete in a commercially viable
22 way, your proposals with respect to loop splitting.
23 Are there any particular proposals that you were
24 referencing when you made that statement?

25 A. Yes, the one I would give the highest

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1 priority to at this point is the element that
2 requires that the existing -- that the data -- that
3 the ILEC, as data provider, must continue to meet the
4 customer's data need, even if the voice is switched
5 to another carrier.

6 The reality here is that there is no data
7 LEC market right now. If we can get some voice
8 providers using UNE-P out there, then maybe, over a
9 period of time, a market of data providers will
10 become reenergized and re-emerge.

11 For all practical purposes right now, for
12 UNE-P providers, which comes back to this is a
13 business strategy that has a broad footprint and goes
14 after small customers, the alternatives that keep
15 getting brought up in questioning -- couldn't you use
16 cable here, couldn't you do collocation there,
17 couldn't you do this -- those are all piecemeal
18 strategies that don't really match up against UNE-P,
19 and as a result, there's only one provider out there
20 with a footprint and a capability to provide data
21 services in this marketplace, and that's the ILEC.
22 And the statistics are proving that, right now,
23 they're the only one you can count on to be a
24 survivor.

25 Q. You also indicated, in response to

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1 questioning by Ms. McClellan, that you had reviewed
2 analyses of what you've termed as the crisis in the
3 competitive DSL industry. What factors have been
4 identified in those analyses?

5 A. Well, the companies that try to go out and
6 create a broad footprint that would give them -- that
7 would position them to be a competitive alternative
8 to the ILEC are going bankrupt. Rhythms has -- or
9 NorthPoint did go bankrupt, Rhythms has all but gone
10 bankrupt, and the spillover from that is not helping
11 Covad; it appears to be hurting it, because they've
12 lost investor confidence and they've lost carrier
13 confidence. And I'm just not aware of anyone else
14 out there that tried to create that kind of
15 footprint.

16 The other DSL plays that I'm aware of are
17 all adjuncts to UNE-P plays, and we're going to be
18 looking at that evolving over a three to five to
19 maybe 10-year time horizon. But as we stand right
20 now, there just doesn't appear to me to be the
21 financial resources for somebody to play against the
22 ILEC in that marketplace with a broad footprint that
23 would match up to a UNE-P need.

24 MS. STEELE: That's all I have. Thanks.

25 MS. McCLELLAN: No questions.

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1 JUDGE BERG: All right. Mr. Gillan, that
2 does conclude your testimony here. Thank you very
3 much for being present. You're excused from the
4 hearing. We'll be adjourned.

5 (Proceedings adjourned at 4:08 p.m.)

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