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BEFORE THE WASHINGTON

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UTILITIES AND TRANSPORTATION COMMISSION

3

In the Matter of the Petition for) UT-033035

Arbitration of AT&T COMMUNICATIONS) Volume II

4

OF THE PACIFIC NORTHWEST AND TCG) Pages 18-176

SEATTLE, with QWEST CORPORATION,)

5

Pursuant to 47 U.S.C. Section)

252(b).)

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An arbitration in the above-entitled matter

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was held at 9:30 a.m. on Wednesday, October 29, 2003,

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at 1300 South Evergreen Park Drive, Southwest,

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Olympia, Washington, before Administrative Law Judge

14

DENNIS MOSS.

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The parties present were as follows:

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QWEST CORPORATION, by Mary Rose Hughes,

Attorney at Law, Perkins Coie, LLP, 607 14th Street

18

N.W., Washington, D.C. 20005-2011.

19

AT&T COMMUNICATIONS OF THE PACIFIC

NORTHWEST and TCG SEATTLE, by Letty S.D. Friesen and

Mitch Menezes, Attorneys at Law, 1875 Lawrence

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Street, Suite 1500, Denver, Colorado 80111.

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Barbara L. Nelson, CCR

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Court Reporter

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1 JUDGE MOSS: Let's be on the record. Good
2 morning, everyone. We are convened in the
3 arbitration proceeding styled In the Matter of The
4 Petition For Arbitration of AT&T Communications of
5 the Pacific Northwest and TCG Seattle with Qwest
6 Corporation Pursuant to 47 U.S.C. Section 252(b).

7 My name is Dennis Moss. I am an
8 Administrative Law Judge with the Washington
9 Utilities and Transportation Commission, and I have
10 been asked to serve as Arbitrator in this proceeding.

11 The parties have prefiled their testimonies
12 and exhibits, including cross-examination. Let me
13 ask, with respect to the issues that are being
14 submitted on the paper record, do the parties wish to
15 stipulate the relevant materials into the record at
16 the outset?

17 MS. HUGHES: We do, Your Honor.

18 MS. FRIESEN: We do, Your Honor.

19 JUDGE MOSS: Okay. The parties have agreed,
20 then. So that will encompass, let's see, everything
21 except Messrs. Talbott, Hyatt, and Freeberg. So let
22 me just make a record. Exhibits -- Exhibit Numbers 1
23 through 5, the prefiled testimony and exhibits by
24 Robert W. Hayes, for AT&T, are admitted by
25 stipulation.

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1 MS. HUGHES: Your Honor, if I may, Witness
2 Hayes, for AT&T, along with Witness Huff, for Qwest,
3 addressed Issue 27, which has been withdrawn from
4 this proceeding. So I think there is no basis to
5 admit that testimony.

6 JUDGE MOSS: Oh, they address only those
7 issues?

8 MS. HUGHES: That's correct.

9 JUDGE MOSS: Only that issue.

10 MS. FRIESEN: That's correct, Your Honor.

11 JUDGE MOSS: Okay. So we don't need Hayes
12 and we don't need Huff.

13 MS. HUGHES: That's also correct.

14 JUDGE MOSS: All right. Well, then, I will
15 correct myself. We will not admit Exhibits 1 through
16 5, because they are not necessary to our record,
17 pertaining only to Issue Number 27 that the parties
18 have resolved by negotiation prior to today.

19 We will, then, admit Exhibit Numbers 6
20 through 9, the prefiled testimony and exhibits of
21 Michael Hydock, for AT&T. We will admit Exhibit
22 Number 10, the prefiled direct testimony by Arleen M.
23 Starr, for AT&T. We will -- well, if you wish, we
24 can admit the others by stipulation, or if you wish
25 to reserve until those witnesses appear, we can do it

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1 that way. What do counsel prefer?

2 MS. HUGHES: It's acceptable to Qwest to
3 admit by stipulation.

4 MS. FRIESEN: It's acceptable to AT&T, as
5 well. I might note just for the record at this point
6 that we do have a few minor corrections to make to
7 some of our testimony, but I assume, under
8 stipulation, that can still be made.

9 JUDGE MOSS: Oh, sure. We'll do that on the
10 stand, assuming that is what they are.

11 MS. FRIESEN: Yeah.

12 JUDGE MOSS: There was one other matter
13 before I walk through this, then. And that was I had
14 the letter from Qwest concerning Exhibit Number 80,
15 the transcript from the Colorado arbitration
16 proceeding. That's just about a two-page exhibit, I
17 think, as provided by AT&T for Mr. Freeberg. That is
18 to say, an excerpt from the transcript, which
19 actually I had some question about, because it
20 doesn't seem to be one page following another and the
21 pages aren't numbered.

22 So I think, as to Exhibit 80, let's go ahead
23 and clarify what we're going to do with that. I'm
24 reluctant to admit the entire transcript. That's a
25 lot of paper. If people are going to refer to

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1 specific portions of that transcript, we can admit
2 those portions. And let me put it back to the
3 parties again. I'm assuming that you have identified
4 specific portions of that transcript that you would
5 propose to use during cross-examination or -- well,
6 actually, it is a cross-examination exhibit for Mr.
7 Freeberg, identified initially for Mr. Freeberg.
8 Shall we proceed on that by simply admitting that
9 number and then we'll sort out later what pages will
10 actually become part of the record?

11 MS. FRIESEN: Your Honor, if I could explain
12 what I was attempting to do here, perhaps that will
13 clarify for Ms. Hughes.

14 JUDGE MOSS: All right.

15 MS. FRIESEN: The first page is obviously
16 the page that relates to and demonstrates that it
17 does come from the record in Colorado in the
18 arbitration between AT&T and Qwest, so that's why I
19 included the first page. The second page indicates
20 that it is the witness Paul McDaniel who was called
21 to the stand and he was sworn, as well as the fact
22 that I began cross-examination. So that just
23 identifies who the witness is and confirms that he
24 was sworn.

25 The third page is actually the page that I

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1 would like -- is the excerpt that I'm interested in,
2 and it begins, you know, roughly at line two and goes
3 through line 14 or 13. So that's why I included
4 three pages, just so that I could authenticate the
5 document sufficiently without having to dump the
6 entire record into the proceeding.

7 JUDGE MOSS: Sure. It occurs to me that I
8 haven't actually taken appearances yet. I suppose we
9 should do that for a clear record before I turn to
10 you, Ms. Hughes. Why don't we have appearances first
11 from AT&T.

12 MS. FRIESEN: Good morning, Your Honor and
13 colleagues. This is Letty Friesen, from AT&T, and
14 joining me at counsel table today is Mitch Menezes,
15 our chief negotiator in this arbitration.

16 JUDGE MOSS: Welcome.

17 MS. HUGHES: Mary Rose Hughes, outside
18 counsel to Qwest.

19 JUDGE MOSS: I apologize. My mind was
20 disorganized. Now, Ms. Hughes, are there specific
21 portions of this transcript that you would wish to
22 refer to during cross-examination? Have you
23 segregated those in a way that we can identify them
24 now or --

25 MS. HUGHES: There are, Your Honor. And if

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1 I may clarify, it was unclear to Qwest, when we
2 received AT&T's exhibit designation, whether AT&T was
3 designating the entirety of the Colorado transcript
4 or whether AT&T was just designating several pages.
5 When we got the actual physical exhibit, we saw that
6 they were designating only three pages.

7 Qwest has a specific concern about Exhibit
8 80, as it's now been designated by AT&T, and that is
9 that it is incomplete. And we have no objection to
10 the relevant portion of this transcript to respond to
11 Your Honor's concern about the entirety of the
12 transcript. We are not suggesting that Exhibit 80
13 should be the entirety of the Colorado transcript,
14 but we do believe that it should pick up, in
15 fairness, the full questions and the full answers
16 that were provided.

17 So we would propose specifically with
18 respect to Exhibit 80 that pages 160 through 168,
19 which encompasses the relevant line of questioning,
20 so that Your Honor and the Washington Commission have
21 a full sense of the questions and the answers. And I
22 know that Ms. Friesen suggested she is only
23 interested in -- I think she said lines two --
24 starting at line two on page 167, but starting at
25 line two is actually starting in the middle of an

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1 answer with no predicate question. So again, we
2 think it's inappropriate not to include the entirety.
3 I think if you look at pages 160 of that transcript
4 through 168, you pick up the relevant questioning,
5 and we're not suggesting that you go beyond the
6 relevant questioning for purposes of this exhibit.

7 JUDGE MOSS: So this would all be
8 cross-examination of Mr. McDaniel that you're
9 referring to?

10 MS. HUGHES: It's not the entirety of the
11 cross-examination, but it is the relevant
12 cross-examination on this particular line of
13 questioning.

14 JUDGE MOSS: Relates to this point.

15 MS. HUGHES: Yes. And that's where I would
16 cut it off. Where the questioning shifts to a new
17 line of questioning, I don't propose that that needs
18 to be included.

19 JUDGE MOSS: Context would seem useful, Ms.
20 Friesen.

21 MS. FRIESEN: I have no objection to that,
22 but I would like to point out that beginning at 160
23 and going forward is a discussion that is not
24 relevant to the question asked nor the particular
25 part of Mr. Freeberg's testimony in this proceeding

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1 to which the portion I'm putting in refers. So what
2 this is talking about initially is Qwest tandem
3 switches as arranged in Colorado and Colorado's
4 exchange service definitions and things like that.

5 So I'm not sure that that is particularly
6 appropriate, because the particular question I'm
7 asking is about CLEC tandem switches, not Qwest.

8 JUDGE MOSS: Well, it might be important for
9 me to understand that.

10 MS. FRIESEN: Okay.

11 JUDGE MOSS: So I think I will want to
12 expand Exhibit 80 to include the pages Ms. Hughes has
13 indicated. So that will be the text of Exhibit 80.

14 Now, I didn't have any other particular
15 issues with the exhibits, so having said that, I
16 believe I got through Exhibit 10 before I stopped.
17 The parties have agreed that we can admit the
18 remaining exhibits by stipulation, so that will
19 include Exhibit Numbers 11 through 27 for Douglas N.
20 Hyatt, from AT&T, and we'll go ahead with the
21 cross-examination exhibits, as well, and there's only
22 one identified there, which is Exhibit 28, so
23 identified in the exhibit list or described in the
24 exhibit list.

25 Exhibit Numbers 31 through 40, the prefilled

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1 direct and rebuttal testimony and exhibits of David
2 L. Talbott, for AT&T, will be admitted by
3 stipulation, as will Qwest's Cross-examination
4 Exhibit Number 41, as described in the exhibit list
5 that will be made a part of our record.

6 Exhibit Numbers 62 and 63, the prefiled
7 direct and rebuttal testimonies of William R. Easton,
8 on behalf of Qwest, are admitted by stipulation.

9 Exhibit Numbers 64 through 67, prefiled
10 direct and rebuttal testimony and exhibits of Philip
11 Linse, for Qwest, are admitted by stipulation.

12 Exhibit Numbers 68 through 78, the prefiled
13 direct and rebuttal testimonies and exhibits by Mr.
14 Thomas R. Freeberg, for Qwest, are admitted by
15 stipulation, as are AT&T's cross-examination
16 exhibits, identified as Numbers 79 through 122, will
17 be admitted by stipulation. Now, 123 and 124 have
18 been marked. Are we actually going to have some
19 artwork in the hearing today?

20 MS. FRIESEN: Your Honor, I'm hoping not.

21 JUDGE MOSS: We'll reserve those.

22 MS. FRIESEN: Can we reserve that?

23 JUDGE MOSS: Sure.

24 MS. FRIESEN: Particularly since it's mine.

25 JUDGE MOSS: I wanted to note for the record

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1 that Exhibit Number 84 is actually identified as
2 confidential, so it should bear the 84-C. Are there
3 any other confidential exhibits? I've looked at all
4 the exhibits, and that's the only one that caught my
5 eye. Okay. Well, let's be diligent about that one.
6 If we have any questions about that exhibit, we'll
7 want to pause and make sure that we don't disclose
8 anything on our publicly-available transcript that
9 shouldn't be exposed.

10 All right. With the exhibits admitted, is
11 there any preliminary matter we need to take up
12 before we call our witnesses? Apparently not. Since
13 we, as I understand it from some discussion we had
14 off the record, Mr. Schell is going to testify from
15 AT&T adopting the testimony of Messrs. Talbott and
16 Hyatt, and so we'll have that testimony, then we'll
17 cover all of the four issues about which we are going
18 to have some live testimony today. And then we'll
19 have -- after that, we'll have Mr. Freeberg on all
20 four issues as to which he previously filed
21 testimony. So why don't we have Mr. Schell take the
22 stand.

23 Whereupon,

24 JOHN D. SCHELL,
25 having been first duly sworn by Judge Moss, was

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1 called as a witness herein and was examined and
2 testified as follows:

3 JUDGE MOSS: Thank you. Please be seated.
4 Your witness, Ms. Friesen.

5 MS. FRIESEN: Thank you, Your Honor.

6

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

8 BY MS. FRIESEN:

9 Q. Mr. Schell, good morning.

10 A. Good morning.

11 Q. Would you please, for the record, identify
12 for whom you work and what your capacity is in that
13 job?

14 A. My name is John D. Schell, Jr., and I am a
15 contract employee in the Local Services Access
16 Management Group in AT&T Network Services. My
17 business address is 3033 Chain Bridge Road, Oakton,
18 Virginia, 22185.

19 Q. Would you provide a very brief background, a
20 summary of your background?

21 A. Yes, I can. Thank you. I graduated from
22 St. Louis University in 1965, with a bachelor of
23 science degree in electrical engineering. I joined
24 AT&T Long Lines in 1965, as a senior engineer in the
25 engineering department in Kansas City, Missouri.

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1 Subsequently, I held many different jobs in
2 engineering and operations in AT&T in both the field
3 and in corporate headquarters. From 1984 to 1987, I
4 was district manager of regulatory support and
5 provided technical expertise and guidance to law and
6 government affairs on issues related to the AT&T
7 network.

8 From October 1987 through August of 1995, I
9 was district manager of access management, and my
10 group was responsible for the development and
11 implementation of policies and strategies to improve
12 AT&T's ability to compete and to achieve AT&T's
13 access price objectives in the Atlantic states.

14 From September 1995 through January 1998,
15 when I retired from AT&T, I was district manager of
16 Connectivity Network Planning, and my group was
17 responsible for developing AT&T's local market
18 infrastructure plans and managing AT&T's access
19 arrangements with local exchange carriers and
20 competitive access providers in the Atlantic states.

21 From March 1998 through May 2001, I was
22 employed by Teligent Corporation. I have appeared in
23 numerous regulatory proceedings, beginning in 1983
24 through 1993. I'm sorry, let me start over. Between
25 1983 and 1993, I prepared and presented expert

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1 testimony on access charges and interconnection
2 issues. I appeared in numerous regulatory
3 proceedings in the original Bell Atlantic states,
4 including Virginia, West Virginia, Maryland,
5 Pennsylvania, Delaware, New Jersey and New York.

6 Since becoming a contract employee for AT&T,
7 I've appeared on behalf of AT&T in Docket Number
8 24015 in Texas, and Docket Number 000075TP in
9 Florida, and Public Service Commission Docket Number
10 02001, which was Verizon's Delaware Section 271
11 Compliance filing, before the FCC in the Virginia
12 arbitration proceeding, CC Docket Number 00251, in
13 the New Jersey and Maryland arbitrations between AT&T
14 and Verizon and -- which were New Jersey Dockets
15 Number TO-00110893 and Maryland Case Number 8882. I
16 also appeared in the Illinois arbitration between
17 AT&T and SBC in Docket Number 030239, and finally in
18 the Minnesota arbitration between AT&T and Qwest,
19 Docket Number P-442421/IC-03-759.

20 JUDGE MOSS: Just a moment. How's the pace?

21 THE REPORTER: A little fast.

22 JUDGE MOSS: Okay. I'll ask you, Mr. Schell
23 -- chances are you won't have such a lengthy answer
24 again today, but if you could moderate your pace of
25 speech just a little bit, and I'll ask that Mr.

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1 Freeberg be cognizant of that, as well, so that the
2 court reporter can keep up, as I speak rapidly and
3 wear her out myself. I'll try to slow down, too.

4 THE WITNESS: I will try, Your Honor.

5 JUDGE MOSS: Okay. We may interrupt you if
6 she needs to. Particularly, Witnesses, when you read
7 something or from something, you'll tend to get a
8 little too fast, so just be conscious of that. Thank
9 you, Ms. Friesen. I apologize for the interruption.

10 MS. FRIESEN: Thank you, Your Honor.

11 Q. Mr. Schell, you have before you two exhibits
12 that have been pre-marked and admitted. The first
13 exhibit is Exhibit 31. It is the direct testimony of
14 David L. Talbott. Second exhibit is Exhibit 35. It
15 is the rebuttal testimony of David L. Talbott. Do
16 you have both of those, sir?

17 A. I do.

18 JUDGE MOSS: Just to correct, I think 36 is
19 the rebuttal testimony.

20 MS. FRIESEN: You are correct. Thank you,
21 Your Honor.

22 JUDGE MOSS: You're welcome.

23 Q. Mr. Schell, are you familiar with both these
24 pieces of testimony?

25 A. Yes, I am.

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1 Q. And do you have any changes to make to these
2 today?

3 A. I have just a couple of typographical errors
4 in the testimony.

5 Q. Could you please identify the page and line
6 number upon which those typographical errors are
7 located?

8 A. Yes, I can. Thank you. In Exhibit 31, the
9 direct testimony of David L. Talbott, at page five of
10 32, line 15, the second word is their, t-h-e-i-r. It
11 should be t-h-e-r-e.

12 The next change is on page nine of 32, at
13 line seven. The word and, a-n-d, should be inserted
14 between the second and third words on line seven.

15 On page 11 of 32, at line 18, the Exhibits
16 DLT-1 through DLT-4 should be identified and changed
17 to DLT-2 through DLT-5.

18 On page 17 of 32, at line 15, the date for
19 the citation should be 2002, not 2000. This is in
20 the footnote -- I'm sorry, it is in Footnote 15, not
21 at line 15.

22 JUDGE MOSS: Should be 2002?

23 THE WITNESS: That is correct, Your Honor,
24 not 2000. Finally, on page 20 of 32, at line 12, the
25 term 50 percent should be changed to 33 percent. And

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1 in the parenthetical expression following that, the
2 denominator, which currently reads 60,000 minus
3 20,000, should read only 60,000. Delete the minus
4 20,000. In line 13, \$250 should be \$167.

5 Q. And that change, Mr. Schell, is the result
6 of a math error; is that correct?

7 A. That is just a simple math error on my part;
8 that is correct.

9 Q. Do you have any changes to Exhibit 35 -- or
10 six, 36?

11 A. Again, just a couple of minor changes. On
12 Exhibit 36, at page 22 of 37, at line six, the word
13 the, t-h-e, should be inserted between the last two
14 words, so that it now says regarding the second. And
15 in line seven, issues should be issue.

16 Finally, the last change is on page 34 of
17 37, at line 12. The last word should be well,
18 w-e-l-l. Those are all of the changes I have to
19 Exhibits 31 and 36.

20 Q. I'd like you to turn now to Exhibit 11 and
21 Exhibit 16. I believe Exhibit 11 is the direct
22 testimony of Douglas N. Hyatt, and Exhibit 16 is the
23 rebuttal testimony of Mr. Hyatt. Do you have those
24 before you, sir?

25 A. I do.

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1 Q. Did you have any changes to make to those?

2 A. No.

3 Q. And you are familiar with the testimony
4 contained in those documents, as well?

5 A. Yes, I am.

6 MS. FRIESEN: Thank you. Your Honor, I
7 tender the witness for cross-examination at this
8 point.

9 JUDGE MOSS: All right. Ms. Hughes, you may
10 proceed.

11 MS. HUGHES: Thank you.

12

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

14 BY MS. HUGHES:

15 Q. Good morning, Mr. Schell.

16 A. Good morning.

17 Q. We've met before, haven't we?

18 A. Yes, we have.

19 Q. You submitted testimony on some of these
20 issues in the arbitration in Minnesota; correct?

21 A. I did, yes.

22 Q. Okay. Directing your attention to Issue
23 Five, Qwest's definition of exchange service is
24 traffic that is originated and terminated in the same
25 local calling area as determined for Qwest by the

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1 Commission; correct?

