

1 BEFORE THE WASHINGTON STATE
2 UTILITIES AND TRANSPORTATION COMMISSION

3 In the Matter of the Joint)
4 Application of) DOCKET NO. UT-050814
5)
6 VERIZON COMMUNICATIONS, INC.) Volume V
7 AND MCI, INC.) Pages 126 to 343
8)
9 For Approval of Agreement and)
10 Plan of Merger)
11)
12 _____)

9 A hearing in the above matter was held on
10 November 1, 2005, from 9:40 a.m to 5:00 p.m., at 1300
11 South Evergreen Park Drive Southwest, Room 206, Olympia,
12 Washington, before Administrative Law Judge C. ROBERT
13 WALLIS and CHAIRMAN MARK H. SIDRAN and Commissioner
14 PATRICK J. OSHIE and Commissioner PHILIP B. JONES.

15 The parties were present as follows:
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16 349 [VZ-MCI] "XO Communications joins

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18 350 [VZ-MCI] "Pandora Networks Selects XO"

19 09/26/05

20 351 [VZ-MCI] "XO Communications Signs 1.500th

21 Business VOIP Service Customer" 9/20/05

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23 TREVOR R. ROYCROFT (Public Counsel)

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20 386 Vonage __ pr__09__06__05.pdf
21 387 WSJ__Vonage Plans to File for IPO__8-25-05.pdf
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4 395 Empirical Analysis of Entry in the Local
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1 P R O C E E D I N G S

2 JUDGE WALLIS: The hearing will please come
3 to order. This is a hearing of the Washington Utilities
4 and Transportation Commission in Commission Docket
5 Number UT-050814, which is brought on by petition
6 jointly filed by Verizon Communications, Inc. and MCI,
7 Inc. for a declaratory order or for approval of an
8 agreement and plan of merger.

9 This hearing is being held in Olympia,
10 Washington, on November 1st of the year 2005 before
11 members of the Commission, Chairman Mark Sidran,
12 Commissioner Patrick Oshie, Commissioner Philip Jones,
13 and myself, Administrative Law Judge C. Robert Wallis.

14 We will begin the hearing today because there
15 is what is under Commission rules called a multiparty
16 settlement with a presentation of the settlement by a
17 representative of the settling parties. And when we
18 undertake that, we will ask the witnesses to stand as a
19 group and be sworn, and then we will ask counsel to set
20 the scene for us.

21 In the meantime, I would like for this first
22 day of the hearing record to have counsel make their
23 appearances in a somewhat more formal manner by stating
24 your name and your client and your law firm and
25 providing the same information for associate counsel

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1 that are appearing with you today, beginning with the
2 company, Verizon.

3 MR. CARRATHERS: Thank you, Your Honor. Good
4 morning, my name is Charles Carrathers, and I am in
5 house at Verizon representing Verizon. With me today is
6 Judy Endejan of the firm of Graham & Dunn, who has also
7 made an appearance in this case.

8 JUDGE WALLIS: I understand that you have
9 another counsel appearing, would you like that person to
10 make an appearance this morning?

11 MR. CARRATHERS: Yes, Your Honor, I would,
12 let me turn the microphone over to Mr. Henry Weissmann
13 of the law firm Munger Tolles in California. He will be
14 assisting us by conducting the direct examination of our
15 witness Mr. Stephen Smith as well as the
16 cross-examination of Public Counsel witness King, which
17 go to various synergy calculations. And with that,
18 here's Mr. Weissmann.

19 MR. WEISSMANN: Good morning, my name is
20 Henry Weissmann, I am representing Verizon, and I'm
21 associated with the law firm of Munger, Tolles & Olson
22 in Los Angeles, and my address is 355 South Grand Avenue
23 in Los Angeles, California 90071. And if I may say,
24 it's a pleasure to be here this morning.

25 JUDGE WALLIS: Thank you very much.

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1 For MCI.

2 MS. SINGER NELSON: Good morning, Your Honor,
3 Commissioners, Michel Singer Nelson, here on behalf of
4 MCI. And with me is Art Butler from the law firm of
5 Ater Wynne in Seattle.

6 JUDGE WALLIS: XO.

7 MR. KOPTA: Gregory Kopta of the law firm
8 Davis Wright Tremaine LLP.

9 JUDGE WALLIS: For Integra.

10 MR. NUSBAUM: Jay Nusbaum for Integra
11 Telecom.

12 JUDGE WALLIS: Public Counsel.

13 MR. FFITCH: Good morning, Commissioners,
14 Your Honor, Simon ffitch, Assistant Attorney General for
15 the Public Counsel section of the Washington State
16 Attorney General's Office.

17 JUDGE WALLIS: Commission Staff.

18 MR. THOMPSON: And I am Jonathan Thompson
19 Assistant Attorney General representing the Commission
20 Staff.

21 JUDGE WALLIS: Thank you very much.

22 At this point I would like to ask the
23 witnesses to stand as a group, please.

24 (Witnesses JING Y. ROTH, CARL R. DANNER,
25 WILLIAM E. TAYLOR, MICHAEL A. BEACH, and

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1 JASON KOENDERS were sworn.)

2 JUDGE WALLIS: Very well, with that I'm going
3 to turn this over to counsel for the settling parties to
4 identify your witnesses for the record and to elicit the
5 statements in support of the proposed settlement.

6 While we are doing that, let us mark the
7 original settlement document as Exhibit Number 501 in
8 this proceeding and the accompanying narrative that the
9 settling parties filed as Exhibit Number 502.

10 Consistent with the parties' agreement on the
11 record of the prehearing conference immediately
12 preceding this hearing, those documents will be admitted
13 by stipulation.

14 MR. FFITCH: Your Honor, I will just note for
15 the record that there is a confidential exhibit I
16 believe to either the narrative or the settlement
17 document that may need to be reflected in the numbering
18 system.

19 JUDGE WALLIS: Very well, thank you,
20 Mr. ffitich.

21 MR. THOMPSON: Well, Your Honor, actually I'm
22 not sure exactly what you have in mind in terms of
23 presenting the witnesses. Staff does have Jing Roth
24 from Commission Staff here to make a statement
25 indicating why Staff believes the proposed settlement

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1 agreement is in the public interest.

2 JUDGE WALLIS: Very well. Would you verify
3 her name and position with the Commission.

4 MR. THOMPSON: I will ask her to do that.

5 Ms. Roth, can you please state your name and
6 your position with the WUTC.

7 MS. ROTH: Yes, my name is Jing Roth,
8 R-O-T-H, I am employed by the Commission as an industry
9 expert in the telecommunications section.

10 JUDGE WALLIS: And she is the witness that
11 Staff is offering to support the settlement agreement;
12 is that correct?

13 MR. THOMPSON: That's right.

14 JUDGE WALLIS: For the company, for Verizon.

15 MS. ENDEJAN: Thank you, Your Honor. The
16 company would introduce as its primary witness in
17 support of the settlement Dr. Carl Danner. He is a
18 director with Wilk & Associates in San Francisco. The
19 company also has available Dr. William Taylor, and he
20 will be providing some comments as well, and he is a
21 Senior Vice President with NERA Economic Consulting in
22 Boston, Massachusetts.

23 JUDGE WALLIS: Very well, and can we have the
24 witnesses say something so we know who you are.

25 MR. DANNER: Good morning, Your Honor, I'm

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1 Carl Danner with Wilk & Associates LECG in San
2 Francisco.

3 MR. TAYLOR: I'm William Taylor, Bill Taylor,
4 from NERA in Boston.

5 JUDGE WALLIS: Very well.

6 For MCI.

7 MS. SINGER NELSON: Thank you, Judge.

8 Michael Beach is the representative of MCI on the panel
9 this morning.

10 Mr. Beach, please state your name for the
11 record and your position with the company.

12 MR. BEACH: Good morning, Commissioners.

13 JUDGE WALLIS: Could we ask the microphone to
14 be passed to the witness or that he approach the
15 microphone, please.

16 MR. BEACH: Thank you, Your Honor. Good
17 morning, Commissioners and Your Honor. My name is
18 Michael Beach, I'm with MCI, I'm Vice President Carrier
19 Management, my office is in Denver, Colorado.

20 JUDGE WALLIS: Thank you.

21 And for Integra.

22 MR. NUSBAUM: Your Honor, for Integra we have
23 Jason Koenders, and I will ask him to step to the
24 microphone and to give his title.

25 MR. KOENDERS: Good morning, Your Honor and

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1 Commissioners, my name is Jason Koenders, Vice President
2 of Operations with Integra.

3 JUDGE WALLIS: Very well.

4 Are we prepared to proceed?

5 Please do so.

6 Ms. Roth.

7 MS. ROTH: Yes.

8 JUDGE WALLIS: Looks like you're on first.

9

10 Whereupon,

11 JING Y. ROTH,

12 having been first duly sworn, was called as a witness

13 herein and was examined and testified as follows:

14

15 MS. ROTH: Good morning, Chairman Sidran,

16 Commissioner Oshie, Commissioner Jones. Again, I'm Jing

17 Roth representing Commission Staff.

18 I would like to start the opening statement

19 with a brief description of the settlement negotiation

20 process. Following the entry of a protective order, all

21 parties began serving formal data requests on Verizon

22 and MCI. Verizon/MCI filed their testimony, and

23 discovery continued. Staff, Public Counsel, XO,

24 Integra, and Covad filed testimony on September 9th.

25 The filing of opposing testimony had the effect of

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1 framing the context of the issues in this docket. It
2 also showed that all parties would be advocating
3 approval of the merger but with the conditions designed
4 to reduce or eliminate potential harm to the public
5 interest and to pass on savings to the Washington
6 consumers.

7 The question then was would the petitioner be
8 willing to agree to conditions, and if so, which ones.
9 Staff put out an E-mail shortly following the filing of
10 testimony by the opposing parties suggesting that all
11 parties get together to discuss settlement. Public
12 Counsel asked whether the petitioners would come to that
13 meeting with a proposal to accept conditions on approval
14 of their merger. The petitioners indicated they would
15 do that.

16 On Friday, September 23rd, the parties were
17 able to meet at the Commission's office. Those who
18 could not be there in person called in by phone.
19 Verizon indicated that although it believed in its
20 litigated position in their pre-filed testimony, but it
21 would be willing to accept certain conditions in
22 settlement. At that meeting it was agreed also that
23 Verizon and Integra would caucus separately to work out
24 the details of the conditions that would meet Integra's
25 proposal for wholesale service quality standards. All

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1 party met again the following Tuesday afternoon on
2 September 27th again at the Commission's office with
3 Staff, Public Counsel, MCI, and Verizon present in
4 person and XO, Covad, Integra calling in. In that
5 meeting it became apparent how far parties are willing
6 to compromise. With Public Counsel's understanding and
7 acceptance, Staff began working out the details of what
8 would become the settlement agreement while Integra
9 worked separately with Verizon on what was becoming
10 number 4 of the conditions in the settlement agreement.

11 Now I will discuss the settlement and
12 highlight for you the proposed conditions. Staff
13 believes the settlement agreement is in public interest
14 because it resolve issues that are important to rate
15 payers and the Commission. The proposed conditions take
16 consideration of three objectives, providing merger
17 savings to consumers, maintaining parity for wholesale
18 service quality, and promoting competition. The
19 conditions set out in the settlement are mostly the same
20 as the conditions that Staff proposed in its testimony
21 with only one modification to Staff proposed conditions,
22 that is a special access service. The settlement
23 including conditions that will provide real benefit to
24 consumers.

25 Specifically Verizon will not raise its basic

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1 residential and business service rates above the level
2 set by the rate case settlement in Docket UT-040788
3 before June 30th, 2009. This will provide Verizon
4 customer with rate stability for an additional two years
5 and will also shelter customers from shouldering the
6 merger costs because those costs are less likely to be a
7 factor in the rate case four years from now.

8 Verizon has also agreed that to make some
9 changes to extend local calling areas for customers in
10 Skagit and Snohomish Counties. This will increase the
11 size of the local calling area for many customers. This
12 condition will also allow more efficient use of member
13 resource.

14 The settlement also resolved the complaint
15 pending in Docket Number UT-050778. Verizon has agreed
16 to extend the service to a rural area where today the
17 customer has no dial tone services, and Verizon will not
18 require this customer to pay construction costs.

19 On special access, Staff's position in its
20 testimony is to reduce Verizon's intrastate special
21 access rates. The modified condition in the settlement
22 require Verizon to support a review by this Commission
23 of its intrastate special access rates if FCC require
24 Verizon to do so for its interstate special access
25 rates. Yesterday FCC approved the merger of Verizon and

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1 MCI with conditions, and some of them are related to the
2 special access issue at the interstate level. And Staff
3 is prepared to review the FCC order when it becomes
4 available, because right now we just have the press
5 release. And to the extent the condition have effects
6 on intrastate services, Staff will engage in discussion
7 with the company and if needed to will bring the issue
8 back to the Commission.

9 And go back to the settlement, Verizon also
10 agrees to conditions that address retail and wholesale
11 service quality. Verizon will be providing information
12 to the UTC and to its wholesale competitors on service
13 quality performance measures. This report will help
14 ensure Verizon does not give better service to MCI than
15 it does to unaffiliated telecommunications companies.

16 In addition, the settlement including
17 conditions that will mitigate competitive harm by
18 require Verizon to offer other telecommunication
19 companies the same commercial agreements that it
20 provides to MCI, and this prohibition will apply for two
21 years after the transaction is completed.

22 To conclude, again the company agreed in some
23 form to all of the conditions that Staff proposed in our
24 pre-filed testimony. Based on the evidence that the
25 merger is a likely affects on the company's financial

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1 health and competition in local long distance service
2 markets in Washington, Staff is satisfied that the eight
3 conditions in the settlement will ensure that the merger
4 is in public interest. Specifically the stay-out
5 provision protects rate payers from potential negative
6 effects of the merger. There are also conditions to
7 ensure the customer, not just the shareholders, realize
8 some of the projected savings, that service quality will
9 not deteriorate, and the competition will be enhanced.
10 Staff recommend the Commission accept the settlement
11 proposal, and that concludes our opening remarks.

12 JUDGE WALLIS: Mr. Danner.

13

14 Whereupon,

15 CARL R. DANNER,

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

18

19 MR. DANNER: Good morning, Chairman Sidran,
20 Commission Oshie, Commission Jones, and Judge Wallis.
21 I'm Carl Danner, and I'm here to speak to the public
22 interest benefits of adopting the settlement to approve
23 the merger transaction between Verizon and MCI. First
24 and most importantly from our perspective is the
25 settlement will permit the merger to go forward nearly

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1 as soon as the Commission issues a favorable order given
2 the approvals that have already been issued by other
3 federal and state authorities reviewing the transaction.
4 In that regard, the recent approvals of the United
5 States Department of Justice and the Federal
6 Communications Commission are especially notable. Both
7 federal agencies specifically found that the merger will
8 not create any competitive problems given certain
9 limited facility leases required by the DOJ in states
10 that did not include Washington. Both agencies also
11 found that the merger will likely create public interest
12 benefits including for consumers. Both agencies
13 determined that the transaction will not harm
14 competition in any arena including the mass market, the
15 Internet, or business services.

16 Accordingly, as Verizon and MCI have
17 documented at considerable length, the transaction will
18 benefit customers in at least three ways. First, it
19 will make the combined companies stronger competitors in
20 the enterprise market, especially here in Washington
21 compared with Qwest. Second, it will allow substantial
22 new investments to be made in MCI's backbone network and
23 systems. And third, it will create synergies that will
24 benefit customers and the economy. At the same time,
25 the merger poses no threat of harm to competition or

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1 customers in Washington, and it will preserve intact the
2 Commission's existing authority over Verizon and MCI.

3 As is also evident, there were some
4 differences of opinion among parties about how the
5 Commission should consider this transaction. The
6 settlement resulted from extensive good faith bargaining
7 efforts among the parties, as Ms. Roth explained. As in
8 any settlement, the resulting terms reflect compromises,
9 principally in directing particular benefits that Staff
10 identified towards mass market customers and providing
11 certain assurances and information for Integra and for
12 other CLECs to use as wholesale customers of Verizon.
13 Verizon agreed to these terms in the spirit of good
14 faith bargaining, to help move this transaction ahead,
15 and to address the usual concerns any party faces about
16 the uncertainty of litigation.

17 I would also note that a number of issues
18 were raised here in Washington that properly belonged in
19 the federal jurisdiction. The FCC addressed these
20 issues in two ways. First, as I noted a moment ago, the
21 FCC's review found specifically that there would not be
22 any competitive harm in the markets it oversees given
23 the DOJ's limited mitigation action. Second, the FCC
24 also adopted a number of voluntary commitments proposed
25 by Verizon and MCI that offer additional assurances

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1 regarding many of these sort of issues that other
2 parties raised here, including for example conditions
3 addressing UNE rates, how impairment is determined under
4 the TRRO's triggers for dedicated transport and/or high
5 capacity loops, Internet peering processes and
6 practices, and a commitment to provide DSL on a
7 stand-alone basis. These commitments should give this
8 Commission additional confidence that these issues were
9 appropriately addressed by the authorities that have
10 proper oversight and responsibility in these areas.

11 For these reasons, Verizon and MCI believe
12 that the settlement is strongly in the public interest.
13 We urge the Commission to accept the settlement as a
14 full resolution of the issues in this case. The
15 settlement endorses a transaction that is beneficial,
16 the settlement will distribute benefits of the
17 transaction among Washington customers, the merging
18 parties, and their competitors, and the settlement
19 represents a good example of the kind of negotiated
20 outcome that the courts and commissions encourage.

21 I thank you once again for your attention
22 this morning. I or any of the Verizon and MCI witnesses
23 will be happy to respond to questions you may have.

24 JUDGE WALLIS: Thank you.

25 MS. SINGER NELSON: Your Honor, I was going

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1 to suggest that Mr. Beach sit up on the stand so he can
2 use the microphone comfortably.

3 JUDGE WALLIS: Yes, we acknowledge that there
4 are but two seats on the witness stand and one
5 microphone, and we encourage the witnesses to play
6 musical chairs here so that each of them will have their
7 turn at the microphone.

8 MS. SINGER NELSON: Thank you, Judge.

9 JUDGE WALLIS: Mr. Beach, please proceed.

10

11 Whereupon,

12

MICHAEL A. BEACH,

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

15

16 MR. BEACH: Good morning again, Commissioners
17 and Your Honor. As I said earlier, my name is Michael
18 Beach, I'm MCI's Vice President of Carrier Management.
19 I have been with MCI for over 30 yours now, and I have
20 had the opportunity on several occasions to appear
21 before this Commission, including in the early 1980's
22 when MCI was seeking authority to offer intrastate long
23 distance services and again in the mid 1990's when MCI
24 was seeking authority to offer local services under
25 local interconnect contracts.

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1 I'm here today on behalf of MCI to endorse
2 the proposed settlement that has been negotiated among
3 the members of this panel and ask that the Commission
4 accept that settlement as an appropriate resolution of
5 all the relevant issues presented in this case. With
6 Mr. Danner and with Staff, I urge the Commission to
7 approve the settlement and the merger transaction. As I
8 stated in my pre-filed testimony, the merger of Verizon
9 and MCI will enable the company through the combination
10 of complementary assets to better serve our current and
11 future customers in the state of Washington and across
12 the globe. The terms of this settlement coupled with
13 the recent FCC and DOJ findings of consumer benefit
14 along with the additional commitments undertaken by
15 Verizon and MCI in those cases should provide this
16 Commission and the other parties in this case full
17 assurance that this merger will not harm competition,
18 will not harm consumers, and will bring public benefits
19 to Washington state.

20 Later today as we examine testimony or at the
21 conclusion of this panel, I will be more than glad to
22 answer any questions that I can that the Commission may
23 have. Thank you.

24 JUDGE WALLIS: Thank you.

25

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1 Whereupon,

2 JASON KOENDERS,

3 having been first duly sworn, was called as a witness

4 herein and was examined and testified as follows:

5

6 MR. KOENDERS: Commissioners, Your Honor, my
7 name is Jason Koenders, Vice President of Operations
8 with Integra Telecom. In my testimony I describe some
9 problems Integra experiences with Verizon in our
10 wholesale transactions. As a remedy, I suggested that
11 the Commission should adopt conditions for approval of
12 the merger that measure Verizon's wholesale performance
13 and hold Verizon accountable for meeting those
14 measurements. Integra Telecom didn't think it was
15 realistic to reinvent the wheel by stating new
16 measurements for specific transactions, so I propose
17 that the Commission adopt the wholesale measurements the
18 FCC has imposed as a result of the Bell Atlantic GTE
19 merger or the JPSA measurements from the California
20 wholesale service quality docket. Verizon has agreed to
21 report on the FCC standards until the newest version of
22 the JPSA metrics are in place in late 2006, Verizon will
23 report until 2008.

24 The settlement is in Integra's interest since
25 it is exactly what Integra Telecom has asked for in my

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1 testimony. There are consequences for not meeting the
2 standards. Our ICA incorporates any wholesale standards
3 imposed by the Commission, and violation of those
4 standards would be a breach of the ICA as well as a
5 breach of the Commission order. The settlement is in
6 the public interest because it will prevent backsliding
7 after the merger and will ensure transparency in
8 wholesale transactions which ideally will make our
9 relationship with Verizon better and make us better able
10 to meet our customers' expectations.

11 Thank you.

12 JUDGE WALLIS: Very well, please remain at
13 the stand for just a minute.

14 This witness is not subject to
15 cross-examination by other parties. No party has
16 indicated a desire to cross examine the witness, and we
17 indicated informally to parties earlier that this might
18 be an appropriate time to see if there are questions
19 from the Bench for this witness about its participation
20 in the settlement. So if the Commissioners do have
21 questions, now would be an appropriate time to ask them
22 of this witness.

23 COMMISSIONER OSHIE: No questions.

24 JUDGE WALLIS: Very well, thank you very
25 much.

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1 And does that conclude the presentation of
2 the panel?

3 MR. CARRATHERS: Yes, it does.

4 JUDGE WALLIS: Very well.

5 MR. NUSBAUM: Your Honor, since Mr. Koenders
6 is not going to be called again, I assume he can be
7 excused and this would be an appropriate place to
8 recognize that his testimony and exhibits are entered
9 into the record.

10 JUDGE WALLIS: Yes, we will at this time
11 receive Exhibits 201T-C, 202-C, 203, 204, 205-C, 206-C,
12 and 207, these documents are received in evidence, and
13 the witness is excused, and Integra if it wishes is
14 excused from further participation in the proceeding.

15 MR. NUSBAUM: Thank you, Your Honor.

16 JUDGE WALLIS: Very well, with that the panel
17 is excused from the stand at this point. Let us take a
18 brief recess, and when we resume we will take up with
19 the examination of Mr. Taylor.

20 Ms. Singer Nelson.

21 MS. SINGER NELSON: Thank you, Your Honor, I
22 was just curious as to whether the Commission wants to
23 take the settlement agreement and the narrative
24 supporting the settlement agreement under consideration,
25 should we admit those into the record at this time, or

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1 should we do that at a later time? How would you like
2 to handle it?

3 JUDGE WALLIS: My recollection is that we did
4 receive those into the record. In clarification, it is
5 the narrative that contains a confidential exhibit and
6 that should be noted as Exhibit 502-C.

7 MS. SINGER NELSON: Okay, thank you, Your
8 Honor.

9 JUDGE WALLIS: Thank you.
10 So let's be off the record.

11 (Recess taken.)

12 JUDGE WALLIS: Let's be back on the record
13 following a brief recess. At this point Verizon is
14 calling its witness Carl Danner to the stand.

15 Mr. Danner, you have previously been sworn in
16 this proceeding.

17 In conjunction with his testimony, Verizon is
18 offering Exhibits 21T, 22, and 23T-C, an exhibit
19 containing confidential materials. Via previous
20 stipulation of the parties, those documents are received
21 in evidence.

22 In addition, Public Counsel has presented a
23 number of exhibits for use on cross-examination, these
24 are Exhibits 24 through 47. And today Public Counsel
25 has distributed a document which is marked as Exhibit 48

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1 for identification entitled Illustrative Exhibit, Missed
2 Appointments for Installation of Basic Services.
3 Verizon has indicated it has no objection to use of this
4 document, and by stipulation of the parties the Exhibits
5 25 through 48 are received in evidence.

