0099

 1 BEFORE THE WASHINGTON STATE

 2 UTILITIES AND TRANSPORTATION COMMISSION

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 4 In the Matter of the Petition for)

 Arbitration of an Interconnection)

 5 Agreement Between )

 )

 6 NORTH COUNTY COMMUNICATIONS )

 CORPORATION OF WASHINGTON, )

 7 )

 and ) Docket UT-093035

 8 )

 QWEST CORPORATION ) Volume 7

 9 Pursuant to 47 U.S.C. Section ) Pages 99 - 281

 252(b). )

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11

12 An arbitration in the above matter was held on Tuesday, July

13 13, 2010 at 9:01 a.m. at 1300 South Evergreen Park Drive

14 Southwest, Olympia, Washington, before Administrative Law

15 Judge ADAM TOREM

16

17 The parties were present as follows:

18 QWEST CORPORATION by Lisa A. Anderl, Attorney at

 Law, ASSOCIATE GENERAL COUNSEL FOR QWEST, 1600 7th Avenue,

19 Room 1506, Seattle, Washington 98191; 206-345-1574

20 NORTH COUNTY COMMUNICATIONS CORPORATION, by

 Anthony McNamer, Attorney at Law, McNAMER AND COMPANY, 920

21 Southwest Third Avenue, Suite 200, Portland, Oregon 97204;

 503-727-2504

22

23

24 Tami Lynn Vondran, CCR No. 2157

25 Court Reporter

0100

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0102

 1 (Whereupon, the following proceedings went on

 2 the record at 9:01 a.m.)

 3 JUDGE TOREM: Let's be on the record in the

 4 arbitration between Qwest and North County. This is

 5 Administrative Law Judge Adam Torem. It's Tuesday morning

 6 July 13th, 2010, it's a little after 9:00 in the morning.

 7 We've convened at Room 206 at the Olympia hearing room of

 8 the Utilities & Transportation Commission. This is Docket

 9 UT-093035.

10 This morning we're going to take appearances for

11 both sides. We have a couple of motions to revise testimony

12 that have been submitted. We'll deal with those first.

13 I've asked counsel to review an exhibit list that actually I

14 did finally provide to them over the weekend. And they've

15 gotten back to me on a date for filing post hearing briefs,

16 and we'll confirm that. And then counsel can let me know if

17 you want to make opening statements or go straight to the

18 witnesses. So let's take appearances first for Qwest.

19 MS. ANDERL: Thank you, Your Honor. Lisa Anderl,

20 in-house attorney representing Qwest Corporation. I

21 previously provided my full appearance, but would you like

22 me to do that again for the new reporter?

23 JUDGE TOREM: No, I think if you've provided a

24 business card to the court reporter that will be sufficient

25 to create that information in the record for today's

0103

 1 hearing.

 2 Okay, for North County?

 3 MR. McNAMER: Anthony McNamer of McNamer and

 4 Company for North County Communications.

 5 JUDGE TOREM: And Mr. McNamer, you've also

 6 provided your information to the court reporter?

 7 MR. McNAMER: Yes, I have.

 8 JUDGE TOREM: Okay, thank you. Let's turn to

 9 those motions to revise testimony. Ms. Anderl, you have on

10 July 2nd filed a motion to revise Ms. Albersheim's

11 testimony, I think it was the original direct from May 19th,

12 and it was something on Page 17; is that correct?

13 MS. ANDERL: Turning there now, Your Honor. Pages

14 16 and 17, and it's very hard to see. And Page 16, it's on

15 Line 7.

16 JUDGE TOREM: Oh, I see. There's a number that's

17 been corrected?

18 MS. ANDERL: Yes. And then we added a question

19 and answer on Page 17. And it's basically a correction of a

20 mathematical calculation error that we made that we didn't

21 catch until the 1st of July.

22 JUDGE TOREM: All right. So, it's a cap on a

23 number of minutes?

24 MS. ANDERL: Yes.

25 JUDGE TOREM: And it's an upward move from 10,000

0104

 1 to 240,000 and then the explanation is what's on Page 17?

 2 MS. ANDERL: Yes.

 3 JUDGE TOREM: Mr. McNamer, what's your company's

 4 position, your client's position on the motion?

 5 MR. McNAMER: We don't have any problem with the

 6 amendment.

 7 JUDGE TOREM: All right. So, I'll grant the

 8 motion. And we'll use as Exhibit RA-1T the revised July 2nd

 9 edition of Ms. Albersheim's prefiled direct testimony.

10 MS. ANDERL: Yes. And, Your Honor, while we're on

11 Qwest corrections, Ms. Albersheim does have a correction to

12 make to her testimony when she's on the stand today. We did

13 not have time to file an errata. It's a correction that

14 Mr. McNamer and Mr. Lesser are aware of because we

15 supplemented a data request response on either Thursday or

16 Friday last week with the changes, but putting together the

17 errata just proved to be beyond us. So we'll make some very

18 small number of changes that are not extensive when

19 Ms. Albersheim is on the stand.

20 JUDGE TOREM: All right, sounds good. If I think

21 we need to have an errata filed later we'll arrange for

22 that.

23 MS. ANDERL: Thank you.

24 JUDGE TOREM: Mr. McNamer, you had a motion, as

25 well, that came in on Friday, I believe on Page 7 of 8 of

0105

 1 Mr. Lesser's testimony?

 2 MR. McNAMER: Yes.

 3 JUDGE TOREM: Briefly explain that.

 4 MR. McNAMER: It essentially is just a summary of

 5 the position we're taking. There's pointed out I think in

 6 some of the testimony that they didn't understand the exact

 7 position we were taking, and so I just added two questions

 8 and answers just to summarize the position.

 9 JUDGE TOREM: Okay. And, Ms. Anderl, Qwest

10 opposing this?

11 MS. ANDERL: Yes, we are.

12 JUDGE TOREM: On what basis?

13 MS. ANDERL: Well, Your Honor, we're opposing it

14 because of the timing of the motion doesn't really allow us

15 to revise our testimony to respond to it. Honestly, the

16 substance of it, if Mr. Lesser -- if you give the witnesses

17 a chance to make opening statements, and Mr. Lesser said

18 these things on the record today, I probably wouldn't have a

19 problem with it. But I have a problem with it appearing to

20 be in testimony that was filed in May where my witnesses'

21 responsive testimony comes out and says this witness didn't

22 talk about this. You know, I don't want to be too

23 colloquial, but it makes us look foolish, and it doesn't

24 sink up.

25 So for potential review purposes for the

0106

 1 Commission or the courts I think it would be confusing and

 2 potentially cast Qwest in an unfairly bad light. Again, if

 3 they want to put these statements on the record as some sort

 4 of a supplemental statement today to frame the issues,

 5 that's fine. But the point is that wasn't their testimony

 6 in May, and Qwest's testimony responded to what they did

 7 file. They should not be allowed, you know, really

 8 virtually 24 hours before the hearing, in terms of business

 9 days, to go back and patch that hole in a way that I think

10 substantively and procedurally disadvantages us.