2 A. Yes, it is.

3 Q. And this is the same definition that is in
4 Qwest's Washington SGAT; correct?

5 A. Yes, it is.

6 Q. Okay. And this is the definition that was
7 presented to the Washington Commission during the
8 course of the 271 process; correct?

9 A. I didn't participate in that process, so I
10 don't know how that definition evolved in that
11 process.

12 Q. Okay. Are you aware that AT&T did not
13 oppose this definition in the 271 process?

14 A. That is my understanding.

15 Q. Okay. And no other carrier opposed this
16 definition in the 271 process?

17 MS. FRIESEN: I'm going to object to the
18 questions. He has said that he was not involved in
19 the 271 proceeding. Therefore, whether he knows who
20 opposed or who did what in that 271 proceeding, I
21 would suggest the witness may not be competent to
22 answer those kind of questions.

23 JUDGE MOSS: If he knows, he can answer. If
24 he doesn't know, he can say so.

25 THE WITNESS: I don't know.

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1 Q. Do you know, Mr. Schell, whether any CLEC
2 opposed this definition in the 271 process?

3 A. I don't know.

4 Q. Okay. And the definition that Qwest
5 proposes for this interconnection agreement with AT&T
6 is the same definition that is in Qwest's SGATs
7 throughout its 14-state service territory; correct?

8 A. I'm not familiar with all of the 14 states,
9 so I don't know.

10 Q. Okay. In connection with your testimony
11 regarding the proper definition of exchange service,
12 have you investigated the extent to which Qwest's
13 definition of exchange service is in use across
14 Qwest's 14-state service territory?

15 A. No.

16 Q. Okay. The definition that Qwest proposes
17 here is the definition that the Minnesota Commission
18 ordered into the new interconnection agreement
19 between Qwest and AT&T; correct?

20 A. I believe that's correct, yes.

21 Q. And it's also the definition that the
22 Colorado Commission has ordered into the new
23 interconnection agreement between Qwest and AT&T?

24 A. As you know, I was in Italy at that time,
25 and I did not appear in Colorado, so I don't know.

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1 Q. So you don't have any understanding of what
2 the Colorado Commission has ordered?

3 A. Not really, no. I mean, I browsed through
4 the order quickly, but I didn't -- I don't remember
5 the details.

6 Q. Okay. This dispute between Qwest and AT&T
7 over the definition of exchange service boils down to
8 whether, at the end of the day, a call is to be rated
9 based on the NPA/NXXs of the calling and the called
10 parties or whether the call is to be rated upon
11 whether it begins and ends in the same local calling
12 area. Is that a fair summary of the distinction
13 between the two offered definitions?

14 A. I think it is, with one clarification. It's
15 whether or not the calls should be rated and routed
16 based on the NPA/NXX codes, as has been the case for
17 30 or 40 years, and in fact is the case today, or
18 whether we should change to rating and routing calls
19 based on the physical location of the end users,
20 which is not the way it's done today. I believe, at
21 bottom, that is the issue.

22 Q. In a nutshell, Qwest's definition says that,
23 at the end of the day, in order for a call to be,
24 quote, unquote, exchange service, it must begin and
25 end in the same local calling area. Do you agree

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1 with that? That's what Qwest's definition provides?

2 A. One moment. I want to look at the most
3 recent version of the disputed issues list. Qwest's
4 definition says that exchange service or extended
5 area service (EAS)/local service means traffic that
6 is originated and terminated within the same local
7 calling area as determined for Qwest by the
8 Commission. So it says what it says.

9 Q. Okay. Under Qwest's proposed definition,
10 when an ILEC, in this case, Qwest, when an ILEC's
11 customer originates a call that's terminated to a
12 CLEC, in this case, say AT&T customer in the same
13 local calling area, the ILEC would pay reciprocal
14 compensation on that call; correct?

15 A. Based on the determination of the rate
16 centers involved, which is, in turn, based on the
17 NPA/NXXs associated with the originating and
18 terminating telephone numbers.

19 Q. I'm asking you, under Qwest's proposed
20 definition, that call would be a call on which
21 reciprocal compensation would be paid; correct?

22 A. Under Qwest's definition, again, the
23 definition is not completely clear on this, which is
24 why I criticized it as being somewhat vague. The
25 definition does not say based on the physical

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1 locations of the originating and terminating party.
2 But making that assumption, which is I believe what
3 you're doing, if the originating and terminating
4 party physically resided in the same local calling
5 area, then, under Qwest's definition, it would be a
6 local call. Otherwise, it would not.

7 Q. And reciprocal compensation would be due on
8 that call; correct --

9 A. That is correct.

10 Q. -- under my example. Under Qwest's proposed
11 definition, when a Qwest customer in one local
12 calling area originates a call that terminates to a
13 CLEC customer in a different local calling area,
14 Qwest is entitled to receive access charges or retail
15 toll charges, isn't it, under Qwest's definition?

16 A. Under Qwest's definition, if the originating
17 and terminating parties are physically located in
18 different rate centers that are not part of the same
19 local calling area, then, under Qwest's language,
20 Qwest would be entitled to either toll or access
21 charges. But I would like to add that there is no
22 way the industry can administer that process today.
23 There are no systems, no procedures or processes to
24 administer the rating or routing of calls based on
25 physical locations of customers. The industry does

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1 not exchange that information today, and so carriers
2 do not have that available.

3 Q. Under AT&T's proposed definition, as long as
4 the NPA/NXXs of the calling and the called parties
5 match, the call would be a local call; correct?

6 A. That is correct.

7 Q. Okay. So under AT&T's proposed definition,
8 as long as the NPA/NXXs of the calling and the called
9 parties are assigned to the same local calling area,
10 the call is local; correct?

11 A. As long as the NPA/NXXs of the originating
12 and terminating numbers are both assigned to a rate
13 center or rate centers within the same local calling
14 area, then the call would be local.

15 Q. So AT&T's proposed definition does not
16 require that the call terminate in the local calling
17 area in which it originates in order for that call to
18 be rated as a local call, does it?

19 A. It does not require that it physically
20 terminate in the same area that it physically
21 originated in because AT&T and all of the other
22 carriers do not know that. AT&T has no way of
23 knowing whether the call originated, for example, on
24 one of Qwest's thousands of FX lines where their
25 customer is not physically located in the rate center

0044

1 associated with the telephone number or whether it
2 originated over a private network. Corporations
3 today have private networks that run between states
4 so they can avoid toll charges.

5 For example, Your Honor, a customer in
6 California, Los Angeles, can have a private network
7 that comes to Seattle. Boeing, for example. And the
8 employee of Boeing in California can get on a private
9 network to Seattle, draw a dial tone from the PBX
10 located in Seattle, and make a local call in Seattle.
11 There's no way that anyone knows that that customer
12 is physically located in California. All they know
13 is the NPA/NXX associated with the rate center that's
14 in the call record.

15 Again, and I don't want to belabor this, but
16 they don't know if the call was forwarded. They
17 don't know if it was a foreign central office call.
18 They don't know if it came from a PBX or Centrex
19 off-premise extension.

20 So there's a predicate assumed in your
21 question which is that somehow the carriers know the
22 actual physical location of the originating
23 subscriber, and they don't know that with certainty.
24 All they know is the NPA/NXX, and they can look in
25 the LERG and find that that's associated with a rate

0045

1 center. And they can use the V&H, vertical and
2 horizontal coordinates in the LERG to rate the call.
3 That's all they know. So they cannot be absolutely
4 certain whether they return the call to the same
5 local calling area or not. I mean, to the area that
6 the originating subscriber physically resides in.

7 Q. Mr. Schell, do you recall the question?

8 A. I certainly do.

9 Q. Okay. And what is the answer to the
10 question?

11 A. I believe I answered the question.

12 Q. Under AT&T's proposed definition, whether or
13 not a call is returned to the local calling area in
14 which it originated is essentially irrelevant;
15 correct?

16 MS. FRIESEN: I'm going to -- withdraw.
17 Sorry.

18 JUDGE MOSS: Do you have the question, Mr.
19 Schell?

20 THE WITNESS: Yes. No, it is not
21 irrelevant, Your Honor. AT&T and the entire industry
22 use the NPA/NXX code to determine the rate center,
23 and they use the rate center then to determine
24 whether or not the call originated and terminated in
25 rate centers that are within a local calling area or

0046

1 not within a local calling area and rate the call
2 accordingly for wholesale and retail purposes. That
3 is, for intercarrier compensation purposes and for
4 billing retail customers.

5 Q. Let me ask a slightly different question.
6 Under AT&T's proposed definition, does it matter
7 whether the call is returned to the local calling
8 area or not?

9 A. Again, based on the NPA/NXX codes, it
10 matters. I don't know if the call is returned to the
11 physical -- to the area that the originating customer
12 physically resides in. All I have is the NPA/NXX
13 code information, and I have to use that to rate the
14 call, and that does matter.

15 Q. Under AT&T's proposed definition of exchange
16 service, does it matter whether the call is
17 physically returned to the local calling area in
18 which the calling party resides?

19 A. Does it matter if it is returned to the area
20 that the calling party physically resides in?

21 Q. Correct.

22 A. No, because we don't know that.

23 Q. To be clear, under AT&T's proposed
24 definition, as long as the NPA/NXXs of the calling
25 and the called parties are the same, no access

0047

1 charges are due on the call whether or not it leaves
2 the local calling area; correct?

3 A. As long as the NPA/NXX codes of the
4 originating and terminating telephone numbers are
5 associated with the rate centers that are in the same
6 local calling area, then that call is deemed a local
7 call and reciprocal compensation applies, and that's
8 the way it's done today.

9 Q. Okay. I think you just answered my second
10 question. Reciprocal compensation would be due on
11 that call; correct?

12 A. Yes.

13 Q. And no access charges would be due on that
14 call; correct?

15 A. Correct.

16 Q. Okay. Under AT&T's proposed definition of
17 exchange service, AT&T would not have to have any
18 customers located in the same local calling area as
19 the originating caller, but the call would still be
20 rated a local call on which reciprocal compensation
21 would be due as long as the NPA/NXXs of the calling
22 and called parties matched; correct?

23 A. Do you want me to take that as a
24 hypothetical?

25 Q. No.

0048

1 A. Then I disagree.

2 Q. Okay. You answered the same question in
3 Minnesota, however.

4 A. Mm-hmm.

5 Q. And your answer in Minnesota was that's
6 true. Do you recall the question in Minnesota and
7 your answer in Minnesota?

8 A. We went back and forth on many issues in
9 Minnesota, and as I read through the transcript from
10 Minnesota, I believe I answered several questions
11 inappropriately. Now, if you want to ask me the
12 question again, I'll answer it as honestly as I can
13 right here, right now.

14 Q. So are you telling me that at least some of
15 your testimony in Minnesota was incorrect, and if I'm
16 asking you the exact same question today that you
17 were asked in Minnesota, your answer today would be
18 different?

19 A. In this particular case, I think the answer
20 is different. I'm not sure it's different in any
21 other case unless you can cite to them. But, I mean,
22 in this particular case, if we can go back -- if you
23 want me to explain, I'll be happy to. I don't want
24 to run on, but if you want me to explain, I'll be
25 happy to. If you want to reask the question, I'll be

0049

1 happy to answer it again.

2 Q. I'll tell you what. Why don't I ask you the
3 question and you can give me your answer today, okay.

4 A. All right.

5 Q. Now, with the understanding that your answer
6 in Minnesota was different, here's the question.
7 Under AT&T's proposed definition of exchange service,
8 AT&T would not have to have any customers located in
9 the local calling area as the originating caller, but
10 the call would still be rated a local call on which
11 reciprocal compensation would be due, as long as the
12 NPA/NXXs of the calling and the called parties match?
13 Again, your answer in Minnesota was, Yes, that's
14 true.

15 A. The only thing I would change is that's
16 hypothetically true. It is technically true. I do
17 not believe that situation exists in Washington.

18 Q. Focusing your attention, Mr. Schell, on a
19 call from a Qwest local services customer to an AT&T
20 local services customer, AT&T knows where its local
21 services customer is receiving service; correct?

22 A. Yes, it does.

23 Q. Okay. And by that, I mean AT&T knows the
24 service address of its local services customers;
25 correct?

0050

1 A. AT&T knows the physical service address that
2 it delivers services to, yes, that's correct.

3 Q. And it needs to know that address in order
4 to provision services to them in the first instance;
5 correct?

6 A. Yes, it is correct.

7 Q. And it needs to know that address in order
8 to supply repair services to them; correct?

9 A. That is correct.

10 Q. And it also needs to know that address in
11 order to inform the appropriate E911 authorities of
12 the physical location of the customer at that service
13 address; correct?

14 A. That is correct.

15 Q. Would you agree with me, Mr. Schell, that
16 the calling areas adopted by the Washington
17 Commission today govern whether a call is a local
18 call or a toll call today?

19 A. Yes.

20 Q. It's technically feasible, isn't it, Mr.
21 Schell, for a Seattle NPA/NXX to be assigned to a
22 customer physically located in New York?

23 A. It is technically possible, but only Qwest
24 provides that service. AT&T does not provide that
25 service.

0051

1 Q. Under the definition of exchange service
2 that AT&T proposes for the parties' interconnection
3 agreement, if a Qwest customer located in Seattle
4 with a Seattle NPA/NXX called an AT&T customer
5 physically located in New York with a Seattle
6 NPA/NXX, that call would be a local call; correct?

7 A. It is correct, but I'd like to explain my
8 answer, Your Honor.

9 JUDGE MOSS: If it requires some
10 explanation, go ahead.

11 THE WITNESS: Thank you. What's involved
12 here is that a customer in New York desires a local
13 number in Seattle, so they go to an interstate
14 interexchange carrier to obtain a private line
15 facility from New York to Seattle. They then contact
16 Qwest and order a Feature Group A access arrangement
17 from Qwest's interstate tariff and they request Qwest
18 connect that to the interstate private line that they
19 obtained from the interexchange carrier. So if they
20 obtain that interexchange private line from New York
21 to Seattle from MCI, then they would order the
22 Feature Group A arrangement from Qwest to the MCI
23 POP, and MCI would cross-connect the two services.

24 All of the minutes of use that flow across
25 that particular arrangement, Qwest receives

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1 interstate switched access charges, all minutes of
2 use. With the Feature Group A arrangement that Qwest
3 provides, it also comes with a local number in
4 Seattle. So number one, you can dial a local number
5 in Seattle and that would then go to New York. Qwest
6 would receive interstate switched access charges for
7 all of those minutes of use, but all other carriers,
8 now, that rate calls to that number would rate their
9 calls based on that NPA/NXX.

10 So if an AT&T customer called that number,
11 and based on the NPA/NXX codes, that was a local
12 call, they would pay Qwest reciprocal compensation
13 for that call and Qwest would collect not only
14 reciprocal compensation, but interstate switched
15 access charges. So what the customer has done is buy
16 himself a local presence in Seattle, and all calls
17 are then rated based on that NPA/NXX.

18 Q. Directing your attention to calls between an
19 AT&T local service customer in Seattle to calls
20 between a Qwest local service customer in Olympia,
21 currently would a call to AT&T -- from AT&T's local
22 customer in Seattle to Qwest's local customer in
23 Olympia be a toll call?

24 A. From an AT&T customer in Seattle to a Qwest
25 customer in Olympia, yes.

0053

1 Q. And I take it, from your earlier answers,
2 access charges would apply to that call?

3 A. Yes.

4 Q. And could AT&T, under its proposed
5 definition, assign an Olympia NPA/NXX to its customer
6 physically located in Seattle?

7 A. Yes.

8 Q. Okay. So let's assume that AT&T did that.
9 So now the AT&T customer in Seattle has an Olympia
10 NPA/NXX, and let's assume that AT&T's proposed
11 definition for this interconnection agreement is
12 adopted. Would a call from Qwest's local customer in
13 Olympia to AT&T's local customer in Seattle with the
14 Olympia NPA/NXX assigned to it be a local call at the
15 retail level?

16 A. Yes, it would, just as if Qwest had provided
17 the FX arrangement and an AT&T customer called the
18 Qwest-assigned NPA/NXX. It's exactly the same
19 service. It works the same.

20 JUDGE MOSS: Let me interject here, because
21 I'd like to fill this out a little bit for my own
22 information. Let's assume the hypothetical Ms.
23 Hughes has proposed, which is to say there's a
24 Seattle customer with an Olympia NPA/NXX.

25 THE WITNESS: Mm-hmm.

0054

1 JUDGE MOSS: If that customer in Seattle
2 were to call another customer in Seattle, how would
3 that call be rated?

4 THE WITNESS: That would be rated as a toll
5 call.

6 JUDGE MOSS: And well, I think that probably
7 does fill it out. There may be one other example
8 that I need, but -- no, thank you.

9 THE WITNESS: It's important to understand,
10 I think, Your Honor, that the FX customer has changed
11 the rate center of a number that they are using, so
12 that they are now choosing to be associated with a
13 different rate center. And all of the calls are then
14 rated from that rate center.

15 JUDGE MOSS: Okay. Thank you.

16 Q. And sticking with the same example, I think
17 I asked you whether that would be rated a local call.
18 Your answer is yes, the AT&T customer located in
19 Seattle with the Olympia NPA/NXX and the Qwest
20 customer with the Olympia NPA/NXX calling the Seattle
21 customer, that would be rated as a local call;
22 correct?

23 A. Yes.

24 Q. And then that would be a call on which
25 reciprocal compensation would be due; correct?

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1 A. Yes.

2 Q. Okay. So the virtual NXX assignment enables
3 that AT&T customer to turn what would otherwise be a
4 long distance call to Olympia if a customer did not
5 have that VNXX assigned to it into a local call by
6 virtue of having that VNXX number assigned to it;
7 correct?

8 A. I disagree.

9 Q. Is your answer no?

10 A. I disagree with that, with that conclusion
11 you're drawing.

12 Q. And do you want to explain your answer?

13 A. Yes. The Olympia customer has chosen a
14 different rate center for their calling and their
15 calling now is out of the Seattle rate center, and
16 all of the calls in the Seattle -- in the local
17 calling area of Seattle today by Qwest, by the entire
18 industry, are rated as local calls based on the
19 NPA/NXX codes.

20 And if you're asking me if neither customer
21 had an FX arrangement, if there were no FX
22 arrangement and a call was made from Olympia to that
23 customer, a call was made from Seattle to that
24 customer in Olympia, would that be a toll call, then
25 yes, it would.

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1 Q. That's my question.

2 A. Okay. Then yes, it would. I would agree
3 with that. In the absence of any FX arrangement by
4 AT&T or by Qwest, that would be a toll call.

5 Q. So to follow up, the fact that there is now
6 a VNXX arrangement in place converts what would
7 otherwise be a toll call to a local call; correct?

8 A. No, I don't agree with that.

9 Q. Okay.

10 A. I don't agree with that conclusion.

11 Q. The AT&T customer in Seattle, sticking with
12 the example we've been using, no longer has to make
13 long distance calls to Olympia; correct?

14 MS. FRIESEN: Objection, asked and answered.

15 JUDGE MOSS: I'll overrule that.

16 THE WITNESS: I'm sorry. Please ask the
17 question again.

18 Q. Yeah. And so the AT&T customer in Seattle
19 assigned the Olympia VNXX number no longer has to
20 make long distance calls to Olympia; correct?

21 A. Their calls -- I'm sorry, I'm just having
22 mental moments here. Ask the question once more,
23 please.

24 Q. Sure. So the AT&T customer in Seattle who
25 has now been assigned the Olympia VNXX no longer has

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1 to make long distance calls to Seattle; correct? I'm
2 sorry, to Olympia; correct?

3 A. Okay. So we're saying now the AT&T customer
4 in Seattle that has an Olympia telephone number can
5 use that arrangement to make local calls in Olympia.
6 That is correct.

7 Q. Okay. And the reverse is true. Persons in
8 Olympia no longer have to make long distance calls to
9 that AT&T customer in Seattle; correct?