6 Is there anything on direct to this witness,
7 Mr. Carrathers?

8 MR. CARRATHERS: Yes, very briefly, Your
9 Honor.

10

11 Whereupon,

12

CARL R. DANNER,

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

15

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

17 BY MR. CARRATHERS:

18 Q. Mr. Danner, you have caused to be filed
19 direct testimony of approximately 26 pages that has been
20 marked as Exhibit 21T, and together with that you have a
21 list of qualifications which have been marked as Exhibit
22 22; is that correct?

23 A. Yes, that's correct.

24 Q. Do you have any changes to that testimony?

25 A. Just my address on page 1 is now Suite 800

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1 instead of Suite 700. We moved up a floor.

2 Q. And, Mr. Danner, you also caused to be filed
3 in this case your rebuttal testimony which has been
4 marked as Exhibit 23T-C, and do you have any changes to
5 that testimony?

6 A. Yes, I do, there are a few more.

7 The same address change on page 1.

8 On page 3 I refer to Mr. Roycroft, it should
9 say Dr. Roycroft at line 12.

10 On page 6, line 2, the word competition is
11 misspelled, it needs another I.

12 MR. FFITCH: Excuse me, Your Honor, are we in
13 the direct?

14 JUDGE WALLIS: I am going to suggest that if
15 these are obvious typographical errors, the witness need
16 not make those corrections on the record.

17 THE WITNESS: Oh, by all means, Your Honor,
18 there are two --

19 JUDGE WALLIS: If it is something that
20 affects the substance.

21 A. There are two substantive changes I should
22 note. It's a bit of a moving target in this proceeding.
23 On page 10 I discuss the approval of other regulatory
24 authorities. Since this exhibit was prepared, some
25 further regulatory proceedings have concluded, most

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1 notably the FCC and the Department of Justice as we have
2 already discussed today. I think the easiest adjustment
3 or correction to this is just to note that certainly in
4 the case of those two authorities some conditions have
5 been attached to the merger. The response indicated
6 that to this point no conditions had been attached by
7 any authority, that's changed.

8 The other substantive change relates to page
9 39 of my testimony, the question and answer that starts
10 on line 1 and goes to line 12. This addresses the
11 availability of stand-alone DSL service. Without
12 rewriting the entire answer, I would observe that the
13 FCC has adopted a condition addressing stand-alone DSL
14 service and would also observe that if there is interest
15 in the details, what Verizon is able to offer in
16 Washington at this time has changed slightly from the
17 writing of this testimony, and I have those details here
18 if there is interest.

19 That would complete the substantive changes.

20 JUDGE WALLIS: Thank you.

21 MR. CARRATHERS: Thank you, Your Honor.

22 Mr. Danner is available for cross-examination.

23 JUDGE WALLIS: Very well.

24 Mr. ffitch.

25 MR. FFITCH: Thank you, Your Honor.

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

2 BY MR. FFITCH:

3 Q. Good morning, is it Dr. Danner?

4 A. If you prefer, yes.

5 Q. I will be happy to give you your due for all
6 the work involved in getting a Ph.D.

7 Dr. Danner, you're not a Verizon employee,
8 are you?

9 A. No, I'm not.

10 Q. And you never have been a Verizon employee?

11 A. No.

12 Q. But as I understand it, you're Verizon's only
13 witness in this case on operational matters; isn't that
14 correct?

15 A. I suppose that's correct. Mr. Beach
16 addresses operational matters for MCI as well.

17 Q. For MCI but not for Verizon?

18 A. That's correct.

19 Q. And so you're also the only witness on
20 investment, facilities deployment, service quality, or
21 any other operational matter, correct?

22 A. I would say that Dr. Taylor's testimony may
23 touch on some of those topics, but I address them as
24 well.

25 Q. But there's no Verizon employee in this case

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1 testifying to any of those matters, correct?

2 A. Yes.

3 Q. And, Dr. Danner, can you tell us what hourly
4 fee you charge for work in this proceeding?

5 A. I believe our hourly rate is \$300 per hour.

6 Q. And do you have a contract limit or maximum
7 in this case, or are you on an hour bill basis?

8 A. Let's see how to describe this, I am working
9 under a contract that does -- I suppose would have a
10 limit but not regarding this case.

11 Q. Can you tell us what your billings to date
12 are for your work in Washington pursuant --

13 MR. CARRATHERS: Objection, Your Honor,
14 relevancy.

15 JUDGE WALLIS: Mr. ffitich.

16 MR. FFITCH: Your Honor, I think that the
17 Commission is entitled to understand the compensation of
18 the different witnesses that appear before it in order
19 -- as one component in weighing the testimony that's
20 being provided by that witness, and these kinds of
21 questions have been routinely allowed in other
22 Commission proceedings.

23 JUDGE WALLIS: Very well, the objection is
24 denied.

25 A. I'm not billing Verizon separately for work

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1 in this case. I am working for Verizon under an ongoing
2 consulting arrangement that has a fixed fee that is paid
3 to our firm for the services of myself and some other
4 people.

5 BY MR. FFITCH:

6 Q. And is that for appearing in multiple
7 jurisdictions?

8 A. For appearing in jurisdictions and for
9 providing advice to the company as well.

10 Q. With respect to the merger proceeding?

11 A. That's one issue, yes.

12 Q. And can you state what the compensation to
13 you is for your participation in those matters in total?

14 A. You know, it doesn't come to mind, I'm sorry,
15 I don't recall at the moment.

16 Q. Can you state how many hours you have devoted
17 to your work for your clients in the Washington
18 proceeding?

19 A. We have records of it, but I haven't totalled
20 it.

21 Q. Do you have any recollection at all, even if
22 in a ball park sense, what kind of expense is incurred
23 by the company for your work in this proceeding?

24 A. You know, if I were to put a ball park on it,
25 Mr. ffitich, I would have to say 200 hours, in that

0180

1 vicinity.

2 Q. Thank you.

3 Now, Dr. Danner, has Verizon ever competed
4 against MCI in Washington?

5 A. Yes.

6 Q. In your rebuttal testimony you discuss merger
7 synergies, and if you would like to go there I'm
8 referring to a comment on page 20 of your rebuttal.
9 It's Exhibit 23T-C; do you have that?

10 A. Yes, I do.

11 Q. And one of the synergies that you identify is
12 the retention of current revenues that would otherwise
13 be lost to competitors. Isn't that a correct excerpt
14 from your testimony that's at line 18?

15 A. Yes, that's correct.

16 Q. Is one of the competitors to whom you refer
17 with this statement MCI?

18 A. You know, I think Mr. Smith would have to
19 give you the details of that.

20 Q. My next few questions relate to the
21 stand-alone DSL issue, and so I'm editing on the fly
22 here as we do have, as has been noted, some new
23 information on that score. Let's go first to page 39 of
24 your exhibit, Dr. Danner, and this is still the rebuttal
25 testimony, Exhibit 23.

0181

1 A. Yes, I have that.

2 Q. And this is where you actually took us to in
3 your corrections just a few minutes ago, and the first
4 question there essentially indicates that at the time
5 this testimony was written, Verizon opposed Public
6 Counsel's recommendation that the offering of
7 stand-alone DSL be made a condition of approval of
8 merger in this state; is that a fair summary?

9 A. Yes, that's correct, it is beyond state
10 jurisdiction.

11 Q. And clearly, since you have already mentioned
12 it, you're aware of the FCC decision on Monday which now
13 requires Verizon to provide stand-alone DSL, correct?

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

15 Q. And are you familiar, Dr. Danner, with the
16 proposed decision in the state of California from
17 Commissioners Kennedy and Peevey with regard to the
18 Verizon merger case?

19 A. Generally, I don't think I have read it in
20 its entirety, but I have a general sense of what's in
21 it.

22 Q. Do you have with you on the stand a copy of
23 the press release from the California Commission that's
24 been marked as an exhibit in the case?

25 MR. FFITCH: May the witness be handed a copy

0182

1 of that. Your Honor, I'm not remembering the exhibit
2 number.

3 JUDGE WALLIS: Number 513.

4 MR. FFITCH: Thank you, Your Honor.

5 A. Yes, I have that.

6 BY MR. FFITCH:

7 Q. Isn't it true, Dr. Danner, that the proposed
8 decision that's referred to in Exhibit 513 requires
9 Verizon to provide stand-alone DSL in California as a
10 condition of the California PUC's approval?

11 A. The press release says that. I would have to
12 look at the decision in particular to see what analysis
13 they're suggesting for that, but yes, the press release
14 does say that.

15 Q. And Verizon opposed that condition in
16 California as well, did it not?

17 A. I believe that's correct.

18 Q. Given that Verizon it now appears as a result
19 of the FCC decision will be required to offer
20 stand-alone DSL, are you willing to now state that
21 Verizon no longer opposes Public Counsel's recommended
22 condition in this proceeding?

23 A. No, I'm not willing to state that. As I
24 mentioned before, this is a matter of federal
25 jurisdiction, and Verizon's position is that states

0183

1 should not try to intrude on that jurisdiction, if you
2 will, that there is a separation between the two
3 jurisdictions for all the reasons we are familiar with.

4 Q. And so is it your position or will it be your
5 position as well that Verizon will oppose the imposition
6 of this condition in the California proceeding?

7 A. Well, you asked if it was my position, I --

8 Q. Your position on behalf of Verizon.

9 A. I would expect Verizon to take that position.
10 I have not discussed it with them specifically.

11 Q. In your testimony at page 39 and also in some
12 responses to data requests that we can go to in a
13 minute, you indicate that under some circumstances, I'm
14 paraphrasing here, under certain conditions Verizon does
15 provide stand-alone DSL to some Washington customers; is
16 that correct?

17 A. I believe that yes, certainly some options
18 are available, and my understanding is that there are a
19 limited number of customers who may be taking it.

20 Q. Right. And we're going to venture perhaps
21 down a more technical road here, but just trying to stay
22 at a somewhat general level initially, is it your
23 understanding that the FCC decision requiring
24 stand-alone DSL by Verizon will require Verizon to offer
25 DSL in a different fashion than the offering that's

0184

1 described in your testimony here?

2 A. I don't know. I don't think without seeing
3 the FCC's order we can be sure of that.

4 MR. FFITCH: Your Honor, may I just have a
5 minute to look at my cross exhibits and make sure we can
6 go to the right ones to discuss this issue.

7 BY MR. FFITCH:

8 Q. Can I ask you to turn, please, to Exhibit 42.
9 It's one of your cross exhibits.

10 A. You may have to help me here, Mr. ffitch, I'm
11 not sure my exhibits are numbered in that fashion.

12 Q. This is a response to Public Counsel Data
13 Request 191.

14 A. Thank you.

15 Q. Do you have that?

16 You know, I apologize, but we have a number
17 of data requests on this matter, and as I'm looking at
18 them, it appears that it may be helpful for us to start
19 with Exhibit 29. Sorry for reversing direction on you
20 there.

21 A. That would be Data Request Number 45?

22 Q. Correct.

23 A. I have that.

24 Q. All right. And that is a Public Counsel data
25 request, is it not?

0185

1 A. It says so, yes.

2 Q. And the question A of the request asks
3 whether Verizon offers stand-alone DSL service to
4 residential customers, and answer A states that Verizon
5 offers stand-alone DSL in Washington where an existing
6 customer's end user switches its existing local exchange
7 service from Verizon to a carrier that does not use
8 Verizon's switching facilities and does not require a
9 Verizon dispatch of Verizon's personnel to the end
10 user's premises, correct?

11 A. Yes.

12 Q. And do you know if that is going to -- that
13 policy will change as a result of the FCC decision?

14 A. Well, you know, the policy has changed
15 already as I indicated in the corrections to my
16 testimony. I'm wondering if it might be useful to
17 report the current status. I have a paper and I can
18 just tell you which circumstances are now available.

19 Q. Certainly, would you please do that.

20 A. Yeah. The first scenario is if a customer
21 has Verizon voice service and also has Verizon DSL
22 service and then ports the voice service, in other words
23 telephone number, to a facilities based carrier, and
24 facilities based carrier would include wireless as well,
25 in those circumstances stand-alone DSL is now available

0186

1 or will be by the end of the year.

2 The second circumstance is where a customer
3 has existing voice service and existing Verizon DSL
4 service and ports the voice service, again sends the
5 telephone number, to a CLEC that is using the Verizon
6 wholesale advantage program that is the replacement for
7 UNE-P, the voluntary agreement that Verizon has
8 negotiated with a number of CLECs.

9 The third scenario is where the customer has
10 voice service through a competitor that uses the
11 wholesale advantage program and the customer then orders
12 DSL separately from Verizon. The last scenario is where
13 a customer simply places an order for DSL service only
14 without voice.

15 Those are the circumstances under which the
16 service will be available on a stand-alone basis in
17 Washington by the end of the year.

18 Q. Are you reading from a particular document
19 generated by the company?

20 A. Some notes I took.

21 Q. And are those from a particular document
22 generated by the company?

23 A. Those came from E-mail correspondence with
24 counsel.

25 Q. Well, the reason I'm asking, Dr. Danner, is

0187

1 that as you know with data requests they are continuing
2 in nature, and I'm not aware that we have received any
3 supplemental response to this data request which
4 describes the stand-alone DSL offerings as of July. Are
5 you aware that any supplemental response has been
6 provided with this additional information that you
7 stated here?

8 A. I'm not aware of that, Mr. ffitch. I would
9 note that my rebuttal testimony, reply testimony, did
10 provide some of this information. I apologize if there
11 was something that wasn't provided that should have
12 been.

13 Q. Part of what I'm trying to do here,
14 Dr. Danner, is just to make sure that we have this
15 information properly in the record. We certainly now
16 have your statement on the record.

17 MR. FFITCH: And, Your Honor, I guess I would
18 ask as a record requisition from Public Counsel if the
19 company has a written statement of its current DSL
20 offering in Washington state if that could be provided
21 either simply as a copy of a document which they have or
22 as a supplement to Public Counsel Data Request Number
23 45.

24 COMMISSIONER OSHIE: Counselor, just a point
25 of clarification, are you requesting the current DSL

0188

1 offering or what they plan to offer as of January 1,
2 2006?

3 MR. FFITCH: Your Honor, right now I was
4 simply asking for the current offering, but you have
5 anticipated my next question of the witness, Your Honor.

6 JUDGE WALLIS: Very well, is the company
7 willing to provide that?

8 MR. CARRATHERS: Yes, Your Honor, thank you.

9 JUDGE WALLIS: That will be Record
10 Requisition Number 1.

11 BY MR. FFITCH:

12 Q. Dr. Danner, sort of tracking off Commissioner
13 Oshie's question, do you know if this is the form in
14 which Verizon will offer stand-alone DSL to meet the
15 requirements of the FCC's decision yesterday?

16 A. Mr. ffitich, I don't, because we haven't seen
17 the order from the FCC, and I believe that that detail
18 will be necessary for the company to review to determine
19 exactly how compliance will be achieved.

20 Q. And do you know if Verizon -- well, strike
21 that.

22 Dr. Danner, how do you think this Commission
23 ought to proceed in order to learn from Verizon what its
24 actual stand-alone DSL offering will be in Washington
25 state after January 1st?

0190

1 Honor, is that when the answer may be generated by
2 Verizon in its review of that decision but may never get
3 into this record. And I realize I'm asking for some
4 sort of future look in here. I guess, Your Honor, I
5 would ask as Record Requisition Number 2 that Verizon
6 state whether after its review of the FCC decision what
7 its -- whether it will be changing its stand-alone DSL
8 offering in Washington that is described in Record
9 Requisition Number 1, and if so, how.

10 JUDGE WALLIS: Could we rephrase that to ask
11 that the company provide a statement after the FCC order
12 becomes available of its plans in light of that decision
13 and provide that to the record?

14 MR. FFITCH: That would be fine, Your Honor,
15 from our perspective.

16 JUDGE WALLIS: Mr. Carrathers.

17 MR. CARRATHERS: Yes, Your Honor, Verizon
18 certainly doesn't object to providing notice to the
19 Commission of what it will do to comply with the FCC
20 order on that condition. Our only point is, as we of
21 course have stated ad nauseam in our testimony, is
22 that's a federal matter, we don't think it really has to
23 be a part of the record in this case. It can be a very
24 simply stand-alone letter, and so we would ask that that
25 be the case.

0191

1 JUDGE WALLIS: We would ask I believe that
2 that be submitted to the record in this docket, unless
3 of course the FCC order is delayed past the entry of a
4 final order in this docket. Is that acceptable to the
5 company?

6 MR. CARRATHERS: Yes, Your Honor, there's no
7 reason to hold up the record in this case for that
8 order, and that seems reasonable, thank you.

9 JUDGE WALLIS: Thank you.

10 MR. FFITCH: Thank you, Your Honor.

11 BY MR. FFITCH:

12 Q. Dr. Danner, do you know if Verizon will be
13 offering stand-alone DSL in California in any different
14 fashion than it will be offering stand-alone DSL in
15 Washington state as a result of the proposed order of
16 the California Commission? And I'm assuming here that
17 there is a built-in assumption if that order becomes
18 final.

19 A. I believe Verizon will be complying with the
20 FCC's order in California as it will in Washington. I
21 don't know whether that -- how, if at all, that will be
22 changed by what the commission may -- California
23 Commission may say in its final order.

24 Q. Let's go back again to Exhibit 29 that we
25 were just looking at, that's Data Request Number 45, and

0192

1 if we can look at item B, the question there asks for
2 monthly rate and tariff information, and the response
3 states that currently there is no incremental charge for
4 stand-alone DSL, correct?

5 A. Yes, that's what it says.

6 Q. Will Verizon after the merger is approved and
7 after it implements the FCC decision be imposing an
8 incremental charge for stand-alone DSL in Washington
9 state?

10 A. I don't know.

11 Q. And will Verizon be imposing an incremental
12 charge for stand-alone DSL in California if stand-alone
13 DSL is offered down there either pursuant to the
14 California Commission's order or the FCC's order?

15 A. Again, Mr. ffitch, I think we would just be
16 speculating until those orders come out and the company
17 has a chance to review them and respond to them.

18 Q. And when will this Commission know whether or
19 not the company intends to impose an incremental charge
20 for stand-alone DSL in Washington state?

21 A. Well, again, without knowing the timing of
22 the FCC's order, I couldn't tell you.

23 Q. Is Verizon willing to represent to this
24 Commission that it will not impose a stand-alone, excuse
25 me, an incremental charge for stand-alone DSL in

0193

1 Washington state as is currently the case on a going
2 forward basis?

3 A. I don't -- I'm not in a position to make that
4 representation today, no.

5 Q. Can we look at item C in this request,
6 please, Dr. Danner. And here we simply ask you to
7 identify the number of DSL, stand-alone DSL lines sold,
8 and you said exact figures are not available, however,
9 it's expected there is a minimal number in service. Is
10 that still your understanding of the level of this
11 offering in Washington?

12 A. Well, actually it was prepared by
13 Mr. Miggins, I don't have any further information to
14 update that response.

15 Q. All right.

16 And can we turn, please, to Exhibit 30, which
17 is the response to Public Counsel Data Request Number
18 46. Do you have that?

19 A. Yes, I do.

20 Q. And in that data request, we ask you
21 essentially the same questions with regard to single
22 line business customers, correct?

23 A. Yes.

24 Q. Single line business customers are
25 essentially or generally small business customers,

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1 correct?

2 A. Yes.

3 Q. And the answer refers us back to the
4 responses that we have just been looking at in Exhibit
5 29, correct?

6 A. Yes, it does.

7 MR. FFITCH: And just I think, Your Honor,
8 just one final question in this area.

9 BY MR. FFITCH:

10 Q. And now we'll go to Exhibit 42.

11 A. Yes, I have that.

12 Q. And this is a Public Counsel Data Request
13 which asks whether if a consumer currently purchases
14 Verizon basic local service whether that consumer can
15 call Verizon, say disconnect my voice service, and then
16 ask that DSL service be activated alone. And your
17 answer here, I guess my question, Dr. Danner, is if you
18 look at that answer, is that now modified by the new
19 policy that you have just described to us that's going
20 to be provided in Record Requisition Number 1?

21 A. I believe so. At this point, or by the end
22 of the year, pardon me, a customer would be able to
23 disconnect voice service and then place an order for DSL
24 on a stand-alone basis and obtain that service.

25 Q. And is it also the case that a customer could

0195

1 simply move into Verizon service territory and order DSL
2 only from the company, from Verizon?

3 A. Yes, that's my understanding.

4 Q. All right, let's move on to another area.

5 Mr. Danner, I'm sorry, reverting to Mr., Dr. Danner, it
6 says Dr. Danner right here on the page too, can I get
7 you to turn the page of your rebuttal testimony to page
8 40, please. Again this is Exhibit 23T-C.

9 A. Yes, I have that.

10 Q. And first of all just ask you, we have heard
11 a lot about the irreversible decline of MCI's mass
12 market business in this case, do you see your testimony
13 as contradicting Mr. Beach's testimony regarding MCI's
14 plans in this regard?

15 A. No, I don't.

16 Q. Let me ask you to go to line 6 of this
17 exhibit. And here you're answering a question regarding
18 one of our conditions, one of our proposed conditions,
19 which asks that the Commission prevent Verizon from
20 avoiding tariff obligations by operating MCI as a shell
21 operation. And you say at the beginning at line 6:

22 Hypothetically, if MCI were to succeed
23 in attracting customers through
24 attractive service offerings following
25 the merger, the Commission should regard

0196

1 the results as positive because they
2 would reflect customers getting a better
3 deal than before.

4 Correct?

5 A. Yes, it says that.

6 Q. Now I understand that you're suggesting that
7 this is -- you're stating that this is a hypothetical,
8 let's explore it a little bit. You're here, first of
9 all, you're referring to MCI activity in Verizon's
10 service territory, right?

11 A. Well, actually I wouldn't limit it to that.
12 The problem here was that Dr. Roycroft's proposed
13 condition in discussion was -- I was unable to figure
14 out what he was talking about or how it could make
15 sense, and so I tried to be a little helpful and suggest
16 one dimension of a scenario he might have in mind. So I
17 don't know that I would limit it to Verizon's service
18 territory, it's just a hypothetical.

19 Q. Does it include customers who are in
20 Verizon's service territory?

21 A. Certainly could I suppose.

22 Q. So I guess we're working with a
23 subhypothetical here, those customers who are being
24 attracted would be Verizon customers whose rates and
25 services are currently regulated, correct?

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1 A. Not necessarily. Customers in Verizon's
2 service territory now take service from a variety of
3 providers and alternatives.

4 Q. All right. Then assume for purposes of this
5 hypothetical that we're talking about a customer in
6 Verizon's service territory who takes Verizon, currently
7 takes Verizon local service.

8 A. Okay.

9 Q. And you're suggesting hypothetically that MCI
10 could possibly attract away that customer, this is post
11 merger, correct?

12 A. Well, I wasn't suggesting MCI could, I said
13 if they did, yes.

14 Q. And that customer who could potentially be
15 attracted away to MCI is currently in the hypothetical
16 receiving regulated rates and service from Verizon,
17 correct?

18 A. The way you framed it now, yes.

19 Q. And is it your recommendation here that MCI
20 could continue to operate as if it were an independently
21 owned competitor within Verizon's own service territory?

22 A. I'm not sure what you mean, I'm not making a
23 recommendation.

24 Q. Well, let me take the word recommendation out
25 of that. Does your hypothetical assume that MCI is

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1 operating as if it is an independently owned competitor
2 within Verizon's service territory?

3 A. I don't know that I made any assumptions
4 about Verizon's competitive strategy or how it viewed
5 itself, pardon me, MCI's competitive strategy or how it
6 viewed itself relative to Verizon, I just said that if
7 it were to make an attractive service offering and
8 attract customers thereby, you know, it follows that
9 customers would be better off. So I don't know that I
10 made an assumption about MCI's competitive strategy per
11 se.

12 Q. Well, I'm just trying to follow your
13 hypothetical through though. If the offer is attractive
14 enough post merger and the customer moves over to MCI,
15 then in your view is that customer now the customer of
16 an independently owned, independently operated
17 competitor not subject to Commission rate or service
18 quality regulation in the same way that they were
19 previously as a Verizon customer?

20 A. Well, let's take your suggestions one at a
21 time. Certainly they wouldn't be independently owned,
22 because following the merger the two companies would be
23 owned by the same ultimate parent. The customer in that
24 case would be buying a service that was less regulated
25 than the prior service that the customer purchased. On

0199

1 the other hand, the customer presumably would have found
2 that more attractive and therefore benefited from having
3 made that move, which is the point of the hypothetical.