11 JUDGE TOREM: So if I understand, it's truly a

12 question of the timing of this addition and clarification

13 and how it's being put in. Had this been a motion to add

14 supplemental testimony you probably would be fine with it or

15 he could be allowed to make the testimony on the stand

16 today?

17 MS. ANDERL: Yes, he could be allowed to make this

18 testimony on the stand. I mean we have gleaned that was

19 their position, but that was not clearly stated as their

20 position in the May filing. And our testimony responded to

21 their testimony with those two questions and answers not

22 being in there. Now if those were to be placed in there our

23 testimony wouldn't sink up.

24 JUDGE TOREM: I understand. Mr. McNamer?

25 MR. McNAMER: I think if she has no problem with

0107

 1 us just putting supplemental testimony on the stand I'll

 2 just have Mr. Lesser read that in his testimony on the

 3 stand, that will be fine.

 4 JUDGE TOREM: All right. So it's really just a

 5 question of the path we take to have this testimony admitted

 6 one way or the other?

 7 MR. McNAMER: Yeah.

 8 JUDGE TOREM: I think I do understand the temporal

 9 concerns Ms. Anderl is stating so that someone else

10 reviewing this, if they didn't read this part of the

11 transcript in context, would wonder why certain questions

12 came later. So, I'll deny the motion to revise the

13 testimony as prefiled. But I will allow your witness,

14 Mr. Lesser, to either read that directly or you can briefly,

15 in asking if he has anything to add to his testimony before

16 he's subjected to cross-examination today he can certainly

17 add these.

18 MR. McNAMER: I'll do that, Your Honor, thank you.

19 JUDGE TOREM: All right. The exhibit list I sent

20 around, of course it would be modified to indicate this

21 ruling to show that the testimony for Mr. Lesser is as of

22 the date and not revised, any other corrections or catches

23 on that?

24 MS. ANDERL: No.

25 MR. McNAMER: No, Your Honor.

0108

 1 JUDGE TOREM: Okay. Then I think we're ready to

 2 just proceed about confirming the dates for post hearing

 3 briefs. I believe you suggested, Ms. Anderl, Wednesday,

 4 August 4th, which would be essentially three weeks from

 5 tomorrow's, at least on paper, scheduled close for the

 6 hearing?

 7 MS. ANDERL: Yes, Your Honor. And that was

 8 subject to clarification today from the court reporter about

 9 when we can get the transcript.

10 JUDGE TOREM: All right, have you gotten that

11 clarification?

12 MS. ANDERL: No, I forgot to ask her.

13 JUDGE TOREM: I think that our standard is about

14 two weeks. So that would mean that you would have a week or

15 maybe a week plus with the transcript. Did you need more

16 time? If we complete the hearing today then the transcript

17 will be ready the 27th of 28th, somewhere in there.

18 MR. McNAMER: I probably would like more than a

19 week, I think, if that's only going to give us a week.

20 MS. ANDERL: I would, too. And I don't want to

21 press Your Honor with a deadline on your arbitrator's

22 decision.

23 JUDGE TOREM: The Commission and the State are

24 already going to be pressing me and giving me another one of

25 these temporary layoff days on August 6th. So perhaps

0109

 1 Monday the 9th would be a good day, or Tuesday the 10th, to

 2 file your brief?

 3 MS. ANDERL: Tuesday the 10th would be good.

 4 JUDGE TOREM: That way we are not pushing

 5 anybody's weekend in the summer.

 6 So August the 10th. And as long as the page

 7 limitations, or any surprises are limited to me, then I

 8 think I should be able to have enough time to write the

 9 order and get things done by the September 3rd deadline that

10 we've set for the arbitration report. All right, so

11 Tuesday, August 10th.

12 Anything else?

13 MS. ANDERL: And just one round of simultaneous

14 opening briefs, no replies?

15 JUDGE TOREM: I think that would be best. At this

16 stage we should be able to get most things out today in any

17 opening statements you need to set the stage and then from

18 there any cross-exam on the record. Mr. McNamer, do you

19 think --

20 MR. McNAMER: That's fine.

21 JUDGE TOREM: Okay, so Tuesday, August 10th

22 simultaneous briefs. And now let's turn to opening

23 statements unless there's any other preliminary items.

24 Counsel, did you guys want to make your own

25 opening statements or do you want to do that through the

0110

 1 witnesses as we call them up?

 2 MR. McNAMER: I planned to make my own.

 3 MS. ANDERL: We're happy to do that, as well.

 4 JUDGE TOREM: All right. I'm not sure who wants

 5 to go first this morning.

 6 MS. ANDERL: Well, Mr. McNamer and I have talked

 7 about that. And it is Qwest's petition for arbitration and

 8 so we're willing to put our witnesses up first for

 9 cross-examination, and we're also willing to start with the

10 opening statement first if that's okay.

11 JUDGE TOREM: Seems logical to me. Let's go ahead

12 and begin.

13 MS. ANDERL: Thank you, Your Honor. We're here

14 today on an arbitration proceeding that we believe

15 encompasses only a very small number of issues. I think

16 that NCC has a different view, but I'll let them make their

17 own case. NCC, largely the relationship with Qwest is one

18 where it's just interconnection. So all we're really

19 talking about are the local interconnection trunks and the

20 provisions for the mutual exchange of traffic that

21 implicates in the Interconnection Agreement Section 7. And

22 there are issues associated with virtual NXX or VNXX. There

23 are issues associated with the RUF, the relative use factor.

24 There are issues associated with the interconnection trunks

25 between the companies and the extent to which Qwest can

0111

 1 accommodate those trunks being only MF signaled as opposed

 2 to using SS7 or out-of-band signaling. And then there are

 3 overarching issues with whether Qwest is then able to

 4 request a brand new agreement or must in fact continue to

 5 negotiate or live under the agreement from 1997.

 6 We believe the Commission is largely on the way to

 7 deciding the jurisdictional issue, and I won't reargue that

 8 here. We think it is very appropriate for Qwest to have

 9 proffered a new interconnection negotiation template for a

10 new ICA. Our witnesses will demonstrate, and I will tell

11 you here today, that that ICA was not written by Qwest, does

12 not contain terms and conditions in it that were solely for

13 Qwest's benefit.

14 It was a document that was created through a

15 painstaking often tortuous process associated with three or

16 four year applications of the request before the FCC for

17 relief under Section 271. It contains terms and conditions

18 that in many cases were written by state commissions or

19 arbitrators and in other cases were written by our

20 competitors. Contains terms and conditions that are in many

21 cases very favorable to the requesting CLEC. It, in our

22 view, complies with the law that it's currently written,

23 reflects all of the changes of law since 1997.