10 A. That is correct. They can call that number.

11 Q. And this results in an expansion by AT&T of
12 Qwest's local calling area, doesn't it?

13 A. Absolutely not. The customer has chosen a
14 different local calling area. It does not change any
15 Qwest local calling area, it does not expand any
16 Qwest local calling area. The customer has simply
17 chosen to be in a different local calling area, and
18 that is true whether AT&T provides the service or
19 Qwest provides the service. There's no expansion or
20 change.

21 Q. Mr. Schell, you were asked this same
22 question in Minnesota, were you not?

23 A. Yes, I was.

24 Q. And the answer you have just given here is
25 different from your answer in Minnesota, is it not?

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1 A. It certainly is.

2 Q. Okay. Can I read you your answer -- the
3 question and the answer in Minnesota?

4 A. You may.

5 Q. Okay. Question: Mr. Schell, when, in the
6 last example, you assigned an NPA/NXX in a rural
7 exchange from a rural Minnesota exchange to a
8 customer in a Minneapolis exchange, aren't you, in
9 effect, expanding the local calling area for Qwest
10 customers? Answer: It's a very focused, laser-like
11 expansion, if you want to use that term.

12 A. As I had mentioned to you earlier, I reread
13 the transcript and I looked at that colloquy, the
14 exchange between us, and I realized that my answer
15 was incorrect.

16 Q. Okay. And you wish to correct it here?

17 A. I certainly do.

18 Q. Okay. Have you attempted to correct the
19 record in any respect in Minnesota?

20 A. I came to this -- I realized all of this
21 after the record had closed. I recognized it in
22 preparing for this proceeding. As a matter of fact,
23 I recognized it in about the last three days, as I
24 prepared for this proceeding.

25 Q. You are aware that a number of parties have

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1 quoted from your testimony in Minnesota to the
2 Minnesota Commission in explaining their positions to
3 the Minnesota Commission?

4 MS. FRIESEN: I'm going to object, Your
5 Honor. The question is vague and ambiguous. I don't
6 know what she means by a number of parties quoting
7 that language to the Minnesota Commission, nor do I
8 think it's particularly relevant.

9 Furthermore, I have some concern about
10 citing particular questions out of context in that
11 proceeding. As I recall, Ms. Hughes was assuming a
12 lot of facts not in evidence in asking a series of
13 questions, and Mr. Schell was attempting to explain
14 the answers and was admonished by the judges in that
15 proceeding not to explain. As a consequence, I think
16 he may have agreed or over-agreed to her simplistic
17 views on some of these questions. So to the extent
18 that we need to pull that kind of colloquy, as Mr.
19 Schell has suggested, into this record to elucidate
20 what was actually said, I'd prefer to do that, rather
21 than having him answer questions that are outside the
22 context of what was going on there and --

23 JUDGE MOSS: Okay. Ms. Friesen --

24 MS. FRIESEN: -- are vague.

25 JUDGE MOSS: I really don't like speaking

0060

1 objections, all right. Let's don't have any more of
2 that. Now, as far as the question that's pending is
3 concerned, I don't think it was particularly vague.
4 I think this witness is quite capable of
5 understanding it, and I will overrule the objection.

6 However, I'm going to also say to you, Ms.
7 Hughes, I don't know that this is going to be a
8 particularly fruitful line to develop very far. So
9 let's have the answer to the pending question, if you
10 have it in mind, Mr. Schell. The question was
11 basically are you aware that some people have quoted
12 your testimony from Minnesota?

13 THE WITNESS: I'm not aware who's quoted
14 what, Your Honor.

15 JUDGE MOSS: Okay.

16 Q. Mr. Schell, would you agree with me that for
17 the particular Qwest customer in Olympia calling the
18 AT&T customer in Seattle, that is, the customer
19 assigned the Olympia NPA/NXX, the local calling area
20 is expanded?

21 A. No.

22 Q. Okay. Will AT&T provide a Seattle NPA/NXX
23 number to a customer located outside of the Seattle
24 LATA?

25 A. No.

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1 Q. That's not AT&T's current policy?

2 A. That is correct. AT&T will not do that.

3 Q. Are you aware of any barriers to changing
4 that policy?

5 A. I believe there may be a legal reason why we
6 would not change that policy, but that's not my area
7 of expertise.

8 Q. Fair enough. Are you aware, Mr. Schell,
9 that CLECs may opt into this interconnection
10 agreement between Qwest and AT&T?

11 A. Yes, I'm aware.

12 Q. Okay. And you can't address the policies or
13 practices that other CLECs may have, can you?

14 A. I can't address them, but I don't believe
15 that should determine or be dispositive of how the
16 issues in the proceeding -- in this two-party
17 arbitration are decided. AT&T should not be punished
18 for something someone else may do or may not do when
19 they opt into the agreement.

20 Q. Are you aware that CLECs have provided an
21 NPA/NXX to customers in other LATAs or in other
22 states?

23 A. No, I'm not.

24 Q. I take it you would agree, Mrs. Schell, that
25 NPA/NXX codes historically have been a surrogate for

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1 the geographic locations used by telecommunications
2 companies for billing purposes to indicate the
3 physical start point and physical end points of the
4 call; correct?

5 A. Yes, they've been used as a surrogate for
6 that.

7 Q. Okay. And you agree, as well, that NPA/NXXs
8 are assigned to a particular rate center?

9 A. I do.

10 Q. And not the reverse?

11 A. NPA/NXXs are associated with a particular
12 rate center.

13 Q. And rate centers or central offices are
14 defined by geographic boundaries, are they not?

15 A. Yes.

16 Q. Directing your attention to Qwest's Data
17 Request 01-029, which we have identified as an
18 exhibit, 41, do you have a copy of that data request?

19 A. AT&T response to 01-029?

20 Q. Correct.

21 A. I do.

22 Q. You'll see there, Mr. Schell, that Qwest has
23 asked AT&T to identify all of the provisions of
24 tariffs of AT&T and TCG that relate to AT&T and
25 TCG's, quote, foreign exchange-like, unquote, aka VFX

0063

1 or VNXX offerings to customers here in Washington?

2 A. Yes.

3 Q. Okay.

4 JUDGE MOSS: I'm momentarily confused.

5 Maybe I've got these exhibits in the wrong place.

6 MS. HUGHES: I'm sorry, Your Honor. I think

7 I referred to it by the wrong number.

8 JUDGE MOSS: Yeah, I think we're actually

9 referring to Exhibit 28, aren't we?

10 MS. HUGHES: Correct, that's correct.

11 Exhibit 28, which contains Attachment F.

12 JUDGE MOSS: Okay.

13 Q. Are you on the right exhibit, Mr. Schell?

14 A. Yes, if that's our response to Qwest 01-029,

15 I am.

16 Q. Okay. And you'll see in that response that

17 AT&T states that it offers this VFX or VNXX service

18 as part of its Prime Connect switched direct inward

19 dialing service in Washington?

20 A. Yes, I see that.

21 Q. Okay. And it also -- and AT&T indicates,

22 does it not, that this service is tariffed in the

23 tariff attached as Exhibit F?

24 A. Yes.

25 Q. F, as in Frank, to Exhibit 28. Okay. And

0064

1 my question to you is if you could turn to page three
2 of that exhibit?

3 A. Could you cite me to a --

4 Q. Attachment F?

5 A. -- a paragraph number, please?

6 Q. Paragraph number -- well, 4.0 is at the top.

7 It -- the upper header indicates Original Price Sheet

8 72-1A. Are you on that page?

9 A. Yes, I am.

10 Q. Okay. Directing your attention to the
11 second paragraph under part A on that page --

12 A. Yes.

13 Q. -- the paragraph that begins, Prime Connect
14 is intended solely for the purposes of providing
15 local and intraLATA non-toll access into a customer's
16 location. Are you with me?

17 A. Yes.

18 Q. Am I reading that correctly?

19 A. Mm-hmm.

20 Q. Next sentence, In the event that local and
21 intraLATA toll calls placed into or out of the Prime
22 Connect facility become subject to additional charges
23 imposed by connecting carriers or by regulation, the
24 company reserves the right to modify the facility
25 rate charges for traffic into the location upon 30

0065

1 days written notice to the customer. Did I read that
2 correctly?

3 A. You did.

4 Q. Okay. And my question to you is what does
5 AT&T mean by that second sentence, In the event that
6 local and intraLATA toll calls placed into or out of
7 a facility become subject to additional charges?

8 A. Okay. First of all, I'm not a tariff
9 expert, but my understanding of this is that AT&T,
10 Qwest, and all carriers put provisos in their tariffs
11 that allow them to change the rate to the customer
12 based on certain externalities. For example, when
13 the FCC instituted the subscriber line charge, that
14 was passed along to customers. If this Commission
15 were to decide to implement some end user line
16 charge, we would have to pass that along to the
17 customer. So these and related tariff provisions of
18 that type allow the carrier to flow through changes
19 in their cost that are beyond their control.

20 MS. HUGHES: Thank you, Mr. Schell. I have
21 no further questions.

22 JUDGE MOSS: No further questions on this
23 issue, or no further questions at all?

24 MS. HUGHES: I have no further questions at
25 all. Thank you.

0066

1 JUDGE MOSS: Simplifies things. I was going
2 to suggest that we modify because I would like to --
3 we're going to have Mr. Freeberg here in a minute.
4 Mr. Schell, thank you very much for your testimony.
5 You may step down.

6 THE WITNESS: Thank you, Your Honor.

7 JUDGE MOSS: Assuming there's no redirect?

8 MS. FRIESEN: No, I have no redirect. Thank
9 you.

10 JUDGE MOSS: I apologize for stepping over
11 that. Yes, as we get to Mr. Freeberg, then, I would
12 like to hear any questions on this Issue Five first,
13 while it's fresh in my mind, so -- and then we can
14 move on to the other issues as need be. And this
15 would also be a convenient moment, although it's a
16 little early, but let's go ahead and take our morning
17 recess so people can stretch their legs and so forth,
18 and we'll be back -- 10 minutes, is that enough, or
19 people want 15?

20 MS. FRIESEN: Can we have 15, just so I can
21 adjust my papers?

22 JUDGE MOSS: We'll be back at a quarter of.
23 Off the record.

24 (Recess taken.)

25 JUDGE MOSS: All right. Let's be on the

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1 record. Mr. Freeberg, if you would rise and raise
2 your right hand.

3 Whereupon,

4 THOMAS R. FREEBERG,

5 having been first duly sworn by Judge Moss, was
6 called as a witness herein and was examined and
7 testified as follows:

8 JUDGE MOSS: Thank you. Please be seated.

9

10 DIRECT EXAMINATION

11 BY MS. HUGHES:

12 Q. Good morning, Mr. Freeberg.

13 A. Good morning.

14 Q. Directing your attention to what we have
15 admitted as Exhibit 68, the prefiled direct testimony
16 of Thomas R. Freeberg --

17 A. Yes.

18 Q. -- do you have any changes or corrections to
19 that testimony?

20 A. I do not.

21 Q. Okay. So if I were to ask you the questions
22 that are asked in that testimony today, would your
23 answers be the same?

24 A. They would.

25 Q. And those answers are true and correct, to

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1 the best of your knowledge?

2 A. Yes.

3 Q. Directing your attention to Exhibit 73, the
4 prefiled rebuttal testimony of Thomas R. Freeberg, do
5 you have any changes or corrections to that
6 testimony?

7 A. I do not.

8 Q. Again, if those questions were to be asked
9 of you live today, would your answers be the same?

10 A. Yes.

11 Q. And are they true and correct, to the best
12 of your ability?

13 A. Yes.

14 MS. HUGHES: Qwest tenders Thomas R.
15 Freeberg for cross-examination on Issues Three, Five,
16 18 and 21.

17 JUDGE MOSS: Thank you. Ms. Friesen.

18

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

20 BY MS. FRIESEN:

21 Q. Good morning, Mr. Freeberg. Good to see
22 you.

23 A. Good morning.

24 Q. We're going to begin with Issue Five. And
25 Issue Five has two issues. One is the definition of

0069

1 exchange service, and then the other has to do with
2 this FX issue, would you agree?

3 A. The two are certainly tied together, yes.

4 Q. Okay. Do you know what the North American
5 Numbering Plan is?

6 A. Yes.

7 Q. Would you agree that the North American
8 Numbering Plan is a hierarchical numbering scheme
9 that uses 10 digits in the form of an NPA/NXX/XXX to
10 route calls?

11 A. Yes.

12 Q. And would you agree that AT&T began
13 administering NANP in 1947?

14 A. Seems right.

15 Q. First three digits, the NPA, is the area
16 code; is that correct?

17 A. Yes.

18 Q. Next three digits, the NXX, is the CO code;
19 is that correct?

20 A. Yes.

21 Q. And the NXX code is associated with certain
22 switches of rate centers; would you agree with that
23 statement?

24 A. Typically with a switch in a rate center,
25 yes.

0070

1 Q. Okay. And AT&T, in this proceeding, is not
2 suggesting upsetting the use of the NXX code in
3 association with a rate center, is it?

4 A. I think that AT&T is proposing that there
5 could be a disassociation between the NXX and the
6 location of the caller, the rate center.

7 Q. AT&T is not suggesting that the industry
8 upset the use of the NXX code associated with a rate
9 center in this proceeding; isn't that correct?

10 A. I think that -- I think that with the
11 definition of exchange service that AT&T is proposing
12 Qwest and AT&T should use in their new agreement,
13 there could be problems created, much as I discussed
14 in my testimony, tied to number portability, tied to
15 reciprocal compensation.

16 Q. Let's move on. The XXX portion of the call
17 is the subscriber line portion, is it not?

18 A. Four Xs, yes.

19 Q. Yes. In Qwest's rate center construct, the
20 originating NPA/NXX and the terminating NPA/NXX are
21 essentially entered into a table, they're compared,
22 and if they are in the same local calling area, the
23 call is rated as local; isn't that correct?

24 A. Ask me that question once again, if you
25 would.

0071

1 Q. Certainly. In the Qwest rate center
2 construct, the way you have your network set up via
3 rate center, the originating NPA/NXX of a call is
4 compared to the terminating NPA/NXX of the call, and
5 if those two numbers match, in other words, if it's
6 the same NPA, those calls are rated as local; isn't
7 that correct?

8 A. Yes, I think there's -- there is a lot of
9 truth to that. However, I think, again, there is the
10 very real possibility that, in a particular
11 interconnection that Qwest might have with another
12 carrier, it could find that in that particular
13 interconnection, while those calling and called
14 telephone numbers appear to match, the traffic could
15 be primarily one end in one city, another end in
16 another city, and potentially could be an improper
17 form of an interconnection.

18 Q. But you haven't identified any improper
19 forms of interconnection in this proceeding as
20 between AT&T and Qwest, have you?

21 A. No, I haven't, but I think that the
22 definition of exchange service is really very
23 important to how Qwest and other carriers do business
24 going forward.

25 Q. Do you happen to have before you any of the

0072

1 cross exhibits that AT&T has offered for use with you
2 today?

3 A. I do.

4 Q. Would you grab those, please? Now,
5 hopefully my numbering's consistent with the Judge's.
6 I'd ask you to turn to what has been marked as
7 Exhibit 85, which I'm hoping is Qwest response to
8 AT&T's Request 01-008.

9 JUDGE MOSS: That's correct.

10 Q. In this request, AT&T is obviously asking
11 Qwest to admit that it routes calls using NPA/NXXs,
12 which is what we just spoke about. And I'd like to
13 focus your attention on Qwest's response. If we set
14 aside the N11 numbers, the special dialing codes that
15 you've described that say, for example -- do you see
16 that sentence in the response? For example, N11.
17 Let's set aside those special dialing things,
18 including the 10-digit codes, okay. Is it fair to
19 say that Qwest switches route calls according to
20 NPA/NXXs?

21 A. Yes.

22 Q. Looking -- directing your attention to the
23 very last sentence in the response to that discovery
24 request wherein it says, Qwest also routes calls
25 based on location routing number for calls associated

0073

1 with number portability, do you see that?

2 A. Yes.

3 Q. It's true that Qwest switches initially will
4 look at the NPA/NXX to route the call and determine
5 whether or not local number portability is permitted,
6 correct, in a particular center?

7 A. Yes.

8 Q. Okay. If it's permitted, then the switch
9 moves beyond looking at the NPA/NXX to something
10 called the local routing number, or the LRN; is that
11 correct?

12 A. That's correct.

13 Q. That LRN number is associated with another
14 switch, or could be; isn't that correct?

15 A. Yes.

16 Q. And then your switch knows to forward the
17 call to where the local routing number is associated
18 with the NXX switch; is that correct?

19 A. That's true.

20 Q. Qwest switches, when one call is coming in
21 with an NPA/NXX, for example, of 360, and it's
22 sending the call to another NPA/NXX, for example, a
23 202 NXX, would Qwest switches route that call as a
24 toll call or a local call?

25 A. Let's see if I'm tracking with you. The

0074

1 originating caller is a telephone number that begins
2 with 360 --

3 Q. Something.

4 A. -- something, and they are attempting a call
5 to a customer with a -- let's say a 206 NPA?

6 Q. A 202. Or 206 is fine.

7 A. 202, okay. That the would appear to be a
8 toll call, I think, and dialed with a one as the
9 first digit.

10 Q. Okay. Would you agree with me, and I think
11 you would, because your footnote at -- Footnote 11 on
12 your direct testimony, page 17, describes the
13 definition of exchange in the state of Washington,
14 and that definition says, Exchange means a geographic
15 area established by a company for telecommunications
16 service in that area. That's your understanding of
17 the definition in Washington?

18 A. I think you're reading from my testimony, so
19 it is what it is.

20 Q. Okay. And would you agree with me that
21 Qwest's definition of exchange service does not say
22 that an exchange is a geographic area established by
23 a company for telecommunications service? Rather, it
24 says that it is a geographic area determined by the
25 Commission for Qwest; is that correct?

0075

1 A. Once again, the definition of exchange
2 service, it seems to me, says what it says, this says
3 what it says. If -- it seems to me in one case
4 you're defining exchange and the other case you're
5 defining exchange service. That's the way I heard
6 the question.

7 Q. Are you suggesting -- let me ask it this
8 way. Are you suggesting here in the state of
9 Washington that whatever is defined for Qwest as an
10 exchange service, by whomever, whether it's the
11 Commission or Qwest itself, that that definition
12 should be imposed on all other carriers?

13 A. Effectively, yes. I think that the
14 incumbent local exchange carrier's serving area is
15 the proxy for those carriers with whom Qwest is
16 interconnected.

17 Q. Okay. And you would agree with with me,
18 would you not, that the definition of an exchange in
19 the state of Washington suggests, in fact, that it is
20 a geographic area established by a company, not
21 necessarily by Qwest for other companies; isn't that
22 correct?

23 A. Again, it says what it says.

24 Q. Okay. I'd like to direct your attention to
25 your direct testimony, page 17, line 16.

0076

1 A. I'm there.

2 Q. In line 16, you're talking about Section 2.1
3 of Qwest's exchange and network service tariff, WNU
4 40. Do you see that?

5 A. I do.

6 Q. Is that tariff a retail tariff for Qwest
7 retail customers?

8 A. I'm not sure I know how to answer that
9 question because I think that, in some respects, yes,
10 and in some respects, no. If you expected the answer
11 yes, the reason I would explain around the possible
12 no is that all those services, I believe, are
13 available for resale, and so to some extent it
14 becomes a wholesale tariff, as well as a retail.

15 Q. It's only a wholesale tariff insofar as
16 those services under the act have to be offered by
17 Qwest to resellers at a wholesale discount; isn't
18 that correct?

19 A. That's -- I think that was my answer just --

20 Q. Setting aside the resale potential, this
21 tariff is primarily aimed at Qwest's retail customers
22 in this state, and by retail customers, I mean end
23 user customers to whom Qwest hopes to sell
24 telecommunications services; isn't that correct?

25 A. Yes.

0077

1 Q. Okay. Would you agree with me that a
2 foreign exchange is any exchange other than that in
3 which the customer's premises is located?

4 A. Seems correct.

5 Q. Okay. Would you likewise agree with me that
6 the service furnished within a local access and
7 transport area from an exchange other than the
8 exchange from which the customer would normally be
9 served is a definition of foreign exchange service?