4 Q. What do you mean by less regulated? Are you
5 -- and let me explain my question. Are you assuming in
6 your hypothetical that MCI's, we're talking about local
7 service here, we're talking about a local service
8 customer in the hypothetical, MCI's local service that
9 is attractively priced and attracts this customer is a
10 competitively classified service pre-merger, are you
11 assuming that once this customer moves over from Verizon
12 to MCI post merger that that is now a less regulated
13 competitively classified service, the local service that
14 they receive?

15 A. You know, Mr. ffitch, I think we're sort of
16 -- we have transitioned from my hypothetical to your
17 hypothetical. My statement was pretty straightforward,
18 just kind of applied economics that a customer who moved
19 over would find the service more attractive. But taking
20 the hypothetical that I think you're offering, MCI is
21 competitively classified in this state, I don't know
22 that -- I mean are you suggesting that we would be
23 talking about a service that MCI now offers or a new
24 service? I'm not sure what you mean.

25 Q. Well, MCI currently offers local service in

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1 competition with Verizon in Verizon's service territory,
2 does it not?

3 A. To a minimal extent, yes.

4 Q. And it appears that your hypothetical is
5 suggesting that that situation will continue after the
6 merger.

7 MR. CARRATHERS: Objection, Your Honor, I
8 think we're going beyond what is in Dr. Danner's
9 testimony. As Dr. Danner explained, the question and
10 answer that we're talking about is our response to
11 Dr. Roycroft's claim that somehow MCI and Verizon are
12 going to operate MCI as a shell company by avoiding
13 tariff obligations and somehow isn't that bad. And so
14 that's the context of Dr. Danner's hypothetical, and I
15 would ask that Public Counsel perhaps rephrase his
16 questions to address that concern that Dr. Danner
17 expresses explicitly.

18 JUDGE WALLIS: Mr. ffitch.

19 MR. FFITCH: I'm happy to rephrase, Your
20 Honor, I'm just trying to explore the premises behind
21 this hypothetical. After all, the answer that we're
22 looking at on page 40 is a direct criticism of our
23 recommendation or condition in this area. But I will
24 try to rephrase it, Your Honor.

25 JUDGE WALLIS: Thank you.

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1 BY MR. FFITCH:

2 Q. I guess what I'm trying to do Dr. Danner is
3 get inside your own mind a little bit here and
4 understand how you're envisioning this hypothetical MCI
5 operating within Verizon service territory and
6 attracting away customers from Verizon, offering the
7 same service but not being independently or separately
8 owned any longer as you have acknowledged, and let me
9 try to come at it this way. Is it your view that MCI
10 after the merger can continue to retain its competitive
11 classification for services offered within Verizon's
12 service territory as if it were a separate independently
13 owned CLEC?

14 A. I know that nothing in the merger agreement
15 or the proposal requires any changes to MCI's current
16 operations. I guess if you're looking for a legal
17 opinion as to the basis for competitive classification,
18 that's probably not me to offer it. But my
19 understanding is that the companies, this is a holding
20 company level merger, it's not going to merge the
21 operating companies together. It's not uncommon at all
22 for different subsidiaries of different companies,
23 whether regulated or not, to offer services that might
24 have customers in common and therefore compete against
25 one another. There's nothing untoward about that. Is

0202

1 that helpful?

2 Q. Well, that's a start. Why would it not be
3 necessary for either Verizon or MCI to come before this
4 Commission and ask the Commission whether or not that
5 service that was being offered by MCI within Verizon
6 service territory was in fact entitled to a competitive
7 classification?

8 MR. CARRATHERS: Objection, Your Honor,
9 asking for a -- it's a legal question.

10 JUDGE WALLIS: Mr. ffitch.

11 MR. FFITCH: Your Honor, I can withdraw that
12 question and ask another question.

13 BY MR. FFITCH:

14 Q. Are you suggesting that MCI's competitive
15 classification within Verizon's service territory simply
16 be grandfathered in; is that your premise behind this
17 hypothetical?

18 A. Well, grandfathered, I mean MCI is
19 competitively classified. I'm not aware of anything in
20 the merger proposal that would change that.

21 Q. That competitive classification occurred, did
22 it not, under entirely different circumstances, salient
23 among those the fact that it was not owned by the very
24 company with which it formerly competed within that
25 service territory?

0203

1 A. I'm not sure I'm in a position to argue the
2 weight of different circumstances for a legal standard.

3 JUDGE WALLIS: Mr. ffitch, how are we doing
4 on your cross-examination?

5 MR. FFITCH: Your Honor, I have a significant
6 amount of additional cross-examination for this witness.

7 JUDGE WALLIS: Very well, let's take a 5
8 minute recess at this point and plan on taking up at 15
9 minutes after 11:00 by the clock on the wall.

10 (Recess taken.)

11 JUDGE WALLIS: Mr. ffitch, you may continue.

12 MR. FFITCH: I'm ready to proceed, Your
13 Honor. Note Staff counsel is not here.

14 JUDGE WALLIS: Please proceed.

15 BY MR. FFITCH:

16 Q. I'm going to ask you just one or two more
17 questions related to this statement about the attractive
18 offerings to Verizon customers, bringing them over to
19 MCI. And let's turn now, if you would, to Mr. Beach's
20 testimony. Do you have that, or perhaps your counsel
21 could provide you --

22 JUDGE WALLIS: Counsel may approach the
23 witness.

24 Q. His rebuttal testimony I'm referring to.

25 A. Do you have the exhibit number for that?

0204

1 Q. Exhibit 61.

2 A. Thank you.

3 Q. Page 9, and I'm going to ask you to look at
4 line 10. Are you there?

5 A. Yes, I am.

6 Q. The question being answered here is:
7 If MCI is now paying higher rates for
8 network access under its commercial
9 agreements, how does that affect MCI's
10 competitive position in the consumer
11 market?

12 Correct?

13 A. Yes.

14 Q. And could you just read the first sentence of
15 the answer.

16 A. Yes, it says:
17 The higher prices under the commercial
18 agreements give MCI no choice but to
19 continue to raise retail rates in order
20 to serve our existing base of customers.

21 Q. So given what Mr. Beach says here,
22 Dr. Danner, isn't it the case that in order for MCI to
23 make a more attractive service offering post merger
24 operating as a competitively classified affiliate, won't
25 it have to either pay lower rates for, lower wholesale

0205

1 rates to Verizon for UNE-P or wholesale advantage or be
2 willing to operate at a loss in order to make a more
3 attractive service offering?

4 A. Mr. ffitch, it's a hypothetical, it doesn't
5 refer specifically to anything that MCI is now doing.
6 As I said before, it's just a point of applied economics
7 as to what would happen. It's like when Verizon
8 Wireless attracts a customer away from Verizon
9 currently. And so I didn't have in mind a particular
10 service or a particular offering, I wasn't trying to
11 make an assertion about MCI's actual operations. It's
12 just a hypothetical.

13 Q. If either of those two conditions were to
14 occur, however, should this Commission be concerned?

15 A. I'm sorry, which conditions?

16 Q. The first condition would be that in order to
17 provide an attractive service offering, MCI would
18 receive a lower wholesale rate, for example a wholesale
19 advantage rate or UNE-P rate. Second would be that MCI
20 would be willing to operate at a loss in order to make a
21 more attractive service offering.

22 MR. CARRATHERS: Objection, Your Honor, this
23 clearly goes beyond the scope of Dr. Danner's testimony.
24 Public Counsel has taken a hypothetical that Dr. Danner
25 has given in discussing Mr. Roycroft's claim that

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1 somehow Verizon and MCI will conspire to evade tariff
2 obligations and turned it into a positive statement that
3 Dr. Danner is testifying to, and that's simply not the
4 case, so I object to that question.

5 JUDGE WALLIS: Mr. ffitich.

6 MR. FFITCH: Well, Your Honor, Dr. Danner has
7 used this hypothetical as an integral part of his
8 challenge to our recommended condition in this area, and
9 I am simply exploring the premises behind his
10 hypothetical, so I feel like it's a permissible
11 question.

12 JUDGE WALLIS: I'm going to overrule the
13 objection and allow inquiry into the nature and
14 foundation for the hypothetical.

15 BY MR. FFITCH:

16 Q. And I guess just to repeat my question, if I
17 can get close to the original question, Dr. Danner, it's
18 simply whether the Commission should be concerned, if
19 MCI is able to offer that attractive offering either
20 through receiving favorable wholesale rates from Verizon
21 or by operating at a loss, should the Commission be
22 concerned if either of those two conditions are
23 occurring?

24 A. Well, I shouldn't think so. To begin with,
25 not all competitive carriers make profits at all times

0207

1 on all services, and that's a normal part of the
2 competitive process. Furthermore, if you turn to the
3 settlement agreement, you will notice that settlement
4 term 7 observes that upon request of any competing
5 carrier, Verizon will make its wholesale advantages
6 service agreement available to the competing carrier at
7 similar rates, terms, and conditions including volume
8 and term commitments. I think Mr. Beach can tell you
9 more about MCI's specific operations and plans, but if
10 Verizon were to lower the price that it was charging
11 MCI, under the settlement they would have to provide
12 that to other competitors as well.

13 Q. Can I get you now, Dr. Danner, to turn to
14 page 40 of your rebuttal testimony.

15 A. Yes.

16 Q. And that's Exhibit 23 still. Are you there?

17 A. Yes, I am.

18 Q. And here you're addressing Public Counsel's
19 recommendation that Verizon be required to increase its
20 deployment of broadband services; isn't that correct?

21 A. Yes.

22 Q. And at line 20 you state:

23 There is no nexus between the suggested
24 condition and the proposed merger.

25 Is that an accurate reading?

0208

1 A. Yes, that's an accurate reading, MCI is not
2 engaged in providing these services in Washington.

3 Q. Verizon is, however, in engaged in providing
4 broadband services in Washington, correct?

5 A. Yes.

6 Q. Do you have a copy of the joint petition in
7 this case, or could your counsel provide you with one?

8 A. I believe I have the joint petition, yes.

9 Q. And if you could turn please to page 17.

10 A. I have page 17.

11 Q. Would you look at paragraph 48 on page 17 and
12 read the first sentence.

13 A. Yes.

14 American consumers and small businesses
15 will benefit from enhanced deployment of
16 wireline and wireless broadband services
17 that this transaction will promote.

18 Q. All right. So isn't it fair to say that one
19 of the benefits cited by the joint petitioners in this
20 case is enhanced deployment of broadband services?

21 A. Yes, and I'm thinking of that in terms of the
22 FTTP FIOS offering myself, but yes.

23 Q. And those representations, are they only
24 meant to apply to the post merger operations on a
25 national basis and not to Washington state?

0209

1 A. Why no, I think they would apply everywhere.

2 Q. And do you make a distinction, I think you
3 just referred to it in your previous answer, do you make
4 a distinction between enhanced deployment of broadband
5 services, the phrase that's used here, and deployment of
6 enhanced broadband services?

7 A. I guess I'm not sure what distinction you
8 have in mind.

9 Q. Well, let's just continue on, and perhaps we
10 can come back to that point.

11 Can you please turn to Exhibit 31, and that's
12 a response to Public Counsel Data Request 61, correct?

13 A. Yes.

14 Q. And this data request actually references
15 this text that we have just seen in the joint petition
16 and asks for specific details of enhanced deployment,
17 correct?

18 A. Yes, that's what it says.

19 Q. I won't read the entire response, the
20 response, however, repeats the representation that:

21 Consumers and small business will
22 benefit from enhanced deployment of
23 broadband services that this transaction
24 will promote.

25 Correct?

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1 A. Yes, although the first sentence also
2 observes that:

3 As noted in the joint petition, the
4 combination of MCI's Internet backbone
5 network with Verizon's ongoing
6 deployment of fiber will create a
7 platform that can create a broad array
8 of multimedia communications services
9 and applications for all customers.

10 Q. All right. And this question asked for
11 deployment details in Washington state, correct?

12 A. Yes.

13 Q. So is this answer intending to represent that
14 these benefits will also be seen in Washington state?

15 A. Yes, that's fair to say.

16 Q. Now let's look at the last sentence. The
17 last sentence states, does it not, that:

18 While there is an intent to deploy
19 broadband services, post transaction
20 planning has not yet begun.

21 Is that correct?

22 A. Yes, it says that.

23 Q. In fact, although this data request asks for
24 details, in the response that we have here no details
25 have been provided with regard to time frames for that

0211

1 deployment, data speeds, prices, or any other detail
2 regarding the deployment of those services, correct?

3 A. Yes, that's correct.

4 Q. So we don't know sitting here today any of
5 that information regarding the asserted benefits of
6 broadband deployment in Washington, do we?

7 A. Well, we know that the environment will be
8 stimulated for this kind of deployment by the
9 combination of Verizon's local assets and the Internet
10 backbone of MCI. It is true in a competitive market and
11 in a less regulated or unregulated market as this one is
12 that you can't necessarily put your finger on a specific
13 outcome that will occur at a specific time. If you
14 think of a policy like trying to promote jobs in this
15 state for example, you may know that you have created
16 improved incentives, but you can't tell exactly how many
17 jobs will occur. In that sense, I would agree that this
18 doesn't have specifics here, but I don't think that that
19 undermines or takes away the positive impact of the
20 merger in this regard.

21 Q. All right.

22 Can you please turn to your direct testimony,
23 which is Exhibit 21, page 3, and if we look at lines 9
24 and 10, there you're stating that it is sensible, well,
25 it starts at line 7, but you're stating that it's

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1 sensible for Verizon to engage in this merger because,
2 quote starting at line 9, its investment strategy to
3 bring enhanced broadband capabilities to mass market
4 customers, correct?

5 A. Yes.

6 Q. Now could you please turn to Exhibit 33.
7 That's the response to Public Counsel Data Request
8 Number 70, and actually on page 2 of that exhibit we see
9 that this response was actually prepared by you, was it
10 not?

11 A. Yes, section A was, yes.

12 Q. And this question keys off of the testimony
13 that we just referred to in your direct, correct?

14 A. Yes, it does.

15 Q. And we asked you a number of questions
16 relating to your testimony, and let's just take a look
17 at those. Item A, you were asked to define enhanced
18 broadband capabilities, and this is perhaps coming back
19 to the question I asked you a little bit earlier, do you
20 make a distinction between enhanced deployment of
21 broadband versus deployment of enhanced broadband? You
22 can look at your answer there to see if that helps.

23 A. Well, I mean I suppose one could make that
24 distinction, but I'm not really sure what you're getting
25 at, but here I talk about enhanced broadband

0213

1 capabilities certainly, and I suppose you could enhance
2 the deployment of other broadband in a fashion.

3 Q. Well, maybe I can clarify my question. Are
4 you saying or is Verizon saying, we're going to make
5 existing currently deployed broadband for people who
6 already have it better, faster, more wonderful, or are
7 you saying we're going to make broadband more widely
8 available throughout our Washington service territory
9 and throughout Washington state, or are you saying both?

10 A. What we're saying here specifically is that
11 the FTTP FIOS effort will be enhanced and promoted by
12 the combination of the networks. And this is, as I
13 think you know, an advanced fiber based broadband
14 network capability that the company has made numerous
15 announcements, public announcements about its intention
16 to build out across the country, so that's the context
17 here.

18 Q. And I probably should have asked you this
19 earlier, but you're using the acronym here of FTTP and
20 FIOS; could you explain what those are, please?

21 A. Fiber to the premises, and actually I confess
22 I have forgotten what FIOS stands for, but that's a
23 service where the company brings fiber to the customer's
24 premises and offers a combination of services including
25 video, voice, Internet, data, and so on.

0214

1 Q. All right. And I realize that this DR asks
2 you about a specific statement of yours which uses the
3 phrase enhanced broadband capabilities, earlier though
4 we looked at the petition itself which refers to
5 enhanced deployment, and I will just return to the
6 question I just asked, which is, is Verizon representing
7 to this Commission and the people of Washington state
8 that the only benefit here is going to be better
9 broadband for existing served areas, or is the
10 representation also that broadband will be more widely
11 deployed within Washington state, or is it both?

12 A. Well, I don't know that I can parse words
13 between the data response answer and the petition, but
14 my understanding of what Verizon is stating as a benefit
15 of the merger is that it will enhance the ability of the
16 company to deliver this new fiber based network to more
17 places more quickly on a more economic basis and
18 potentially increase innovation in the process. So I
19 guess that would be more better broadband and perhaps in
20 the taxonomy that you're suggesting.

21 Q. And that includes more widely deployed, does
22 it not, if I'm understanding you?

23 A. Well, I believe that the potential of
24 combining these networks will permit the FTTP product to
25 be perhaps deployed more widely more quickly, yes.

0215

1 Q. Now you have been speaking about FTTP and
2 FIOS here, and you haven't mentioned DSL broadband, are
3 you excluding that intentionally from the definition of
4 the benefits that are being offered here by the
5 proponents of the merger?

6 A. I see the direct relationship between the
7 benefits as clearer with respect to broadband and fiber
8 deployment. I don't think I -- the market driven
9 deployment of DSL I think is less well -- less tightly
10 tied to this potential.

11 Q. Are you saying that Verizon does not
12 represent that this merger will have any benefits in the
13 area of DSL service or deployment?

14 A. I believe Verizon's position is that DSL is
15 not directly affected by the merger since there is no
16 combination of existing, from a competitive standpoint,
17 there's no combination of existing MCI DSL offerings. I
18 think the company's position is that -- I guess I don't
19 know specifically if there are particular benefits tied
20 to DSL, I have focused more on FTTP.

21 Q. All right. Forgive me if I'm belaboring
22 this, but you're not saying, are you, that when we read,
23 as we do throughout the petition and throughout the
24 supporting testimony, that one of the benefits is
25 enhanced deployment of broadband or enhanced broadband

0216

1 but that is excluding DSL, you're not saying that, are
2 you?

3 A. No, I'm not saying it's excluding DSL, I'm
4 saying I believe it's more closely tied to the FTTP.

5 Q. Let's take a look at question B here back on
6 the exhibit, Exhibit 33, you're asked to provide a
7 detailed discussion of the investment strategy in
8 Verizon's Washington service area, and the answer is
9 you're currently assessing where it will offer fiber to
10 the premise, correct?

11 A. Yes.

12 Q. Is that still correct, still currently
13 assessing?

14 A. I think the company is always assessing this.

15 Q. Let's look at question C:
16 Please provide a copy of the business
17 plan for the deployment of enhanced
18 broadband capabilities for mass market
19 customers in Washington.

20 And we can look at the answer and see a
21 statement that Verizon has no plans to offer FTTP or
22 FIOS services in 2005, the deployment plan for 2006 is
23 under development, correct?

24 A. Yes, that's what it says in this response.

25 Q. Now it looks like you're looking for

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1 something else there, is that still an accurate
2 statement?

3 A. My understanding is that the company had
4 provided a supplemental data response that indicated
5 some more specific initial plans for Washington.

6 Q. All right. I believe you may be referring to
7 the response to Data Request Number 235.

8 A. Yes.

9 Q. That was provided on October 31st, 2005?

10 A. That's my understanding.

11 MR. FFITCH: Your Honor, I'm not quite sure
12 how to proceed with this information. It appears that
13 the witness may -- it may be helpful to the witness to
14 look at this and then be able to supplement his answer
15 on this point, so if he could be provided with a copy, I
16 just have one here.

17 JUDGE WALLIS: Does the witness have that
18 document?

19 THE WITNESS: I was looking for it, Your
20 Honor, and I don't think I do.

21 MR. CARRATHERS: We'll get it.

22 MR. FFITCH: And also I will just note that
23 there's confidential information in this. Perhaps one
24 way to approach this might be to just note for the
25 record that there is a supplemental response or an

0218

1 update on this response and perhaps have copies made for
2 the record. I haven't had time to do that, Your Honor,
3 because we just received this.

4 JUDGE WALLIS: Is there any objection to
5 that?

6 MS. ENDEJAN: No, Your Honor, but we would
7 note that that has been marked as a confidential
8 response.

9 JUDGE WALLIS: Very well.
10 What is the length of the response, is it a
11 few words, a few sentences, a few paragraphs?

12 MR. FFITCH: Your Honor, it's one page other
13 than the boiler plate.

14 JUDGE WALLIS: Very well, we would ask that
15 that be marked as Exhibit 49 for identification and
16 offered when you have copies, and to correct that it's
17 49-C in as much as it is designated confidential.

18 The witness has a copy of that; is that
19 correct?

20 THE WITNESS: Yes, Your Honor.

21 MR. FFITCH: Your Honor, may I just have a
22 moment, and it may be just convenient to just ask one or
23 two questions about this without getting into the
24 confidential information, and then we can move on.

25 JUDGE WALLIS: Very well.

0219

1 BY MR. FFITCH:

2 Q. Do you have a copy of that in front of you,
3 Dr. Danner?

4 A. Yes, I do, Mr. ffitch.

5 Q. And the data request asks Verizon to update
6 previous responses in this area about broadband
7 deployment in light of a trade press article entitled,
8 Verizon Commits to Video Broadband Service Spending,
9 correct?

10 A. Yes, I see that.

11 Q. And the first phrase of the trade press piece
12 says, Verizon expects to spend more than \$5 Billion on
13 its FIOS fiber project, correct?

14 A. Yes, that's correct.

15 Q. Do you know if that's accurate?

16 A. I'm sorry, you mean do I know whether
17 Verizon's expectation is accurate or whether this report
18 is accurate?

19 Q. Do you know if it's accurate that Verizon
20 intends or expects to spend more than \$5 Billion on this
21 fiber project?

22 A. I expect so, I mean there are large sums
23 involved.

24 Q. Do you know how much of that expenditure
25 would occur in Washington?

0220

1 A. No, I don't have a breakout of that, and I
2 don't know that it's -- well, I just don't know.

3 Q. And let's look at the response, that's we
4 have just so far been talking about the question which
5 incorporates this trade press item. The response states
6 in the first sentence:

7 Verizon has announced that it is
8 deploying fiber to the premise which
9 enables our most advanced consumer and
10 small business broadband services.

11 Correct?

12 A. Yes, that's correct.

13 Q. And then the remainder of the answer is
14 confidential, and it describes specific deployment
15 plans, correct?

16 A. Yes, it does.

17 MR. FFITCH: Your Honor, I think going
18 further is going to tread potentially on confidential
19 areas, so we'll just work with the issue perhaps on
20 brief.

21 JUDGE WALLIS: Very well.

22 MR. FFITCH: And we'll offer this when we get
23 copies.

24 JUDGE WALLIS: Thank you.

25 BY MR. FFITCH:

0221

1 Q. So let's move to item D in this exhibit,
2 we're still in Exhibit 33, Dr. Danner. Item D asks you
3 to identify investment account amounts incurred
4 associated with residential enhanced broadband
5 capabilities from 2002 to date, correct?

6 A. Yes.

7 Q. And the answer is:
8 Verizon has not incurred investments
9 associated with residential enhanced
10 broadband capabilities in Washington.
11 Right?

12 A. That's what it says, yes.

13 Q. Next question asks you to identify planned
14 investment amounts for 2005, 2006, 2007, the answer
15 refers us back to the answer to question C, correct?

16 A. Yes.

17 Q. And that was where we got into the discussion
18 of the new data response.

19 A. Correct, and my understanding was that that
20 data response was meant to update the discussion of this
21 issue.

22 Q. And the final question is, please identify
23 what portion of these investments would not occur if the
24 merger is not finalized, and the answer again simply
25 refers us back to item C, the answer in C, right?

0222

1 A. It does, yes.

2 Q. Can you please turn to your cross Exhibit
3 Number 32?

4 A. That would be Data Response 62?

5 Q. Correct.

6 A. Yes, I have that.

7 Q. And that asked what percentage of Verizon's
8 local loops are capable of providing DSL service at the
9 following data speeds which are listed, correct?

10 A. Yes.

11 Q. And I will just warn you that the actual
12 answer is confidential, we're turning to page 2, I'm not
13 going to ask you to state anything confidential in the
14 open hearing room here, but we can see that the answers
15 are given in specific percentages, correct?

16 A. Yes.

17 Q. And if you look in the two far right-hand
18 columns, would you agree that this indicates the
19 percentage of Verizon loops that are not qualified for
20 DSL?

21 A. Yes.

22 Q. And then if we go to the next column over,
23 and I believe the heading is confidential, it's just a
24 speed.

25 A. Mm-hm.

0223

1 Q. That indicates the percentage which are only
2 qualified up to 768 kilowatts per second, correct?

3 A. Yes, that indicates what's qualified up to a
4 certain speed there.

5 Q. Now can you turn to Exhibit 44, please.
6 Sorry we weren't able to get all of these in numerical
7 order. In general, and this is a response to Public
8 Counsel Data Request Number 193, and just in general
9 this is a follow up to the response we just looked at,
10 and we generally asked for an explanation of the
11 limitations on why DSL is not available in those areas,
12 correct, in a number of different related questions?