24 It contains definitional terms and other

25 provisions that comport with Qwest's current product

0112

 1 descriptions and Qwest's current processes including the

 2 process called the change management process, or the CMP,

 3 that was set up in order to enable CLEC's to have an

 4 opportunity for input when Qwest wishes to change the way

 5 CLEC's interact with Qwest.

 6 It also reflects this Commission's decisions on

 7 issues such as the relative use factor and VNXX and whether

 8 those minutes are appropriate for inclusion or exclusion and

 9 whether those minutes should be compensated or not. It is,

10 of course, been the Commission's ruling in the not too

11 distant past that VNXX traffic, if it is to be permitted to

12 be exchanged at all in the state of Washington, is to be

13 exchanged on a bill and keep basis.

14 For those reasons, and because the agreement that

15 we presented to NCC has been drafted in a way so as to allow

16 NCC to continue to use MF signaling, the only CLEC in the

17 state of Washington that wishes to interconnect with Qwest

18 using MF signaling. We believe we have reasonably

19 accommodated their desire to maintain that term. We believe

20 that the Interconnection Agreement itself is very reasonable

21 and fair and balanced, in compliance with applicable law.

22 And we believe that the Commission should, on all of the

23 disputed issues, rule in Qwest's favor and adopt the ICA

24 that was submitted in Qwest's August 2009 petition for

25 arbitration. Thank you.

0113

 1 JUDGE TOREM: Mr. McNamer?

 2 MR. McNAMER: Yes. There are three main issues in

 3 North County's opinion. The first issue is MF technology

 4 and the use of MF technology by NCC. As Your Honor knows,

 5 NCC uses MF technology and Qwest used to use MF technology

 6 but now has changed to SS7 technology. There are other

 7 technologies that Qwest could have changed to but it chose

 8 SS7, and now it's attempting to punish NCC for not

 9 converting to Qwest's chosen technology. We don't believe

10 there's anything in the law or any regulation that allows

11 Qwest to dictate NCC's technology choices or allows Qwest to

12 punish NCC for its technology choices. As Mr. Lesser's

13 direct testimony makes clear, the MF technology is actually

14 more reliable than SS7, and there will be more testimony

15 about that today.

16 Moreover, Qwest alleged they cannot accurately

17 track billing information on MF. That allegation, as

18 Mr. Lesser's testimony makes clear, is false. Qwest chooses

19 not to track the information, that's a choice that they've

20 made. They could easily do so by programming their switches

21 to track the information or by providing North County with

22 something called an automatic number identification or ANI

23 which would allow NCC to track the information. Qwest

24 simply refuses to do either, and then it claims it doesn't

25 have sufficient information to properly track MF.

0114

 1 While Qwest's proposed language technically allows

 2 NCC to terminate calls using MF, it does not allow NCC to

 3 originate calls. If NCC wants to start originating calls

 4 NCC would have to switch to SS7 which would cost an amount

 5 of money that would make it prohibitive for NCC to ever do

 6 that. And though the language does allow for termination it

 7 arbitrarily caps the number of billable minutes at 240,000

 8 per DS1 line. DS1 lines, as you will hear today, have a

 9 capacity of about a million minutes. So, if you cap it at

10 240,000 you're arbitrarily requiring my client to operate at

11 24 percent capacity, either that or just give away the rest

12 of the minutes for free. And, you know, again, there's no

13 reason for that. That's just a made up number, 240,000.

14 The second issue is relative use factor, which is

15 called RUF or maybe RUF, I'm not sure, but we'll call it

16 RUF. But Qwest, again, has arbitrarily decided to count

17 calls that originate from Qwest customers and terminate with

18 NCC as if they originated from NCC customers and terminated

19 with Qwest. There's -- as far as we know, there's no other

20 ILEC, at least no other ILEC that NCC operates with, which

21 does this, which uses a formula which literally does the

22 exact opposite of what is actually happening as it relates

23 to relative use.

24 Relative use is suppose to be exactly what it says

25 it's suppose to do, it's suppose to determine what the

0115

 1 relative use of the network is. And as Qwest has admitted,

 2 the current relationship between the two parties, the

 3 relative use, is that 100 percent of the use is used by

 4 Qwest customers terminating with NCC. NCC does not place

 5 outgoing calls, so 100 percent of the use is Qwest use. And

 6 by modifying the way you determine relative use Qwest is

 7 attempting to simply arbitrarily make relative use factor

 8 something that benefits Qwest. The factor should be based

 9 on reality and should operate to determine actual relative

10 use. So, we would ask that the Commission deny the request

11 to change the relative use factor.

12 Finally, there is an issue with VNXX. The

13 Commission has already decided -- has already made a

14 determination on what the definition of VNXX is. The

15 Commission has already determined that VNXX is something

16 that has to be bill and keep. We don't believe that there

17 should be a different determination or definition by Qwest.

18 The Commission has already defined VNXX calls and determined

19 how they should be compensated. So we think that ruling

20 governs and the parties do not need to address VNXX in this

21 agreement.

22 And those are the three issues we'll talk about

23 today. And we believe on all three issues the Commission

24 should deny Qwest's request for the language that they've

25 presented and instead, in relation to RUF and in relation to

0116

 1 MF technology, use the prior language in the current ICA.

 2 JUDGE TOREM: All right, thank you.

 3 I take it then we're ready for witnesses. Are all

 4 the witnesses here?

 5 MS. ANDERL: For Qwest, yes.

 6 MR. McNAMER: Yes.

 7 JUDGE TOREM: All right. So Qwest is going to put

 8 on their witnesses first?

 9 MS. ANDERL: Yes.

10 JUDGE TOREM: It is going to be Ms. Albersheim

11 first?

12 MS. ANDERL: It is going to be Mr. Linse first.

13 So Qwest would call Mr. Linse to the stand.

14 JUDGE TOREM: Mr. Linse, let me ask you to come

15 over to this chair that's across from the court reporter.

16 Since we don't need to use that for counsel today I will

17 have you all the way to my right. And when you get to the

18 microphone there I think if you push the button on there it

19 will light up and then you will know that mic is active.

20 MS. ANDERL: Your Honor, may I ask a point of

21 clarification?

22 JUDGE TOREM: Go ahead.

23 MS. ANDERL: I don't have a copy of the witness

24 list in front of me that Your Honor sent out, as I neglected

25 to print it. Are we going to refer to the exhibits just the

0117

 1 way they were numbered without assigning them any sort of

 2 separate numerical identifier?

 3 JUDGE TOREM: I think that would be fine. We were

 4 trying to do that in some of our more complex rate cases

 5 rather than listing these and having competing sets of

 6 numbers. I don't see any initials that are duplicative.

 7 And there's only three witnesses, so I think they're fine as

 8 they are. So it will be the first and last initial of the

 9 witness, a number and then if it's a testimony exhibit with

10 a "T." So, for Mr. Linse it looks like we have exhibits

11 PL-1T, PL-2 and PL-3T.

12 MS. ANDERL: Yes. Thank you, Your Honor, just

13 wanted to clarify that so we're all...