10 A. I think that's correct.

11 Q. Would you further agree with me that an
12 entity or a person that purchases from Qwest FX
13 service could be called a FX service subscriber?

14 A. Yes.

15 Q. Okay. And would you agree with me that the
16 FX service subscriber may be located in an exchange
17 using a rate center that is different from the rate
18 center and exchange in which it obtains the foreign
19 number?

20 A. By definition, I think that's true, yes.

21 Q. Qwest offers foreign exchange service in the
22 state of Washington, doesn't it?

23 A. Yes.

24 Q. It's fair to say that Qwest's foreign
25 exchange service offered in Washington doesn't

0078

1 require an 8XX dialing pattern, does it?

2 A. No.

3 Q. And by 8XX, you understand I'm talking about
4 an 800 dialing pattern?

5 A. 800, 866, 888, yes.

6 Q. What are all of those?

7 A. Those are typically understood to be
8 toll-free NPA.

9 Q. Okay. And in that situation, under the 800
10 calling scenarios that Qwest does offer in the state
11 of Washington, as well as FX service, the situation
12 there would be that the owner of the 800 number would
13 pick up the toll charges for all those who called the
14 800 number; is that correct?

15 A. Yes, the called party pays.

16 Q. Yes, and you understand that AT&T's 800
17 numbers work in a similar fashion, do you not?

18 A. I would expect that.

19 Q. Okay. Do you know what an ISP is?

20 A. Internet service provider.

21 Q. And Qwest serves retail ISPs in Washington;
22 isn't that correct?

23 A. Yes.

24 Q. Some of the services that Qwest provides to
25 its Internet service providers include things like

0079

1 broadband access aggregation service; isn't that
2 correct?

3 A. Yes.

4 Q. And I'd just like to direct your attention
5 to your exhibits, your cross-examination exhibits.
6 Hopefully, I'll get these marked correctly. The
7 first one would be Exhibit 100, which I believe is
8 the web page from the broadband access aggregation
9 service. Do you have that?

10 A. I do.

11 Q. And this is a service offered to ISPs in the
12 state of Washington; isn't that correct?

13 A. It appears to be that way. It's not my
14 exhibit, so I -- having read it, I would say yes.

15 Q. Okay. Are you familiar at all with this
16 service?

17 A. Somewhat.

18 Q. Okay. And if a customer in Washington could
19 go into the Web site, see this service, and determine
20 that it was available in the state of Washington,
21 they'd plug on that or they'd click on that and be
22 able to acquire information about this service; is
23 that correct?

24 A. I -- yes.

25 Q. I'd like you to take a look at what has been

0080

1 marked as Exhibit 101, dial business dial. Do you
2 see that?

3 A. Yes.

4 Q. Is that what you have? Now, this is also an
5 Internet solution or Internet service provided by
6 Qwest to ISPs and large businesses in the state, is
7 it not?

8 A. Yes, quite different from the last one.
9 Again, not my area of expertise, but it appears to be
10 what you say that it is.

11 Q. Okay. This service allows for the
12 collapsing of physical boundaries. In other words,
13 exchange areas and other areas wherein that might
14 bound this service don't, in fact, apply to this
15 service; isn't that correct?

16 A. This is very much like the toll-free service
17 that we just spoke about where the called party pays,
18 I believe.

19 Q. Okay. Let's take a look at page two of this
20 dial business dial. I think you'll note that there's
21 a bullet point that says, Dial-up Internet access for
22 more than 2,600 U.S. POPs across the country covering
23 more than 84 percent of the U.S. population with a
24 local call. Do you see that, Mr. Freeberg?

25 A. I do.

0081

1 Q. Do you know what a POP is?

2 A. Point of presence is what I would expect.

3 Q. Okay. And that's referring to Qwest's point
4 of presence, is it not?

5 A. I would say yes.

6 Q. Do you have any familiarity with what that
7 means, that it covers 84 percent of the U.S.
8 population with a local call?

9 A. Well, having read what you've read, and
10 again, not being an expert, what I believe is true
11 here is that here a party can move and take a
12 computer with them that they use to dial up access to
13 the Internet, and as they go from city to city, they
14 can dial in the local number in that city. And
15 again, the called party is going to pay for the cost
16 of getting that call from where it originates to some
17 number of central points.

18 The originating carrier, I don't believe, is
19 providing that transport to those central points at
20 no charge, so if where we're going here is that
21 somehow there is a form of call processing here that
22 resembles the VNXX, I think, without a doubt, virtual
23 NXX-type call processing is not involved with
24 business dial service.

25 Q. But you don't know that for a fact, because

0082

1 this is not your area of expertise; isn't that
2 correct?

3 A. It's not my area of expertise.

4 Q. Let's take a look at what I'm hoping is
5 Exhibit 103, which should be Dial In and Roaming
6 Numbers.

7 A. I'm there.

8 Q. And it talks about expanded calling areas in
9 the very first sentence on the first page. Do you
10 see that?

11 A. I do.

12 Q. And it's, again, offering up 1,500 dial up
13 numbers, quite like what we just looked at; isn't
14 that correct?

15 A. Yes.

16 Q. And it's clearly -- well, I won't say it's
17 clearly available. It does have a notation for
18 Washington in those boxes below it where one could
19 click to go to the state of Washington; is that
20 correct?

21 A. Yes, right.

22 Q. And if you flip through those pages, I think
23 you'll see the dial up numbers offered for the state
24 of Washington, will you not? I want to say that
25 that's the fourth page back.

0083

1 A. Yes.

2 Q. Okay. Now, in order to set up this service,
3 I'd like you to take a look at Exhibit 104, which
4 should be setting up roaming service. Do you see
5 that?

6 A. I do see it.

7 Q. And in setting up the roaming service, Qwest
8 advertises for those customers purchasing this
9 service, in the third paragraph down, where it says,
10 About roaming service within Qwest's net service
11 area, if you move your computer outside the local
12 calling area you are registered in, change your
13 dialer to dial a local number for the area you are in
14 to avoid long distance charges. Do you see that?

15 A. I see that.

16 Q. Okay. And this service allows Qwest to
17 expand the local calling areas for customers that
18 take their computers outside what would ordinarily be
19 their customer premises or their home base; isn't
20 that correct?

21 A. I think there's no expansion. I think these
22 numbers are all from that local area. I believe
23 there is a modem pool in each of these local calling
24 areas into which the caller originates its call. And
25 I think there is a private network that aggregates

0084

1 calls from many distributed points back to one or a
2 few central points, a private data communications
3 network, which is paid for by the subscriber to the
4 service the called party is paying to collect these
5 calls from the many distributed points. I would
6 expect that the called party recoups those costs that
7 it faces, much as it recoups the cost of buying a
8 modem from its subscriber.

9 Q. If I didn't have this service from Qwest and
10 I took my computer away from the ISP or the business
11 server that had originally served it in the state of
12 Washington and I took that computer to the state of
13 Colorado, I hooked up there and I had to use phone
14 service, dial up service to get back, I'd have to pay
15 a toll call or toll access charges on that use,
16 wouldn't I?

17 A. Not necessarily.

18 Q. Wouldn't I if I don't have any of these
19 roaming abilities?

20 A. Well, you could call an 800 number, as we
21 talked about before.

22 Q. If I don't call an 800 number, if I don't
23 have the roaming abilities, I would have to pay toll,
24 would I not?

25 A. You certainly could make a call like that,

0085

1 could make your computer dial a one and call in via
2 toll path.

3 Q. Okay. I'd like you to pull out what I'm
4 hoping is Exhibit 106, which should be your discovery
5 response to 01-026. Are you there?

6 A. Yeah, I am. Can I have just one moment to
7 read it?

8 Q. Certainly.

9 A. I'm there.

10 Q. In the question, we've asked Qwest to admit
11 that the NXX assigned to a Qwest FX subscriber -- and
12 as I use that term, FX subscriber, you understand
13 that to mean the end user that purchases FX service
14 from Qwest; correct?

15 A. Correct.

16 Q. For its customer's use is assigned vertical
17 and horizontal coordinates. Do you know what those
18 are, Mr. Freeberg?

19 A. Do I know what vertical and horizontal
20 coordinates are? Yes.

21 Q. Yes. In the calling party's local calling
22 area. And we know what a local calling area is; is
23 that correct?

24 A. Yes.

25 Q. Could you tell me -- the objection here is

0086

1 that this is somehow vague and ambiguous. Is there
2 some part of this request for admission that you find
3 difficult to understand?

4 A. Yes.

5 Q. What would that be?

6 A. For its customer's use.

7 Q. Okay.

8 A. Who is the customer?

9 Q. The FX subscriber.

10 A. Are you sure?

11 Q. Yes.

12 A. Well, this is what I thought was vague,
13 because I thought you meant the caller of the FX
14 subscriber. That's why we thought it was vague.

15 Q. Okay. In responding to this request, you're
16 saying that -- Qwest states that pursuant to the
17 specific permitted exception in the central office
18 code assignment guidelines, the NXX assigned to a
19 Qwest FX subscriber may be different from the NXX for
20 the exchange where the FX subscriber is physically
21 located. Do you see that sentence?

22 A. Yes.

23 Q. In the central office code assignment
24 guidelines, what exception are you referring to?

25 A. In my rebuttal testimony, page 11, line 14,

0087

1 we talk about that.

2 Q. And it is the exception for foreign exchange
3 services; is that correct? Is that what you're
4 trying to point me to?

5 A. Yes.

6 Q. So there is an exception in the central
7 office code assignment guideline for special services
8 like Qwest's FX service that allows Qwest and other
9 carriers with FX-type service to assign NPA/NXXs in
10 rate centers other than the ones in which the FX
11 subscribers are physically located; is that correct?

12 A. There's an exception, yes. Qwest's concern,
13 by the way, is simply that the exception might be
14 considered by an individual carrier to be the primary
15 way that all their calls might be routed.

16 Q. That's not AT&T's position in this
17 arbitration, nor has it ever been; isn't that true?

18 A. I have not heard AT&T say that, no.

19 Q. Okay. And Qwest's position is that this
20 exception in the Central Office Code Assignment
21 Guidelines should not apply equally to AT&T's VNXX
22 service; isn't that correct?

23 A. VNXX service is a service where -- which I
24 would consider very different from foreign exchange
25 service. Different in three ways.

0088

1 Q. Could I back up for just a minute before you
2 explain?

3 A. Sure.

4 Q. Could you answer my initial question with a
5 yes or no? Isn't it true that you're suggesting to
6 this Commission that this exception found in the
7 Central Office Code Assignment Guidelines should not
8 apply to AT&T's VNXX service?

9 A. That's true.

10 Q. Okay. Go ahead. If I can have just one
11 second, I think I'm going to knock some questions
12 out.

13 JUDGE MOSS: All right.

14 Q. Mr. Freeberg, I'd like to take your
15 attention to Exhibit 108, which is AT&T -- or Qwest's
16 response to AT&T 01-029. Are you there, sir?

17 A. Yes.

18 Q. Excuse me. I'd like you also to take a look
19 at Exhibit 109, which hopefully is right behind it.
20 It should be some web pages from your PCAT. Do you
21 see that?

22 A. I see it.

23 Q. First off, what is the PCAT, P-C-A-T?

24 A. I think it's an abbreviation for product
25 catalog.

0089

1 Q. Okay. And the product catalog contains
2 products offered to whom?

3 A. Wholesale buyers.

4 Q. Okay. Does it contain products offered to
5 large businesses or ISPs, as well?

6 A. I think, as the term product catalog or PCAT
7 is used, it's generally the wholesale buyer, not a
8 retail large business.

9 Q. Okay. So now flip back, if you would, to
10 Exhibit 108.

11 A. Because mine aren't numbered, we're talking
12 about 29?

13 Q. I'm sorry, 29.

14 A. Twenty-nine, yes. Okay.

15 Q. Here AT&T asked whether Qwest provides
16 directory listings for its FX customers' numbers in
17 foreign exchange. Do you see that?

18 A. I do.

19 Q. And Qwest provided us with a reference to a
20 Web site. Do you see that?

21 A. I do.

22 Q. And do you see the PCAT notation there?

23 A. Yes.

24 Q. I'm a little confused by this response. In
25 light of the fact that the PCAT is a wholesale

0090

1 document and we're asking about Qwest retail FX
2 customers, can you tell me whether or not Qwest, in
3 fact, provides directory listings for its retail
4 foreign exchange customers?

5 A. I can't for a fact. I recognize the
6 mismatch. I think the question was misread in
7 Qwest's response. And I guess not having, you know,
8 thoroughly researched that question on the retail
9 basis, I probably shouldn't respond.

10 Q. So you don't know the answer?

11 A. I don't know.

12 Q. Are you familiar with WNU 40, which is your
13 retail tariff?

14 A. Not extensively, no.

15 Q. Okay. That tariff does contain Qwest's
16 product offering and product descriptions for its
17 foreign exchange service here in the state of
18 Washington; is that correct? Do you know that?

19 A. Yes.

20 Q. And that's contained in Section 5.1; is that
21 correct?

22 A. I think that was an attachment to Mr.
23 Hyatt's testimony.

24 Q. Okay. And in that tariff, at Section 5.1.4,
25 subpart C, paragraph 14, it says, FX service will be

0091

1 listed in the directory of the FX. Do you have any
2 idea what that means?

3 A. Means what it says.

4 Q. So there is a directory for FX, would you
5 assume?

6 A. I've not read that before. It means what it
7 says. I --

8 Q. Okay.

9 A. I would expect directory listings are
10 available to retail and wholesale customers fairly
11 even-handedly.

12 Q. And you would agree, wouldn't you, that AT&T
13 and Qwest have multiple points of interconnection in
14 the state of Washington?

15 A. Yes.

16 Q. With respect to Qwest's FX service, Qwest
17 does not impute access charges or costs of those
18 services and pass that imputation along to its end
19 user customers, does it?

20 A. Page 29 of my rebuttal, at Footnotes 30 and
21 31, I think I discuss that question, though I didn't
22 use the word imputation, and I don't claim to really
23 be knowledgeable about that word. What I -- the
24 point I tried to make there is that the buyer of
25 those services faces toll charges as the called party

0092

1 for traffic associated with those services.

2 Q. I think what you've identified here is
3 distance-sensitive charges, not toll access
4 imputation. So let me back up a little bit. Do you
5 know what switched access is?

6 A. Yes.

7 Q. Do you know what special access is?

8 A. Yes.

9 Q. And what is it, sir? What is switched
10 access, first?

11 A. Switched access is a capability sold by a
12 local exchange carrier to an interexchange carrier.
13 It's a service that involves aggregating either
14 originating or terminating one-plus long distance
15 traffic for that interexchange carrier, moving it
16 from the telephones where those calls originate and
17 terminate to the carrier's point of presence in that
18 area. Moving, in the case of switched access, moving
19 it typically via a tandem as well as an end office.

20 Special access, I would say is a similar
21 function, but one that typically does not involve,
22 for example, switching at the tandem.

23 Q. Okay. Access is a charge, whether switched
24 or special, that Qwest collects from long distance
25 carriers to allegedly cover the costs of local loops;

0093

1 isn't that correct?

2 A. That and other things, I would expect.

3 Q. And do you know what the rate elements of
4 switched access are, for example?

5 A. No.

6 Q. Is there a switching rate element, do you
7 imagine?

8 A. I would expect.

9 Q. Is there a transport element?

10 A. I would think so, but I must admit I don't
11 know.

12 Q. Okay. And when Qwest offers services -- do
13 you know what imputation is? Do you have any idea
14 what that is?

15 A. No, I mean, as I explained before, I think
16 your question was does a subscriber to Qwest's
17 foreign exchange, for example, face a charge for
18 interexchange transport, transport between cities,
19 yes. Because they face a charge, in fact, they are,
20 I think, paying for the imputation that you're
21 concerned with.

22 Q. So these two cites that you've provided in
23 Footnotes 30 and 31, your tariffs will speak for
24 themselves?

25 A. They do.

0094

1 Q. Would you agree with that?

2 A. Yes, I would.

3 MS. FRIESEN: Okay. Your Honor, I have
4 nothing further on Issue Five.

5 JUDGE MOSS: All right. Before you move on,
6 I have a couple of questions.

7

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

9 BY JUDGE MOSS:

10 Q. You testified earlier, Mr. Freeberg, with
11 respect to your testimony, I think perhaps it was
12 your rebuttal at page 11, on the exception. Yes,
13 page 11 of your rebuttal testimony. And I wanted to
14 hear your explanation of why the exception shouldn't
15 apply to the AT&T VNXX.

16 A. Thank you. I think there are at least three
17 important differences between virtual NXX and
18 services such as foreign exchange service. Maybe the
19 most important difference between the two is that, in
20 the case of virtual NXX, the assumption is that
21 reciprocal compensation applies and so the calling
22 party pays. In the case of foreign exchange service,
23 I think clearly the called party pays. That makes
24 virtual NXX and foreign exchange very different from
25 one another.

0095

1 The second difference that I think is
2 important is that, in the case of foreign exchange,
3 the call is consistently routed back to the exchange
4 where the call originated before the call is then
5 forwarded to wherever that destination may be. In
6 the case of virtual NXX, the call is not routed back
7 to the originating local calling area as that call is
8 completed.

9 The third difference that I think is
10 important is that, in the case of virtual NXX, the
11 originating carrier is expected to provide sometimes
12 very extensive transport where the terminating
13 carrier provides only a very small amount. In the
14 case of foreign exchange, both carriers provide an
15 extensive amount of transport.

16 Q. With respect to the third point, the same
17 thing could be true of a VNXX, depending on where the
18 point of interconnection was located, couldn't it?

19 A. It could be.

20 Q. You alluded briefly or referred briefly to
21 the Qwest concern -- the note I wrote down was the
22 concern is that the exceptions will swallow the rule.
23 Is that really the heart of the matter, the practical
24 concern is not so much that AT&T, for example, would
25 be offering a service that would be comparable to and

0096

1 competitive against Qwest's FX service, but that AT&T
2 or another CLEC might, for lack of a better term,
3 abuse the --

4 A. Exception.

5 Q. -- the exception and make it a predominant
6 --

7 A. The rule.

8 Q. -- a predominant form of service?

9 A. I think that's very well put, yes.

10 Q. And so that's the practical concern?

11 A. Yes.

12 Q. And related to that is -- perhaps you can
13 tell me or not in connection with this particular
14 arbitration, my sense from the testimonies is that
15 Qwest is not so much concerned that AT&T would be
16 this type of company that would make the exception
17 swallow the rule, but that the ability of other
18 competitive local exchange carriers to opt into the
19 language of this agreement, whatever it turns out to
20 be, would sort of open the door to that potential
21 problem?

22 A. Again, I think you put that very well, yes.

23 Q. Now -- all right. I think -- oh, one more
24 question for you, and that's simply a follow-up to a
25 question I put to Mr. Schell. If an AT&T customer

0097

1 who purchases this type of -- I'm going to call it
2 FX-like service, for lack of a --

3 A. Prime Connect.

4 Q. So if an AT&T customer in Seattle, if the
5 service was available from AT&T, and the AT&T
6 customer in Seattle, which is area code 206, was to
7 purchase a 360 number, you may recall my question to
8 Mr. Schell, using that connection, if that Seattle
9 customer were to make a call in Seattle, it would be
10 a toll call?

11 A. This is true, but in the case of Prime
12 Connect, it's all inbound. So there is no outbound
13 calling.

14 Q. Ah, okay. All right. All right. Since
15 we're moving on from Issue Five, I just want to say
16 that, as I studied this case, and I spent
17 considerable time studying this case, and I've faced
18 these types of issues before, this is a difficult
19 issue. It's an emerging issue in the industry, I
20 think.

21 Hope springing eternal, I thought that the
22 companies might see their way clear to find a way to
23 resolve this. I will remain optimistic that, in the
24 period between the time of today's hearing and the
25 filing of briefs, let's say, that some discussion

0098

1 will continue. I have to tell you that I genuinely
2 feel that the two parties ought to be able to work
3 out a resolution of this issue that will probably be
4 superior for both of them to what is going to
5 potentially come out of a decision that I make and
6 that may ultimately be vindicated or reversed by the
7 Commission. It's just one of those types of issues.