13 A. Yes, you asked a number of related questions.

14 Q. And if we look at question B and answer B, we
15 learn, do we not, that all Washington state wire centers
16 have a number of lines that are not qualified?

17 A. Yes.

18 Q. And if we look at the answer to part E, the
19 question asks for Verizon's qualification and deployment
20 plans and associated expected dates of DSL service for
21 enabling the not qualified lines and then what data
22 speeds those would have, and if we look down at the
23 answer which comes after the second little D, it should
24 be an E right under the confidential information, the
25 answer is, currently there are no new deployment plans

0224

1 for Washington state, correct?

2 A. Yes.

3 Q. And then if we look at question E asks to,

4 I'm sorry, question F asks you to discuss Verizon

5 deployment plans and associated expected dates of

6 service for enabling the 768 kilobyte lines to qualify

7 at 1.5 megabytes, correct?

8 A. Yes.

9 Q. And your answer indicates that that would

10 require the use of ATM equipment to replace frame relay

11 equipment, correct?

12 A. Yes.

13 Q. And that you do not have any plans, Verizon

14 does not have any plans to replace that equipment at

15 this time unless there is an exhaust situation, correct?

16 A. Yes, it says that.

17 JUDGE WALLIS: For the record, could we have

18 the term ATM defined, please.

19 THE WITNESS: Asynchronous transmission mode.

20 JUDGE WALLIS: Thank you.

21 Mr. ffitch, we are coming up on the noon

22 hour, it's my intention to go until noon and then cut

23 off at that point.

24 MR. FFITCH: Thank you, Your Honor, I think I

25 just have one or two more in this area so that I can

0225

1 conclude this line.

2 JUDGE WALLIS: Please proceed.

3 BY MR. FFITCH:

4 Q. So it appears from these answers that we have
5 looked at, Dr. Danner, that Verizon has engaged in no
6 post merger planning about how to increase this
7 coverage?

8 A. I'm not aware of any post merger planning to
9 increase this coverage. I think the post merger
10 planning process has just begun, I don't know that there
11 are any results from it.

12 Q. All right. And now am I correct in
13 understanding that, based on your testimony in this
14 case, that Verizon is not willing to make any specific
15 commitment to this Commission in the context of merger
16 approval to extend the availability of DSL in Washington
17 to those areas shown that are not served?

18 A. Verizon's position is that DSL and services
19 like it are regulated in the federal jurisdiction and
20 therefore -- and also on a market based approach that I
21 believe is the appropriate approach for these services
22 and is the approach the Federal Communications
23 Commission has embraced, and that therefore this
24 Commission should leave that question alone and defer to
25 the FCC's deliberations on related issues to the extent

0226

1 that they may have something to say.

2 Q. So Verizon is not willing to make any
3 specific commitment in this proceeding to enhance the
4 deployment of DSL service in Washington state; is that
5 correct?

6 A. Yes, that would be correct.

7 Q. Are you aware of the recent proposed orders
8 of the California Commission in the California merger
9 proceeding? And I will ask you to take a look at
10 Exhibit 513.

11 A. I am generally aware. As I said before, I
12 don't think I have read them cover to cover.

13 Q. Okay, well, fortunately we don't have to look
14 at the whole thing here because we have a handy press
15 release to refer to, which is only two pages long, and
16 that has been previously marked as Exhibit 513 if you
17 could take a copy of that.

18 A. Do I have that?

19 JUDGE WALLIS: Counsel may approach the
20 witness.

21 A. Oh, now I have two of them, sorry, thank you,
22 I didn't need more paper, I have it here.

23 Q. If you look at the bottom of the first page,
24 there is a heading, is there not, that says Broadband
25 Deployment, California Emerging Technology Fund,

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1 correct?

2 A. Yes.

3 Q. And then the text actually continues on the
4 next page, but isn't it true that one of the conditions
5 imposed in that proposed order by the California
6 Commission is that Verizon will make a \$15 Million
7 investment in broadband towards a stated goal of 100%
8 broadband deployment in California in five years?

9 A. Let me just read this. It's something like
10 that, I want to make sure what it says.

11 (Reading.)

12 Well, it talks about the Commission being
13 committed to 100% access, about aiming towards it.
14 Certainly it's this commission, this particular state
15 commission has raised this concern in those proposed
16 decisions, yes.

17 Q. All right. And you would agree that there is
18 actually, as I stated in my earlier question, a
19 requirement that Verizon will make a \$15 Million
20 contribution towards broadband deployment in California
21 as a condition of the merger approval; isn't that
22 correct?

23 MR. CARRATHERS: Objection, Your Honor,
24 that's not a requirement.

25 MR. FFITCH: Well, Your Honor, I'm happy to

0228

1 rephrase it, I'm simply trying to paraphrase the press
2 release here. If we can look at the first sentence --
3 I'm sorry, Your Honor.

4 JUDGE WALLIS: I was just going to say that
5 we have received that document in evidence, and it would
6 appear to speak for itself unless the witness has
7 information that supplements or contradicts the language
8 of the document.

9 MR. FFITCH: Well, thank you, Your Honor, I'm
10 simply asking the witness to agree that if this
11 condition is ultimately imposed by the California
12 Commission, it does contemplate a \$15 Million investment
13 by Verizon in broadband deployment in California.

14 BY MR. FFITCH:

15 Q. Is that not correct, Dr. Danner?

16 A. Yes, this proposed decision I guess uniquely
17 in California does contemplate that, yes.

18 MR. FFITCH: And, Your Honor, I will just
19 note for the record that this condition is addressed I
20 believe in Paragraph 61 of the actual proposed
21 California decision.

22 And that concludes my questioning on this
23 line, Your Honor. I do have some additional questions
24 for Dr. Danner in other areas.

25 JUDGE WALLIS: Very well, let's take our noon

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1 recess at this time, and be back in the room ready to
2 proceed at 1:30 p.m., please.

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

4

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

6 (1:30 p.m.)

7 JUDGE WALLIS: Let's be back on the record,
8 please, following our noon recess. Mr. ffitch, you're
9 in the process of examining the witness, Mr. Danner.

10 MR. FFITCH: Thank you, Your Honor.

11

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

13 BY MR. FFITCH:

14 Q. Good afternoon, Mr. Danner, Dr. Danner.

15 A. Good afternoon, Mr. ffitch.

16 Q. I will try to do better this afternoon on
17 that.

18 Can I ask you to please turn to Exhibit 21,
19 which is your direct testimony, go to page 6, and could
20 you please read the first complete sentence on that
21 page.

22 A. In the excerpt or in my statement?

23 Q. In the excerpt.

24 A. (Reading.)

25 In particular, there is no change

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1 contemplated with respect to the terms
2 and conditions of service, service
3 quality, customer service, the quality
4 of facilities, the rate of investment,
5 the companies' corporate affiliate
6 transaction guidelines and policies, and
7 their respective commitments to their
8 customers and to their communities.

9 Q. Thank you.

10 Now, Dr. Danner, I understand that you are
11 not an employee of Verizon or MCI, but have you been
12 retained by either company to analyze the past service
13 quality performance of either Verizon or MCI prior to
14 the merger?

15 A. Well, I have looked at service quality in
16 other contexts related to Verizon. I'm not sure I would
17 say I did a specific project on service quality for
18 example, no.

19 Q. All right. And so you weren't asked to
20 develop specific plans or strategies to ensure that
21 going forward after the merger transaction that
22 effective service quality, both retail and wholesale, is
23 maintained?

24 A. No, I wasn't asked to prepare such plans.

25 Q. And the excerpt you just read in which the

0231

1 statement is made that there's no change contemplated in
2 several areas including service quality, what's the
3 source of your information for making that statement?

4 A. I was informed by people within Verizon that
5 these terms were contemplated, and it's also consistent
6 with the filings the company has made in support of the
7 transaction in various jurisdictions.

8 Q. All right.

9 And similarly, Dr. Danner, have you been
10 retained in this case by Verizon and MCI to review their
11 network investments?

12 A. Not specifically to examine them in detail,
13 no.

14 Q. And have you been asked to develop any
15 specific plans regarding future network investment
16 decisions after the transaction has been completed?

17 A. No.

18 Q. Can I ask you to turn, please, to Exhibit 38,
19 which is one of your cross exhibits. We're going to
20 talk about service quality here a little bit. This is a
21 data request from Public Counsel, Number 177, do you
22 have that?

23 A. Yes, I do.

24 Q. And this asks Verizon to provide all monthly
25 service quality reports beginning in May 2005 and then

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1 continuing for each month during the proceeding as
2 filed, correct?

3 A. Yes, that's what it says.

4 Q. And could you turn, please, to page 5 of the
5 exhibit.

6 A. I have that.

7 Q. All right. And if you look at the exhibit,
8 there's a set of numbers under the heading repair report
9 on the left-hand side, well, the numbers are not on the
10 left-hand side, but there is language on various --
11 under the heading repair report on the left-hand side,
12 correct?

13 A. Yes.

14 Q. And the first set of numbers pertains to out
15 of service trouble reports cleared or not cleared within
16 24 hours, correct?

17 A. Yes.

18 Q. And just so we're clear, what this refers to
19 is customers who do not have dial tone; isn't that
20 right?

21 A. Yes, I believe so.

22 Q. And so would you agree that according to this
23 report for July 2004, September 2004, November 2004, and
24 February 2005, that for each of these months there are
25 over 100 instances where Verizon was not able to restore

0233

1 service within 48 hours as required by Commission rules?

2 A. Yes, I see that.

3 Q. And are you aware of any initiatives or
4 controls that the merged companies plan to put in place
5 to ensure that this number gets as close to zero as
6 possible so that it's in compliance with Commission
7 rules?

8 A. I don't know of any company that can
9 necessarily achieve 100% in an objective such as this.
10 I'm not aware of specific plans by the company to reach
11 perfection here.

12 Q. Are you aware of any plans to improve
13 performance in this area post merger?

14 A. I'm not aware of such plans, although as I
15 mentioned before, the post merger planning process has
16 just begun, I don't know if it will produce results here
17 or not.

18 Q. All right.

19 I would like to ask you now to take a look at
20 both our illustrative exhibit and this Exhibit 38 that
21 we're in. We distributed earlier a 1 page document
22 entitled Illustrative Exhibit Verizon Missed
23 Appointments for Installation of Basic Service, do you
24 have that?

25 A. Yes, I do.

0234

1 MR. FFITCH: And I apologize, Your Honor, I
2 neglected to note the exhibit number on this exhibit, I
3 believe it's in the 500 series, or it may be Exhibit 48,
4 I don't know.

5 JUDGE WALLIS: I believe that's Exhibit 48.

6 MR. FFITCH: Thank you.

7 BY MR. FFITCH:

8 Q. Now you'll see on the left-hand side,
9 Dr. Danner, that this refers to the source of the data
10 as Exhibit 38 that we were just looking at, correct?

11 A. I see that, yes.

12 Q. And I would like you to look at columns E and
13 F in this table, which show the number of Verizon's
14 missed appointments per month, and that's column E, and
15 then the percentage of missed appointments per month in
16 column F, and this is for the 12 month period from July
17 2004 to June 2005.

18 A. I see those.

19 Q. And as you can see from this illustrative
20 exhibit, Verizon has missed an average of 22% of
21 appointments for installation of basic service during
22 this 12 month period. Would you accept that that's an
23 accurate reflection of the data here?

24 A. My understanding is that it is.

25 Q. And are you aware of any initiatives or

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1 controls that the merged companies will put in place to
2 ensure that the number of missed appointments per month
3 is reduced below this level?

4 A. I'm not. As I indicated before, my
5 understanding and view is that these service quality
6 issues are unrelated to the merger, but I don't have any
7 specific information of the kind you're asking.

8 Q. All right. And when Verizon misses a four
9 hour appointment to install basic service or for a
10 repair, does the company compensate that customer?

11 A. I'm not aware that that's done.

12 Q. You're not aware of the company's policy in
13 that area?

14 A. No, I'm not.

15 Q. Is there a Verizon witness in this case who
16 has the answer to that information?

17 A. You know, I would have to ask counsel about
18 this, I'm not sure.

19 JUDGE WALLIS: Mr. Carrathers.

20 MR. CARRATHERS: Your Honor, we can certainly
21 file a response to a record request which refers to our
22 tariff and our policy in that regard.

23 JUDGE WALLIS: Mr. Ffitch, would that be
24 satisfactory?

25 MR. FFITCH: That would be satisfactory, Your

0236

1 Honor. And if perhaps I could state the question for
2 the company's benefit, and the questions that I had for
3 Dr. Danner were does the company compensate the customer
4 for missing the appointment. And there's no mystery
5 here, it's my understanding that there is a compensation
6 mechanism, but I would like to get that in the record.
7 And then the second question related is are the credits
8 applied to the customer's account automatically, or does
9 the customer need to contact the company and complain in
10 order to receive the credit.

11 JUDGE WALLIS: Did you also wish to have the
12 amount of any compensation?

13 MR. FFITCH: Yes, Your Honor, thank you, and
14 that would be for both residential and business
15 customers.

16 JUDGE WALLIS: That will be Record
17 Requisition Number 3.

18 Let's be off the record for just a moment.

19 (Discussion off the record.)

20 BY MR. FFITCH:

21 Q. Dr. Danner, could you please turn to page 4
22 of Exhibit 38.

23 A. I have that.

24 Q. I realize that you have just been looking at
25 this exhibit for a few minutes this morning, let me ask

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1 you two questions subject to check. Would you accept
2 subject to check that Verizon failed to meet the
3 Commission's standards of installing 90% of orders for
4 basic service within 5 days or by a later date if
5 requested by the customer for 6 months from July through
6 December of 2004?

7 A. Are you asking me to accept what's on the
8 page here?

9 Q. I'm asking you to accept that Exhibit 38
10 reflects that data subject to check. I believe that is
11 summarized on this page.

12 A. So you're looking at installed basic service
13 percentage installation commitments met at the center of
14 the page?

15 Q. Correct.

16 A. And so you're asking me to compare the 90%
17 objective to 89.33, 87.38, and so on?

18 Q. Correct.

19 A. Well, I see 6 figures that are just below
20 90%, yes.

21 Q. Thank you. And would you also accept subject
22 to check that Verizon failed the Commission's standard
23 of installing 100% of orders for basic service within
24 180 days at page 5? Let me ask you to turn to page 5
25 first, that would be a more fair way to ask the

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1 question.

2 A. I have page 5.

3 JUDGE WALLIS: Let me interject for the
4 witness's benefit that the purpose of a question that
5 asks the witness to take something subject to check in
6 the instance of a mere mechanical calculation is to
7 avoid the need for you to perform any calculations on
8 the stand. And if you believe that it appears to be
9 within a range that is acceptable to you, you can go
10 back and check it within 10 days I believe after
11 delivery of the transcript.

12 THE WITNESS: Thank you, Your Honor, that's
13 helpful, appreciate that.

14 JUDGE WALLIS: Could you repeat the question,
15 Mr. ffitch.

16 MR. FFITCH: I can, Your Honor, and I think
17 it's not necessary for it to be subject to check.

18 BY MR. FFITCH:

19 Q. As I look at the data on this page, and we
20 were referring to page 5 of Exhibit 38, and we're
21 looking down at the bottom section which is installation
22 of basic service not completed in 180 days and looking
23 over at December 2004 column.

24 A. Yes, Mr. ffitch, I see that 99.96% were
25 completed within the allowed interval, and therefore I

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1 guess 0.04% were not, and by a literal interpretation
2 having that 0.04% does not make 100%, I see that.

3 Q. And, in fact, we can see that that represents
4 33 orders, does it not, immediately above the
5 percentage?

6 A. Yes, we can see that.

7 Q. That's 33 orders for basic service that were
8 not completed within 180 days just to be clear, correct?

9 A. Yes.

10 Q. Please turn to Exhibit 37, Public Counsel
11 Data Request Number 133,

12 A. I see that.

13 Q. Now I think you have already testified one or
14 two times about the fact that post transaction planning
15 is just beginning. This asks whether MCI will continue
16 to operate under the MCI brand name in Washington
17 whether in Qwest, Verizon, or any other service area in
18 the state, correct?

19 A. It does ask that, yes.

20 Q. And the answer is the companies have not yet
21 engaged in post transaction operational planning and so
22 it is unknown; isn't that correct?

23 A. It says that, yes.

24 Q. And we haven't had a supplemental response to
25 this data request to your knowledge, have we?

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1 A. I'm not aware of one.

2 Q. So as far as you know, this is still an
3 accurate response?

4 A. I believe so, yes.

5 Q. Dr. Danner, can you tell me what you would
6 expect this Commission to rely on in terms of the
7 commitments to provide effective service quality and
8 maintain sufficient network investment in light of these
9 statements by both companies that no post transaction
10 planning has begun?

11 A. Well, Mr. ffitch, I think the first thing to
12 recognize is that no post transaction planning is
13 necessary to continue to operate the two companies as
14 they have been operated up until now. The post
15 transaction planning is principally aimed at obtaining
16 the benefits of the merger transaction that we have
17 described in various ways. But as of the day after the
18 merger is concluded, the same people come to work at
19 Verizon and provide the same service subject to the same
20 rules that the Commission enforces and provide a level
21 of service quality that, as you know, Ms. Roth and the
22 Staff have characterized as fine. I don't know if that
23 was her exact phrase, but she spoke favorably of it in
24 her testimony. So it's not necessary for this planning
25 to have been completed for the companies to continue to

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1 operate as they will. Now I do expect that there will
2 be plans put into place over time to effectuate the
3 benefits of the merger, but the implication of your
4 question is that there is some operational void there,
5 and I don't believe that is the case.

6 Q. All right.

7 Please turn to Exhibit 47, and that's Public
8 Counsel Data Request Number 56, and essentially that
9 asks whether or asks for information about staffing
10 levels after the merger, correct?

11 A. Yes.

12 Q. And the response indicates there will be an
13 overall national work force reduction of 7,000
14 nationwide. The response does not provide any
15 information to us about any work force reductions in
16 Washington state; is that correct?

17 A. That's correct, it doesn't have any of that
18 detail here.

19 Q. And it also states again that this is because
20 the companies have not engaged in any post transaction
21 planning; is that correct?

22 A. Yes, it says that.

23 Q. So again, other than the general assertions
24 that we have in the petition and your previous response,
25 general assertions of that nature, there's no

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1 information available to this Commission about how to
2 evaluate the impact of the merger in Washington state on
3 work force levels, correct?

4 A. Well, there is a little information. We know
5 that the IBEW to which many or all of Verizon Northwest
6 employees belong, I don't know what the membership is
7 exactly, has endorsed the merger as an appropriate means
8 to try to preserve jobs and to help the company compete
9 in the new environment, so labor representatives
10 certainly have spoken favorably of the merger.

11 We know that the Commission maintains a
12 comprehensive set of service quality rules and oversight
13 that it's done for many years and I imagine has
14 perfected to some degree over that time that will
15 continue to apply to the company. So in regard to
16 service as we were discussing a moment ago, I think the
17 Commission can be fully confident that service levels
18 will be maintained. And if they aren't, as is the case
19 today, the Commission has avenues to take action or
20 remedies if there is a problem. So I wouldn't share
21 your lack of confidence in that regard, Mr. ffitich.

22 Q. The IBEW letter you referred to, are you
23 aware whether or not the IBEW is privy to any post
24 transaction planning by Verizon/MCI for operations in
25 Washington state?

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1 A. I don't imagine that they are at this point.

2 Q. We focused this morning, Dr. Danner, about
3 broadband deployment in Washington state, both DSL and
4 fiber to the premises, am I correct that any DSL
5 provided by Verizon has to use the local loop, that's
6 right, isn't it?

7 A. Yes, I believe it would.

8 Q. And the distribution portion of the loop
9 that's being used is copper in most cases; is that
10 right?

11 A. For DSL that would generally be the case,
12 yes.

13 Q. And for feeder plant in the company's
14 network, some of that might be fiber, some of it copper;
15 is that correct?

16 A. I believe so. I mean I haven't done a
17 specific review of it here, but I expect so.

18 Q. And that loop is used for a variety of
19 services including just plain voice service, correct?

20 A. Yes.

21 Q. And you talked about fiber to the premises,
22 is it correct to characterize that as a, oh, a
23 substitution if you will of a new material into the loop
24 facility in place of the loop, excuse me, in place of
25 the copper connection to the premises?

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1 A. Yes, as far as Verizon is concerned, that's
2 right.

3 Q. And the distribution feeder facilities in the
4 loop are part of the company's rate base, are they not?

5 A. Yes.

6 Q. Can I ask you to turn to your rebuttal
7 testimony, please, at page 22, that's Exhibit 23.

8 A. Page 23, I have that.

9 Q. And actually I was going to ask you to turn
10 to page 22, and there you argue generally that
11 competition will ensure that consumers benefit from the
12 merger; isn't that correct?

13 A. Yes.

14 Q. And at line 12 you suggest that this is the
15 case with respect to enterprise and long distance
16 service; is that a fair paraphrase?

17 A. Yes, in one respect, yes.

18 Q. Is this also the case with residential local
19 service within Verizon's service area?

20 A. Do you mean residential customers or a
21 particular service offering itself?

22 Q. Well, your point here is that the Commission
23 needs to take no specific action to ensure that economic
24 benefits pass to any of Verizon's customers in
25 Washington state because competitive forces will take

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1 care of that; isn't that correct?

2 A. Yes.

3 Q. And so you then say at line 12, you're
4 referring to enterprise and long distance lines of
5 business, I'm asking you if you make that assertion with
6 regard to benefits being generated for residential local
7 service or for residential local service customers?

8 A. Well, I would focus on the latter, on the
9 customer, and there's a variety of ways that they will
10 benefit that I have talked about in the testimony. They
11 benefit indirectly from benefits to the enterprise
12 market because residential customers buy services, have
13 jobs, and invest in companies that do business in
14 Washington. The usual concerns that one expresses about
15 the health of the economy relate to that. They will
16 benefit from some of the enhancement of, well, enhanced
17 broadband we discussed this morning. The deployment
18 plans that we reviewed this morning will address
19 residential customers.

20 They may or may not benefit directly in the
21 price of their basic local monthly service, which in
22 many cases is priced below its economic cost. On the
23 other hand, I would point out that through the agreement
24 that the company has reached with the Staff and some
25 other parties, we do have an additional two year stay

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1 out in terms of a potential rate case, and insofar as
2 basic residential service prices could be affected by a
3 rate case to recover a revenue deficiency, that
4 settlement agreement would provide a benefit in that
5 regard.

6 Q. Dr. Danner, you indicated that residential
7 service in Washington state for Verizon is priced below
8 cost; isn't that what you just testified to?

9 A. That is often the case. I haven't studied it
10 specifically for this proceeding, but my general
11 understanding is that it is often or nearly always
12 priced below cost.

13 Q. Are you aware of any decision of this
14 Commission that that is the case for Verizon's
15 residential service or any other residential service of
16 a regulated phone company in this state?

17 A. I'm not sure, I don't recall specific
18 decisions that have addressed that.

19 Q. Then you're not aware of the Commission's
20 decision in the U S West 95 rate case which specifically
21 rejected that theory for U S West's local service,
22 you're not aware of that decision?

23 A. Is that a loop allocation decision?

24 Q. Essentially.

25 A. Oh, well, I guess I would have to say this

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1 respectfully, that the Commission found that it erred.
2 But in any case, I can't point to a decision of this
3 Commission that says that tariff of basic service is
4 priced below cost.

5 Q. All right. And you have just cited as one of
6 the ways that customers can benefit from, residential
7 customers would benefit, would obtain benefits, economic
8 benefits from this merger as the two year stay out
9 period that was agreed to and is contained in the
10 settlement, did you not?

11 A. Yes.

12 Q. Now that's essentially in the nature of a
13 regulatory action, is it not, that's not a result of
14 competitive forces?

15 A. Well, that particular term in the stipulation
16 does relate to regulation, yes.

17 Q. And did these competitive forces that you're
18 referring to prevent Verizon from filing for a rate
19 increase in excess of \$100 Million in April of last year
20 in Washington state?

21 A. The company did file for a rate increase in
22 Washington state notwithstanding competition, yes, and I
23 believe a discussion of competition occurred in that
24 docket.