14 JUDGE TOREM: Mr. Linse, is the microphone on in

15 front of you?

16 MR. LINSE: Yes.

17 JUDGE TOREM: Briefly I am going to have you stand

18 up and I'll swear you in.

19

20 PHILIP A. LINSE,

21 having been first duly sworn

22 on oath was examined and

23 testified as follows:

24

25 JUDGE TOREM: Sir, if you can state and spell both

0118

 1 your first and last name for the court reporter?

 2 MR. LINSE: My name is Philip Linse, P-h-i-l-i-p.

 3 And Linse is spelled L-i-n-s-e.

 4 MS. ANDERL: Thank you, Your Honor.

 5

 6 DIRECT EXAMINATION

 7 BY MS. ANDERL:

 8 Q. Good morning, Mr. Linse.

 9 A. Good morning.

10 Q. You prepared and caused to be filed in this docket

11 Exhibits PL-1T, PL-2 and PL-3T; is that correct?

12 A. That's correct.

13 Q. Is that your testimony in this case?

14 A. Yes, it is.

15 Q. And if I were to ask you the questions contained

16 in that testimony today would your answers be the same?

17 A. Yes.

18 Q. Do you have any changes or corrections that you

19 need to make?

20 A. No, I don't.

21 MS. ANDERL: Your Honor, we would move the

22 admission of those three exhibits and tender the witness for

23 cross.

24 MR. McNAMER: No objection.

25 JUDGE TOREM: Those exhibits will be admitted.

0119

 1 Mr. McNamer, your witness.

 2

 3 CROSS-EXAMINATION

 4 BY MR. McNAMER:

 5 Q. Mr. Linse, I believe in your direct examination

 6 you said that you worked for CDI Telecommunications in

 7 Missoula, Montana; is that correct?

 8 A. Yes, that's correct.

 9 Q. During your employment with CDI was it your job or

10 responsibility to install or maintain or program central

11 offices?

12 A. No, that was not part of my job function at CDI.

13 Q. In 1998 it looks like you took a job as a planner

14 with Pacific Bell; is that correct?

15 A. That is correct.

16 Q. And was it your job at Pacific Bell to install,

17 maintain or program central offices?

18 A. No, it was not part of my job function at Pacific

19 Bell.

20 Q. In 2000 it looks like you took a similar position

21 at Qwest; is that correct?

22 A. That's correct.

23 Q. Was your responsibility at Qwest to install,

24 maintain or program central offices?

25 A. Not as the transfer, that job function, no.

0120

 1 Q. And in 2001 you were promoted to staff position of

 2 technical regulatory interconnection planning with Qwest; is

 3 that correct?

 4 A. That's correct.

 5 Q. At that point was it your job to install, maintain

 6 or program central offices?

 7 A. It was my job to understand that -- how to program

 8 and not necessarily install but how switches work.

 9 Q. Did you ever actually install, maintain or program

10 central offices?

11 A. I did do some programming when I went through the

12 switch translations courses that were part of my training

13 for that position of interconnection planner.

14 Q. Did you do any actual installation, maintenance or

15 program in the field?

16 A. No, I have not, the actual installations.

17 Q. So you -- so I'm clear, you took some -- in a

18 class you took you had to do some programming but other than

19 that you have no real world programming, installation or

20 maintenance of central offices?

21 A. Actually, those training classes involved real

22 world switches.

23 Q. Were they active switches that Qwest was using or

24 switches just for the purpose of the class?

25 A. Well, as far as the classes were concerned those

0121

 1 were not customer affecting switches, no.

 2 Q. Okay. Have you ever programmed a Northern Telecom

 3 or Lucent central office?

 4 A. Lucent, I think, is where the main training course

 5 that I was involved with, when I programmed, was involved

 6 with switch translations.

 7 Q. So the one we were talking about earlier that you

 8 programmed in a class was a Lucent one?

 9 A. Right.

10 Q. And what was the -- how many days or weeks or

11 months was the training for the programming of the Lucent

12 central offices?

13 A. I don't recall, it was maybe five weeks.

14 Q. Was it a tandem or in-office -- I mean tandem or

15 in-office switch training?

16 A. It involved both.

17 Q. Have you ever read the Bellcore document LSSGR?

18 A. The LSSGR is a very, very large set of documents.

19 So, I don't think I've -- I don't know if I've ever heard of

20 anybody reading the entire LSSGR.

21 Q. Have you read the portion of the LSSGR that

22 discusses the capability of a central office switch?

23 A. Yes.

24 Q. And did you do that as part of your classes?

25 A. I did that as part of the preparation for this as

0122

 1 well as other references as part of my function as a

 2 interconnection planner.

 3 Q. Have you ever read any of the programming manuals

 4 for the Northern Telecom or a Lucent central office?

 5 A. I believe that was part of my training, they

 6 provided that type of documentation to me.

 7 Q. For both or just for Lucent?

 8 A. For the Lucent.

 9 Q. Now, you testified that Qwest can't track MF

10 calls. Did you -- in preparing your testimony did you

11 contact anyone at Northern Telecom or Lucent to see if they

12 knew of a way to track MF calls?

13 MS. ANDERL: I'm going to object, Your Honor, I

14 believe that this -- I believe that Counsel's paraphrase of

15 Mr. Linse's testimony misstates his testimony. I don't

16 believe that Mr. Linse stated that we can't track MF calls.

17 MR. McNAMER: Okay. Let me just clarify.

18 Q. (By Mr. McNamer) Can you explain to me what you

19 believe to be the limitation on tracking of MF calls?

20 A. Essentially what we have as far as the ability to

21 track is the ability to identify individual call events.

22 They call those the peg count which identifies individual

23 calls in either direction between the companies. In

24 addition to that Qwest switches have the capability to

25 identify the overall usage throughout a period of time for a

0123

 1 particular trunk with a particular switch.

 2 Q. What piece of information that you need to

 3 accurately track calls is missing?

 4 A. What is missing is the ability to segregate the

 5 individual calls, specifically the difference between an

 6 interLATA or an interstate call and intrastate call and

 7 intraLATA call, a transit local call, a transit intraLATA

 8 toll call, a local Qwest originated or terminated call.

 9 Those are I think pretty -- and wireless, originating and

10 terminating wireless.

11 Q. Have you, in relation to the things that you just

12 named were missing pieces of information, have you tried to

13 contact anyone to determine whether or not that information

14 is available?

15 A. In the preparation of my testimony I've consulted

16 with many of our tech support engineers and they have weekly

17 discussions about different switch translations, issues and

18 confirmed what my understanding was which was this was a

19 limitation of our switch.

20 Q. Did you contact anybody at Northern Telecom or

21 Lucent?

22 A. No, I did not. Our technical support staff is

23 very -- their job functions are specific to individual

24 switch vendors. So we will have individual tech support and

25 engineers that specialize in the manufacture/vendor type

0124

 1 switch. So we have Nortel switch tech supports as well as

 2 Lucent and Ericsson.

 3 Q. And you contacted your own tech support for each

 4 of those vendors to determine whether or not your

 5 understanding of the information/issues was correct?