8 And so I want to offer my comments as an
9 encouragement to you to try to work this out. Some
10 of my questions to Mr. Freeberg just now were also
11 oriented toward that thought on my part in the sense
12 that it does seem to me that there's a practical side
13 to this with respect to these two individual
14 companies, and if the matter could be resolved in
15 such a way as to let AT&T provide a competitive type
16 of a service with something that Qwest offers,
17 without opening, you know, without using some
18 definitional result that would open things up in an
19 unacceptable or potentially unacceptable way, that
20 that would be a good way to go.

21 So I've probably said too much, but
22 hopefully not. I just leave you with those words of
23 encouragement and say no more. I suppose, maybe to
24 bring full closure to this issue, and I probably
25 should have held my comments till I asked, did you

0099

1 have any redirect on this issue? Let's close this
2 issue so it will all be together in the transcript.

3 MS. HUGHES: Actually, I do, Your Honor. I
4 didn't know if you wanted me to wait till the end or
5 -- I assumed you would want redirect.

6 JUDGE MOSS: No, let's go ahead and close
7 that loop up. I'm proceeding in a rather
8 disorganized way today. Maybe it's the setting. Go
9 ahead.

10

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

12 BY MS. HUGHES:

13 Q. Very briefly. Mr. Freeberg, directing your
14 attention to Exhibit 100, about which AT&T questioned
15 you --

16 A. Because my exhibits are not numbered, give
17 me a little bit more information.

18 Q. I'm sorry. This concerns the broadband
19 access aggregation service.

20 A. Thank you. Is it near one of the discovery
21 questions?

22 Q. Yes.

23 A. In front of or behind?

24 Q. It's right behind DR 01-023.

25 A. I'm there.

0100

1 Q. Does Qwest's broadband access aggregation
2 service have anything to do with the public switched
3 network?

4 A. No.

5 Q. So does it have anything to do with any
6 issue that we've been addressing under Issue Five in
7 this arbitration?

8 A. No, it doesn't, because this service
9 involves DSL and not dial-up service, so the
10 subscriber is not dialing a telephone number. In
11 fact, the signal moves in parallel to that customer's
12 voice service on the loop and once it hits the first
13 central office, it's split from the voice traffic and
14 simply not carried on the voice network at all.

15 Q. Directing your attention to Exhibits 101,
16 103, 104, which should be directly behind the exhibit
17 we just discussed.

18 A. Yes.

19 Q. Even though this is not your area of
20 expertise, did you investigate how the services
21 addressed in Exhibits 101, 103 and 104 are
22 provisioned?

23 A. I did. And I did this much. I think that
24 AT&T seems to be concerned that Qwest has somehow
25 arranged an Internet service provider behind itself

0101

1 to look like a CLEC. And as a CLEC, that it might
2 then somehow gain the same advantage of being able to
3 collect calls from across a broad area back to one or
4 a few central points at no cost to the called party,
5 if you will. And I'm confident that's not what's
6 happening here.

7 I -- Qwest does not have an Internet service
8 provider behind itself that it considers a CLEC, that
9 there are no interconnection trunks to a Qwest
10 subsidiary that is an ISP, has -- there are no codes,
11 NXX codes, for example, owned by a subsidiary that is
12 an ISP behind Qwest.

13 So instead, what I am confident is true is
14 that this Qwest function is purchasing services from
15 Qwest, the ILEC, much as would any retail Internet
16 service provider, not as a wholesale CLEC. And as a
17 retail service provider, it is going to collect its
18 traffic from many distributed points, either by a
19 data communications network, and that's the one that
20 I think is in place here based on looking at
21 technical publications and so forth behind this.
22 There is a discussion about a modem pool in each of
23 these local calling areas tied to a private line
24 coming back to one or a few central points, all of
25 which is paid for, again, by this service and not

0102

1 provided, you know, at no charge. We're not engaging
2 in virtual NXX-type call processing with regard to
3 these telephone numbers and this service.

4 Q. So to be clear, are the services that are
5 addressed in Exhibits 101, 103, 104, provisioned in a
6 way that in any respect parallels AT&T's
7 transport-free VNXX proposal here?

8 A. I see no parallel.

9 MS. HUGHES: Thank you. I have no further
10 questions.

11 JUDGE MOSS: Well, how are we doing on time?
12 Do we need a break or do we have more than 20 minutes
13 worth of questions?

14 MS. FRIESEN: Yes.

15 JUDGE MOSS: Can you finish one area in 20
16 minutes?

17 MS. FRIESEN: Actually, the next area I was
18 going to do is Issue Three and Issue 18, which are
19 kind of subsumed in the same notion, and I can't do
20 that in 20 minutes.

21 JUDGE MOSS: Let's be off the record.

22 (Discussion off the record.)

23 (Lunch recess taken.)

24 JUDGE MOSS: All right. We'll be on the
25 record. If there's nothing preliminary, Ms. Friesen,

0103

1 you can continue with your cross-examination of Mr.
2 Freeberg.

3 MS. FRIESEN: Thank you, Your Honor.

4

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

6 BY MS. FRIESEN:

7 Q. Mr. Freeberg, let's begin our discussion
8 this afternoon in relation to Issue Three.

9 A. Okay.

10 Q. And Issue Three is the dispute regarding the
11 definition of tandem switch; am I correct?

12 A. Yes.

13 Q. And the issue involves -- or the dispute
14 involves whether or not Qwest should pay the tandem
15 rate to AT&T when AT&T's switches are in use; is that
16 a fairly fair paraphrase?

17 A. Yes.

18 Q. Okay. And to take the issue down, to
19 further refine the issue, we could say that the
20 dispute largely centers around the word servers in
21 the FCC's rule; is that correct?

22 A. The word serves and the words capable of.

23 Q. Okay. Could you describe for me, please,
24 what a tandem switch is?

25 A. It's a switch which has trunks on it, but no

0104

1 lines.

2 Q. Okay. And Qwest's network has two types of
3 tandem switches, does it not?

4 A. Yes.

5 Q. It has a local tandem and an access tandem;
6 is that correct?

7 A. Yes.

8 Q. And Qwest, in your testimony, your direct
9 testimony, page 9, line 16, suggests -- want to grab
10 that?

11 A. I think I'm there.

12 Q. At line 16, you're basically suggesting that
13 you're willing to pay AT&T for local call termination
14 at the appropriate tandem rate when AT&T's switches
15 serve a comparable geographic area?

16 A. Yes.

17 Q. And in order to determine when our switches
18 serve this comparable area, I believe you're
19 suggesting to the Commission that AT&T should have to
20 comply with and meet a test; is that correct?

21 A. Yes. I'm saying that I think it would be a
22 good thing if the parties could agree or could have
23 agreed in negotiation that, in order to be clear
24 about the definition, that, you know, a fairly clear
25 test like the one we proposed could suffice, and I

0105

1 was hopeful the parties weren't far apart and that
2 AT&T might have passed that test, perhaps.

3 Q. Okay. And that test, as you just described,
4 is the -- is actually contained in the form TRF-2 to
5 your direct testimony, which I believe, for purposes
6 of this hearing, is marked as Exhibit 69; am I
7 correct?

8 JUDGE MOSS: That's correct.

9 Q. Could you take a look at TRF-2, or Exhibit
10 69, please, Mr. Freeberg?

11 A. There.

12 Q. Okay. Sir, I'd like to really understand
13 what this form is and how it works.

14 A. Okay.

15 Q. Let me first ask you this. Do you see --
16 let's see. I'm looking at the first page of the
17 form, and it's entitled Qwest Tandem Comparable
18 Geographic Area Test. Are you on that page?

19 A. I am.

20 Q. Okay. You'll see a table with some
21 information, I guess, that's required for the CLEC to
22 be filling out; is that correct?

23 A. Yes.

24 Q. And if you take a look at the table and you
25 go down to the third set of rows, in other words,

0106

1 there are three sets of rows that have titles above
2 each of the sets, and I'm down at the third one that
3 begins with the word information for each.

4 A. I see it.

5 Q. Are you there? Is it your intent that AT&T
6 and TCG would have to identify their switches for
7 Qwest by filling out the information that's in that
8 third set? In other words, will that identify our
9 switches for Qwest? What's the purpose of this?

10 A. Right. Just as you say, so that there's no
11 misunderstanding about which AT&T switch it is that
12 we're qualifying here.

13 Q. Okay. And then, if you go down below the
14 table to where it says -- and below the signature
15 lines, to where it says, Note, do you see that?

16 A. Yes.

17 Q. It says, CLEC is expected to promptly notify
18 Qwest as soon as CLEC's tandem footprint falls below
19 80 percent of Qwest. I'd like to understand what
20 that means. First, what is the CLEC's tandem
21 footprint?

22 A. On the next page, the following pages of the
23 form, there is a blank far right-hand column, and at
24 the top of that column, the header says Served by
25 CLEC Loop or Qwest UNE Loop, Yes or No. So the

0107

1 thought here would be that in those geographies
2 where, in fact, a CLEC had a loop, it would put a yes
3 into that right-hand column, and the collective sum
4 of all the yes areas taken together would be the
5 footprint of the CLEC switch.

6 Q. Okay. And then, if the CLEC's footprint
7 falls below 80 percent, 80 percent of what?

8 A. On the -- if you'll go with me to the --
9 actually, to the first page, which lists all of the
10 Qwest tandems, if you'll go -- let's use the Spokane
11 tandem there, which I think is the -- oh, it occupies
12 the majority of that first page. If you move down to
13 the bottom of that first block, you'll see where it
14 says total rate centers equal 35?

15 Q. Mm-hmm.

16 A. So what it's done there is it's gone to the
17 rate center column, which I think is the second from
18 the right. So there are some 35. So if there were
19 yeses in 80 percent of the 35, that would be the 80
20 percent we're referring to on the first page there,
21 where you see note.

22 Q. Okay. And then, as I understand your
23 explanation, it would be 80 percent within the
24 Spokane -- just the Spokane -- just related -- let me
25 back that up. Just related to the Spokane tandem

0108

1 switch, it would be 80 percent within that switch's
2 -- whatever you want to call these rate centers?

3 A. Right, if your switch and our switch had an
4 interconnection trunk group between each other, one
5 end on either of our switches, if the switch of ours
6 was, let's say, this Spokane tandem, then your switch
7 might be, in fact, classified as a tandem if, in
8 fact, it was covering 80 percent of the rate centers
9 of our tandem to which each of our switches were
10 interconnected.

11 Q. Okay. So then, following that, the
12 footprint, then, for your Spokane tandem would have
13 to remain at 80 percent or we would have to tell you
14 that it didn't, and then, if you go down to the next
15 tandem, which is -- what is that, STTL?

16 A. Seattle.

17 Q. Okay. And if you go down to the Seattle
18 tandem, there, again, our switch would have to meet
19 80 percent or stay within 80 percent of the total of
20 18 rate centers; correct?

21 A. True.

22 Q. For each of these tandems?

23 A. You wouldn't need to be at 80 percent for
24 more than one of them, to be clear. In other words,
25 if one of your tandems served 80 percent of the rate

0109

1 centers of one of ours, then you don't need to prove
2 that your tandem serves 80 percent of all of our
3 tandems, but one of them.

4 Q. Let me make sure I understand it, because
5 I'm not clear on how this test works. AT&T doesn't
6 really have tandems switches, does it?

7 A. True.

8 Q. Qwest has tandems. So these tandems that
9 are listed on your form show, for example, the
10 Spokane tandem serves all the rate centers listed in
11 the second to -- second column in from the right-hand
12 side; am I correct?

13 A. Yes.

14 Q. And so AT&T would have to put yeses by all
15 of these rate centers where our switch had a loop to
16 one of those?

17 A. Right.

18 Q. Okay. Now, explain for me what that means
19 precisely. If we're serving customers in any one of
20 these rate centers off our switch, what is the loop
21 in that instance? What are you looking for?

22 A. It's the transport that would effectively
23 provide that customer dial tone.

24 Q. Okay. And we would have to have direct
25 trunk transport between our switch to these rate

0110

1 centers; is that --

2 A. No.

3 Q. Okay. How do we get there?

4 A. A trunk and a loop are two very different
5 things.

6 Q. Okay. Good. So explain the distinction
7 here for me when you're talking about what our switch
8 has to have in connection with each of these rate
9 centers?

10 A. Okay. The thought here would be that --
11 it's been commented that you've got 38 gigahertz
12 radio, that you've got fiberoptic rings, okay, and
13 you know where those are and those could be used as
14 loops from your switch to whatever geographies are
15 covered by those transport systems. And I would
16 expect that you would refer to your maps where you
17 have those facilities, where you could, in fact,
18 provide loops and that's how you would fill out this
19 right-hand column on the form.

20 Q. Okay. Now, if we had UNE loops that we used
21 with our switch, we would use those in this column,
22 as well?

23 A. You could use those, also.

24 Q. Okay. And then, just so I'm understanding
25 what your response was, if AT&T's switch met this 80

0111

1 percent footprint within -- for the tandem, the
2 Spokane tandem, then we would have met the 80 percent
3 test for all --

4 A. Yes, your switch only needs to qualify one
5 time.

6 Q. -- of your tandems across the entire state?

7 A. Excuse me. I'll let you finish. Sorry.

8 Q. Okay. This is what I'm not understanding
9 about this form. The 80 percent footprint that we
10 have to meet we only have to meet with respect to one
11 tandem out of all of these and then you will pay the
12 tandem rate for that switch regardless going forward;
13 correct?

14 A. Yes, that's why I think it's a reasonable
15 test.

16 Q. Now, I would have to do that with respect to
17 each one of my switches in Washington, would I not?

18 A. That you felt, yes, qualified, uh-huh.

19 Q. Okay. So if a particular switch -- if I
20 provisioned service through two switches, then both
21 those switches have to meet the 80 percent footprint
22 in one of these, with relation to one of these
23 tandems or you won't pay the tandem rate?

24 A. Right, you would have an interconnection
25 trunk group from one of your switches potentially to

0112

1 one of our tandems and you'd compare those two. Your
2 other switch might have an interconnection trunk
3 group to another one of our tandems, and we'd compare
4 those two.

5 Q. Okay.

6 JUDGE MOSS: If you're leaving this area, I
7 have a few clarifying questions.

8 MS. FRIESEN: I'm not yet.

9 Q. And then I think you clarified for me that
10 once AT&T makes this certification, it only has to
11 make it once going forward for the duration of the
12 contract. That would be, if the term is the
13 three-year term, it would be for three years, two
14 year term would be for two years; correct?

15 A. Yeah, I wouldn't expect you to go backwards.

16 Q. Okay.

17 A. I would expect you to grow.

18 Q. Okay. Now, with respect to this note,
19 looking back again at this note, if our switches
20 certify one time, one time alone, then why is it
21 necessary for us to notify Qwest that we have fallen
22 below the 80 percent footprint?

23 A. Well, it's in there as a possibility. I
24 suppose there could be a merger, acquisition,
25 spin-off kind of possibility where some fraction of

0113

1 your network was purchased by another party or
2 something like that. I don't think it's likely, but
3 I think it's possible, and I think that was the
4 genesis of the note.

5 Q. If that happened, imagine BellSouth buying a
6 piece part of our network here in Washington and our
7 footprint drops below 80 percent, so what. We should
8 still obtain the tandem rate from you under the terms
9 of our agreement, should we not?

10 A. I guess I'm not following. I don't know why
11 that would be true.

12 Q. So if in fact our footprint falls below 80
13 percent, then indeed you're telling me that we would
14 have to recertify or you would quit paying the tandem
15 rate? I'm failing to understand what you're
16 suggesting.

17 A. Well, I'm suggesting that here I think that
18 a carrier with a more extensive loop network should
19 be paid at a rate higher than a CLEC with a less
20 extensive loop network, all right. I don't believe
21 they should be paid the same. So I think the
22 hypothetical that we're talking through here is
23 unlikely, all right, but it does seem possible. And
24 I think it was the genesis of this note. So I think
25 there is the possibility that a carrier who passed

0114

1 the test one day, as a result of divesting some
2 fraction of their network, might have a much less
3 extensive network in the future than they had in the
4 past, and so potentially could, you know, go through
5 this certification more than once. But, again, I
6 think that's the exception, certainly.

7 Q. Okay. Let's take a look at page two of this
8 form. And just so we're clear here, the tandem
9 switch, let's look at the row that contains the
10 tandem switch CLLI, the C-L-L-I?

11 A. Yes.

12 Q. What is a CLLI?

13 A. Common language location identifier.

14 Q. Okay. And the first part of the numbers or
15 the identifiers in those columns have things like
16 ABRD, SPKN. Those are the names of the tandem
17 switches or the locations of the tandems; is that
18 correct?

19 A. The Qwest tandems, yes.

20 Q. Then let's go into the next column, which is
21 subtending switch CLLI, C-L-L-I, again. And what are
22 these?

23 A. Those are the Qwest end offices that subtend
24 those tandems.

25 Q. Okay. That means they're connected to that

0115

1 tandem?

2 A. Yes.

3 Q. Correct. And I guess the subtending switch
4 name is what it says on its face, but that
5 corresponds to the first letter digits in front of
6 the numbers in the subtending switch CLLI column;
7 isn't that correct?

8 A. I'm not sure -- ask me that one once more.

9 Q. Okay. Let's look at the subtending switch
10 CLLI column.

11 A. Yes.

12 Q. Do you see the -- let's take a look at the
13 very first one in the Aberdeen.

14 A. Yes.

15 Q. And ABRD stands for Aberdeen; right?

16 A. Right.

17 Q. And if I look over one column to the
18 subtending switch name, that's Aberdeen?

19 A. Ah, just the English common name, yes.

20 Q. And then the same is true of the next column
21 identifying the rate center by name?

22 A. Yes.

23 Q. And that rate center is associated with the
24 subtending switch and the tandem?

25 A. The rate center is associated with that end

0116

1 office, so that subtending switch.

2 Q. Okay. Now, when you go to the final column,
3 which is the row that apparently the CLECs have to
4 fill out, you want the CLECs to identify each loop
5 they have connected to the subtending switch in the
6 column with a Y or an N; is that correct?

7 A. That a loop exists. Not each loop, but that
8 a loop exists, yes. You have an ability to provide
9 dial tone to a customer in that geography from a
10 switch, which might be some distance away.

11 Q. Okay. So we have to have a loop that is
12 connected to these subtending switches or connected
13 to --

14 A. Or switch.

15 Q. Yes, the switch.

16 A. Or switch, single or only a few.

17 MS. FRIESEN: Okay. Just one second. Your
18 Honor, that's all the questions I have on this
19 particular form if you'd like to ask a few.

20 JUDGE MOSS: I will perhaps be more
21 simplistic, but it will lead to my understanding, I
22 hope.

23

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

25 BY JUDGE MOSS:

0117

1 Q. Let's go back to the example on the --
2 what's got an Arabic numeral one. It's actually the
3 second substantive page of the exhibit where we've
4 got the Spokane tandem switch. Now, there are 38 --
5 no, 35 rate centers there?

6 A. I believe so.

7 Q. But there's one -- is there one tandem
8 switch?

9 A. Right.

10 Q. So I'm trying to understand. It's 80
11 percent of the rate centers have to be served or --

12 A. Yes.

13 Q. Okay. So in order to qualify under the
14 Qwest proposed test, there would have to be a Y in
15 the right-hand most column for 28?

16 A. I'll take your word that that's the math,
17 yes, yes.

18 Q. That's a risky thing to do, taking my word
19 on the math, but assuming the math is correct, that's
20 how this works?

21 A. Yes, it is.

22 Q. Now, where does the 80 percent criterion
23 come from?

24 A. It comes from understanding that what we
25 need to be talking about here is a comparable area.

0118

1 If it were the precise area, it might be 100 percent
2 of the 35. So 80 percent is 80/20, thought being
3 that if a CLEC switch covers 80 percent, it is a
4 comparable area. It isn't a number that is any more
5 scientific than that. It is a proposed test. And to
6 be clear, we think it's less onerous than 80 percent
7 of each of the individual wire centers. That is,
8 there are very typically more than one wire center in
9 a rate center. So the CLEC does not need to be into
10 80 percent of the wire centers, but only 80 percent
11 of the rate centers in the footprint of the Qwest
12 tandem.