25 Q. Can you please turn to page 25 of your

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1 rebuttal, and starting at page 25 you argue, do you not,
2 that it's inappropriate now to adjust for synergies that
3 will not occur for several years; is that a fair summary
4 of this line of discussion that starts here?

5 A. Yes, I highlight the inconsistency or
6 contradiction between that position and the Commission's
7 general rate making procedures.

8 Q. All right.

9 Could you turn to Exhibit 25, please, and do
10 you have that order in front of you?

11 A. Yes, I do.

12 Q. And would you accept that that is the
13 Commission's order approving the settlement and
14 approving the merger of PacifiCorp and Scottish Power in
15 this state?

16 A. Yes.

17 Q. And could you please turn to page 5 of that
18 order, and take a look at the first two paragraphs there
19 in which the order discusses the representations of the
20 merging parties about the benefits of the merger.

21 A. I see those paragraphs.

22 Q. And would you just look at those for a moment
23 and tell me whether these paragraphs describe the same
24 sort of synergy benefits in general that Verizon and MCI
25 claim will result from this merger, understanding that

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1 we're dealing with energy, not telecom, in this
2 particular order?

3 A. You know, I don't know that I can accept that
4 proposition. I haven't studied this merger, and you are
5 quite right that energy and telecom are considerably
6 different industries. I don't know if there's another
7 way you can ask your question, but I don't think I can
8 just accept that broad statement.

9 Q. All right. Let's turn to page 8 of the
10 exhibit and the order. At page 8 begins a summary of
11 the main stipulation, correct?

12 A. Yes, I see that.

13 Q. And if you see in the first paragraph there,
14 there's a reference to 46 terms and conditions that were
15 imposed on this merger?

16 A. I see 46 terms and conditions, yes.

17 Q. Do you know if Scottish Power and PacifiCorp
18 were in competition with each other in Washington state
19 prior to this merger?

20 A. I don't really know anything about the
21 Scottish company, Scottish Power.

22 Q. Okay. Let's turn to the next page, page 9,
23 and if we look down in the middle of the page, there's a
24 paragraph that starts paragraph 4, and that states that
25 the main stipulation provides an annual merger credit of

0250

1 \$3 Million per year for four years, correct?

2 A. Yes, it says that.

3 Q. And then the next paragraph states that
4 paragraph 5 promises that PacifiCorp will fund the
5 estimated \$55 Million in network expenditures required
6 to implement the service standards commitments, correct?

7 A. It says that, yes.

8 Q. So in this order we have financial
9 concessions from the merging companies that begin
10 immediately following the merger, don't we?

11 A. We do, and I read this order to say that if
12 you are a company proposing a merger and you wish to
13 settle with other parties who have opposing positions,
14 you may need to make certain concessions, and that's --
15 I read this order that's what happened.

16 Q. Isn't it likely that these immediate
17 concessions precede the actual realization of merger
18 synergies in the PacifiCorp case?

19 MR. CARRATHERS: Objection, Your Honor, he's
20 asking for speculation on a case that our witness has
21 already testified he's not familiar with that particular
22 transaction and the specifics of the company.

23 JUDGE WALLIS: Mr. ffitich.

24 MR. FFITCH: Your Honor, the order speaks for
25 itself, and I can move along.

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1 JUDGE WALLIS: Very well.

2 BY MR. FFITCH:

3 Q. Exhibit 26, please, Dr. Danner.

4 A. I have that.

5 Q. And Exhibit 26 is a copy of this Commission's
6 order approving the GTE/Bell Atlantic merger in
7 Washington state, correct?

8 A. Yes, it is.

9 Q. And could you please turn to page 21 of this
10 order. I guess my first question is, to your knowledge,
11 did Bell Atlantic conduct any significant competitive
12 activities of any type in Washington state prior to this
13 merger?

14 A. No, they did not.

15 Q. Now starting at page 21, we have a summary of
16 the settlement terms in this case, correct?

17 A. Yes, I see that.

18 Q. And if you read the second of the settlement
19 terms right at the bottom of the page:

20 GTE Northwest agrees to reduce rates for
21 regulated services in Washington in 4
22 phases to achieve a \$30 Million net
23 annual revenue reduction by July 1st,
24 2001.

25 Correct?

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1 A. Yes, and that is identified I believe as the
2 settlement of the three separate dockets that this
3 decision resolved.

4 Q. Correct.

5 A. One of which was the merger, correct.

6 Q. And those are implemented within a two year
7 period following the consummation of the merger,
8 correct, they're immediate, essentially immediate
9 revenue reductions, correct?

10 A. Well, the schedule you have here I wouldn't
11 say they're quite immediate, they seem to be phased in
12 over a period of time, but they do start relatively
13 soon, yes.

14 Q. All right. Well, again, we can do the
15 specific calendaring from reading the order, but
16 relatively soon, correct?

17 A. That's what it says, yes.

18 Q. And do you believe that all of the synergies
19 from merging GTE into Bell Atlantic were realized during
20 the first two years of the merger prior to the end of
21 the \$30 Million rate reduction, revenue reduction in the
22 settlement?

23 A. I think there's an assumption behind your
24 question I would just like to highlight.

25 Q. Well, could you answer my question first, and

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1 then go ahead and --

2 A. By all means. I think it took longer than
3 two years to achieve all the synergies in that
4 transaction.

5 Q. All right.

6 A. I guess the assumption I didn't want to
7 accept implicitly was that these rate adjustments were
8 related only to the merger in this case. As you saw in
9 my testimony and I highlighted that the settlement of
10 the three separate dockets was another important factor
11 in this case.

12 Q. And is it your understanding that a general
13 rate case was underway for GTE at the time of the merger
14 or shortly prior to the merger?

15 A. In this instance I believe it was
16 characterized as an informal earnings review.

17 Q. All right. So it was not a general rate
18 case?

19 A. No, it was not. It was characterized as an
20 informal earnings review in the decision.

21 Q. So do you know whether or not there were any
22 formal proceedings before the Commission in that
23 informal rate review involving testimony by the company
24 or any other party regarding the company's rates or rate
25 of return?

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1 A. I don't know. I know it was formal enough to
2 lead to this order, but I don't know what the process
3 was prior to it.

4 Q. Can you please turn to Exhibit 27, and
5 Exhibit 27 is the Commission's order approving the
6 settlement of U S West and Qwest Communications,
7 correct?

8 A. Yes.

9 Q. Are you aware of any competition beyond
10 deminimus competition between U S West and Qwest
11 Communications International prior to this merger in
12 Washington state?

13 A. I don't know. I want to -- I'm not sure. I
14 mean I know Qwest had a broadband network and was a long
15 distance competitor, and so they may well have been
16 competing against U S West, I don't know.

17 Q. Would they have been competing against U S
18 West for any intrastate local services?

19 MR. CARRATHERS: Your Honor, I would object,
20 this is beyond the scope of Dr. Danner's direct and
21 rebuttal testimony, and as indicated by Mr. ffitich with
22 his previous orders, the order speaks for itself,
23 describes the transaction, and, you know, we can
24 certainly make whatever arguments we want on brief as to
25 its relevance.

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1 JUDGE WALLIS: Mr. ffitch.

2 MR. FFITCH: Your Honor, I can move on.

3 JUDGE WALLIS: Very well.

4 MR. FFITCH: I have one or two other
5 questions on this order, and then I will be done.

6 BY MR. FFITCH:

7 Q. Can you turn, please, to page 9 of the order,
8 and there it begins a summary of the settlement terms of
9 the order, correct?

10 A. I see that, yes.

11 Q. And then there's a number of items listed
12 beginning on the next page, and if we look at items 4,
13 5, and 6 on page 10, we see that there are monetary
14 penalties in effect connected with various service
15 quality commitments; is that a fair summary?

16 A. Yes, it seems the settlement did include
17 those terms here, yes.

18 Q. And if we turn to the next page, page 11, we
19 see at paragraph 31 at the bottom of the page, we see
20 that Qwest has undertaken some significant commitments
21 to maintain investment levels at specific dollar amounts
22 in Washington state, correct?

23 A. Well, I see investment levels. Are you
24 characterizing them significant, perhaps they are, I
25 don't know, I haven't studied their investments, so I

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1 don't know how to characterize them, but I see the
2 numbers, yes.

3 Q. All right, well, I will withdraw the
4 characterization, simply meaning to summarize that the
5 company committed to maintain historic investment levels
6 in Washington state for three calendar years after the
7 merger closing date, correct?

8 A. It says that, yes.

9 Q. And then on page 12 at the top of the page,
10 the company committed to spending \$1 Million per year
11 for three years to extend local service to certain
12 areas. And again the same question regarding the timing
13 of the merger savings versus these benefits, do you have
14 any indication or any reason to believe that the
15 synergies or merger savings from the U.S. Qwest merger
16 were realized entirely within the first two to three
17 years of this merger?

18 MR. CARRATHERS: I will make the same
19 objection, Your Honor, as I did before, (a) speculative,
20 and (b) whatever the facts are are spoken for in the
21 document.

22 JUDGE WALLIS: Mr. ffitch.

23 MR. FFITCH: I will withdraw the question,
24 Your Honor.

25 MR. FFITCH: May I have one moment, Your

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1 Honor, just to check my notes here.

2 JUDGE WALLIS: Yes.

3 BY MR. FFITCH:

4 Q. Can you please turn to page 26 of your
5 rebuttal, Dr. Danner, and the question there beginning
6 at line 8 essentially leads you to a statement of
7 disagreement with Public Counsel witness Charles King,
8 and essentially you're disagreeing that the GTE/Bell
9 Atlantic merger decision or settlement was a precedent
10 for imposing financial and rate related conditions on
11 the merging companies; is that correct?

12 A. Yes.

13 Q. And am I correct that part of the reason for
14 your disagreement is that that merger occurred in the
15 context of a contested rate case of some type?

16 A. That's part of the disagreement. The other
17 part is the fact that it's a settlement, the question
18 asks about imposing conditions as opposed to conditions
19 being reached through a settlement.

20 Q. Well, in your opinion, Dr. Danner, would any
21 of these companies have agreed to settle these cases and
22 accept conditions if they did not believe that the
23 Commission could potentially impose conditions on its
24 approval of their merger petitions?

25 A. You know, companies are often willing to pay

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1 a price to eliminate a risk of uncertainty or litigation
2 in any number of litigated contexts even where they
3 believe that they would prevail and they should prevail
4 without paying the cost on the merits if the case is
5 fully litigated. So there's other -- the other concern
6 is if a court or commission should potentially accept an
7 argument that exceeds its authority or goes to a remedy
8 that's inappropriate, then you have the problem of
9 appeal and related delay and uncertainty. So it doesn't
10 surprise me at all that a party might make a financial
11 concession of some type in a situation where by all
12 rights and by their full understanding of the case on
13 the merits they shouldn't have to do it. I think it's
14 an every day practice in courts across the country, and
15 we certainly see it in commission proceedings as well.
16 So I would disagree with your premise.

17 Q. So you disagree that one consideration for a
18 company in this situation is that the Commission might
19 order one or another type of condition with regard to
20 service quality or pass through of merger benefits or
21 protection of competition, you're disagreeing that
22 that's a consideration that companies take into account
23 when entering into these settlements?

24 A. Well, no, now you have changed it a little
25 bit. Before you asked me if I thought so because the

0259

1 companies expected this might occur. Certainly it's a
2 consideration that they think about what a commission
3 might do, and I think I referred to that in my previous
4 answer in talking about the potential for some sort of a
5 mistake or an error or a, you know, an order that went
6 too far in some regard. But again, I don't take these
7 settlements necessarily, and I don't know what was in
8 the minds of the corporate executives that entered in
9 the various settlements we have discussed, I don't take
10 those as evidence necessarily that they are conceding
11 that those particular issues have merit. I take it as a
12 settlement entered into to resolve an important
13 litigated matter, and the other parties wanted some
14 things, and so they had to give some.

15 Q. But you're not suggesting that it would in
16 every case be a mistake or an error if the Commission
17 imposed a condition on its approval of a proposed
18 merger, would you, are you, you're not suggesting that?

19 A. In every case, there are conditions that
20 commissions can approve and impose on mergers that are
21 not erroneous or mistaken I would expect.

22 Q. All right. Now you mentioned the fact that
23 it's significant to you that a rate review of some type,
24 and we have seen that it's referred to as an informal
25 rate review, was a factor for you in questioning the use

0260

1 of the GTE/Bell Atlantic merger as a precedent, correct?

2 A. Well, questioning it as a precedent for the
3 manner in which you suggest using it, yes.

4 Q. All right. And again we have heard that
5 you're actually not -- you don't have any specific
6 knowledge of what type of proceedings were occurring at
7 that time and whether or not there was, in fact, any
8 formal rate review before the Commission itself?

9 A. Well, as I said before, it was formal enough
10 to appear in the order and for the order to report that
11 it was concluding the proceeding, and to me that makes
12 it significant.

13 Q. And if we look at page 1 of Exhibit 26, which
14 is the GTE/Bell Atlantic order, we see that the docket
15 is referred to as an informal Staff investigation; isn't
16 that correct?

17 MR. CARRATHERS: Objection, Your Honor, this
18 question has been asked and answered several times.

19 JUDGE WALLIS: Mr. ffitch, any response?

20 MR. FFITCH: Well, Your Honor, we can read
21 the -- we can all read the caption in the order, so I
22 will move on to my next question.

23 JUDGE WALLIS: Very well. I am going to
24 sustain the objection and a prior objection that has
25 been made in that the witness has indicated little or no

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1 knowledge about the circumstances that led to these
2 orders. As you have pointed out, the language in those
3 orders speaks for themselves, and the questions are
4 getting repetitive as to what the orders say and what
5 the witness despite his lack of knowledge thinks about
6 them. So I would ask you to acknowledge that the
7 objections are sustained as you proceed with your
8 questioning.

9 MR. FFITCH: Thank you, Your Honor, I will do
10 that.

11 BY MR. FFITCH:

12 Q. It's true, isn't it, Dr. Danner, that the
13 Commission has just completed a review, a detailed
14 review of Verizon's general rates in this state, has it
15 not?

16 A. Well, yes, I believe it's accurate to call it
17 a rate case, yes.

18 Q. And it was, in fact, a fully filed general
19 rate case which ultimately resulted in a settlement,
20 correct?

21 A. Yes.

22 Q. And that order approved rates that Verizon
23 found acceptable as indicated by its agreement?

24 A. Yes, Verizon accepted them.

25 Q. And to your knowledge, did that order

0262

1 consider any synergies that might result from the merger
2 of Verizon with MCI?

3 A. No, as my testimony indicated, it didn't, and
4 it couldn't have because it would have been
5 inappropriate in terms of the Commission's rate making
6 practices to do so.

7 Q. Do you dispute that the settlement
8 specifically preserved this Commission's right to
9 address rate issues coming out of this merger?

10 A. It says what it says, I don't dispute its
11 language.

12 Q. Can you please turn to page 28 of Exhibit 23,
13 and on that page at lines -- essentially you're arguing
14 here that Verizon is not earning its authorized rate of
15 return, correct?

16 A. Well, I'm actually reporting a fact, correct.

17 Q. And from whom did you receive this
18 information?

19 A. From the company, it's a filing that's made
20 with the Commission reporting its earning.

21 Q. And were you a participant in the recent rate
22 case?

23 A. Yes.

24 Q. Was there unanimity among the parties as to
25 the rate of return that Verizon was actually earning

0263

1 during the test year?

2 A. There were a number of adjustments that a lot
3 of the parties proposed for rate making purposes to say
4 that the earnings should be considered to be different.
5 As far as actual booked earnings, I'm not sure I know
6 the answer to that. I'm not an accountant, and I'm not
7 sure of what the standards used to say that.

8 Q. In fact, didn't the Commission Staff argue
9 and present testimony to the effect that Verizon was
10 overearning by \$25 Million?

11 A. I believe they said something of the sort.

12 Q. Please turn to page 29 of your testimony, at
13 line 9 you state that Mr. King seeks immediate rate
14 reductions based on projections of a favorable trend; is
15 that your testimony?

16 A. That is what he says, yes.

17 Q. Isn't it accurate in fact that Mr. King
18 represents, excuse me, recommends a reduction in the
19 level of increase and not a rate reduction; isn't that
20 correct?

21 A. Relative to the rates that would otherwise
22 obtain, he seeks to have them reduced.

23 Q. All right, well, I guess we won't fight a
24 semantic battle, he's not recommending a reduction of
25 rates over current levels, is he?

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1 A. I'm not sure of that in the sense that you're
2 suggesting. I mean he -- there is a trend of rates that
3 has been agreed to in the rate case settlement, he would
4 like to see the rates reduced below that, to me that's a
5 rate reduction.

6 Q. Well, we can go to Mr. King's exhibits if you
7 would like, but isn't it correct that there is a
8 currently under -- I don't think we need to do that, I
9 think we can probably just do this based on our common
10 understanding. Isn't it correct that there is a rate
11 increase currently scheduled for July 1st, 2007?

12 A. I believe that's correct.

13 Q. All right. And that will increase rates over
14 where they are today for Verizon customers, correct?

15 A. For those services, yes.

16 Q. All right. And Mr. King's recommendation is,
17 one of his recommendations is that that increase be
18 smaller but not be zero, correct?

19 A. Well, and that's what I have characterized as
20 a reduction, but you're right, I mean it can become
21 semantics.

22 Q. All right. Can you turn to page 33 of your
23 rebuttal, please, and at line 17 there you object that
24 Mr. King recommends, and you use italics, that the
25 Commission appropriate the entirety of what he considers

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1 to be merger synergies that he allocates to Verizon
2 Northwest regulated operations.

3 A. Yes.

4 Q. Okay, that's not accurate, is it?

5 A. I believe it is from looking at the exhibit.

6 Q. Can I ask your counsel to give you a copy of
7 Mr. King's Exhibit 8-HC.

8 MR. CARRATHERS: Is that 7 or 8-HC?

9 MR. FFITCH: 8-HC.

10 MS. ENDEJAN: That's his direct testimony?

11 JUDGE WALLIS: That is marked as Exhibit
12 418-HC in this docket, Exhibit 418.

13 A. And the reference in my testimony is Exhibit
14 7-HC.

15 BY MR. FFITCH:

16 Q. All right, well, let's first by way of
17 getting this cleared up let's look at Exhibit 8-HC, and
18 then you can take us to 7. And these are highly
19 confidential, I believe they're on blue paper, so let's
20 not talk about the numbers on the record. Far bottom
21 right-hand corner of Exhibit 8 reflects that 8% of
22 synergies number, does it not, under the column rate
23 payer share present value?

24 A. Yes, it does.

25 Q. And that is less than 100%, is it not?

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1 A. But this is also referring, if I'm not
2 mistaken, to Mr. King's total system synergies argument.

3 Q. All right, well, I'm certainly happy for you
4 to explain your testimony, but in this recommendation,
5 this is not shown on 8-C, this is not a recommendation
6 that the entirety of these synergies be allocated to
7 rate payers, correct?

8 A. Well, there are a couple of different
9 calculations of synergies. In this case I would have to
10 say Mr. Smith is the one who can collaborate on this
11 particular one I think since he has been through the
12 numbers, but I think we're mixing apples and oranges in
13 terms of which synergy calculation. But yes, I would
14 agree that with regard to this page 8-C, the number
15 that's shown there is less than 100%.

16 Q. All right. And so I believe, I mean I will
17 allow you to explain, I believe what you're saying is
18 you're referring to the other calculation shown on
19 Exhibit 7; is that right?

20 A. Right, which is the reference in my
21 testimony.

22 JUDGE WALLIS: For the record that would be
23 Exhibit 417-HC.

24 A. And my understanding is that the totals there
25 are to be taken entirely by Mr. King's recommendation,

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1 but I agree with you that the second -- the other look
2 at it gives a different result.

3 Q. All right. Could you please turn to Exhibit
4 45. That's the response to Public Counsel Data Request
5 Number 226, do you have that?

6 A. Yes, I have it.

7 Q. And there the merging parties were asked
8 whether they have complied with the cited WAC regarding
9 notice to customers affected by the merger, they were
10 asked to provide a copy and a description of how it was
11 provided, and the answer in summary indicates that no
12 notice has been provided and the company's belief that
13 none was legally required; is that right?

14 A. Yes, that's what it says.

15 Q. And essentially the argument is that neither
16 of the applicants in this case are public service
17 companies, right? That's paraphrasing a sentence in the
18 middle of the answer there.

19 A. Yes, it says that.

20 Q. Now are you aware that at the beginning of
21 the hearing today that Verizon counsel has provided
22 Public Counsel with a copy of a draft notice that would
23 -- a draft notice to customers in this matter?

24 A. I believe a notice was provided, yes.

25 Q. And are you able to testify regarding the

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1 company's plans to implement providing this notice to
2 its customers?

3 A. Yes, my understanding is that the company has
4 provided this notice for the review of Staff and that
5 Staff has found it acceptable and that the company plans
6 to run it in a number of newspapers of general
7 circulation that operate within Verizon's service
8 territory in Washington.

9 Q. Do you know how many newspapers?

10 A. The number I heard was 13, that's correct I
11 think.

12 Q. And is it your understanding that there is no
13 intention to provide this notice to customers in their
14 -- in an individual way, for example through a so-called
15 bill stuffer?

16 A. My understanding is that this would be a
17 newspaper notice.

18 Q. Now the notice offers the or indicates to
19 customers that they can comment and the comments must be
20 submitted no later than December 15th, 2005, correct?

21 A. Yes, I believe it says that.

22 Q. Do you know why the company has come forward
23 with this notice given the response in Exhibit 45?

24 A. I think the company in an abundance of
25 caution decided that it was a good idea to provide this

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1 notice. It consulted with the Staff, which thought it
2 was an appropriate thing to do, and so they're sending
3 it out. I think the company's position as I understand
4 it as a legal matter is still that the notice is not
5 required in this transaction, so the company regards
6 this as kind of a good faith effort.

7 Q. Do you know where this notice is going to be
8 placed in the newspapers that you mentioned?

9 A. I don't have details of how or exactly where
10 it will be placed in the paper.

11 Q. So, for example, you don't know whether it's
12 going to be placed in the legal notices section?

13 A. I don't know.

14 Q. Do you know if it's going to include any
15 graphics or color or specific type face or type size
16 specifications to attract attention?

17 A. I don't, I don't know.

18 Q. Can we turn please to Exhibit 46, and that's
19 a response to Public Counsel Data Request Number 54, and
20 there Verizon was asked to provide any plans for
21 insulating rate payers from merger costs or cost
22 increases that might occur as a result of the merger,
23 and the answer given was that the agreement doesn't call
24 for any changes in rates, terms, or conditions and that
25 if any occur they will be subject to regulatory

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1 approvals that may be required, correct?

2 A. Yes, that's what it says.

3 Q. So in other words, there is no plan to
4 insulate rate payers from merger costs or cost increases
5 that may occur as a result of the merger?

6 A. Well, I don't think one is required. Verizon
7 is a cost of service rate regulated company in this
8 state, it's operating under an existing two year stay
9 out for any general rate case proceeding, the settlement
10 agreement would provide for two more years of stay out,
11 I'm not sure that there's any mechanism by which these
12 costs would come back to customers in any event, and
13 certainly the Commission would have to approve any
14 increase to basic rates. And as I say, there's four
15 years of a stay out with the acceptance of the
16 settlement. Additionally, the costs to achieve the
17 merger tend to occur in the early years, and so by the
18 time the stay out provision will have expired, those
19 costs will have already been incurred and wouldn't be
20 suited to a general rate case proceeding in any event.
21 So I don't think there's a plan that's required.

22 Q. So will Verizon commit to insulate customers
23 from any costs or cost increases that result from this
24 merger?

25 A. Well, Verizon has already proposed in its

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1 settlement, as I said, an extra two years of stay out
2 from a general rate case proceeding, and I think that
3 amounts to an appropriate means for doing that.

4 Q. Will Verizon commit to not seek any merger
5 related costs or cost increases after the expiration of
6 the two year stay out?

7 A. Pardon me, do you mean the four year stay out
8 if the settlement is approved or the two year stay out?
9 I'm confused between the different terms.

10 Q. The settlement agreement only contains a two
11 year stay out.

12 A. Right, which would --

13 Q. In this docket.

14 A. Which would go on top of the existing stay
15 out that was already ordered with the general rate case
16 proceeding settlement, so that's why I was using four.