 6 A. That's correct. I basically confirmed that the

 7 same limitation exists with all the switches that we

 8 operate.

 9 Q. I believe Mr. Lesser testified that AT&T and

10 Verizon track North County's in-bound and out-bound MF

11 traffic, did you read that testimony?

12 A. Yes, I did.

13 Q. And did you contact Verizon or AT&T to figure out

14 how they're doing that?

15 A. You know, we are involved with the network

16 interoperability and interconnection forum which is an

17 industry standard group that Qwest, AT&T, as well as Verizon

18 participate in. And we queried AT&T and Verizon on that.

19 And the feedback that I got, which was not formal, was that

20 they did not track it in the same way that Mr. Lesser has

21 testified to.

22 Q. Did they explain to you how they track it or how

23 they bill --

24 A. No, it was just a high level query to them. I

25 don't know exactly what their expertise was as far as our

0125

 1 interface with them.

 2 Q. Do you know who you spoke with?

 3 A. Their network interoperability interconnection

 4 forum representative.

 5 Q. Do you know if that person had any direct

 6 familiarity with --

 7 A. I really don't know. It was kind of a general

 8 query with them and so I don't know exactly what their

 9 expertise was.

10 Q. Now, is it your position that MF is not as

11 reliable as SS7?

12 A. In some instances it's not. I think when you look

13 at the overall capability of that trunk, and the problems

14 that you can have with an MF trunk versus an SS7 trunk, SS7

15 is more reliable.

16 Q. Do you have any -- have you looked at any

17 statistics relating to outages for the two different kinds

18 of trunks to determine whether statistically one is more or

19 less reliable?

20 A. What I have looked at is that since SS7 has been

21 developed and is a protocol that has been considered a

22 mature protocol, the reliability has increased significantly

23 just since 9-11, and has consistently become more and more

24 reliable as time progresses.

25 Q. Are you saying the reliability of SS7 has

0126

 1 increased as compared to --

 2 A. Absolutely.

 3 Q. -- prior reliability of SS7?

 4 A. Absolutely. When SS7 was first installed into the

 5 networks and was first used of course companies weren't as

 6 familiar with the procedures that would be necessary to make

 7 it as reliable as it is today. Over time the companies --

 8 we've all learned to make SS7 about as reliable as it can

 9 be.

10 Q. And my question was as compared to MF have you

11 done any research or seen any statistics which compare the

12 reliability of SS7 as compared to the reliability of MF?

13 A. The reliability, I think, is pretty relative

14 because you're talking about a whole different network.

15 You're talking with SS7 an out-of-band type signaling. SS7

16 is its own network where MF is not its own network, it's

17 just the voice network. So it's only as reliable as that

18 one circuit that runs between the two switches, where SS7,

19 you know, it's a whole nother network.

20 Q. Is it true that 9-11 system uses MF signaling?

21 A. 911 you mean?

22 Q. Sorry, 911.

23 A. We do use SS7 for our 911 trunking at Qwest.

24 Q. You use SS7?

25 A. That's correct.

0127

 1 Q. In general in the country is 911 typically MF?

 2 A. I think people, or other carriers, are moving

 3 towards using SS7 for 911. You know, Qwest has converted,

 4 if not all, the majority of its network -- 911 network to

 5 SS7.

 6 Q. So right now you're using both MF and SS7 for 911?

 7 A. You know, I'm not 100 percent sure if it's

 8 complete. There might be one or two offices or a few

 9 offices that might be MF, but I don't think they really

10 exist. I think there are -- I think we are 100 percent off

11 MF, but I haven't validated that, but I know we are in the

12 process or have converted our 911 network to SS7.

13 Q. In the 13 years that NCC and Qwest interconnected

14 were there ever any outages related to the MF signaling that

15 you know of?

16 A. Can you repeat that question? I missed the first

17 part.

18 Q. In the prior 13 years where NCC and Qwest

19 interconnected do you know of any outages related to MF

20 signaling?

21 A. I don't know if I would know or if anybody would

22 really know because I don't think we document that type of

23 outage.

24 Q. So you don't know of any?

25 A. I don't know of any.

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 1 Q. In your reply testimony I believe you stated that

 2 the agreement required NCC to implement SS7 in a very short

 3 period of time; is that your testimony?

 4 A. Yes.

 5 Q. Now, isn't it true that the last Qwest central

 6 office just converted from MF to SS7 a few months ago?

 7 A. Yes.

 8 Q. And so I guess I don't understand the point that

 9 you're making then. So there was an agreement that was

10 entered 13 years ago and your testimony was that that

11 agreement required the conversion to SS7 in a very short

12 period of time, yet 13 years later Qwest is just finally

13 changed over their last central office to SS7?

14 A. That's correct. Essentially how Qwest implemented

15 SS7 is as we entered into agreements with other CLEC's Qwest

16 upgraded its switches as interconnection requests came in.

17 Obviously, we would start with the much larger offices, the

18 tandem offices and those types of metro area type switches.

19 The last few switches that Qwest upgraded were in very rural

20 areas where there was no competitive presence, thus there

21 was no real necessity to upgrade into that to an SS7.

22 However, if we were to receive a request for interconnection

23 we would have upgraded that particular switch.

24 Q. And do you know about how much it costs to

25 upgrade, let's just take one of the smaller switches, how

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 1 much it costs to do the upgrade from MF to SS7?

 2 A. I don't have the actual figures but it was for the

 3 last switch that we upgraded it cost about $30,000, 30 or

 4 $40,000 to upgrade that switch.

 5 Q. What kind of switch was that?

 6 A. It was a DMS-10.

 7 Q. Do you know what kind of switches NCC uses?

 8 A. They're DMS-100's.

 9 Q. At the point five months ago isn't it true that

10 NCC couldn't have ordered SS7 trunks to that central office

11 that was using MF technology?

12 A. They could have, we would have then had to have

13 upgraded that switch to SS7.

14 Q. As the switch was at the time it wouldn't have

15 been able, you would have had to upgrade it in order for

16 them to connect?

17 A. Of course.

18 Q. Did you have to replace the central office to

19 implement the SS7 in that central office?

20 A. No.

21 Q. How did you do the upgrade without replacing the

22 central office?

23 A. It's just -- I think there was some software and

24 some hardware. But the Nortel switches have the capability

25 of doing SS7, it's a matter of basically making sure that

0130

 1 you have the appropriate interfaces and software to enable

 2 that capability.

 3 Q. If you didn't have a switch that had SS7

 4 capability do you know how much it would cost to change out

 5 the central office?

 6 A. No, I don't.

 7 Q. Do you know how much a new central office with an

 8 SS7 switch costs?

 9 MS. ANDERL: Objection, Your Honor. This is a

10 question that was asked in discovery. It is vague without

11 adequate parameters to enable the witness to answer, nor are

12 central office costs directly at issue in this case.