13 Q. And to qualify, to put a Y in the right-hand
14 most column, the CLEC would not necessarily have to
15 actually be providing service to anybody, just
16 capable of doing so?

17 A. Exactly.

18 Q. To use some disfavored words.

19 A. Right, right.

20 Q. Now, but, again turning to the example
21 above, I gather that's Aberdeen, Aberdeen area, Ocean
22 Shores, there, because of -- using an 80 percent
23 criterion, the CLEC would have to actually be serving
24 100 percent?

25 A. I think that's true.

0119

1 Q. So it's -- with respect to these larger
2 ones, it could be less than 100 percent, but with
3 respect to the one I just mentioned -- actually --

4 A. Need to be in both.

5 Q. That may be the only one problematic in that
6 way. Okay. All right. Well, I think I understand
7 now. Thank you, Ms. Friesen. I appreciate you
8 allowing me to interrupt.

9 MS. FRIESEN: Well, I'm afraid I don't
10 understand now.

11

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

13 BY MS. FRIESEN:

14 Q. If I put a Y in the column on the right-hand
15 corner, that's an indication to you that I have an
16 actual loop into that rate center; isn't that
17 correct?

18 A. Right.

19 Q. And a loop is associated with a customer, is
20 it not?

21 A. Yes.

22 Q. Okay. So my switch isn't merely capable in
23 that instance of serving that customer in that rate
24 center; I am, in fact, serving via that loop a
25 customer in that rate center; correct?

0120

1 A. I think most of us, as carriers, have many,
2 many loops that don't serve customers; right?

3 Q. You think AT&T has many loops that don't
4 serve customers?

5 A. Right, that are idle.

6 Q. Okay. I don't agree with you.

7 A. Oh.

8 Q. So if I have two Ys, and I'm looking at the
9 Aberdeen tandem.

10 A. Mm-hmm.

11 Q. If I have two Ys there, I'm at 100 percent,
12 I'm done certifying?

13 A. That switch, yes.

14 Q. Okay. So that switch, and if I only have
15 one switch in sort of Seattle, the Seattle area that
16 serves Aberdeen, and I have two loops to both those
17 rate centers, then it's your contention thereafter
18 you will pay the tandem rate on that switch
19 regardless of where your traffic goes anywhere in the
20 state?

21 A. Yes, that's why I think, as parties, we're
22 close here. I think it's a reasonable test.

23 Q. And it's fair to say, is it not, that the
24 FCC has not suggested that CLECs must have an 80
25 percent footprint in the wire centers in order to

0121

1 obtain a tandem rate on their switch; isn't that
2 correct?

3 A. I think that's correct.

4 Q. I'd like you to take a look at your rebuttal
5 testimony, if you would, page five, line four. Are
6 you there?

7 A. Yes.

8 Q. And here Mr. Talbott, or in this case, now,
9 Mr. Schell is talking about the difficulty of pulling
10 from or extracting from this particular arbitration
11 the question of whether or not AT&T and TCG switches
12 in fact meet any test, whether it's the 80 percent
13 footprint test or its the test that AT&T proposes.
14 Is that a fair statement of what the dispute is here?

15 A. This particular Q and A, this is the one
16 that talks about, On page four of his testimony, Mr.
17 Talbott -- is that the one?

18 Q. Yes.

19 A. I think he here is -- was talking about
20 Qwest's unwillingness to pay, and I think I was
21 trying to point out that Qwest does have a
22 willingness to pay.

23 Q. Let me ask you the question this way. I
24 don't want to read into the record what it is you're
25 saying. I'll ask the question, perhaps that will be

0122

1 clearer. You state, Mr. Talbott improperly predicts
2 that if the Commission does not determine now that
3 AT&T's and TCG's switches are tandems for purposes of
4 reciprocal compensation, Qwest will not pay AT&T and
5 TCG the tandem rate when this contract is implemented
6 and AT&T will have to come back before this
7 Commission to have it make the very determination
8 that AT&T seeks in this proceeding.

9 My question to you, Mr. Freeberg, is if the
10 Commission finds in favor of AT&T, in other words, it
11 says, Yes, AT&T, your definition is the one we pick,
12 is it Qwest's position that it will immediately begin
13 to pay the tandem rates for AT&T's and TCG's switches
14 in the state of Washington?

15 A. Because, you know, you're asking me to
16 predict about a bridge we don't think we've crossed
17 yet, I think that's a tough question to answer. I
18 think that the problem with the capable of language
19 is that it's interpreted differently by potentially
20 every party with whom Qwest is interconnected with.
21 And you know, I think that Qwest, you know, if in
22 fact is not allowed what it believes to be the proper
23 definition here, Qwest is going to have to regroup
24 and understand what it needs to do as a result of
25 AT&T's language having been favored here and dealing

0123

1 with what I think is a vague definition in the
2 contract.

3 Q. Does your response mean that you will not
4 pay the tandem rate for our switches and we will have
5 to come back to the Commission to battle that
6 dispute?

7 A. No, I think I said I don't know. You know,
8 I think what I said is, you know, that it's -- it's a
9 bridge we'll have to have crossed and we'll cross it
10 and we'll make the right decision, and it won't
11 necessarily be that we're unwilling, nor will it
12 necessarily be that we are. I think you'll present
13 something which you believe is evidence of your being
14 capable and we'll have to decide there whether we
15 think you're -- we agree or not.

16 Q. So there is a chance, then, you'd agree,
17 that we will be back in front of this Commission if
18 we disagree, even though AT&T's definition is
19 adopted, if you continue to disagree that our
20 switches are capable of serving, we could be back in
21 front of the Commission --

22 A. We could be.

23 Q. -- fighting that dispute?

24 A. We could be.

25 Q. I'd like you to take a look at your direct

0124

1 testimony, page 12, line 11. And in particular, I'd
2 like to direct your attention to the statement that
3 any CLEC could claim that its switch is capable of
4 serving a comparable geographic area as Qwest's
5 tandem since, technically speaking, any
6 manufacturer's switch can be programmed to complete
7 calls from many NXXs. Do you see that?

8 A. I do.

9 Q. So is it fair to say that, technically
10 speaking, it's true that AT&T and TCG's switches are
11 capable of serving a comparable geographic area as
12 Qwest's tandem?

13 A. What I said there is that I think that
14 capable of is a very vague term, and it allows that
15 people could, on a basis of many different things,
16 argue that their switch is capable, so --

17 Q. Here you're saying specifically, sir, that
18 technically speaking, any manufacturer's switch can
19 be programmed to complete the calls from many NXXs;
20 is that true?

21 A. That's true.

22 Q. And doesn't it stand to reason that AT&T and
23 TCG's switches, technically speaking, can be
24 programmed to complete calls from many NXXs?

25 A. What I don't know is whether that's the

0125

1 criterion for capable of.

2 Q. Well, I'm not asking you the criterion for
3 capable of right now. I'm asking you, isn't it true
4 that our switch can be programmed to complete calls
5 from many NXXs?

6 A. Definitely.

7 Q. Would you take a look at your rebuttal
8 testimony, page eight, line 10, please? And there
9 I'd like to focus your attention on -- you're
10 addressing what Mr. Talbott believes, and the portion
11 that I'm particularly interested in reads like this.
12 An AT&T switch is capable of serving a geographic
13 area if AT&T has merely received authority to serve
14 the area and has loaded numbers into the switch.
15 Okay. Are you there?

16 A. I see that.

17 Q. Technically speaking, any manufacturer's
18 switch can be programmed to complete calls, so that
19 if AT&T has loaded numbers into its switch, from a
20 technical perspective, isn't it true that it is
21 capable of serving customers?

22 A. Well, at another point, Mr. Talbott said all
23 that's necessary is that a carrier be certified and
24 that it have a tariff. They might have nothing to do
25 with numbers and switches. I don't know. Capable

0126

1 of, to me, seems like a poor term for a contract.

2 Q. Sir, you've suggested here that by merely --
3 you're suggesting that this is what Mr. Talbott is
4 saying, so let's set aside that may or may not be his
5 advocacy, but you're suggesting that loading numbers
6 into the switch and receiving authority within the
7 state -- I assume that means a certificate to provide
8 local exchange service in this state; is that
9 correct?

10 A. (Nodding.)

11 Q. That those two things are sufficient to
12 allow a switch to reach, technically speaking --
13 technically speaking, any switch can be programmed to
14 call the NXXs, then, and so isn't it true that if we
15 have authority and we've loaded numbers, then we can,
16 technically speaking, serve customers within the
17 serving area that we have authorized service for;
18 correct?

19 A. Well, I don't know if we talked about a
20 tariff before and I didn't mention tariff. Is that
21 part of capable of or not?

22 Q. No, technically speaking. I want to talk
23 about technically speaking now. You've stated that
24 -- you've alleged that Mr. Talbott's argument is that
25 receiving authority, which includes a certificate to

0127

1 serve customers in the state somewhere, correct, that
2 coupled with loading numbers into the switch is
3 really all you have to do to serve customers within
4 the certificated area. And I'm asking you, from a
5 technical perspective, isn't that true?

6 A. Well, in this Q and A, I think what I was
7 describing was what I understood to be Mr. Talbott's
8 position, so -- and as I've worked with Mr. Talbott
9 in negotiation and read what he's said in testimony,
10 capable of seems elusive from the standpoint of what
11 is the criteria for capable of. I've seen four or
12 five, maybe six things mentioned, so here we're
13 focusing on a couple that I was interpreting were the
14 ones that Mr. Talbott was focusing on at that time.
15 But I must admit I was presuming that I understood
16 what he was intending for me to understand.

17 Q. Do you understand today, as you sit there,
18 that Mr. Talbott's testimony actually deals with more
19 than merely loading numbers into a switch and having
20 certificated authority to prove that your switch is
21 capable of serving a comparable geographic area to
22 Qwest's tandem? Do you understand that?

23 A. Under our new agreement, I don't think we
24 have this list. We don't -- we don't say what the
25 criterion are for capable of.

0128

1 Q. Let's take a look at your direct testimony,
2 page 13, line 18.

3 A. Yes.

4 Q. Wait a minute. I have the wrong one. I'm
5 sorry. I sent you to the wrong page. Page 10, line
6 nine. I'd also like to have you take a look at your
7 cross exhibits and pull out of those, if you would,
8 the exhibits I can't find. There are pictures of
9 network architecture. Do you have those with you?

10 A. I do.

11 Q. Okay. Now, let's take a look at your
12 testimony.

13 JUDGE MOSS: Let's have an exhibit number
14 first so the rest of us can get there.

15 MS. FRIESEN: Okay.

16 JUDGE MOSS: Is that the diagram at Exhibit
17 122?

18 MS. FRIESEN: Your Honor, I'm uncertain. I
19 think it may be 122 and 123 or 121 and 122.

20 JUDGE MOSS: There is no 123.

21 MS. FRIESEN: Then I think it's 121 and 122.
22 They should be network architecture diagrams.

23 JUDGE MOSS: Well, 121 is response to Data
24 Request 49. 122 is this circle with blue.

25 MS. FRIESEN: Yes, there should be another

0129

1 one just like that. Maybe -- is it beyond there?

2 JUDGE MOSS: I don't have it. Ah, I take it
3 back. I do have it. It's behind the data request
4 response. All right. So we're on the last two
5 exhibits in our exhibit list, 121 and 122.

6 MS. FRIESEN: And I apologize. I seem to
7 have lost my -- oh, there they are. Your Honor,
8 which of these shall we mark as 122 and --

9 JUDGE MOSS: 122, as I have it, is a
10 single-page exhibit that says Qwest Network
11 Architecture.

12 MS. FRIESEN: And then the AT&T Network
13 Architecture, may that become 123?

14 JUDGE MOSS: Oh, that's supposed to be
15 separate from the response to Data Request 49?

16 MS. FRIESEN: Yes, it is.

17 JUDGE MOSS: Aha. All right. I take back
18 my compliment. You left your tab out.

19 MS. FRIESEN: Sorry.

20 JUDGE MOSS: Just kidding. All right. So
21 we do need to identify Exhibit 123, then, as the AT&T
22 Network Architecture, and we'll add that to our
23 exhibit list. And can that be admitted without
24 objection? All right. Hearing no objection, 123 is
25 admitted as part of our record.

0130

1 Q. Mr. Freeberg, in your testimony, direct
2 testimony, page 10, roughly lines nine through 24,
3 you cite the FCC's local competition order at
4 paragraph 1090. And this paragraph discusses when
5 CLECs might be able to receive tandem rates for their
6 switches; is that correct?

7 A. Yes.

8 Q. And I'd like to draw your attention to the
9 sentence beginning on line 15 that says, In such
10 event states shall also consider whether new
11 technologies, e.g. fiber ring or wireless networks,
12 perform functions similar to those performed by an
13 incumbent's tandem switch and thus whether some or
14 all calls terminating on the new entrant's network
15 would be priced the same as the sum of transport and
16 termination via the incumbent LEC's tandem switch.
17 Do you see that passage?

18 A. I do.

19 Q. I'd like you to take a look at Exhibit 123,
20 which is AT&T -- a demonstrative exhibit of AT&T's
21 network architecture. Do you have it?

22 A. I have it.

23 Q. This network architecture indicates that
24 AT&T has fiber rings, does it not?

25 A. I think both carriers have fiber rings, yes.

0131

1 Q. I'm asking you right now just about AT&T, as
2 a new entrant, has fiber rings, does it not?

3 A. I don't know. I -- I'm not comfortable that
4 I know about the AT&T network.

5 Q. You're not comfortable?

6 A. Well, I mean, I don't know whether AT&T has
7 fiber rings or not. If you say that they do, you
8 know, I don't quarrel with that.

9 Q. Okay. Mr. Talbott has provided this exhibit
10 as an attachment to his direct testimony indicating
11 that this is the kind of network architecture that
12 AT&T has in the state of Washington. Are you aware
13 of that?

14 A. I am.

15 Q. Okay. And this network architecture
16 includes something called a fiber ring, does it not?

17 A. I see it on the diagram.

18 Q. And the diagram also contains a 38 gigahertz
19 representation of wireless, does it not?

20 A. Yes.

21 Q. Okay. And is it possible that Mr. Talbott
22 provided these exhibits, in particular Exhibit 123,
23 to indicate what AT&T had in Washington to enable
24 this Commission to determine that its switches in its
25 facilities, in fact, might be capable of serving an

0132

1 area comparable to those served by Qwest's tandem?

2 MS. HUGHES: I object to the form of the
3 question.

4 JUDGE MOSS: The objection is sustained.

5 Mr. Freeberg is not in a position to say what reason

6 Mr. Talbott might have offered this exhibit beyond

7 Mr. Talbott's testimony.

8 Q. That's fine. Let's move on. In your direct
9 testimony, at page 13, line eight, you state that the
10 FCC did not intend every CLEC's switch to receive
11 tandem treatment. It's true, is it not, in the
12 passage that we just read, that the FCC said that
13 some or all calls terminating on the new entrant's
14 network could be priced at those tandem rates.

15 Didn't it say that?

16 A. Yes.

17 Q. And you'd agree with me, wouldn't you, that
18 the FCC instructed states to consider new entrants'
19 networks with fiber rings and wireless networks as
20 those that may obtain tandem switching from RBOCs or
21 ILECs; isn't that correct?

22 A. That's why I referred to those kinds of
23 technologies when we were discussing the form that
24 Qwest was proposing.

25 Q. In your rebuttal testimony at page seven,

0133

1 line eight, you state the fact that AT&T and TCG are
2 authorized to serve in these areas does not
3 demonstrate whether they are completing calls
4 throughout the geographic area so as to qualify for
5 tandem compensation under the FCC Rule 51.711. Are
6 you there?

7 A. I am.

8 Q. I'm trying to reconcile this statement with
9 your simple test or the form that we just discussed.
10 Here you're suggesting a different test, that we have
11 to be able to complete calls. That would be
12 different than simply having a loop, and in fact a
13 loop that isn't used to 80 percent or loops that
14 aren't used to 80 percent of the rate centers,
15 wouldn't it?

16 A. Yes, it would be different.

17 Q. I'd like to direct your attention to your
18 direct testimony at page 13, line four. There you're
19 suggesting that our proposal would encourage CLECs to
20 acquire and retain precious industry numbering
21 resources simply to qualify our switches for the
22 tandem rate or the higher rate.

23 Are you aware, sir, that the CO Code
24 Assignment Guides provide for carriers -- provide
25 that carriers have to activate those numbers within a

0134

1 certain period of time or return them?

2 A. Yes.

3 Q. Okay. And you're suggesting to this

4 Commission that somehow AT&T can retain those kind of

5 numbers, not activate them, and acquire higher tandem

6 rates and skirt the reclamation requirements of the

7 numbering guidelines; isn't that correct?

8 A. Well, here what I'm -- the point I'm trying

9 to make is that a CLEC could arrange a very small

10 network, one not very extensive at all, one with

11 relatively few loops and relatively short loops. And

12 to the customers of that CLEC at the ends of those

13 loops, they could assign a range of telephone numbers

14 from rate centers across the LATA, for example. That

15 would show the number administrator that they were,

16 in fact, using those numbers, they would appear to be

17 in use to the numbering administrator. However, they

18 would not be used to provide service in the

19 geographies where I think the numbering administrator

20 expected they would be used when the codes were

21 originally assigned.

22 Q. Let me make sure I understand your response.

23 To acquire an NPA/NXX, or a thousand block of numbers

24 by NPA/NXX, they have to be associated with one rate

25 center; right? I can't split an NPA/NXX across a

0135

1 couple of rate centers, can I?

2 A. Agreed.

3 Q. So if I have acquired some NPA/NXXs that
4 relate to a particular rate center, I think I
5 understood you to say that I would start acquiring
6 blocks of those and then not use them?

7 A. No, I didn't say that. I said you would use
8 them but assign them to customers at the end of very
9 short loops very near the switch.

10 Q. Do you have any evidence at all that that's
11 what AT&T or any CLEC in this state is doing?

12 A. There is nothing to preclude any carrier
13 from doing that at the present time, I think.

14 Q. You are aware that this state does actively
15 engage in reclamation when numbers aren't being used,
16 aren't you?

17 A. Sure.

18 Q. So as I understand it, you have about 60
19 days to activate those numbers, and if you don't do
20 it, you've got to return them. Is that your
21 understanding, as well?

22 A. I accept that.

23 Q. Okay. On page 12 of your direct testimony,
24 line 17, you're suggesting here that AT&T's
25 definition would somehow send the wrong message to

0136

1 CLECs again by encouraging them not to construct
2 facilities. Are you there?

3 A. I am.

4 Q. And just so I'm clear on what you're
5 suggesting, you're suggesting that Qwest paying CLECs
6 a tandem rate so the CLEC has a switch in place would
7 be sufficient incentive for the CLEC to only invest,
8 I guess, in the switch and not really serve
9 customers; is that correct?

10 A. I guess my point here is it would seem
11 unreasonable to me that it would be okay with AT&T
12 that a small CLEC who had a much less extensive
13 network than AT&T should be able to charge Qwest the
14 same as perhaps AT&T does with a more extensive
15 network, all right. In other words, the CLEC with
16 the more extensive network should be able to collect
17 at a higher rate. The CLEC with the less extensive
18 network might be incented to build out their network
19 to become more extensive in order that it could
20 charge the higher rate.

21 Q. And so extensive, in your mind, and as
22 you're using it today, means facilities in the
23 ground; is that correct?

24 A. Yes.

25 Q. Now, if the smaller CLEC had a switch and it

0137

1 was serving a lot of customers, but it had a smaller
2 switch -- or I mean, excuse me, less facilities in
3 the ground, it's Qwest's position that it wouldn't
4 want to pay that CLEC a tandem rate, even though that
5 CLEC could serve with that switch and nothing else
6 the various loops that were comparable to the areas
7 served by Qwest tandems; isn't that correct?

8 A. I think you lost me on the question.

9 Q. Let me reask it, let me reask it. That was
10 a bit long. You're suggesting that AT&T should take
11 it as a personal affront if it has extensive
12 facilities in the ground, meaning lots of loops, lots
13 of transport, switches, that kind of thing; right?