17 Q. All right, well, here's my question, after I
18 guess we're talking about July 1st, 2009, will Verizon
19 commit to not seek to recover from rate payers any
20 merger related costs or cost increases?

21 A. I'm not in a -- I don't think Verizon is in a
22 position to make any particular assurances about how
23 rate making will proceed in 2009 at this point. What I
24 can tell you, as I said, is that the merger costs to
25 achieve will occur in the early years, but I don't feel

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1 I can offer a general stipulation regarding a rate case
2 that may or may not occur four years from now.

3 Q. You indicated earlier in your testimony that
4 -- well, let me rephrase that.

5 You addressed the fact that there are a
6 number of state proceedings going on reviewing this
7 merger, and you updated that testimony I think when you
8 first took the stand to refer to the federal decisions
9 or the recommendations, correct?

10 A. Yes, I said those were the most significant
11 proceedings that have advanced since I first filed that
12 testimony.

13 Q. And it's true, is it not, that this merger
14 has not been approved by all the states where merger
15 proceedings are pending; is that right?

16 A. That's correct, yes.

17 Q. And can you just state whatever other states
18 are still conducting a review of the merger?

19 A. You know, I don't have a list in mind. I
20 imagine it could be provided, but I don't -- I can't
21 tick them off, no.

22 Q. All right. And the Department of Justice
23 consent decree that you mentioned at the outset of your
24 testimony, that has not been approved by the court yet,
25 has it?

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1 A. No, I don't think so, although I think it's a
2 -- they usually are.

3 Q. All right.

4 MR. FFITCH: Your Honor, I believe that
5 concludes, that does conclude my questions for
6 Dr. Danner. I would like to offer Public Counsel's
7 cross exhibits at this time.

8 JUDGE WALLIS: I believe we accepted those
9 into the record in light of the stipulation at the time
10 the witness came on the stand, however, if there is any
11 confusion about that, we receive them at this time.

12 MR. FFITCH: Thank you, Your Honor.

13 JUDGE WALLIS: Very well. Mr. Kopta, do you
14 have any questions of this witness?

15 MR. KOPTA: No, Your Honor, thank you.

16 JUDGE WALLIS: Redirect?

17 MR. CARRATHERS: No redirect, Your Honor.

18 JUDGE WALLIS: Very well, are there questions
19 from the Bench for this witness?

20 It appears as though you are free,
21 Mr. Danner.

22 THE WITNESS: Thank you, Your Honor.

23 JUDGE WALLIS: Thank you very much for
24 appearing today, you are excused from the stand at this
25 time.

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1 Let's take our afternoon recess for 15
2 minutes and be back and ready to go at a couple of
3 minutes after 3:00 p.m. The next witness is going to
4 be?

5 MR. CARRATHERS: Mr. Beach.

6 JUDGE WALLIS: Mr. Beach, very well, and when
7 we resume at 3:00 we will ask that Mr. Beach be on the
8 stand with his materials ready to proceed.

9 (Recess taken.)

10 JUDGE WALLIS: Let's be on the record
11 following our afternoon recess.

12 Mr. Beach, you have previously been sworn in
13 this docket, have you not?

14 THE WITNESS: Yes, Your Honor.

15 JUDGE WALLIS: Very well.
16 Counsel.

17 MS. SINGER NELSON: Thank you, Judge.

18

19

20 Whereupon,

21 MICHAEL A. BEACH,
22 having been first duly sworn, was called as a witness
23 herein and was examined and testified as follows:

24

25

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

2 BY MS. SINGER NELSON:

3 Q. Mr. Beach, do you have your testimony in
4 front of you?

5 A. Yes, I do.

6 Q. I've got premarked for purposes of
7 identification at this point Exhibits 60T-HC, which is
8 Mr. Beach's direct testimony, 61T-HC which is
9 Mr. Beach's rebuttal testimony, and then 62-C which are
10 the exhibits, the maps, two maps that are attached to
11 your rebuttal testimony. Do you have those in front of
12 you?

13 A. Yes, I do.

14 Q. Do you have any changes to those exhibits?

15 A. I do not, thanks.

16 MS. SINGER NELSON: Your Honor, as far as the
17 stipulation on the admissibility of the data responses
18 that have been marked by Public Counsel as cross
19 exhibits for Mr. Beach, Mr. ffitch and I have talked
20 about it, and MCI has no objection to the admission of
21 those except to the extent that, let's see, Exhibits 68
22 and 69 each refer to additional data responses, and
23 Mr. ffitch and I have agreed that those will be marked
24 and admitted, put into the record as well, and with that
25 condition I have no objection to the cross exhibits.

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1 JUDGE WALLIS: Very well.

2 Mr. ffitch.

3 MR. FFITCH: That's correct, Your Honor.

4 JUDGE WALLIS: And when will those be
5 provided?

6 MR. FFITCH: Your Honor, we hadn't discussed
7 that. I was assuming that perhaps MCI, incorrectly that
8 MCI was going to do that, but we can talk about it and
9 make provision.

10 MS. SINGER NELSON: Right.

11 MR. FFITCH: I have copies of them here in
12 Olympia so that we could perhaps have those tomorrow.

13 JUDGE WALLIS: How many documents are we
14 talking about?

15 MS. SINGER NELSON: I think each response is
16 approximately two pages long, so not very lengthy data
17 responses.

18 JUDGE WALLIS: How many responses, additional
19 responses?

20 MS. SINGER NELSON: Just two.

21 JUDGE WALLIS: So that would be Exhibit
22 Numbers 74 and 75, and we will note those as to be filed
23 prior to the conclusion of the hearing session.

24 MS. SINGER NELSON: Thank you, Your Honor.

25 JUDGE WALLIS: Very well. With that Exhibits

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1 60T-HC through 73 are received in evidence, and we will
2 reserve a ruling on Exhibit Numbers 74 and 75 until we
3 actually have those documents in hand, so 60 through 73
4 are received.

5 MS. SINGER NELSON: Thank you.

6 Mr. Beach is available for cross-examination
7 at this time.

8 JUDGE WALLIS: Very well, and as earlier
9 indicated, Mr. Kopta and Mr. ffitch have indicated that
10 Mr. Kopta will go first with Mr. Beach.

11 MR. KOPTA: Thank you, Your Honor.

12

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

14 BY MR. KOPTA:

15 Q. Good afternoon, Mr. Beach, I'm Greg Kopta
16 representing XO. First thing I want to ask you is
17 whether it's as strange for you to be cross-examined by
18 a CLEC lawyer as it is for me to be cross-examining an
19 MCI witness?

20 A. Well, not at all, I have been in a lot of
21 these proceedings over the years, and it's often a free
22 for all.

23 Q. So much for the enemy of my enemy is my
24 friend.

25 Would you look at your direct testimony,

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1 which is Exhibit 60T-HC, specifically on page 8. And at
2 least on my copy it's the question and answer that's
3 lines 154 through 157 at which you discuss MCI's use of
4 other carriers' facilities; do you see where I'm
5 referring to?

6 A. Yes, I do.

7 Q. Okay. And I want to focus on the services
8 and facilities that MCI obtains from Verizon. Those
9 include unbundled network elements or UNE's, do they
10 not?

11 A. Are you asking specifically to Washington or
12 more generally to Verizon?

13 Q. I'm specific to Washington.

14 A. UNE's are available from Verizon in
15 Washington, and I believe we do have some of those.

16 Q. Do you know whether you obtain high capacity
17 loops from Verizon?

18 A. Yes, we do.

19 Q. Transport?

20 A. Yes.

21 Q. And do you obtain those UNE's out of an
22 interconnection agreement with Verizon?

23 A. The unbundled network elements are under the
24 local interconnect contracts, that's correct.

25 Q. And the terms and conditions under which you

0279

1 obtain those UNE's are spelled out in the
2 interconnection agreement or ICA, are they not?

3 A. Generally that's the case. In some
4 instances, and I'm not sure if it's the case here, the
5 contracts also refer to certain aspects of tariffs.
6 Qwest often does that. Frankly I'm not sure if Verizon
7 does that here in Washington or not, but the local
8 interconnect contracts that are on file with the
9 Commission and approved by the Commission here, yes.

10 Q. And were you involved in negotiating the
11 interconnection agreement between MCI and Verizon under
12 which the companies are operating today?

13 A. My organization has that responsibility. I
14 was responsible for a prior organization that had that
15 responsibility before the current one in fact, so I'm
16 certain it was within my organization.

17 Q. And were you involved in the arbitration that
18 eventually led to that interconnection agreement?

19 A. I believe that I was. I can't recall if I
20 actually testified or participated in the proceeding
21 itself, but I was involved in evaluating our position
22 and those issues that we should try to resolve through
23 negotiations that preceded the arbitration.

24 Q. And do you know when that arbitration took
25 place?

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1 A. I don't, I don't have the date, I don't
2 recall the date.

3 Q. Ball park late '90's I believe?

4 MS. SINGER NELSON: Asked and answered, Your
5 Honor.

6 MR. KOPTA: Just asking him if he has a
7 general recollection.

8 JUDGE WALLIS: The question is allowed.

9 A. I can try to ball park it, but it would be
10 just that. I know that our local interconnect contract
11 negotiations and arbitrations with Qwest in this state
12 and others proceeded very rapidly after the issuance of
13 the Telecom Act of 96, that was I think February of '96.
14 And typically the GTE negotiations and contracts, which
15 would have been I think the predecessor company here,
16 would have been later than that. So it may have even
17 been into '97 or later perhaps but probably in '97.
18 Those negotiations and arbitrations typically took a
19 year or more. Verizon may not have been that long, but
20 Qwest certainly were. So almost certainly would have
21 been a '97 or '98 contract, in that ball park.

22 BY MR. KOPTA:

23 Q. Thank you. And that is the agreement that
24 resulted from that arbitration is the agreement that is
25 currently in operation between the two companies; is

0281

1 that correct?

2 A. Well, I'm not certain. The initial
3 agreements often are amended or expire. My expectation
4 is that that agreement probably hasn't expired but could
5 well have been amended but would be as I said earlier on
6 file and approved by this state Commission.

7 Q. Do you know whether Verizon is making that
8 agreement available to other carriers to opt into at
9 this point?

10 A. I believe they're required to, yes.

11 Q. Is MCI in the process of negotiating a new
12 interconnection agreement with Verizon?

13 A. I know that we do have negotiations underway
14 for replacements of expiring agreements with Verizon,
15 but I don't recall if Washington is in that situation or
16 not.

17 Q. Do you know whether the companies at this
18 point as a representation or a commitment to competitors
19 would be willing to make the interconnection agreement
20 that's currently in operation between Verizon and MCI
21 available to other carriers?

22 MS. SINGER NELSON: Your Honor, objection to
23 the extent the question calls for Mr. Beach to speculate
24 as to what Verizon intends.

25 MR. KOPTA: I'm not asking for speculation,

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1 I'm asking whether they will actually make that
2 representation as we sit here today.

3 JUDGE WALLIS: The objection is overruled and
4 the witness may respond.

5 A. You would have to ask Verizon that question
6 at this point since we haven't merged. But as I
7 indicated earlier, I believe that the 251/252 contracts
8 that are approved by the state Commission are required
9 to be available for adoption in whole under both federal
10 and state requirements. That's my understanding, and so
11 if I'm correct in that understanding, I don't think it
12 would be necessary for Verizon to make such a
13 commitment, I think that requirement exists today.

14 BY MR. KOPTA:

15 Q. Do you know or do you have a position on
16 whether, assuming the merger is approved and actually
17 happens, whether or not MCI will need an interconnection
18 agreement with Verizon for the state of Washington?

19 MS. SINGER NELSON: Objection to the extent
20 the question asks for a legal conclusion.

21 MR. KOPTA: I'm not asking for a legal
22 conclusion, I'm merely asking for his understanding as
23 the person who is responsible for intercarrier
24 agreements.

25 JUDGE WALLIS: The objection is overruled and

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1 the witness may respond.

2 A. Thank you, I won't try to make a legal
3 opinion on that. It's my understanding that we will
4 still require contracts between the competitive parts of
5 the merged company and the more fully regulated, and
6 under the affiliate transaction rules and under the
7 rules that currently apply to Verizon's affiliates will
8 apply post merger. I don't see any change brought about
9 by the merger in that regard.

10 Q. But would you anticipate that, you reference
11 the affiliate transaction requirements, that any
12 agreement between Verizon and MCI post merger would be
13 also in compliance or in consideration of Sections 251
14 and 252 of the Telecommunications Act of 1996?

15 A. Well, not in this regard. Certainly any
16 contract between the companies wouldn't be subject to
17 251/252. 251/252 is specific as to certain aspects of
18 interconnection that come from the Telecom Act of 96 as
19 amended, but it is my understanding that those rules
20 don't change as a result of the merger pretty clearly.
21 And we will operate post merger with 251/252 type
22 agreements, and to the extent that we still have those,
23 we will -- those rules still apply, yes.

24 Q. So let me see if I understand what you're
25 saying. The interconnection agreement that is in place

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1 today between the companies post merger would continue
2 to stay in place; is that what you're saying?

3 A. Yes, unless we somehow change our business
4 and no longer need that agreement. But for those kinds
5 of requirements that are subject to the Act, I think
6 we'll still need such an agreement between affiliates.

7 Q. And at such time as when that agreement
8 expires, would you anticipate that you would be
9 negotiating and/or arbitrating an agreement as you would
10 as if the companies were not merged?

11 A. I really don't know what agreements we'll
12 need in the longer term, because I think as we have
13 indicated we haven't completed the transition planning
14 with respect to the services that will be offered and so
15 forth. But certainly day one when that merger occurs
16 that agreements in place stay in place, we'll continue
17 to operate pursuant to.

18 Q. Would you anticipate that MCI would be
19 arbitrating any agreements with Verizon with respect to
20 obtaining unbundled network elements in Washington after
21 the merger?

22 MS. SINGER NELSON: Your Honor, I think
23 Mr. Beach has already answered that question.

24 MR. KOPTA: I don't believe so, I asked him a
25 specific question about arbitration.

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1 JUDGE WALLIS: Very well, the witness may
2 respond.

3 A. That's an interesting question to
4 contemplate. I haven't thought of it frankly, don't
5 know, sorry.

6 BY MR. KOPTA:

7 Q. MCI also leases special access services from
8 Verizon in Washington, does it not?

9 A. That's correct.

10 Q. Out of Verizon, or are they jurisdictionally
11 interstate?

12 A. Almost exclusively, yes.

13 Q. And does MCI use any of those special access
14 services to provide local service in Washington?

15 A. I think we do with respect to customers that
16 are using the service to complete both local and long
17 distance calling. That's pretty typical.

18 Q. And do you obtain those out of -- with
19 Verizon pursuant to a contract?

20 A. No, special access is pursuant to tariff,
21 it's required to be pursuant to tariff.

22 Q. So there's no volume commitment or term
23 commitment that would be reflected in a contract between
24 MCI and Verizon?

25 A. No. There are tariff volume or term plans

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1 available pursuant to tariff, but those are required to
2 be tariffed as well.

3 Q. MCI provides special access services to other
4 carriers in Washington, does it not?

5 A. Yes, we do.

6 Q. And that would include competing local
7 exchange carriers or CLECs?

8 A. Some of them are, yes.

9 Q. And I believe in your testimony you state
10 that those are all jurisdictionally interstate; is that
11 correct?

12 A. Typically that's the case.

13 Q. Are there any restrictions in the provision
14 of those interstate special access services in terms of
15 a CLEC's ability to use those to provide local service?

16 A. Well, I think there are. I mean there are
17 requirements that, as I think you're aware, that the
18 federal rules specify that interstate jurisdiction is
19 determined if at least 10% of the traffic is interstate
20 for mixed use facilities. So that could I suppose limit
21 the potential use of interstate services for totally
22 local if a carrier were using them that way.

23 What you also need to understand though is
24 that our special access services with carriers are
25 typically pursuant to contract, and there could be

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1 restrictions in the contract itself, MCI's contract with
2 that carrier. I'm not familiar with all the different
3 varieties of such restrictions, but it's possible there
4 might be some.

5 Q. But in general at least some of the
6 interstate special access services that MCI provides to
7 CLECs could be used at least in part for the CLECs to be
8 able to provide local service in Washington?

9 A. That's conceivable. As I mentioned before,
10 if you have mixed use traffic, someone may complete a
11 local call even using, you know, long distance services,
12 or they could configure connections to carry services
13 that originate, terminate, that are jurisdictionally
14 local.

15 Q. Well, let me ask one final sort of summing
16 up. Would you expect that CLECs would be able to use
17 MCI's interstate special access services to provide
18 local service to the same extent that MCI uses Verizon's
19 interstate special access services to provide local
20 exchange service?

21 A. I'm not familiar enough with the other CLEC
22 networks to tell you if they could configure their
23 network the same way that we do, but I think that I
24 wouldn't believe that there would be any different
25 restrictions on their use other than the possible

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1 contract restrictions I mentioned than MCI would be
2 restricted under the Verizon tariffs or Qwest tariffs.

3 Q. Do you have access to Exhibit 511, which is
4 the FCC's corrected press release on the merger that was
5 just issued yesterday?

6 A. I don't have it here. I have an uncorrected
7 version I believe, but perhaps we could obtain that.

8 Q. If your counsel has a copy that she would
9 share with you.

10 A. Thank you.

11 JUDGE WALLIS: Do you have that copy now?

12 THE WITNESS: Yes, I have it now, thank you.

13 BY MR. KOPTA:

14 Q. Are you familiar with this document?

15 A. Yes, I have read it.

16 Q. I was --

17 MS. SINGER NELSON: Your Honor, excuse me,
18 just I want to make sure that the witness clarifies that
19 he was just handed the corrected version, he previously
20 stated that he had read the previous version of the FCC
21 press release, so to the extent the corrected version
22 has changed the original press release, then I want to
23 make sure that the witness keeps that in mind.

24 JUDGE WALLIS: Does the witness have that in
25 mind?

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1 THE WITNESS: You bet.

2 MS. SINGER NELSON: Thank you.

3 BY MR. KOPTA:

4 Q. Well, at this point I don't believe I'm going
5 to be asking you anything that will have changed, but
6 certainly that would be subject to your check.

7 Specifically I would like you to look at the
8 third page of this document, the first bullet point on
9 that page.

10 A. Is that the bullet that starts with, the
11 applicants committed?

12 Q. That's correct.

13 The applicants committed, for 30 months,
14 not to increase the rates paid by
15 existing in-region customers of AT&T in
16 SBC's region or MCI in Verizon's region
17 for wholesale DS1 and DS3 local private
18 line services.

19 Have I read that correctly?

20 A. I believe so, I just wanted to make sure
21 because the pages aren't numbered that I was on the same
22 page as you.

23 Q. Always a good idea.

24 Are you familiar with this specific
25 commitment that Verizon and MCI made to the FCC?

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1 A. Well, only to the extent that I have read
2 both the corrected now and uncorrected versions and
3 actually previously had seen an electronic version of
4 this in the press releases. It's pretty
5 straightforward.

6 Q. Well, let me ask you a couple of questions
7 about it, and if it's straightforward then hopefully
8 they will be easy to answer. Do you know whether this
9 commitment applies to new services for existing
10 customers?

11 A. This paragraph doesn't seem to limit that,
12 but I can't tell for sure. It certainly is limited to
13 existing in-region customers and the rates they pay, but
14 it doesn't specifically include or exclude new services
15 versus old. It makes no distinction in this document.
16 My expectation is the final order would make that clear.

17 Q. But it is your understanding that this would
18 not apply to new customers of MCI in Verizon service
19 territory in Washington; is that correct?

20 A. I don't read it to say that, no, I don't
21 believe it would.

22 Q. You don't believe that it would apply?

23 A. To new customers, no.

24 Q. Is there any requirement to continue
25 providing the services, existing services, at all once a

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1 particular contract expires?

2 MS. SINGER NELSON: Your Honor, at this point
3 I want to object, the document speaks for itself.

4 MR. KOPTA: I don't believe it speaks to that
5 particular issue at all, which is why I'm asking whether
6 at this point that's part of the commitment that Verizon
7 and MCI have made to the FCC.

8 MS. SINGER NELSON: Your Honor, the witness
9 has already stated that he doesn't know anything more
10 beyond what is in this press release, and the document
11 speaks for itself.

12 JUDGE WALLIS: I'm going to overrule the
13 objection and allow the witness to respond, to state the
14 extent of his knowledge and the nature of any knowledge
15 that he has in response to that question.

16 Does the witness have the question in mind?

17 THE WITNESS: Would it be possible to have
18 that read back or repeated?

19 JUDGE WALLIS: Perhaps, Mr. Kopta, you would
20 just repeat it.

21 MR. KOPTA: I would be glad to repeat it.

22 BY MR. KOPTA:

23 Q. Is there any requirement for MCI to continue
24 to provide existing services once a contract with an
25 existing customer expires within this 30 month period?

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1 A. That doesn't seem to say one way or the
2 other. It does certainly specify the 30 month period
3 that you indicated, and it talks about not increasing
4 rates.

5 Q. Has MCI made any commitment to the FCC to
6 continue to offer wholesale services at all in Verizon's
7 service territory in Washington or elsewhere?

8 A. This commitment as I understand it is
9 applicable across the entire MCI domestic operating area
10 including Washington to the extent that it's in the
11 Verizon territory, so I would say yes, it does apply
12 here.

13 Q. What about outside of Verizon service
14 territories?

15 A. No, it doesn't appear to do that.

16 Q. And you're not aware independently of any
17 representation to the FCC that Verizon or MCI have made
18 with respect to any commitment to continue to provide
19 wholesale services outside of Verizon's service
20 territory?

21 A. No, I'm not.

22 Q. Would you refer, please, to your rebuttal
23 testimony, which is Exhibit 61T-HC, on page 14,
24 specifically the portion of your testimony beginning on
25 line 15, the sentence that carries down through line 17

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1 where you are discussing Verizon's commitment to invest
2 more than \$2 Billion in MCI's network and systems; do
3 you see where my reference is?

4 A. Yes, I do.

5 Q. Do you know how much of that commitment is
6 for investment in the state of Washington?

7 A. No, I don't, I think as we have said before
8 that the investment plans and the transition plans are
9 not yet complete.

10 Q. Do you know whether any of it is going to be
11 devoted to Washington?

12 A. I don't.

13 Q. Do you know over what period of time the \$2
14 Billion will be invested?

15 A. You know, I think that's referenced in our
16 filing, but I don't recall that time. I think it was a
17 period of time that from my business experience
18 transition of networks often does take several years.

19 Q. Do you know whether that money is going to be
20 invested within Verizon's service territory?

21 A. No.

22 Q. Do you know whether that money is going to be
23 invested in the construction of additional local loop
24 facilities?

25 A. No, I don't. As I indicated earlier, the

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1 planning for that is not yet complete. I will though
2 maybe modify my answer I made earlier where I said that
3 I didn't know if any of this would be in Verizon
4 territory. One thing to keep in mind is that certain
5 improvements in MCI's systems, particularly in the
6 systems, improve service for customers nationwide. So
7 order processing for example or billing system
8 improvements could affect customers across the country,
9 including Verizon territory.

10 Q. But at this point you don't know anything
11 specific about dollars spent in the state of Washington?

12 A. No, and again, you know, the systems don't
13 have to be in Washington to benefit Washington
14 customers. Billing systems and so forth, you know, may
15 be located regionally or even at a single point
16 nationally and used for all products across the country,
17 but those plans are not yet complete.

18 Q. Would you turn to page 20 of your rebuttal
19 testimony, Exhibit 61T-HC, and on this page I refer you
20 specifically to the sentence that begins on line 17 and
21 carries through line 20, and your reference here toward
22 the end of the sentence is to other competitive local
23 carriers that have fiber routes in the immediate
24 vicinity of where MCI has fiber connected to commercial
25 buildings in Verizon's local service areas; isn't that a

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1 fair characterization of what you're talking about at
2 this point in your testimony?

3 A. Yes, it is.

4 Q. Is it your testimony that fiber routes in the
5 immediate vicinity is equivalent to fiber into a
6 specific building?

7 A. No, but it's certainly a very good step
8 toward that. If you only have to complete a short
9 connection from your fiber route typically in a right of
10 way in a street or in an alley close to a building into
11 that building and apply electronics to it, it's a lot
12 less expensive to expand into that building than if you
13 had to construct the entire route and then connect into
14 the building.

15 Q. Do you know whether MCI has constructed fiber
16 into every building within say one tenth of a mile of
17 its fiber route in Washington?