13 JUDGE TOREM: Sustained.

14 Q. (By Mr. McNamer) Do you know how much -- at any

15 point did you have to replace a central office entirely to

16 upgrade to SS7?

17 A. Hmm...

18 Q. You mentioned that MF doesn't allow you to send

19 calling party information, have you ever set up an MF trunk

20 group?

21 A. I'm trying to think back to my training if we set

22 up -- I think there's an option to set those types of trunk

23 groups up in the Nortel software, or in the Lucent software

24 I should say.

25 Q. Do you know if you ever did it?

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 1 A. I think we probably did it as part of, you know,

 2 let's set up a trunking arrangement MF, let's set up a

 3 trunking arrangement with SS7.

 4 Q. Have you ever done that in the field other than

 5 your training class?

 6 A. No, I haven't been involved with that on a live

 7 switch.

 8 Q. Is it true that MF 911 and Feature Group D trunks

 9 send calling party information?

10 A. Would you repeat those?

11 Q. Isn't it true that MF 911 and Feature Group D

12 trunks both send calling party information?

13 A. I don't know if I would call it calling party, I

14 would call it automatic number identification which is more

15 of a billing telephone billing type number.

16 Q. And, so, MF 911 trunks send automatic number

17 identification information?

18 A. That's true.

19 Q. Isn't it true that right now you segregate --

20 Qwest segregates trunk groups on a jurisdictional basis?

21 A. No, we don't require that that's -- that's not a

22 requirement.

23 Q. Is it something that you guys do?

24 A. We typically segregate specialized type trunk

25 groups such as 911 and operator services, directory

0132

 1 assistance type trunk groups because of the specialized

 2 nature of those; however, other types of jurisdictional

 3 billed type trunk groups or trunk groups that are subject to

 4 different jurisdictional billing can be combined.

 5 Q. Now, a second ago you said that MF 911 trunks send

 6 ANI information. Can't you use ANI to determine

 7 jurisdiction?

 8 A. ANI is typically used like with -- like Feature

 9 Group D is a -- the jurisdiction is predetermined when that

10 call is originated. And, so, the ANI merely provides the

11 billing information to the interexchange carrier for the

12 long distance jurisdictional traffic.

13 Q. How is it predetermined?

14 A. By the originating office.

15 Q. Can you use the ANI -- let's assume it's not

16 predetermined. Can you use ANI to determine jurisdiction?

17 A. I guess I'm not quite sure what you mean by can

18 you use ANI? You can use a telephone number to determine

19 jurisdiction. If you want to call it ANI, I mean that's...

20 Q. And so if -- just trying to connect the dots here.

21 So if MF trunks can provide ANI information--ANI information

22 is a telephone number--and a telephone number can be used to

23 determine jurisdiction, then MF trunks can provide

24 information that allows you to determine jurisdiction;

25 right?

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 1 A. That's not how the network is designed and how the

 2 network operates. If you want to create a whole new network

 3 and whole new set of rules as far as how the network

 4 operates then you can probably come into any one of our

 5 industry standard meetings and propose a new standard for

 6 how this traffic is identified and recognized. In fact, you

 7 know, it's a big issue in the industry today that the

 8 industry groups have been attempting to address is, you

 9 know, how can we better identify traffic? The problem is is

10 with MF, MF has specific limitations that prohibit ANI, any

11 type of identifying originating information associated with

12 local calls.

13 Q. But if -- let's just say Qwest didn't want to

14 change their system so they figured out the jurisdiction

15 using the information that can be provided by MF trunks,

16 couldn't Qwest at the very least provide the ANI information

17 to North County, or North County could then send a bill to

18 Qwest based on the ANI information that Qwest delivers to

19 North County?

20 A. I suppose they could probably do that over like a

21 long distance trunk, but then I believe the traffic over

22 that trunk would be subject to long distance charges. So if

23 North County would like to establish that kind of a trunk

24 with Qwest, you know, we could send that traffic over to

25 that trunk and bill them long distance charges for that

0134

 1 traffic.

 2 Q. But couldn't Qwest just take the information that

 3 is available -- and maybe I'm not understanding this. But

 4 it sounds like what you said is that you can get ANI from an

 5 MF trunk and if you have ANI then you can figure out the

 6 jurisdiction, but Qwest billing isn't set up to look at ANI

 7 and determine jurisdiction for billing purposes, is that --

 8 am I summarizing that part correct?

 9 A. I don't believe so.

10 Q. So tell me what's wrong.

11 A. I'm not really sure exactly what all you were

12 trying to say.

13 Q. Okay. So stop me when I get something wrong. So

14 MF trunks have the ability to send ANI; that's correct,

15 right?

16 A. For long distance traffic, that's correct.

17 Q. Why is it only long distance traffic?

18 A. Because that information is necessary for carrier,

19 a long distance carrier, to bill for the traffic. In

20 addition to that, of course, you have 911 that provides ANI,

21 and that provides the information of the calling party to

22 PSAP which is the Public Safety Answering Point so that the

23 operator at Public Safety Answering Point can identify

24 address type information associated with that calling party.

25 And it's very specific to the service that's being provided.

0135

 1 So 911 is an emergency service type signaling that provides

 2 ANI, the called party is always 911. So you don't have

 3 really a jurisdictional issue there, it's an emergency

 4 service trunk which is why you have the protocol set up the

 5 way it's set up.

 6 Q. I understand there's a specific reason why 911 has

 7 the ANI information because you want to know who's calling

 8 to report an emergency. But what's the reason why you can't

 9 set up a local trunk to do the exact same thing, is there --

10 I mean if you can do it for long distance and you can do it

11 for 911 there doesn't seem to be a technical barrier for

12 doing it for local, you just don't do it that way. But is

13 there a technical reason why you can't?

14 A. I believe it's called a long distance trunk or a

15 911 service. It's either long distance -- there's

16 essentially what? four types of traffic in the network.

17 You've got long distance, you've got local, you've got 911

18 and operator services. There's some other extraneous type

19 trunks but those are essentially the four categories of

20 signaling information that comes with those types of

21 services.

22 Q. I understand that Qwest classifies services

23 differently, but the switches themselves can do it, you're

24 just making determinations based on the classifications not

25 to do it; right?

0136

 1 A. You know, we could provide a 911 service but it

 2 would provide 911 service. I mean I guess I'm not quite

 3 sure what --

 4 Q. My point is this, you know, if you can collect

 5 this information for long distance calls, and you can

 6 collect the information for 911 calls then you can collect

 7 the information. And I understand that you have determined

 8 that you only collect it for certain classes of information

 9 or if it's a long distance call or if it's a 911 call or

10 there's some other kind of special service call. But

11 there's no technical reason--I mean I understand there's a

12 determination that you don't do it--but there's no technical

13 reason why a local switch couldn't also collect that

14 information; right?