14 A. I think we're focusing on loops, but okay.

15 Q. Okay. Let's focus on loops, if that's what
16 you mean by extensive facilities. If AT&T has a
17 switch and it wants to get the tandem rate from Qwest
18 because its switch is able to serve an area that is
19 comparable to Qwest's tandem switch, okay, through
20 its own facilities or through facilities it leases
21 from Qwest, your suggestion is that if AT&T enjoys
22 that right, it will disincent other CLECs to build
23 facilities, and rather, they may invest in a switch
24 or whatever, but not acquire the same sort of loops
25 that AT&T might otherwise have. Is that correct?

0138

1 A. Yes.

2 Q. Okay. And are you familiar -- let me ask it
3 this way. Do you imagine that when a CLEC invests
4 equipment in the ground, it looks at its customer
5 base and wants to ensure that it can cover that
6 investment by revenues that come in from the customer
7 base?

8 A. I think we all want to earn on our
9 investment, yes.

10 Q. Right. And we want to keep increasing those
11 customer bases so that we can continue to earn on our
12 investment and, in fact, cover the cost of those
13 investments; right?

14 A. Yes.

15 Q. Okay. I'd like you to take a look at your
16 direct testimony, page 14, line nine. And there
17 you're saying that during the month of July 2003,
18 Qwest sent 1.8 billion minutes of calls to Washington
19 CLECs on local interconnection trunks. Are you
20 there?

21 A. Yes.

22 Q. During that same time, I guess you received
23 only 300 million minutes back; is that correct?

24 A. Right.

25 Q. And you're suggesting that AT&T's proposal

0139

1 in this arbitration will somehow increase this
2 imbalance and you feel that that's unjust toward
3 Qwest; is that correct?

4 A. Correct.

5 Q. Okay. I'd like you to take a look at -- if
6 you would grab your cross exhibits, turn to AT&T
7 Request 01-005, which is Exhibit Number -- excuse me,
8 84C.

9 MS. FRIESEN: And Your Honor, this is a
10 confidential exhibit, and I will need to discuss some
11 confidential numbers on the record.

12 JUDGE MOSS: All right. Well, I guess we
13 can approach this a couple of ways. One is we can
14 discuss these numbers by simply referring to them by
15 their location on the confidential exhibit without
16 actually disclosing them into the transcript. Will
17 that work? For example, you could say the number in
18 the right-hand column, fourth number down in the
19 right-hand column.

20 MS. FRIESEN: I'd be willing to give it a
21 try.

22 JUDGE MOSS: Well, the important thing is
23 that we not disclose the confidential material into
24 the transcript, because if we do that, then I have to
25 ask the court reporter to seal a portion of the

0140

1 transcript, and she won't like me as much as she
2 otherwise would. So I'd prefer not to do that if we
3 can avoid it. And of course we also have the
4 problem, we may have someone in the room who has not
5 signed the appropriate affidavit under the protective
6 order, in which case I would have to ask those people
7 to leave, and I don't want to do that either.

8 So I want you to try that and be
9 conscientious about it. Sometimes we have a slip, so
10 you might want to move slowly to avoid that
11 possibility.

12 MS. FRIESEN: I would like to refer, Your
13 Honor, to certain words on this page which I don't
14 think are the confidential portion of what's depicted
15 here. I think the numbers are the confidential
16 portion. And I'd just like confirmation from Qwest
17 that that's true.

18 JUDGE MOSS: I think that's an appropriate
19 question. Is it just the numbers on this page in the
20 right-hand column that are matters that are
21 confidential?

22 THE WITNESS: Yes.

23 JUDGE MOSS: The witness tells us yes, so
24 that's good enough for me.

25 Q. Okay. Mr. Freeberg, let's back up to the

0141

1 first page of that confidential Exhibit 84, which is
2 actually not confidential and is a discovery request
3 AT&T sent in relation to your claim that the traffic
4 is not in balance. Would you agree with me that
5 that's basically what that is?

6 A. Yes.

7 Q. Let's then flip to the confidential page,
8 Confidential Attachment A, and there we see a chart.
9 And I'd like to make sure I understand what this
10 chart is telling me, okay. This chart is the
11 underlying data that you relied upon to make the
12 claim that Qwest received 1.8 billion minutes and
13 only sent 300 million; correct?

14 A. Correct.

15 Q. If I look at the number 110, that is a Qwest
16 code for the minutes of use sent to the CLEC; is that
17 correct?

18 A. That's correct.

19 Q. If I look at the word non-transit local and
20 then I see end office and tandem, what does that
21 mean? What does the --

22 A. Those are counts of minutes that were
23 associated with calls on local interconnection trunk
24 groups, calls that involved traffic moving from Qwest
25 towards the CLEC. Non-transit would mean that it was

0142

1 just Qwest and that other carrier involved, no other
2 carriers involved, and that in one case the traffic
3 is moving on a direct trunk group from a Qwest end
4 office towards a CLEC switch, and in the next case
5 moving via an overflow or a tandem route probably.

6 Q. Okay. So it's the minutes of use -- in the
7 first box I'm looking at, it's the minutes of use
8 that Qwest sends to the CLEC flowing over the end
9 office and/or the tandem. Those minutes of use are
10 counted via that end office switch or the tandem;
11 correct?

12 A. Correct.

13 Q. Then let's go down to the next box. The
14 code 119 is the Qwest code for the CLEC where the
15 CLEC sends minutes of use to Qwest; is that correct
16 --

17 A. Yes.

18 Q. -- what I'm supposed to understand? And
19 again, non-transit local traffic and transit local
20 traffic is consistently measured for the CLEC, as it
21 was for Qwest, across those switches; correct?

22 A. Measured in both directions, yes.

23 Q. Okay. Let's take a look at Attachment B,
24 please.

25 JUDGE MOSS: Attachment B, as in Baker?

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1 MS. FRIESEN: B, as in Baker, and it is also
2 a confidential attachment, so I won't refer to -- I
3 won't state the numbers.

4 Q. And this chart tells me the number of
5 minutes Qwest sends to AT&T and TCG; is that correct?

6 A. Yes.

7 Q. As opposed to all of the CLECs across the
8 entire state; correct?

9 A. Yes.

10 Q. And I'm going to flip now quickly to
11 Confidential Attachment C. In contrast to what we
12 just saw in Attachment B, this chart shows me the
13 number of minutes that AT&T and TCG sent toward
14 Qwest; is that correct?

15 A. Correct.

16 Q. And if I'm to look at the number of minutes
17 on Attachment C, at the very bottom of where it says
18 AT&T Local, do you see that column?

19 A. Yes.

20 Q. And I flip back and compare that number to
21 Attachment B, AT&T Local, it's fair to say, is it
22 not, that those numbers are much more in balance than
23 they are out of balance?

24 A. Yes, I agree.

25 Q. And the same would be true of the TCG

0144

1 columns?

2 A. Yes, I agree.

3 Q. Okay. There's one thing I think might be an
4 error here. Take a look at Attachment C, would you?

5 I don't know how much of this I can read. The
6 sentences that are above the chart?

7 A. Yes.

8 Q. If you look at the second line, it says July
9 2003. Do you see that?

10 A. Yes.

11 Q. The following represents the minutes Qwest
12 sent to AT&T. Isn't this -- isn't that wrong?

13 A. Yes, it is.

14 Q. Okay. So that should be the minutes AT&T
15 sent to Qwest?

16 A. Yes, that's -- you're correct.

17 Q. When we talk about the 1.8 billion minutes
18 that you've cited in your testimony, I think you
19 agree with me that that covers all CLECs across the
20 entire state; is that correct?

21 A. Yes.

22 Q. And that traffic includes traffic traversing
23 interconnection trunks, 911, anything like that; is
24 that correct?

25 A. Correct.

0145

1 Q. With respect to that traffic, Qwest would
2 only pay a tandem rate to any of those CLECs if the
3 CLECs have a switch; isn't that correct?

4 A. In order for Qwest to have a trunk group
5 with a CLEC, the CLEC and Qwest would each need to
6 have a switch.

7 Q. Okay. And I'd like you to take a look --
8 well, let me back it up. Your -- I think the thrust
9 of your testimony is that this imbalance is a bad
10 thing; is that correct?

11 A. Yes.

12 Q. It's an unfair thing. Is that your take?

13 A. I think, based on the expectation that the
14 exchange of calls with CLECs would be similar to the
15 exchange of calls that ILECs might have had prior to
16 the Telecom Act, that ILECs, as calls moved back and
17 forth, were more mutually exchanged, often those
18 exchanges of calls were actually on a bill and keep
19 basis because, in fact, the traffic quantities
20 balanced one another out.

21 Yeah, I think this is -- where we are now
22 was unexpected by many people at the time of the
23 Telecom Act and shortly thereafter.

24 Q. Okay. Now, setting aside the fact that AT&T
25 and TCG and Qwest minutes are more in balance, much

0146

1 more in balance, let's look at those 1.8 billion
2 minutes. If Qwest knows the minutes that AT&T sends
3 to it and vice versa, isn't it true that Qwest also
4 knows the CLECs who are sending the kind of traffic
5 that is terribly out of balance to them? You can
6 identify those CLECs, can't you?

7 A. Do I know who sends me how many minutes and
8 how many minutes I send them?

9 Q. Mm-hmm.

10 A. Sure.

11 Q. Okay. And has Qwest taken it upon itself to
12 investigate those CLECs that are sending a lot of
13 traffic out of balance to Qwest?

14 A. Yes.

15 Q. And if Qwest finds something wrong with that
16 or something illegal about that, doesn't Qwest have a
17 right to go pursue those illegalities, either before
18 this Commission or in some other forum?

19 A. Yes.

20 Q. Okay. And has Qwest?

21 A. Yes.

22 Q. And so it's your position, then, that even
23 though you have that avenue, dispute resolution, you
24 won't agree to AT&T's definition because you believe
25 somehow other CLECs will take advantage of it; is

0147

1 that correct?

2 A. I certainly expect that other parties will
3 opt into the agreement that Qwest and AT&T sign, yes.

4 Q. Okay.

5 JUDGE MOSS: Could that be avoided in
6 connection with this issue if the language question
7 included some sort of a balancing formula and said,
8 you know, this applies if we're within this type of
9 balance range, but not if we're in this other type of
10 balance range? I understand that one of Qwest's
11 concerns here is the opt in.

12 THE WITNESS: Well, I -- it would be my
13 understanding that I couldn't preclude any other
14 carrier from including, on a pick and choose basis in
15 its agreement, any term that we and AT&T have used in
16 our agreement.

17 JUDGE MOSS: Right. I'm trying to focus on
18 the fact that this is a negotiation, now an
19 arbitration, between these two parties. And while
20 the Constitution forbids bills of attainder, that is
21 to say, legislation directed at a single individual,
22 the Congress sometimes wires around that by saying
23 this law applies to all defense contractors who do
24 over \$50 billion of business in a year, which, gee,
25 there's only one.

0148

1 But what I'm suggesting is is it possible,
2 if this imbalance problem is part of the issue here,
3 to craft language that would say if a balance is
4 within a certain range, then this is an acceptable
5 outcome, but if the balance is more skewed outside of
6 that range, it's not. And that way, the CLEC that's
7 seriously in balance could opt in all day long, but
8 it wouldn't do any good. I'm just exploring the
9 possibilities with you. I'm --

10 THE WITNESS: Technically speaking, it seems
11 possible. Whether it's legally allowed, I'm not
12 sure.

13 JUDGE MOSS: I'm not, either. All right.
14 Thank you.

15 Q. Mr. Freeberg, I'd like to shift to Issue 18
16 right now, which is sort of tied to Issue Three. And
17 Your Honor, I'd offer the opportunity to ask
18 questions on Issue Three if you --

19 JUDGE MOSS: I appreciate that, because I do
20 have one matter I wanted to take up, and it may be
21 for the counsel, rather than the witness.

22

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

24 BY JUDGE MOSS:

25 Q. But looking at pages 11 and 12 of your

0149

1 direct testimony, Mr. Freeberg, there's some
2 reference there at the bottom of page 11 to this 25th
3 Supplemental Order from this Commission. I guess
4 that was in the SGAT; is that how you say it?

5 A. Yes.

6 Q. Statement of Generally Available Terms
7 proceeding. And there's a reference here to Qwest
8 being required to modify SGAT Section 4.1.1.2 to
9 delete the word actually. And so my curiosity has
10 been burning as to what that whole section said and I
11 wasn't able, in quick time, to get a copy of that, so
12 do you know what that -- how it read before? And if
13 I can ask counsel to simply provide me a copy of it
14 and I can look at it. So what's the right approach
15 here? You tell me.

16 A. I believe the word actually formerly found
17 its place in front of the word serves.

18 JUDGE MOSS: I had guessed as much. All
19 right. Let's see. I think that's probably the only
20 question I had on that. I don't suppose I need to
21 see it if I know that piece of information. No,
22 that's the only question I had on that point. Ms.
23 Friesen.

24 MS. FRIESEN: Thank you, Your Honor.

25

0150

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

2 BY MS. FRIESEN:

3 Q. Mr. Freeberg, Issue 18 is related to Issue
4 Three in that if the switch meets the definition of
5 tandem, Issue 18 tells us what rates you're going to
6 pay; right?

7 A. Correct.

8 Q. Okay. With respect to the tandem rate,
9 Qwest itself, it charges an end office call
10 termination rate; is that correct?

11 A. Maybe you want to ask me that question once
12 more.

13 Q. I'm talking about Qwest tandem rates.

14 A. Okay.

15 Q. Okay. Qwest charges an end office call
16 termination rate, doesn't it?

17 A. If the call moves from a CLEC, a
18 facilities-based CLEC towards Qwest and it is
19 switched by the Qwest tandem and the call then moves
20 down to a Qwest end office because the call needs to
21 be terminated to a Qwest retail customer, then Qwest
22 would charge the end office switching rate, as well
23 as the tandem switching rate.

24 Q. Okay. And it would charge a tandem
25 switching rate, too. Okay. Does Qwest charge a

0151

1 tandem transmission rate, as well?

2 A. Yes.

3 Q. And those rates, if I wanted to know what
4 those rates are, where would I look?

5 A. I would probably go to Exhibit A of the
6 SGAT.

7 Q. Okay. Would the SGAT and any section of the
8 SGAT identify for me what the tandem rates -- or
9 describe for me what the tandem rates are?

10 A. Though I must admit I didn't check for the
11 match, I think Mr. Talbott put this in his rebuttal
12 testimony, did he not?

13 Q. I think he did, but I just want to make sure
14 you agree with him.

15 A. I haven't checked to see whether Mr. Talbott
16 quoted the correct rates. I could do that, if you'd
17 like.

18 Q. Well, not the rates themselves, just the
19 tandem elements, the rate elements, let me say it
20 that way. Not the number per se.

21 A. So ask me the question once more. I'm
22 sorry.

23 Q. Would I look in your SGAT to find out what
24 the rate elements are for the tandem, Qwest tandem
25 rates?

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1 A. Yes.

2 Q. Okay. And I won't make you check and see if
3 Mr. Talbott was right on that. We'll just assume.
4 As I understand Qwest's concern, Qwest is suggesting
5 that AT&T is imposing a nine-mile average rate upon
6 Qwest; is that correct?

7 A. I think that's AT&T's position.

8 Q. Okay. And you're suggesting that we pull
9 that rate from something that you have in a similar
10 situation for transit traffic; is that correct?

11 A. Here's what I think is true. I believe that
12 AT&T holds that its switches are simultaneously both
13 a tandem and an end office. And when this is the
14 case for Qwest and Qwest is terminating a call from a
15 CLEC to a switch like this, in calculating the
16 terminating charge which Qwest applies, Qwest
17 measures the distance between the Qwest tandem and
18 the Qwest end office as zero miles.

19 So when a Qwest switch is both tandem and
20 end office, and that does happen, in that case, when
21 Qwest measures that actual distance, it measures it
22 as zero, and so here I think Qwest is holding that
23 AT&T should do the same.

24 Q. Would you agree with me that the rules --
25 the FCC's rules require symmetry?

0153

1 A. Yes.

2 MS. FRIESEN: Okay. Your Honor, that's all
3 I have on Issues Three and 18. And at this point,
4 I'd like to move to Issue 21, if that's acceptable.

5 JUDGE MOSS: All right.

6 Q. Mr. Freeberg, what is calling party number?

7 A. It's the telephone number of the person
8 placing a call.

9 Q. Okay. And that telephone number or CPN, as
10 we call it, is used to rate calls; is that correct?

11 A. You can expect that the calling party's
12 telephone number, by virtue of the NXX that is
13 associated with that calling number, is owned by an
14 individual carrier, and so you could draw conclusions
15 about who the originating carrier was by knowing the
16 telephone number associated with the caller.

17 Q. Okay.

18 A. Did that answer your question?

19 Q. Yeah.

20 A. Okay.

21 Q. Pretty much. Would you agree with me that
22 neither AT&T nor Qwest can supply CPN on the traffic
23 they send to each other all of the time?

24 A. I would agree with that.

25 Q. There are instances wherein the CPN is

0154

1 missing from local calls; isn't that true?

2 A. There is, but I think we're both pretty good
3 at it. We both said it most of the time.

4 Q. There are instances where the CPN is missing
5 from toll calling; isn't that correct?

6 A. When there is no CPN, it's hard to know
7 whether it's toll or not toll.

8 Q. Okay. And it's true that both AT&T and
9 Qwest strive to maintain CPN on their calls that they
10 exchange; isn't that correct?

11 A. I think very much so, yes.

12 Q. Do you know what transit traffic is?

13 A. It's traffic for which a carrier neither
14 originates nor terminates the call but is involved in
15 the call. The carrier who is the transit carrier is
16 relaying the call between other carriers, but, again,
17 has no association with either the calling or called
18 telephone number.

19 Q. So it's traffic that's just crossing your
20 network. It didn't originate there and it isn't
21 terminating there. Is that basically what you said?

22 A. Correct, right.

23 Q. With respect to that traffic, I'd like to --
24 I'd like to direct your attention to page 43, line
25 nine of your direct testimony. And are you there?

0155

1 A. I am.

2 Q. And line nine begins -- the sentence I'm
3 particularly interested in begins with the two words
4 the transit provider. Do you see that?

5 A. If I can have just a minute here? Page 43,
6 line nine of my direct?

7 Q. Yes.

8 A. Is that right?

9 Q. What I'm looking at, Mr. Freeberg, is AT&T's
10 proposal for Section 7.3.8?

11 A. Yeah, that looks right, but now my line nine
12 says passed with CPN is less than 90 percent. That's
13 not what you're looking at?

14 Q. No. Let me read the sentence that I'm
15 interested in, and maybe you can find it on your
16 copy.

17 A. Maybe I'm close.

18 Q. It says the transit provider will not be
19 accountable for transit traffic without CPN as long
20 as the transit provider provides information to the
21 other party each month that identifies no CPN transit
22 traffic, the carriers that originated the no CPN
23 traffic, and the no CPN traffic originated by each
24 carrier. Otherwise, the transit provider will be
25 responsible for such traffic. That's the --

0156

1 A. Those are lines 13 through 18 on my copy,
2 but yes, I see.

3 Q. Okay. Take a look at those, because that's
4 what I'd like to talk to you about.

5 A. Okay.

6 Q. Now, it's true, isn't it, that Qwest is
7 compensated for CPN transit -- or CPN-less transit
8 traffic by the carriers that send it to Qwest in
9 accordance with interconnection agreements between
10 Qwest and those carriers?

11 A. Whatever that interconnection agreement says
12 is the right thing to do with no CPN is what those
13 carriers do.

14 Q. So you're getting paid for taking the
15 traffic across your network; right?

16 A. Not necessarily. I mean, I don't know what
17 all those agreements say.

18 Q. Okay. And is it -- is it fair to say that
19 Qwest right now today doesn't distinguish between
20 transit traffic that lacks CPN and traffic that's
21 originated on its network that lacks CPN?

22 A. Very hard to tell one from the other.

23 Q. Okay. And it's Qwest's position in this
24 arbitration that AT&T, whether that traffic is
25 transit traffic or whether that traffic is local or

0157

1 toll traffic, should pay for all of the traffic that
2 lacks CPN as though it were all toll traffic; isn't
3 that correct?