18 A. No, I know that we haven't as a matter of
19 fact. We construct into locations where we see
20 opportunity and where we have customer orders typically
21 these days rather than try to build them into every
22 building and then try to sell to customers in that
23 building. So it's clear to me that competitive carriers
24 in the event that MCI was underserving customers in that
25 building and competitors had fiber routes, you know, a

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1 few hundred feet away or half a mile away or so would be
2 incented to make the investment and spend the time to
3 get that turned up and provide service to that customer
4 as an alternative.

5 Q. Do you have an idea of what it costs to
6 construct that spur, if you will, off of a fiber route
7 into a specific building?

8 A. It's going to vary, but just to give you a
9 sense of it, it's typically in the few hundred thousand
10 dollar range as opposed to millions of dollars for a
11 full fiber route construction, but it varies a lot, it
12 really does.

13 Q. And if a customer in a building were
14 requesting, for example, a single DS1 private line
15 service, would you expect that that service alone would
16 be sufficient to justify constructing facilities from a
17 fiber route into that specific building?

18 A. Probably not, you would have to have an
19 awfully long commitment from that customer or perhaps
20 other customers that you felt fairly certain you were
21 going to get service in that building. Typically, as I
22 indicated before, we haven't built into buildings where
23 there's only a DS1 of capacity requirement. Typically
24 it's much more than that, and I would expect other
25 competitors to look at it in a very similar light.

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1 Q. Do you know what level of service would
2 generally be considered to be sufficient to justify that
3 kind of expense?

4 A. No, I think it's hard to pick an average,
5 because the construction costs may vary. The period of
6 time that the customer is going to commit to the service
7 or that you feel is going to stay with the service is
8 going to vary. Those are the two key variables that you
9 would have to know to say and that our engineers
10 literally do calculate based on sales input when to
11 construct versus when to lease.

12 Q. Do you know whether MCI pays building owners
13 for access to buildings?

14 A. I know that's been an issue, but I really
15 don't know the status of building owner efforts to
16 extract money from carriers these days.

17 Q. I assume that you also probably don't know
18 the extent to which MCI has been refused access into any
19 buildings into which it has sought to construct?

20 A. No, I don't, but I do know that there is a
21 tremendous amount of lit buildings in Seattle provided
22 by other carriers other than MCI and a tremendous amount
23 of fiber in the ground out there. So I know that we
24 have been successful in getting into the buildings that
25 we're in, and I know that other competitors have been

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1 successful in getting into the buildings that they're
2 in.

3 Q. Do you know the number of buildings within a
4 tenth of a mile of MCI's fiber route in Verizon service
5 territory in Washington?

6 A. No, I don't have that number.

7 Q. Do you know the number of commercial
8 buildings in Verizon's service territory in Washington?

9 A. No, I don't.

10 MR. KOPTA: Thank you, Mr. Beach, those are
11 all my questions.

12 THE WITNESS: You're welcome.

13 JUDGE WALLIS: Mr. ffitch.

14 MR. FFITCH: Thank you, Your Honor.

15

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

17 BY MR. FFITCH:

18 Q. Good afternoon, Mr. Beach.

19 A. Good afternoon.

20 Q. I don't believe we've met, my name is Simon
21 ffitch, I'm with the Office of Public Counsel here in
22 Washington, and I just wanted to follow up first of all
23 on a couple questions regarding commercial buildings
24 that Mr. Kopta has been asking. Could I ask you,
25 please, to take a copy of the Department of Justice

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1 press release, and that's Exhibit 512.

2 A. Could I ask for one that's been marked just
3 so I've got the right document.

4 Thank you, I have that now.

5 Q. And about three quarters of the way down the
6 page there's a sentence that begins, according to the
7 complaint against Verizon; do you see that?

8 A. Yes, I see that.

9 Q. And it states that according to the
10 complaint, Verizon and MCI are the only two firms that
11 own or control a direct wireline connection to hundreds
12 of buildings in the metropolitan areas of a series of
13 cities that are listed there.

14 A. Well, actually I don't see the cities that
15 are listed there, but otherwise.

16 Q. Washington, Baltimore, Boston, New York, et
17 cetera, in the press release.

18 A. Oh, I'm sorry, I was in the wrong line.

19 Q. Okay.

20 A. Yes, thank you.

21 Q. All right. None of those are west of the
22 Mississippi, are they?

23 A. No.

24 Q. And in the testimony, in your rebuttal
25 testimony on page 20, and that's Exhibit 61-C, I don't

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1 know that we need to go to it, but we were just looking
2 at that and you referenced a specific number, a highly
3 confidential number, of buildings served by MCI in
4 Verizon service territory, we can go to that.

5 A. Would you mind --

6 Q. That's again Exhibit 61-C, page 20, line 12,
7 and you state there the specific number of commercial
8 buildings connected to MCI fiber in Verizon's local
9 service territory, correct? Do you see that on line 12?

10 A. Yes, I do.

11 Q. Are there any buildings in Verizon's service
12 territory in Washington state where Verizon and MCI are
13 the only two firms that own or control a direct wireline
14 connection?

15 A. You know, it could be, but I'm not sure that
16 MCI and Verizon have all the information about
17 competitive carriers. My understanding is that when the
18 Department of Justice did their study that they did have
19 through their subpoena power input from other carriers.

20 MS. SINGER NELSON: Your Honor, this is an
21 area where Dr. Taylor thoroughly covers, that Dr. Taylor
22 thoroughly covers in his testimony, and to the extent
23 that Mr. Beach is unable to answer a question in this
24 area, Dr. Taylor will certainly be able to attempt to
25 address that issue.

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1 JUDGE WALLIS: Thank you.

2 MR. FFITCH: Well, Your Honor, I'm happy to
3 take this up with Dr. Taylor also. I will just note
4 that Mr. Beach is an MCI employee, which Dr. Taylor is
5 not, so I would like to at least --

6 JUDGE WALLIS: And I did not hear counsel
7 raise an objection but merely to explain that the
8 information would be available from the other witness.

9 MR. FFITCH: All right.

10 BY MR. FFITCH:

11 Q. Well, Mr. Beach, I believe that you were
12 explaining or trying to answer whether or not any of
13 these buildings are solely only served by Verizon and
14 MCI?

15 A. I thought I actually said that I didn't know
16 that.

17 Q. All right. And is there a way for this
18 Commission to find that out in this proceeding?

19 A. Well, again, I think as I mentioned earlier,
20 it's my understanding that the Department of Justice
21 would have been in a better position to look at that
22 given the information they have, and Dr. Taylor perhaps
23 might even be able to provide further guidance on
24 whether such an answer can be achieved in this
25 proceeding or not.

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1 Q. Do you believe that the only buildings in the
2 United States that are served by Verizon and MCI only
3 are those that are listed in the Department of Justice
4 consent decree in these limited number of cities?

5 A. I don't know, but the press release seems to
6 indicate that's the only area, and only those 11
7 metropolitan areas with respect to Verizon.

8 Q. All right.

9 A. And MCI were of concern to them, and
10 otherwise noted by them and the FCC that they didn't
11 believe that the merger created any competitive problem
12 anywhere else.

13 Q. All right, let's move on. Would you please
14 turn to page 9 of your rebuttal, again Exhibit 61-C, and
15 at lines 2 and 3 there you state that MCI is not a
16 significant competitor in the mass market in Verizon's
17 service territory; is that right?

18 A. That's correct.

19 Q. If no other CLEC has as many customers as MCI
20 in Verizon's Washington service area, wouldn't it be the
21 case that MCI was the largest CLEC operating in Verizon
22 Washington service area?

23 A. I guess I couldn't quarrel with your
24 question. If you said that MCI was the largest, then
25 they must be the largest. I don't see how that relates

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1 to the question of whether they're a significant
2 competitor in the mass market, because I think the
3 relative size and effect is different than whether
4 they're the largest or the smallest. We're quite small
5 in that territory and getting smaller.

6 Q. Do you disagree that you are the largest CLEC
7 in Verizon's service territory?

8 A. I think Dr. Taylor probably could answer that
9 question. It may be, but again I think we have less
10 than 1% of the lines, local lines that are being served
11 in Verizon territory in Washington state, so that's
12 pretty small, and getting smaller.

13 Q. And can you refresh my memory, Mr. Beach,
14 forgive me, I'm not remembering your vitae and
15 background information, but you don't work for MCI in
16 Washington state, do you?

17 A. I'm located in Denver, but I'm responsible
18 for MCI's carrier management functions throughout the
19 United States.

20 Q. All right, including Washington?

21 A. Including Washington.

22 Q. And generally, Mr. Beach, I understand it's
23 your testimony that MCI is now trying to manage the
24 decline of its mass market business; is that right?

25 A. Yes, that's correct.

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1 Q. And by mass market business, I mean MCI's
2 provision of local and long distance service to
3 residential and small business customers, the
4 non-enterprise component of the business; is that a
5 reasonable description of the mass market?

6 A. Yes, that's very good.

7 Q. At some point in MCI's history, MCI did try
8 to grow its mass market business, correct?

9 A. And continues to try to grow it. We have
10 just not been successful.

11 Q. And in the past and even presently, MCI is a
12 competitor of Verizon, correct?

13 A. That's correct.

14 Q. And also a competitor of Qwest Washington
15 either now or in the past or both?

16 A. Yes.

17 Q. And MCI actually had some success in growing
18 its mass market business in the past, did it not?

19 A. Yes.

20 Q. In your opinion when customers switch to
21 MCI's local services and then stop taking service from
22 an incumbent like Verizon, was it because the customer
23 was exercising their judgment in reacting to an offer
24 made by MCI evaluated in comparison with other
25 alternatives?

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1 A. Well, I'm certain that that's true for some
2 customers. I don't think I could speak to all
3 customers. Some may be less rigorous in their
4 evaluation than others.

5 Q. But in any event, they made their own choice,
6 correct? I mean MCI didn't trick these customers into
7 taking service from MCI, right?

8 A. Gosh, I hope not. Certainly we wouldn't
9 condone that as a company.

10 Q. And do you believe that it's possible at
11 least some of the customers that you were successful in
12 attracting came because they were dissatisfied with
13 their relationship with Verizon or Qwest or with their
14 previously serving ILEC incumbent company?

15 MS. SINGER NELSON: Your Honor, objection to
16 the extent the question asks Mr. Beach to speculate as
17 to why customers choose the phone company that they
18 choose.

19 JUDGE WALLIS: I didn't hear the question to
20 ask for speculation, I heard it to ask for his
21 knowledge.

22 Mr. ffitch; is that correct?

23 MR. FFITCH: Yes, Your Honor, and I'm asking
24 for MCI's perspective on why they were successful in
25 attracting those customers.

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1 JUDGE WALLIS: The witness may respond.

2 A. Actually, your explanation of the question
3 seemed to be different than the question, so could you
4 maybe reask it for me.

5 BY MR. FFITCH:

6 Q. I can. Do you believe that it's possible
7 that at least some of the customers that MCI has been
8 successful in attracting from an incumbent company like
9 Verizon came to MCI because they were dissatisfied with
10 the service or other parts of their relationship with
11 the incumbent company?

12 A. Certainly that's possible.

13 Q. Can I ask you, I would like to ask you a few
14 more questions about your phrase that the continuing and
15 irreversible decline of MCI's mass market business, do
16 you believe that there will come a time when MCI has no
17 mass market customers?

18 A. It's certainly possible. We are a company
19 and frankly an industry in transition, and I think to
20 some extent people don't even recognize the full
21 magnitude of that transition. We are trying to hold on
22 to and add new customers in mass markets to the extent
23 we can. The data that we have provided in testimony and
24 shared in response to inquiry from the parties and the
25 Commission demonstrate that that has not been successful

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1 in recent times. The factors affecting that that I
2 mentioned in testimony such as do-not-call legislation,
3 the advent of bundled competition from the incumbent
4 carriers, the development of competition of all
5 different kinds with cable and VoIP and others, are not
6 likely to change in my opinion. And I suspect that
7 that, you know, and as I have testified here, that that
8 decline will continue, and it's possible it could get to
9 zero, it's possible it could get to a very small number
10 at some point in time. Certainly in the near term it's
11 declining.

12 Q. All right.

13 A. And expected to continue to do so.

14 Q. Now as current MCI mass market customers
15 leave, they will presumably replace the services they
16 have been buying from MCI from another carrier, right?

17 A. Presumably.

18 Q. And --

19 A. I'm sorry.

20 Q. Go ahead.

21 A. Just using the term carrier in the broadest
22 sense.

23 Q. Is it possible that these former MCI
24 customers will face service initiation fees levied by
25 the new provider?

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1 A. It's possible that they will. It's possible
2 that they won't. You see both situations in the
3 marketplace.

4 Q. Would you please turn to Exhibit 65, that's
5 one of your cross exhibits. Do you have that?

6 A. Yes, I do.

7 Q. All right. And I will just represent to you
8 that that is a Verizon Northwest tariff sheet; have you
9 seen this before?

10 A. I examined this in preparation with counsel
11 for the first time this week.

12 Q. All right. And isn't it the case that to
13 establish service with Verizon in Washington, the
14 consumer would be charged an initial service charge of
15 \$26.25 that's shown on line 1-A, C-1-A, for residential?

16 MS. SINGER NELSON: Objection, Your Honor,
17 Mr. ffitch has represented that this is a Verizon tariff
18 page, but there's been no foundation laid that Mr. Beach
19 is familiar with when the terms or the charges laid out
20 in this tariffed page apply and when they don't apply.

21 JUDGE WALLIS: Mr. ffitch.

22 MR. FFITCH: Your Honor, I apparently have a
23 misunderstanding about the nature of the stipulations
24 with regard to cross exhibits in this matter. It was my
25 understanding that there were no objections to cross

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1 exhibits as long as there was examination regarding the
2 exhibits and that -- so this is an objection that I was
3 expecting -- if there were objections, I was expecting
4 to hear them earlier in our preliminary proceedings.

5 MS. SINGER NELSON: Well, Your Honor, to the
6 extent that the exhibit speaks for itself, we have no
7 objection to it being in the record. But if Mr. Beach
8 doesn't know the answer to the question, I suppose he
9 can just say he doesn't know.

10 JUDGE WALLIS: Mr. ffitch, perhaps you could
11 explore the extent of the witness's knowledge. And if
12 the witness does have knowledge which he may have in
13 light of his position and his experience, then you may
14 proceed to explore the extent of that knowledge. And if
15 he has none, then perhaps the exhibit might be allowed
16 to speak for itself.

17 MR. FFITCH: Thank you, Your Honor, let me
18 just ask it this way then.

19 BY MR. FFITCH:

20 Q. Mr. Beach, isn't it correct that this tariff
21 sheet states on its face that in order to initiate
22 service with Verizon Northwest, a residential customer
23 would have to pay \$26.25 plus the line connection shown
24 at line C-2 of \$17; isn't that what this sheet of paper
25 shows?

0310

1 A. It does show those numbers, but as I
2 indicated before, in some instances nonrecurring charges
3 are applied by carriers and other cases they're not, and
4 I am really not familiar with whether Verizon does apply
5 these in all cases or in what cases they may not.

6 Q. All right.

7 MR. FFITCH: And, Your Honor, I realize that
8 we have an MCI witness here, we have no Verizon employee
9 witnesses other than Mr. Smith if I'm correct. So it
10 may be that if there's an issue here, we need to call
11 back somebody from Verizon who can simply vouch for the
12 accuracy of this tariff. But I'm not sure we have an
13 objection to this coming into the record, and those are
14 all the questions that I have on this document in any
15 event.

16 MS. SINGER NELSON: Your Honor, we have no
17 objection to the exhibit coming into the record. I
18 think the Commission can take official notice of the
19 tariffs on file with the Commission, we have no
20 objection.

21 JUDGE WALLIS: Very well, that should resolve
22 your concern.

23 MR. FFITCH: Thank you, I appreciate that, I
24 appreciate the courtesy of counsel.

25 BY MR. FFITCH:

0311

1 Q. Now you mention in your testimony, Mr. Beach,
2 that MCI is now facing a more adverse market environment
3 because incumbents are charging higher prices for
4 commercial agreements with MCI; is that correct?

5 A. Yes, I mentioned that in combination with
6 several other factors affecting us in that mass market.

7 Q. All right. Based on your knowledge, is this
8 occurrence unique to MCI, or is it something that all
9 CLECs which rely on wholesale agreements with incumbents
10 are generally facing?

11 A. It's my understanding that the commercial
12 agreements that MCI has signed, negotiated and signed
13 are typically -- they're available to others -- or let
14 me put it this way. Other CLECs have negotiated similar
15 agreements that are in effect, and I think that their
16 only other alternative at the time was even higher rates
17 without a commercial agreement for UNE-P services or a
18 commercial agreement for these replacement services at
19 higher rates but not as high as the regulated charges.

20 Q. All right, something of a Hobson's choice for
21 the CLECs, wouldn't you agree?

22 A. Yeah, it was a difficult decision, but I was
23 actually pleased with our ability to negotiate some
24 agreements that would allow us to manage this decline
25 and continue to add new customers, which the regulated

0312

1 outcome under the FCC rules would not have allowed.

2 Q. Now can you please turn to Exhibit 66.

3 A. Yes, thank you.

4 Q. All right. And that's a response to Data
5 Request Number 93, and this is, is it not, a series of
6 questions that come at this issue we have just been
7 discussing in a little bit more detail but essentially
8 ask if the negative influences that you discuss in your
9 testimony including the increasing wholesale costs, if
10 those are exclusively being experienced by MCI or
11 whether they affect all CLECs or other CLECs as well,
12 and you answered below, do you not, that the trends
13 described on those pages do not affect MCI only, but
14 neither do they affect all carriers equally, and then
15 you continue with further explanation, correct?

16 A. Yes, that's correct.

17 Q. And you have testified that the impact of the
18 rising rates for UNE-P replacement, unbundled network
19 element platform replacements such as wholesale
20 advantage rates that are now available through
21 commercial agreements mean that MCI "has no choice but
22 to continue to raise retail rates", correct?

23 MS. SINGER NELSON: Do you have a specific
24 reference for that testimony?

25 Q. Exhibit 61, your rebuttal testimony.

0313

1 MS. SINGER NELSON: At a certain page?

2 Q. Page 9.

3 MS. SINGER NELSON: Thank you.

4 JUDGE WALLIS: Ms. Singer Nelson, could you
5 move that microphone closer so that you are speaking
6 directly into it.

7 MS. SINGER NELSON: Thank you, Judge.

8 JUDGE WALLIS: It's easier for us to hear
9 that way.

10 MS. SINGER NELSON: I apologize.

11 JUDGE WALLIS: Thank you.

12 A. Yes.

13 BY MR. FFITCH:

14 Q. That is your testimony there, correct?

15 A. Yes.

16 MR. FFITCH: That's lines 11 through 12, Your
17 Honor, for a more specific reference.

18 JUDGE WALLIS: Thank you.

19 BY MR. FFITCH:

20 Q. Mr. Beach, do you believe that MCI's need to
21 raise its retail rates in response to these rising
22 wholesale prices creates an advantage for the incumbent
23 telephone companies?

24 A. I don't know an advantage. I think it
25 affects our competitive position in the market with

0314

1 respect to any of the carriers or other alternative
2 providers. I'm not sure how it would be unique to the
3 incumbent.

4 Q. Does it affect your competitive position
5 positively or negatively?

6 A. Negatively.

7 Q. Can you please look at page 23 of your direct
8 testimony, and that's Exhibit --

9 JUDGE WALLIS: Number 60.

10 Q. Exhibit 60, thank you, please look at line
11 459.

12 A. Yes.

13 Q. And you state that MCI is not a price leader
14 for residential service, correct?

15 A. That's correct.

16 Q. Would you please look at Exhibit 73, and in
17 Exhibit 73, this is Public Counsel's Data Request 91, we
18 ask you to define the term price leader that you use at
19 this place, and could you just read your response,
20 please, containing your definition.

21 A. Yes.

22 In this context price leader means the
23 company with the ability and incentive
24 to initiate price changes in the
25 relevant market that other companies

0315

1 must follow to remain competitive or
2 otherwise avoid losing market share or
3 significant numbers of customers.

4 Q. Is there a price leader, Mr. Beach, for
5 residential services today in Verizon's service
6 territory?

7 A. I don't know if there is or isn't, but I know
8 that we're not.

9 Q. Do you have any candidates in mind for who
10 the price leader might be?

11 A. I don't know, but perhaps Dr. Taylor would be
12 a person who might have an opinion on that.

13 Q. All right.

14 Please turn to Exhibit 63, do you have that?

15 And that -- I'm sorry, have you located that?

16 A. I believe so, that's marked as Data Request
17 Number 57?

18 Q. Correct.

19 A. Yes, I have it.

20 Q. All right. In Part A of that data request,
21 we ask:

22 Please explain how residential customers
23 who currently purchase service from MCI
24 will be affected by the merger.

25 And the answer is provided below:

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1 All residential and business customers
2 will remain customers of the
3 subsidiaries after the transaction is
4 completed subject to whatever
5 contractual obligations are in force.

6 And it continues, and I'm just paraphrasing,
7 to indicate that those customers can choose to become
8 Verizon's customers if they wish to, and Verizon would
9 provide service to them, correct?

10 A. Yes.

11 Q. And that Verizon might actively choose to
12 solicit customers from MCI?

13 A. Well, that's not quite what I said. I didn't
14 say they would or wouldn't, but I said if they should do
15 so, I believe they will be required to adhere to
16 applicable slamming rules and so forth.

17 Q. All right, that's a better paraphrase.

18 A. Thank you.

19 Q. And if that occurred, based on what we have
20 seen in Exhibit 65, the customer would have to pay the
21 \$26 and plus the \$17, correct?

22 A. I thought I told you I didn't know that.

23 Q. All right.

24 Is it your position, Mr. Beach, that this
25 customer who is a customer after the merger of an MCI

0317

1 subsidiary is being served by an independently owned
2 competitor of Verizon?

3 A. No.

4 Q. And then in Part B we ask if customers will
5 automatically be migrated to Verizon's local and long
6 distance service, and we were referred back to Part A.
7 And then part C we asked for copies of documents
8 relating to plans for the transition, and we were
9 referred back to Part A. And if you will look at the
10 third paragraph of Part A, the answer states that the
11 companies have not engaged yet in post transaction
12 planning, correct?

13 A. That's what it says, yes.

14 Q. And then it goes on to say that MCI's present
15 intention is to continue to provide service outside of
16 Verizon's operating territory in a manner consistent
17 with MCI's current business plan regarding mass market
18 customers, correct? And that is correct, that's what it
19 states, correct?

20 A. Yes.

21 Q. Now the current business plan is a managed
22 decline, is that right?

23 A. That's correct for mass market customers.

24 Q. All right.

25 A. The response talks about residential and

0318

1 business customers in some points. Certainly we don't
2 anticipate managing the decline for business customers.
3 In fact, we're excited about being able to grow that
4 business as a combined and more efficient company.

5 Q. So MCI's primary operations outside of
6 Verizon's operating territory are in Qwest's service
7 territory, are they not?

8 A. In Washington state?

9 Q. In Washington state.

10 A. That's correct.

11 Q. So MCI will be effectively managing the
12 decline of a competitive option in Qwest's service
13 territory for the residential and small business
14 customers, right?

15 A. That's correct. I anticipate those factors
16 described in my testimony and in the responses and that
17 I think I listed here earlier in response to one of your
18 questions will continue, and they certainly do affect us
19 in the Qwest service territory and nationally for this
20 national product.

21 Q. Could you please go to your direct testimony,
22 Exhibit 60, at page 17, and go to line 351, and there --
23 do you have that?

24 A. It was at page 17?

25 Q. Yes.

0319

1 A. 351?

2 Q. Line 351, and this is your direct.

3 A. Thank you.

4 Q. Exhibit 60, and there the question is:

5 Has MCI had to take any other steps that

6 are likely to hasten the decline in its

7 market share?

8 And you say:

9 Yes, MCI has increased charges and is

10 likely to continue to do so in the

11 future.

12 Then you give some examples of carrier cost
13 recovery charge increasing and interstate carrier access
14 charge, correct?

15 A. Yes.

16 Q. And then can you turn to Exhibit 67, we asked
17 you to explain these charges, and you do that in Exhibit
18 67. I will let you get there.

19 A. Data Request 98; is that correct?

20 Q. 89.

21 A. Oh, 89.

22 Q. Data Request 89.

23 A. Yes, thank you.

24 Q. And there you do explain the charges in more
25 detail, correct?

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1 A. That's correct.