15 A. Okay. You've just changed the question. The

16 question originally was whether or not we can provide ANI on

17 these different types of trunks. Now it's a question of

18 whether or not we can record that information. And I don't

19 think we've said that we can't collect the information, it's

20 a matter of limitations of signaling for a local call does

21 not provide the ANI or any other calling party information.

22 It's local signaling and that's the nature of local

23 signaling, period.

24 Q. Okay. Is that parameter that is just set up by

25 Qwest that the way you define local signaling it does not

0137

 1 allow for the collection of ANI? The switches themselves

 2 could collect the information but you've set up a parameter,

 3 this is what local calling means, and local calling doesn't

 4 mean we collect ANI -- or send the ANI, sorry?

 5 A. So what is -- long distance call requires the

 6 interexchange carrier to obtain billing information, that is

 7 why ANI is sent on a long distance call. With a local call

 8 that type of information is not necessary. So MF signaling

 9 was never designed to provide that kind of information on a

10 local call.

11 Q. Okay. And so what if it was necessary?

12 A. Then the protocol would have been designed with

13 that capability.

14 Q. Okay. But -- and obviously I'm not a technician,

15 but the thing I'm not understanding is one of the points

16 you're making is with MF technology you can't get the

17 information, the necessary information to segregate it

18 jurisdictionally? And then on the other hand the

19 information, the ANI information is something you can get

20 from MFI -- I'm sorry, from MF, and if you get that

21 information you can segregate it jurisdictionally? And so

22 it sounds to me, and correct me if I'm wrong, that you're

23 saying the necessary information we can't get? And on the

24 other hand you're saying, well, we can get it but we're not

25 set up to -- for local calls we just don't, we don't, that's

0138

 1 just not what we do, that's not part of the local call

 2 protocol.

 3 So if someone decided tomorrow that it was

 4 necessary, or, for instance, in order to track MF calls

 5 coming from North County you decided, well, it's necessary

 6 for us now to track ANI for local calls, there's nothing in

 7 the switches that would prevent you from doing that; right?

 8 A. That's the interesting thing about this whole case

 9 is that the industry has moved to SS7. Qwest interconnects

10 with, you know, well over 100 different CLEC's and they're

11 all SS7. NCC is the only one that insists on being MF for,

12 you know, exclusively. The MF protocol type of signaling is

13 basically obsolete. Everybody is using SS7 in the public

14 switch telephone network. So if you brought that to the

15 industry you would be waiting a long time before you would

16 see a standard come out redefining MF signaling to provide

17 ANI on a local call.

18 Q. Are there other -- you said that everybody

19 switched to SS7, isn't it true that a lot of people have

20 switched to other things other than SS7?

21 A. I think there are other methods of providing

22 signaling with the -- with new Voiceover IP type calling and

23 things like that. There's other signaling protocols out

24 there that other companies use, but there isn't -- hasn't

25 been any industry standard that has been agreed upon for all

0139

 1 service providers to exchange traffic.

 2 Q. Is there some agreement somewhere where everybody

 3 has decided on SS7?

 4 A. I don't know if there is necessarily an agreement

 5 but it's basically a de facto standard that all service

 6 providers at least on a TDM network uses SS7.

 7 Q. Let's move on to a different issue. So is there

 8 any technical reason to cap the number of billable minutes

 9 at 240,000 minutes per DS1 line?

10 A. 240,000 for a DS1, from a technical perspective,

11 typically that kind of an arrangement is provided using a

12 call centum second usage calculation. When you look at the

13 blocking objectives associated with trunking, which is the

14 amount of calls, the percentage of calls that would complete

15 over a particular trunk group during a very high volume of

16 traffic time.

17 I think most people understand that Mother's Day

18 is typically like the biggest phone call day of the year

19 where everybody is calling their mothers for Mother's Day.

20 And so when you engineer your network you engineer it based

21 on the busy hour of the busy season which is typically the

22 Mother's Day period. When you look at the call centum

23 seconds associated with that there is an acceptable limit as

24 to how much volume is acceptable over those trunk groups in

25 order to minimize the amount of blocking. And so when you

0140

 1 take that calculation into play and you say I'm going to

 2 engineer my network to the busiest time of the year so I can

 3 insure that that capacity is there for that busy time of the

 4 year then you have to -- basically you end up over

 5 engineering it for the rest of the year.

 6 So when you look at that calculation it's about, I

 7 think about a 60 percent utilization for the rest of the

 8 year is what you would experience over that trunk group.

 9 And I've done some note pad and pencil calculations and it

10 comes to be about 240,000 minutes for the -- what we would

11 call the 512CCS rule which is also in our contract. And

12 it's kind of an accepted level of traffic volume over a

13 particular trunk group.

14 Q. Okay. But isn't that an engineering issue not a

15 billing issue?

16 A. It's an engineering issue that says this is what

17 the maximum number of minutes you would theoretically see

18 over that trunk group to make -- to get to the point where

19 you have that 512 call centum seconds. And that then

20 translates into the need for another trunk group. Which

21 from a billing perspective, okay, how many minutes is there

22 possible over a DS1 before you actually need to install

23 another DS1? And I think that's where you get your billing

24 calculation is because that DS1 has a capacity of about

25 240,000 minutes. Once you reach that benchmark then you

0141

 1 would need to put in another DS1.

 2 Q. But doesn't the capacity you're referring to -- so

 3 you're just taking about the sort of low average capacity

 4 you need so at the high point of the -- on Mother's Day you

 5 don't get dropped calls or you don't get busy signals and

 6 the rest of the year it's way under capacity; is that right?

 7 A. It can be. I mean it depends. You can also have

 8 that fluctuation of other times of the year, doesn't

 9 necessarily have to be Mother's Day.

10 Q. Isn't that also completely dependent on the types

11 of callers you have and the types of calls they're making?

12 A. Yeah, there's a whole algorithm as determining how

13 that works. But it's designed into the network.

14 Q. And you guys don't stop billing your customers

15 when you go over 240,000 minutes; is that correct?

16 A. I think that's when your billing issue comes into

17 play. I think that's a protection for Qwest because of the

18 MF nature of the connection and their inability to track --

19 or not track, but to receive the calling party information

20 that you would normally receive like with SS7.

21 Q. Other than making Qwest -- okay. Can you tell me

22 why that number couldn't be 350,000?

23 A. Well, from an engineering perspective if you were

24 to draw that line, if you were to equate 512CCS to a

25 particular number of minutes then it's whatever that number

0142

 1 of minutes are.

 2 Q. But you're not proposing to actually limit the

 3 amount of minutes actually used, just the amount of minutes

 4 that you'll pay for? So, for instance, if Qwest customers

 5 call my client and use a million minutes you're not limiting

 6 the ability of my client to take a million minutes of calls

 7 from Qwest customers, my client can do that, technically,

 8 you're not setting up any sort of engineering blockade for

 9 that? So your clients -- or Qwest customers get to call my

10 client for a million minutes, Qwest is just saying we're

11 only going to pay you for the first 240,000 minutes of it;

12 right?