4 A. That's -- that's the Qwest proposal, yes.

5 Q. Okay. And AT&T's proposal, if you'll look
6 back at the sentences I believe on page 43, lines 13
7 through 18 that you have, suggests, in fact, an
8 arrangement where Qwest would not pay for CPN-less
9 traffic that transit its network where it provided
10 information about the originating carrier to AT&T;
11 isn't that correct?

12 A. I think that's the AT&T proposal.

13 Q. Okay. And the inverse would be true, as
14 well, for AT&T. In other words, this proposal
15 applies equally to Qwest and to AT&T, depending on
16 who's sending the transiting traffic; isn't that
17 correct?

18 A. I think -- I think it's important here to
19 note that when this particular section of the model
20 agreement was written, the expectation was that this
21 was not a mirror image circumstance, that Qwest would
22 much more frequently find itself in the position of
23 being a transit carrier where the other party with
24 whom it was exchanging traffic was not. So the
25 thinking was it's more likely that Qwest will send

0158

1 more no CPN for the very reason you were discussing
2 before, more no CPN because some is transit and some
3 is non-transit.

4 If Qwest were interconnected with another
5 carrier who was not a transit carrier, it would
6 probably send less no CPN, because none of it was
7 associated with transit traffic. It wasn't acting as
8 a transit carrier. So the expectation was that very
9 probably there wouldn't be comparable amounts of no
10 CPN moving back and forth. I think it's fortunate
11 that they are as close as they are, and I think that
12 where Qwest is sending slightly more, that's the
13 reason why.

14 So I think that in this situation it's
15 important to know that it isn't -- it isn't common
16 for the carrier with whom Qwest is interconnected to
17 be acting as a transit carrier.

18 Q. And that may or may not be a fair statement.
19 I don't know. What I'm asking you about, in
20 particular, is the relationship between AT&T and
21 Qwest. And the proposal that AT&T has offered to
22 Qwest is a proposal that applies equally to Qwest and
23 equally to AT&T whenever one of those two carriers
24 acts as the transit provider; isn't that correct?

25 A. I think that's AT&T's proposal.

0159

1 Q. You would agree with me, wouldn't you, that
2 the amount of CPN-less traffic that AT&T and Qwest
3 exchange over a period of time varies?

4 A. Yes, it does, but I've looked at it over a
5 period of years, as we've worked through 271 and so
6 forth, and fortunately it has remained low for a
7 period of years, which I think is good. So while
8 there is some variability to it, it doesn't vary a
9 great deal on average, looking at statewide numbers.
10 So there is some variability, but not a lot.

11 Q. Let me ask you this. AT&T, in a data
12 response to Qwest, suggested that for a certain
13 period of time we sent CPN that exceeded five -- or
14 CPN-less traffic that exceeded five percent. Would
15 you agree with that?

16 A. I --

17 Q. You don't recall?

18 A. I don't recall.

19 Q. It's possible, is it not, for AT&T, over
20 this long period of time that you've studied, to vary
21 the amount of CPN it sends such that sometimes it
22 might be sending more than five percent, sometimes it
23 may be sending less than five percent?

24 A. No quarrel.

25 Q. And the same is true of Qwest, isn't it?

0160

1 Sometimes you may be sending more, sometimes you may
2 be sending less?

3 A. I think I've answered my question.

4 Q. Okay. Would you -- did you happen to look
5 at data request of Qwest 01-025?

6 MS. HUGHES: Is that an exhibit?

7 MS. FRIESEN: I'm asking him if he's looked
8 at it.

9 JUDGE MOSS: It's identified as Exhibit 105
10 for the record.

11 MS. FRIESEN: Oh, no, wait a minute. Not of
12 AT&T's. This is a response -- I'm asking him if he's
13 familiar with a response that AT&T provided to Qwest
14 --

15 JUDGE MOSS: Ah.

16 MS. FRIESEN: -- on a discovery request to
17 see if I can jog his recollection or refresh his
18 recollection of --

19 THE WITNESS: Did you say 25?

20 Q. Yes, 25.

21 A. Is this the question about functionality of
22 8XX service?

23 Q. No, these are not -- let me back up.

24 A. Okay.

25 Q. Qwest sent discovery to AT&T; isn't that

0161

1 true?

2 A. Ah, okay.

3 Q. And AT&T responded to that discovery.

4 A. Okay.

5 Q. Within that discovery, Qwest asked questions
6 about CPN traffic. Do you recall any of those
7 questions?

8 A. I have them here before me, I think.

9 Q. Do you?

10 A. Do I? These are -- I have what I believe --
11 AT&T responses to Qwest?

12 Q. Yes. Take a look at AT&T's response to
13 Qwest 25.

14 A. Twenty-five. I see it.

15 Q. And that question is basically asking if
16 AT&T could provide information on non-CPN or CPN-less
17 traffic that it sent, what percentage within a study
18 period. And AT&T there, actually TCG, suggested it
19 sent more than five percent, didn't it?

20 A. I see that.

21 Q. Okay. It's true, isn't it, that Qwest
22 considers this no CPN traffic issue presently and
23 historically, the total amount of no CPN traffic, to
24 be insignificant?

25 A. Yeah, I think that it's good that we've kept

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1 it as low as it is. It's curious to me that TCG
2 would be as high as it is above the average. I think
3 that's an oddity. To be really clear, the
4 AT&T-proposed solution to this problem for me is, as
5 I understand it, is this. I think that AT&T would
6 like for Qwest to put the identity of what Qwest
7 believes to be the originating carrier onto every
8 transit record. And if Qwest did that, then those
9 records that lacked CPN would have the identity of
10 the originating carrier on it.

11 So while there are not many records
12 associated with no CPN calls, I think that what AT&T,
13 if I'm not misunderstanding, would like the
14 originating carrier's identity on each and every
15 transit record so that, on those few calls with no
16 CPN, there was an identity. Is that a proper --
17 that's my understanding. I guess I'll just leave it
18 at that.

19 Q. On traffic where there lacks CPN, if AT&T
20 wants only that traffic to contain some kind of
21 information about the originating carrier, Qwest is
22 capable of doing that, isn't it?

23 A. It is procedurally similar to putting the
24 identity of an interexchange carrier on a
25 jointly-provided switched access record. So

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1 procedurally speaking, there is a -- you know, there
2 is a similarity here. But I wouldn't expect that
3 Qwest would put those -- the identity of that OCN,
4 the originating carrier's operating company number
5 onto a transit record associated with only the no CPN
6 calls.

7 AT&T has talked about other types of calls,
8 too, for which it would like that OCN. Now we're
9 drifting into an issue that we're not going to cross
10 on, so -- but I may have the wrong understanding of
11 AT&T's position, but it would be odd, I think, for
12 Qwest to develop a solution here that was limited to
13 the no CPN calls.

14 Q. And if AT&T is only asking for a very
15 limited solution to an insignificant amount of no CPN
16 traffic, if AT&T's merely asking Qwest to provide the
17 identity of the carrier that originates that so that
18 AT&T can fairly bill it, is Qwest opposed to
19 providing that information?

20 A. Yes. Yes and no. I think that it's my
21 understanding that AT&T expects, number one, that
22 Qwest should feel an obligation to provide transit
23 service, and AT&T thinks that Qwest should have an
24 obligation to provide it at TELRIC rates, each of
25 which I think are debatable questions.

0164

1 The next place AT&T goes is Qwest should,
2 for these transit calls, also provide the type of
3 call record that AT&T prefers. Other carriers might
4 prefer another type of call record. So here what I
5 think is true is AT&T would like for Qwest to supply
6 this at no charge to AT&T, as far as I can tell, and
7 I expect this would call for development on Qwest's
8 part and it's development that Qwest hasn't planned
9 on. So I think we, you know, we have an expectation
10 that that's -- there's a mismatch between Qwest
11 having to do this to defend itself versus doing it to
12 in a way that covers its costs of doing it.

13 Q. Let's go back to something you said in that
14 last statement. You suggested that it's somehow
15 unfair for AT&T to expect Qwest to carry transit
16 traffic. Do I have that about right?

17 A. I think that was an issue in --

18 Q. We don't have a legal right to expect that
19 and you have no practical right to do it; correct?

20 A. That was an issue in the Virginia
21 arbitration case, I believe, yes.

22 Q. And you lost that issue, didn't you? Well,
23 not you. Let me back up. Carriers have an
24 obligation to interconnect their networks with one
25 another; isn't that correct?

0165

1 A. Yes.

2 Q. Carriers -- if carriers could preclude
3 transit traffic, then is it fair to say that every
4 small ICO in the entire state of Washington would
5 have to independently interconnect to every other
6 carrier in this state if their customers wish to make
7 telephone calls; isn't that correct?

8 A. If there were no carrier voluntarily
9 providing it, that would be true, I think.

10 Q. Okay. And is it your understanding that
11 AT&T provides transit traffic service to other
12 carriers, as well as Qwest?

13 A. I don't know.

14 Q. Okay. Now, you're suggesting that AT&T is
15 expecting to receive information from Qwest without
16 paying for it about traffic that's coming from
17 Qwest's network to AT&T that lacks CPN. It's true,
18 also, that you're expecting -- or Qwest is expecting,
19 in addition, that -- strike that. Strike that.

20 You're suggesting that AT&T has said it will
21 not pay for the information or it should have to pay
22 for the information on the originating carrier so
23 that AT&T can bill the CPN-less traffic correctly;
24 isn't that correct?

25 A. As I understand the AT&T proposal, it is

0166

1 that Qwest wouldn't be financially responsible if it
2 supplied this information, but if it didn't supply
3 the information, it would then be financially
4 responsible.

5 Q. And it's your position or Qwest's position
6 that AT&T should have to take this transit traffic
7 and pay for all of it that lacks CPN as though it
8 were toll traffic; isn't that correct?

9 A. Yes.

10 Q. Okay. Give me just a minute. I think I'm
11 going to knock some questions out and we'll be done.
12 The dispute in this issue, Issue 21, is not that
13 you're refusing to provide transit traffic; isn't
14 that correct?

15 A. That's true.

16 Q. The dispute is really, when you do provide
17 transit traffic or when AT&T provides transit
18 traffic, how are we going to rate it. What are we
19 going to do with it when it doesn't have CPNs. Isn't
20 that the issue?

21 A. I think that's --

22 Q. Okay. Thank you, Mr. Freeberg. I have
23 nothing further. I'm trying to get you to your
24 plane.

25

0167

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

2 BY JUDGE MOSS:

3 Q. Let me ask you a question, Mr. Freeberg. On
4 page 43 of your direct testimony, there's a quotation
5 that actually begins over on the bottom of page 42
6 about AT&T's counter-proposal for Section 7.3.8?

7 A. Yes.

8 Q. In the last couple of sentences there -- we
9 talked about this a little bit. The transit provider
10 will not be accountable for transit traffic without
11 CPN as long as the transit provider provides certain
12 information that's listed there. And my question is
13 simply can Qwest provide the information? Can it?
14 Just -- is it capable of doing so?

15 A. Not flawlessly. In the -- let me tell you
16 what I mean by that. I said before that providing
17 this information is procedurally similar to putting
18 the CIC code, the identity of an interexchange
19 carrier onto a jointly-provided switched access call
20 record. This is the type of call where an
21 interexchange carrier has potentially carried a call
22 across country, hands that call to Qwest, Qwest
23 relays that call to another local carrier, who is the
24 owner of the destination of the call. The two local
25 carriers then bill the interexchange carrier for

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1 having completed that call and the three carriers
2 exchange with each other this -- the record of this
3 call, a category 11 record, and it allows for proper
4 billing and validation among the three carriers.

5 In this case, what I believe AT&T is looking
6 for is for Qwest to put the identity of the carrier
7 who supplied it, the call, that it transited to AT&T
8 in a similar way to the CIC.

9 What's different here, though, is the
10 carrier who supplied the call to Qwest is not
11 necessarily the carrier who originated it. And that
12 means that, as Qwest then supplies this to AT&T,
13 potentially AT&T goes back, tries to bill this
14 carrier, and this carrier says, I didn't originate
15 that call. Now Qwest is embroiled in a dispute
16 because it supplied a record which is not necessarily
17 accurate and somehow now is caught up in the
18 controversy between AT&T and the carrier who supplied
19 Qwest the call.

20 So there is the possibility that it's just
21 more than one transit carrier involved in a local
22 call, so Qwest can't know with absolute confidence
23 that the carrier who sent the call to it was the
24 originating carrier. So it -- a solution that Qwest
25 could create here would not be as good as one that

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1 would have, let's say, the originating carrier
2 identify itself in the signaling stream.

3 It's possible that the originating carrier
4 could identify itself when it originated the call,
5 that all transit carriers could relay that
6 information in the signaling stream of the call so
7 that the terminating carrier could read the
8 information in the signaling stream of a call and
9 know who originated it with confidence.

10 And I'm not saying this is the right answer,
11 the absolute answer. This, to me, would be an
12 industry solution, maybe a better one than one we
13 might create here in this two-party arbitration. I
14 think this is an industry problem. Did I respond to
15 your question?

16 Q. Pretty much. I think the answer is that you
17 can provide the information regarding the identity of
18 either the originating or the immediately upstream
19 transit carrier on all of these calls?

20 A. It would require some systems development on
21 our part, but it could be done, technically speaking.

22 Q. Yeah. Are we looking at a very expensive
23 system of development, or are we looking at something
24 that's relatively minor?

25 A. I'm dealing here with both our switches and

0170

1 our billing systems. Every time I want to do
2 anything with our billing systems, I get large
3 numbers, so --

4 Q. I've heard that before.

5 A. So I don't have a number for you, but I
6 think it could be considerable.

7 Q. Yeah. And this -- in your testimony,
8 there's some evidence of the -- I guess, on an
9 overall basis, we're talking about something less
10 than two percent of all minutes exchanged are this no
11 CPN type of traffic?

12 A. Yes.

13 Q. Is that -- translated into dollars, is that
14 a large number? Say is 1.8 percent a large number of
15 dollars?

16 A. No, and if you're asking me if we were to
17 multiply that many minutes times the switched access
18 rate, let's say the intrastate, would not be many
19 dollars.

20 Q. Are we talking hundreds of thousands or
21 millions?

22 A. I think even less than that.

23 Q. Even less than hundreds of thousands?

24 A. I do. Fairly small numbers.

25 Q. So small matter, great principle?

0171

1 A. I'm afraid so.

2 JUDGE MOSS: All right. All right. Let's
3 see. Catch up where we were. You have completed
4 your questions?

5 MS. FRIESEN: I have, Your Honor.

6 JUDGE MOSS: So did you have anything on
7 Issues Three, 18 or 21?

8

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

10 BY MS. HUGHES:

11 Q. Just briefly, Your Honor. On Issue 21, Mr.
12 Freeberg, is AT&T willing to pay the development and
13 other costs that Qwest would incur to provide AT&T
14 with the information it seeks on originating calls?

15 A. Well, judging by their proposed language,
16 again, at page 43, lines 13 through 18, I would read
17 this to say that Qwest would need to do this
18 development in order to protect itself from otherwise
19 being financially responsible for this traffic. So I
20 would understand that to be, you know, something that
21 it would see Qwest obligated to do at no additional
22 cost to AT&T.

23 Q. Has AT&T stated to Qwest whether or not AT&T
24 would pay the development and other costs associated
25 with providing AT&T with what it seeks?

0172

1 A. I've never heard a willingness on AT&T's
2 part for that, no.

3 Q. In fact, has AT&T affirmatively said it
4 would not pay the costs associated with providing
5 what it seeks in originating carrier information?

6 A. I'm not sure.

7 Q. As between the originating carrier and the
8 transit carrier, which of the two carriers, Mr.
9 Freeberg, is in the superior position to attach the
10 appropriate identifying information on the call?

11 A. To me, the originating carrier is the
12 carrier who could supply that information with the
13 call that it sends. And I think the benefit of a
14 solution like this is the terminating carrier would
15 then receive this information in real time as it
16 processed the call, and it might not even then need
17 to buy category 11 transit records from the transit
18 carriers, because it would have that information.
19 And so it would allow a carrier to either interpret
20 that information in its call processing and not need
21 to buy those records or could be less sophisticated,
22 maybe not have the ability to interpret that, and
23 alternatively buy the transit records from the
24 transit carrier. So I think the best solution is for
25 the originating carrier to identify itself.

0173

1 MS. HUGHES: I have no further questions.

2 MS. FRIESEN: Your Honor, could I ask
3 re-cross?

4 JUDGE MOSS: Sure, just briefly.

5

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

7 BY MS. FRIESEN:

8 Q. On the subject you just talked with Ms.
9 Hughes about, the language that AT&T proposes applies
10 reciprocally to AT&T such that if it provided
11 CPN-less traffic to Qwest, AT&T would have to provide
12 Qwest with information on the originating carrier,
13 would it not?

14 A. If it were a transit provider, yes.

15 Q. And Qwest hasn't offered to pay the cost of
16 AT&T's requirements to identify for Qwest the
17 originating carrier from which the transit traffic
18 came, has it?

19 A. Qwest hasn't asked the same thing of AT&T,
20 no.

21 MS. FRIESEN: Okay. Thank you, Your Honor.
22 That's all I have.

23 JUDGE MOSS: Okay. Well, does -- that would
24 seem to complete our examination of Mr. Freeberg, and
25 we appreciate having you here and you can step down.

0174

1 Counsel have anything else for me? I have a few
2 words for you.

3 MS. FRIESEN: Nothing, Your Honor.

4 JUDGE MOSS: Okay. We do have a briefing
5 schedule. I'm not going to look through my notebooks
6 and find where that is. I'm sure you all know when
7 your briefs are due. What I do want to say about the
8 briefs is I hope they will be sharply focused. The
9 testimony is fairly extensive. I'm hoping the briefs
10 are going to tie it all together for me in a very
11 neat and comprehensible way without being over long.
12 So that will make my life a little easier, and I
13 always hope for that.

14 I will simply follow up on my earlier
15 comments today and say that, in listening to the
16 cross-examination, I continue to be struck, as I was
17 when I read the prefiled testimonies and reviewed
18 numerous exhibits, that it does seem that there are
19 some practical bases for solutions to some of these
20 issues that you all are in a position to determine
21 that I might have a more difficult time getting to
22 simply because I'm faced with competing proposals
23 basically to choose between, although I suppose I
24 could, in some instances, fashion a solution that
25 might adopt principles from both.

0175

1 It's a bit more difficult in these cases
2 when we're talking about specific language and you're
3 proposing one set and you're proposing another. My
4 third set might be worse than either. And so -- and
5 what typically happens in these cases is one side or
6 the other wins on each issue, Qwest's language here,
7 AT&T's language there. Everybody goes away unhappy.
8 And for half the issues I'm brilliant, and the other
9 half I'm dumb, and then, for the other party, it
10 flip-flops.

11 That doesn't particularly bother me, but I
12 think the best interest of the parties is served
13 where they can, again, fashion language, and in some
14 cases it might take some fairly small adjustments to
15 achieve practical solutions. There are numerous
16 sayings, I suppose, about the risk of standing on
17 principle, and those might be kept in mind as we go
18 forward. I realize you're on a tight schedule, you
19 have to take this show on the road again to Arizona
20 next, as I understand it, and you're all very busy,
21 but maybe you could all fly together or take a bus or
22 something.

23 So I'm just trying to be encouraging.
24 Obviously I am prepared to do my job as Arbitrator
25 and make the decisions based on the record in hand,

0176

1 and I will do that, certainly. But I hope those
2 words of encouragement will carry some weight with
3 you.

4 And if there's nothing further from you, I
5 would just like to compliment you all on your very
6 professional work. That's one good thing about
7 sitting where I sit. I get to enjoy very
8 professional representation from both sides and hear
9 some good witnesses and learn a lot, and my
10 vocabulary is now filled with new acronyms. So with
11 that, our record is closed. Thank you.

12 MS. HUGHES: Thank you, Your Honor.

13 MS. FRIESEN: Thank you, Your Honor.

14 (Proceedings adjourned at 2:42 p.m.)

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