2 Q. Correct that you have been increasing, and do
3 you expect these charges to continue to increase after
4 the merger?

5 A. Yes, although let me just make it clear that
6 I expect we will need to increase pricing because, for
7 this service provided using the commercial contracts,
8 because those commercial contracts do step up on an
9 annual basis in the prices that we have to pay. Whether
10 we apply them to these particular rate elements or not
11 is probably a question I couldn't answer, but the prices
12 as I indicated in the direct testimony are likely to
13 continue to increase as a result of increasing costs.

14 Q. All right.

15 Please turn to Exhibit 68, and in Exhibit 68
16 you were asked, how will Verizon customers be notified
17 of the merger and how will MCI's customers be notified
18 of the merger. And in that response you're indicating
19 that there essentially will be no notification to the
20 customers except that you will follow all applicable
21 customer notice requirements, correct?

22 MS. SINGER NELSON: Your Honor, at this point
23 this is one of those data request responses that refers
24 to another data request response that we have agreed to
25 have admitted into the record. I've got a copy on my

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1 computer, and I do have one copy for the witness, and I
2 just want to make sure that to the extent that there are
3 any questions on that exhibit so that Mr. Beach can put
4 it in context he has both data responses.

5 JUDGE WALLIS: Very well.

6 Mr. ffitch, is that acceptable?

7 MR. FFITCH: Yes, it is. And if you would
8 like to show that to the or if counsel would like to
9 show that to the witness, I have no objection.

10 MS. SINGER NELSON: Thank you.

11 JUDGE WALLIS: Could you identify the
12 specific document that has been provided to the witness,
13 please.

14 Ms. SINGER NELSON: Yes, thank you, Judge.
15 The document that's been provided to Mr. Beach is MCI
16 and Verizon's response to Public Counsel Data Request
17 Number 71, which is referred to at line 1 of Exhibit 68,
18 and I think it's been marked.

19 JUDGE WALLIS: I don't believe we identified
20 which would be what number, but let's call this one
21 Exhibit Number 74. And that was the response to which?

22 MS. SINGER NELSON: 71, Public Counsel Data
23 Request Number 71.

24 JUDGE WALLIS: Thank you.

25 MS. SINGER NELSON: Thank you.

0322

1 BY MR. FFITCH:

2 Q. Now, Mr. Beach, you're reviewing that
3 response, response to request 71, does that cause you to
4 want to add anything to your answers here?

5 A. Actually, I don't think I had answered your
6 question.

7 Q. I have lost track.

8 A. I believe -- and I think I was going to
9 answer your question by saying I didn't necessarily
10 agree with you that this says that we would not notify
11 customers, but it certainly said that if we did or if we
12 didn't, we would follow all applicable customer notice
13 regulations. And I think we heard earlier of an
14 agreement to provide publication, notification via
15 publication, so that, you know, essentially would modify
16 this response obviously.

17 Q. All right.

18 Please turn to Exhibit 69, that's Public
19 Counsel Data Request Number 160.

20 MS. SINGER NELSON: And, Your Honor, at this
21 point I will just make a note that exhibit or Data
22 Response Number 159 is referenced in this exhibit, and
23 that relates to the other data request response that we
24 had discussed earlier, and the witness does have a copy
25 of Verizon and MCI's response to Public Counsel Data

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1 Request Number 159.

2 JUDGE WALLIS: And that will be 75 for
3 identification.

4 MS. SINGER NELSON: Thank you.

5 BY MR. FFITCH:

6 Q. All right, Mr. Beach, this asks if following
7 the merger MCI will continue to offer its neighborhood
8 broadband calling plan in Washington in its service
9 territory, correct? And it also asks if they will
10 continue to offer it outside of Verizon's Washington
11 service area, correct? Is that an accurate reading?

12 A. I'm rereading it, please, just a moment.

13 Q. All right.

14 A. (Reading.)

15 Yes, I think that's the question as posed.

16 Q. All right. And is this a mass market
17 offering?

18 A. Yes, it's actually a trial offering.

19 Q. And the answer is, could you read the second
20 sentence of the answer.

21 A. Second sentence:

22 In addition, Verizon and MCI have not
23 performed any post transaction planning.

24 Q. Can I ask you to turn to Exhibit 37, please,
25 that was an exhibit that was identified to Dr. Danner,

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1 it's Public Counsel Data Request Number 133.

2 A. If you just give me a moment, I might have to
3 get another binder up here.

4 This is marked Data Request Number 133; is
5 that right?

6 Q. Correct.

7 A. Yes, I have it.

8 Q. This asks whether MCI will continue to
9 operate under its brand name in Washington, correct?

10 A. Yes.

11 Q. The answer is essentially, we haven't made
12 any plans, so we don't know, correct?

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

14 Q. All right. Now we have quite a number of
15 these sorts of responses that in answer to a variety of
16 questions indicate that no plans have been made; isn't
17 that true?

18 A. Yes, and at the time they were filed, they
19 were correct. I would only modify them by saying that
20 the plans have not been completed, but I think as was
21 indicated earlier planning has begun.

22 Q. All right. But this Commission doesn't know
23 what the plans are, correct? Those plans have not been
24 provided to this Commission in this record, have they?

25 A. No, they have not, because they're not yet

0325

1 complete, and I think as we have pointed out, to the
2 extent that we do change products or pricing or other
3 services that the affiliated companies post merger
4 provide, the Commission does have specific oversight on
5 many of those, and we'll have to follow the same rules
6 to make any changes on those products or pricing or
7 names that we would have had to do pre-merger, so the
8 merger is not going to change that.

9 Q. Looking back at Exhibit 68, that's Data
10 Request Number 158, we have already looked at that, the
11 answer states:

12 After the transaction, Verizon and MCI
13 operating companies will continue to
14 provide service to their customers in
15 Washington.

16 I guess I'm having trouble reconciling the
17 various responses which indicate that no plans have been
18 made, for example Exhibit 37 that we just looked at
19 indicating that we don't know if the brand name will
20 continue, just one example, with this answer which
21 indicates that the operating companies will continue to
22 provide service; aren't these inconsistent?

23 A. I don't think so.

24 Q. Turn to Exhibit 71, please, and this is an
25 informal Staff Information Request Number 6, and it's

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1 true, isn't it, that this asks what is the business plan
2 for the post transaction entities overall and in
3 Washington, and again we have the answer, development of
4 post transaction business plans has not yet occurred,
5 correct?

6 A. That's correct. As I said before, those
7 plans are underway and not yet complete.

8 Q. Okay. Please turn to Exhibit 72. Do you
9 have that?

10 A. Yes, I do.

11 Q. And this is Staff Data Request 17, and this
12 asks have Verizon and MCI begun transition planning for
13 the merger of the two companies and asks some other
14 follow-up questions, and the answer is, no transition
15 planning has begun, no timetable has been determined, it
16 is unknown when the plan will be implemented, et cetera,
17 correct?

18 A. That's what it says.

19 Q. Now you have sort of updated some of these
20 other no planning answers before, do you have an update
21 for this one?

22 A. All I can tell you, as I just did, that
23 planning has begun. I think the most visible aspect of
24 that was an announcement, I believe it was last week,
25 when the officers of the company, the new merged company

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1 that would be providing competitive services, was
2 released, and the -- at a real high overview, I think
3 there's a need to have some level of planning in place
4 in terms of how the company is going to operate when the
5 merger closes, so that would be a deadline as to when
6 some aspects of the planning need to be done. A lot of
7 the -- particularly with respect to networks and systems
8 and so forth, that planning will go on for quite some
9 time even after the merger closes.

10 Q. Would you expect that at some point there
11 will be a merger plan adopted by the merging companies?

12 A. Well, certainly the merged company is going
13 to at some point have a business plan. The different
14 units that operate within that organization will have
15 specific plans with regard to their organizations and
16 the synergies and so forth, but they will probably come
17 together at different points in time, you know, based on
18 my experience having been through, well, I've been at
19 MCI for a long time, I have been merged into and out of
20 different companies quite a bit, and that's the way it
21 usually works. I don't think it will be any different
22 here.

23 Q. So this Commission is in the position, is it
24 not, of having to determine whether or not to approve
25 this merger before it has any information regarding the

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1 company's transition plan or any of the other matters
2 that are still only in the early planning stages as
3 indicated by these various data responses, isn't that
4 right?

5 A. I think that's true in the respects we have
6 just talked about, but I don't really see why the
7 Commission would need to have answers to some of the
8 things that you have asked, because they will still have
9 a role in any changes that we make. Day one pretty
10 clearly we'll have to continue to operate as we have
11 operated before. Like I said, I have been in and out
12 of, you know, different company names on my business
13 card a number of times, but I was still providing
14 service to customers, I was still running the network, I
15 continued to do that through those kind of transitions,
16 and when regulatory approval is required, either before
17 the merger or after the merger, we will be here or at
18 the FCC or wherever we need to be.

19 Q. And so this Commission is going to have to
20 decide whether this merger is in the public interest
21 without that information?

22 A. Without that information but with a wealth of
23 information that we have provided that has been, you
24 know, gathered through discovery from others. Now
25 before them is the decision of the FCC and the

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1 Department of Justice, which I think are instructive,
2 the review of their expert Staff. I mean I think they
3 have a lot of information that I think will allow them
4 to conclude that some of the things being asked here
5 that we don't have answers to yet are really not
6 necessary to have in order to conclude that this is in
7 the public interest.

8 MR. FFITCH: Your Honor, I think that
9 concludes my questions. Thank you, Mr. Beach.

10 THE WITNESS: You're welcome.

11 MR. FFITCH: I would like to offer the
12 cross-examination exhibits that have been marked for
13 Mr. Beach.

14 JUDGE WALLIS: Those have been received. The
15 documents described as Exhibits 74 and 75 for
16 identification, we do not yet have copies of those
17 distributed, they have been referred to in the
18 testimony, and we will receive those documents at this
19 time subject to receiving copies presumably tomorrow.

20 MS. SINGER NELSON: Yes, Your Honor, thank
21 you.

22 JUDGE WALLIS: Redirect.

23 MS. SINGER NELSON: Just one clarification.

24

25

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

2 BY MS. SINGER NELSON:

3 Q. Mr. Beach, do you recall the questions from
4 XO's attorney, Mr. Kopta, relating to connection
5 negotiations with Qwest and GTE back in the late '90's
6 after the Act was passed?

7 A. Yes, I do.

8 Q. Were you involved specifically in an
9 arbitration between GTE and MCI?

10 A. You know, there's so many of those, it's hard
11 to remember, but I would -- if we had such an
12 arbitration, I would have had responsibility for that
13 action at that time through my organization. Whether I
14 was, as I think I said, whether I actually was there,
15 whether we actually went to arbitration or adopted a
16 contract I don't know for sure.

17 Q. That was my next question. Sometimes did MCI
18 just adopt ICA's of other carriers rather than arbitrate
19 its own ICA in a case?

20 A. Yes, we have quite a few adopted contracts.
21 Typically we try to negotiate an agreement with the
22 incumbent. We typically examine the contracts that are
23 on file and approved by the state with other carriers in
24 an effort to at one time pick and choose and now adopt
25 in whole as the rules change. And then arbitrate is

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1 sort of a last resort because it takes a long time.

2 Q. And are you aware of whether MCI has opted in
3 to any GTE/AT&T interconnection agreements in any
4 states?

5 A. Certainly possible. AT&T contracts that I
6 have examined in many states are relatively complete as
7 compared to perhaps a regional carrier who may only have
8 a resale interest or a specific collocation interest, so
9 often we do. I couldn't tell you whether we have here
10 or not.

11 Q. Would you be surprised if we did opt into an
12 AT&T/GTE interconnection agreement here in Washington?

13 A. I guess I would not.

14 MS. SINGER NELSON: Thank you, that's all I
15 have.

16 JUDGE WALLIS: Are there any further
17 questions from counsel?

18 MR. KOPTA: One clarification on the
19 clarification, and I suppose I would make this in the
20 form of a record requisition. It's unclear based on my
21 questioning as well as Ms. Singer Nelson's questioning
22 exactly the nature of the interconnection agreement
23 between Verizon and MCI that is in effect or at least
24 under which the companies are operating, so I would ask
25 as a record requisition to identify when that agreement

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1 between Verizon or GTE, its predecessor, and MCI was
2 executed originally and the nature of that agreement,
3 whether it was an arbitrated agreement between GTE or
4 Verizon and MCI or whether it was an adoption of an AT&T
5 agreement with Verizon or GTE.

6 JUDGE WALLIS: Ms. Singer Nelson.

7 MS. SINGER NELSON: We have no objection to
8 that.

9 JUDGE WALLIS: Very well, that will be Record
10 Requisition Number 4.

11 MR. KOPTA: Thank you, Your Honor, that's all
12 I have.

13 JUDGE WALLIS: Are there questions from the
14 Bench?

15 Very well, Mr. Beach, you are excused from
16 the stand.

17 THE WITNESS: Thank you.

18 JUDGE WALLIS: Let's be off the record for a
19 scheduling discussion.

20 (Discussion off the record.)

21 JUDGE WALLIS: Mr. Smith is coming to the
22 stand on behalf of Verizon/MCI.

23 Mr. Smith, raise your right hand, please.

24 (Witness Stephen E. Smith was sworn.)

25 JUDGE WALLIS: Please be seated.

0333

1 Counsel.

2

3 Whereupon,

4 STEPHEN E. SMITH,

5 having been first duly sworn, was called as a witness

6 herein and was examined and testified as follows:

7

8 DIRECT EXAMINATION

9 BY MR. WEISSMANN:

10 Q. Good afternoon, Mr. Smith, I'm Henry
11 Weissmann representing Verizon. Do you have before you
12 what's been marked for identification as Exhibits
13 86T-HC, 87-HC, and 88-C?

14 A. I do.

15 Q. Do you have any additions or corrections to
16 make to your testimony at this time?

17 A. I do not.

18 MR. WEISSMANN: Your Honor, the witness is
19 available for cross-examination.

20 JUDGE WALLIS: Very well, we will receive
21 Exhibits 86T-HC, 87-HC, and 88-C, and consistent with
22 the stipulation as to cross exhibits also we'll receive
23 Exhibits 89, 90, and 91, which are documents presented
24 by Public Counsel for use on cross-examination.

25 Mr. ffitch.

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1 MR. FFITCH: Thank you, Your Honor.

2

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

4 BY MR. FFITCH:

5 Q. Good late afternoon, Mr. Smith.

6 A. Good afternoon, Mr. ffitch. I was a little
7 worried that the sun would be in my eyes, but we have
8 managed to avoid that, thank you very much.

9 Q. It's not often a problem around here at this
10 time of year.

11 Please turn to page 10 of your testimony,
12 which has been marked as Exhibit 86T, and on this page
13 generally you challenge Mr. King's assumption that the
14 two companies, MCI and Verizon, will have to be combined
15 to achieve synergies. Is it your testimony that MCI and
16 Verizon will continue to operate as totally separate
17 companies in Washington?

18 A. It's my testimony that the company has no
19 plans to merge MCI with its ILEC operations in
20 Washington. It is my further testimony that the
21 synergies that we have described about the transaction
22 do not rely on the merger of MCI and the ILEC operations
23 of Verizon.

24 JUDGE WALLIS: Mr. Smith, would you move the
25 microphone closer to your mouth so you're speaking

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1 directly into it. And you should, if everything is
2 hitting on all cylinders, hear yourself through the
3 speakers as you are speaking to assure that the rest of
4 us can hear what you're saying.

5 THE WITNESS: I apologize, is that better?

6 JUDGE WALLIS: Yes.

7 THE WITNESS: Mr. ffitch, would you like me
8 to respond again?

9 MR. FFITCH: That's fine if you would like to
10 repeat your answer.

11 THE WITNESS: If you heard it, then I'm okay.

12 MR. FFITCH: I did hear it, thank you.

13 THE WITNESS: You heard it?

14 THE REPORTER: Yes.

15 BY MR. FFITCH:

16 Q. Can you take a look, please, at Exhibit 72.

17 MR. FFITCH: And, Your Honor, I will note
18 that we have marked the same exhibit twice here. Public
19 Counsel identified the same data response for Mr. Beach
20 and for Mr. Smith, and we didn't pick up the
21 duplication, so Exhibit 89 and Exhibit 72 are the same,
22 so I was going to refer to Exhibit 72.

23 A. I'm looking at Exhibit 89, is that correct?

24 JUDGE WALLIS: It should be the same.

25 Q. Okay.

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1 A. I don't have 72 with me.

2 Q. All right, that's fine.

3 And there again the question is asked about
4 whether Verizon had begun transition planning, correct?

5 A. Yes, that's the question, have Verizon and
6 MCI begun transition planning for the merger of the two
7 companies, and then the question goes on.

8 Q. All right. And the answer begins, no
9 transition planning has begun, correct?

10 A. That is what it says, yes.

11 Q. And we have had some testimony from another
12 witness about this; do you have anything to add to this
13 answer?

14 A. Nothing beyond what Mr. Beach has testified.
15 Indeed the companies have now begun merger planning in
16 earnest. None of that was done prior to just recently
17 because neither Verizon nor MCI wanted to gun jump the
18 decisions that would be required first by the share
19 owners and then by the various regulatory authorities.

20 Q. All right. But we have just seen in your
21 rebuttal testimony that you have apparently an
22 assumption, clear assumption or understanding in mind
23 about how these two companies will operate post merger?

24 A. No, sir, I said at least we have no plans at
25 this time to merge the businesses, and a merger of the

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1 operations, the ILEC operations and MCI, were not
2 contemplated as part of the merger analysis.

3 Q. So there was a plan or there is a plan --

4 A. No, there was an analysis of the merger
5 opportunity, and in the context of the merger
6 opportunity analysis we looked at things like synergies
7 and synergy opportunities. We did not contemplate the
8 need for the merger of the operations, of the ILEC
9 operations and the MCI operations.

10 Q. In your mind does it make sense to continue
11 to maintain two enterprise market operations in
12 Washington?

13 A. Verizon maintains separate operations in
14 Washington today. Verizon Wireless is a very separate
15 operation from Verizon local exchange business, Verizon
16 LLD is a separate operation, Verizon ISP services are a
17 separate operation, so it does not surprise me that the
18 company might not merge and does not have plans at this
19 time to merge up those operations.

20 Q. So you're saying that Verizon and MCI will
21 maintain identical separate operations to serve the
22 enterprise market in Washington?

23 A. No, I'm not saying that. I don't know the
24 final plans for the enterprise, how we'll serve
25 enterprise customers. I do know that as we thought

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1 about the enterprise opportunities, we hoped that we
2 would -- I mean this is a merger about building MCI's
3 business, principally its enterprise business, and there
4 will be an expectation, we have expectations that the
5 parties on -- for the revenue synergies generated by the
6 combination of business, those revenue synergies will
7 occur through sales to enterprise customers, through
8 sales to small business customers, and through sales to
9 wireless customers. On the enterprise side we expect to
10 do that by -- through partnership the way that Verizon
11 partners today with, you know, a third party contractor.
12 If Verizon bids an enterprise account today, it will
13 either sub to a prime or prime and have subs. What MCI
14 enables us to do is to offer a complete end to end
15 solution to customers, which we can't do today. And so
16 we think we're going to have the opportunity to afford
17 customers a much better service solution, a single
18 provider of the service, but it will be done through
19 affiliate agreements between affiliates. And to the
20 extent that there are affiliate agreements with the
21 ILEC, those are subject to review, of course, by the
22 Washington public service commission, Utilities
23 Commission, I apologize.

24 Q. So there will be a single provider?

25 A. I'm sorry, no, there will not be a single

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1 provider.

2 Q. I'm sorry, I thought I heard you say that
3 there would be a single provider working through
4 multifaceted affiliate agreements?

5 A. There will be a lead provider of the service
6 when the -- my expectation is that it will work as it
7 does today when Verizon partners with other affiliates.
8 Based on the opportunity, the need of the customer, and
9 the affiliate who is in the best position to meet those
10 needs, that affiliate will probably bid the account and
11 do so by augmenting the bid with affiliate services
12 where he can, she can. In this case we will now have a
13 great opportunity to augment the bid to provide a very
14 much more complete end to end solution by either us
15 partnering -- by either MCI being the lead to a customer
16 and us partnering, us the local exchange business or us
17 the long distance business or us the wireless business,
18 partnering with MCI as the lead or alternatively one of
19 the other affiliates taking the lead depending upon
20 again the customer's needs and the position of the
21 relationship of the affiliate to the customer.

22 Q. Is the customer going to understand with whom
23 they're dealing?

24 A. We hope so, yes, we hope so.

25 Q. Are they going to be dealing with MCI or with

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1 Verizon?

2 A. They'll be dealing with -- certainly on the
3 enterprise side they're very sophisticated customers,
4 and they know the reputation of MCI, and either MCI or
5 Verizon depending upon again the lead will come in and
6 present here's what we're going to offer, Verizon the
7 local exchange will pick up this piece, MCI will pick up
8 this piece, Verizon local exchange at the other end to
9 pick up this piece. And so you have a complete
10 solution, and you have a single accountable company for
11 delivery. And that will improve things like service
12 level commitments to customers. Today if I'm partnering
13 with a level 3, I can't necessarily provide service
14 level guarantees the way I will be able to do when I can
15 -- when I know what the end to end capability of the
16 company is, I know the systems and the infrastructure
17 which supports the entities, and can feel comfortable
18 making the kind of service level commitments that
19 customers will be looking for.

20 Q. In your mind does it make sense to maintain
21 two separate mass market operations in Washington?

22 A. I have not given it a thought.

23 Q. Can you take a look at Exhibit 512, please,
24 that's the Justice Department press release.

25 A. 512, I don't have that, can you hold one

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1 second, please.

2 Q. And if you look down about three quarters of
3 the way down the page, there the phrase appears, well,
4 I'm going to paraphrase this sentence, the phrase
5 appears, the phrase that I'm looking at is exceptionally
6 large merger efficiencies, correct?

7 A. This is my first opportunity to look at this,
8 so you will have to point me directly to the language
9 you want me to read.

10 Q. All right. Well, let's not just take a
11 little piece of the sentence. I believe the sentence
12 begins a little further up with the phrase, with the
13 exception of the cities covered by today's action; do
14 you see that?

15 A. I do see that, yes.

16 Q. And it goes on to say:
17 The Division concluded that the
18 transactions will not harm competition
19 and will likely benefit consumers due to
20 existing competition, emerging
21 technologies, the changing regulatory
22 environment, and --
23 Here's the magic phrase.
24 -- exceptionally large merger specific
25 efficiencies.

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1 So am I understanding --

2 JUDGE WALLIS: We do have to have --

3 A. The magic phrase was an editorial comment.

4 JUDGE WALLIS: We do have to have just one
5 person speaking at a time.

6 THE WITNESS: I'm sorry.

7 BY MR. FFITCH:

8 Q. What were you --

9 A. I was noting that you were reading up until a
10 point, and then you stuck in the words, the magic,
11 here's the magic phrase, and I was just trying to add a
12 clarification that that was not in here, that was all, I
13 apologize.

14 Q. You're correct, the Justice Department did
15 not use that description in this press release. But
16 that is the phrase that I was specifically focusing on,
17 and here's my question I guess, Mr. Smith. As I
18 understand what you're saying, the except -- part of
19 these exceptionally -- I'm sorry, it's getting late in
20 the day, I'm having trouble being articulate. We
21 shouldn't look to efficiencies caused by the combination
22 of the enterprise operations of these two companies or
23 the mass market operations of these two companies to
24 contribute to these exceptionally large merger specific
25 efficiencies. Do I understand your testimony correctly?

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1 A. No, I didn't testify first of all with this
2 phrase in mind. I think what I said is that the
3 synergies that we have identified in the merger
4 opportunity, the merger of the businesses, do not rely
5 on the organizational consolidation of MCI with local
6 exchange business.

7 JUDGE WALLIS: Mr. ffitich, we are closing in
8 on the 5:00 hour, so when you're done with this line of
9 questions on this particular part of this document,
10 let's conclude.

11 MR. FFITCH: Thank you, Your Honor, if I may
12 just check my notes here, I believe that does conclude
13 this particular line, Your Honor.

14 JUDGE WALLIS: Very well, let us then
15 conclude today's session, we will take up promptly at
16 9:00 tomorrow morning.

17 Mr. Smith, you will return to the stand at
18 that time, and we will continue your examination.

19 THE WITNESS: Thank you, I will be happy to.

20 JUDGE WALLIS: Thank you.

21 (Hearing adjourned at 5:00 p.m.)

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