13 A. I think that's part of the protection of limiting

14 Qwest's exposure to the unknown nature of the traffic.

15 Q. If you're a retail or a wholesale customer and you

16 send 800,000 minutes is Qwest going to only bill for 240,000

17 minutes of that?

18 A. I don't think this is a matter of Qwest billing,

19 it's a matter of Qwest's exposure to NCC's traffic that's

20 originated MF or terminated MF.

21 Q. But earlier you said that the 240,000 minutes

22 relates to some engineering calculation where that's about

23 how much you need in order to make sure that your network is

24 fine during the busiest periods. So earlier you said

25 240,000 minutes, it's an engineering number, right? It has

0143

 1 to do with being able to maintain capacity during peak

 2 periods of time; right?

 3 A. The 512CCS is an engineering number. The 240,000

 4 minutes is a cap in the Interconnection Agreement. You

 5 asked is there any technical association of the 240,000

 6 minutes from an engineering perspective. And I said, yes,

 7 there is, and that was my explanation for that.

 8 Now, the 240,000 from a billing perspective, or

 9 the cap that's in the Interconnection Agreement, I think is

10 different than from my engineering perspective.

11 Q. So there's two reasons to have the 240,000 cap,

12 there's the technical reason to have it at 240,000 and then

13 there's also a billing reason. And the billing reason is

14 that it will disincentivise people to use more than 240,000

15 minutes?

16 MS. ANDERL: Your Honor, I'm going to object.

17 Ms. Albersheim is the witness who supports the billing

18 rationale. And that question is therefore outside the scope

19 of Mr. Linse's testimony.

20 MR. McNAMER: Want me to respond to that?

21 JUDGE TOREM: Overruled. I think Mr. Linse is

22 doing a fine job of answering these. If Mr. Linse feels

23 he's not competent to answer the question he can say so.

24 A. Well, and I think Renee, Ms. Albersheim, would

25 have probably a better insight into that and could probably

0144

 1 answer your question a little more completely than I can

 2 from the billing side of it.

 3 Q. (By Mr. McNamer) Is there anything that says

 4 240,000 minutes as compared to 305,000?

 5 A. From an engineering perspective the 240,000 or

 6 even 300 is really a guess from an engineering perspective

 7 even. And that's just because of the nature of trying to

 8 convert call centum seconds to minutes of use which doesn't

 9 really convert. You kind of have to say, well, if 512CCS is

10 about a 60 percent use of trunk and how many minutes are

11 possible over the trunk theoretically? Then you're kind of

12 at 240,000 minutes. I mean it's not an exact calculation by

13 any means, it's just kind of a ballpark.

14 Q. And is there anything that -- technically is there

15 any reason -- do you have any reason to believe, as you sit

16 here today, that my client's DS1 lines can't operate at a

17 million minutes without having any blocked calls?

18 A. I can't imagine a trunk working, a T1 working at a

19 million minutes and not experience some blocking.

20 Q. But doesn't that depend a lot on the kind of calls

21 the T1 is getting?

22 A. Really it's more of the peakedness of the trunk

23 group. And what I mean by "peakedness" is you have -- the

24 calling patterns of people are very dynamic. You can have

25 times where call volumes just peak and other times where

0145

 1 they may not peak as much. And so they call that variation,

 2 quote, peakedness. And that's what the, you know, the call

 3 centum seconds, the trunk engineering standards are suppose

 4 to accommodate for is that kind of peakedness. And I would

 5 never expect to see a million minutes used sequentially

 6 across a trunk group. You will always see some sort of

 7 peakedness associated with human calling patterns.

 8 Q. Could you have a trunk group that -- would a DS1

 9 line be able to handle a trunk group that was sort of always

10 in the 700,000 to 1.2 million minutes?

11 A. You know, again, a calculation like that, you're

12 trying to back in to the engineering of that and it just --

13 minutes of use does not typically transfer into the

14 engineering of a trunk group.

15 Q. So it's something that's very difficult to

16 calculate?

17 A. It's not something engineers calculate at all. We

18 don't -- when you design a trunk group you don't design it

19 based on how many minutes of use.

20 Q. And, so, under the formula that Qwest has, let's

21 just assume that NCC has DS1 lines and they can handle up to

22 a million minutes, not constant million minutes of use but

23 up to a million minutes of use. Unless NCC wanted to give

24 away that last 760,000 they would just order another line?

25 After 240 you just keep ordering lines? Like if you want to

0146

 1 get anything more than 240 you can get that, you can get it

 2 and get paid, you just have to order another line; is that

 3 right?

 4 A. You know, again, engineering of those trunk groups

 5 is different than minutes of use, and, so, I would not

 6 equate the two from an engineering perspective.

 7 Q. Can you explain to me why Qwest remote call

 8 forwarding service is not VNXX?

 9 A. From a technical perspective with call forwarding

10 there's two telephone numbers involved, the called number

11 and then the forwarded to number. And in each of those

12 instances those numbers are assigned within the local

13 calling area of the subscriber that subscribes to those

14 services.

15 Q. The local number isn't assigned to the -- does

16 Qwest currently have the ability to not bill a CLEC for

17 terminating traffic to a remote call forwarding number?

18 A. I guess you're going to have to clarify that.

19 MR. McNAMER: Actually, I don't need the answer to

20 that question. I'll withdraw that question. Can I take a

21 minute break to see if there's anymore questions?

22 (Discussion between Mr. Lesser and

23 Mr. McNamer held off the record.)

24 MS. ANDERL: Your Honor, may we have a few minutes

25 off the record then for a general comfort break?

0147

 1 JUDGE TOREM: We will as soon as he comes back and

 2 let's us know if he has additional questions we will take a

 3 brief recess.

 4 MS. ANDERL: Thank you.

 5 MR. McNAMER: We don't have any further questions.

 6 JUDGE TOREM: All right, thank you. It's about

 7 10:20, so we'll take a break. Maybe about 10:30 we'll come

 8 back on the record unless, Ms. Anderl, you need any time to

 9 check with your witness on any redirect?

10 MS. ANDERL: I think we're ready to proceed after

11 the break. Thank you, Your Honor.

12 JUDGE TOREM: We'll come back in 10 or 12 minutes

13 and proceed with redirect of Mr. Linse.

14 (Break taken from 10:16 to 10:32 a.m.)

15 JUDGE TOREM: All right. We're back on the

16 record. It's a little after 10:30. Ms. Anderl, ready for

17 redirect of the witness?

18 MS. ANDERL: Yes, Your Honor, Mr. McNamer and I

19 have spoken previously about stipulating to the admission

20 of/or official notice being taken of the two Interconnection

21 Agreements that are at issue in the docket, the 1997 one and

22 the proposed 2009 one. And I believe he has said that he

23 did not have a problem with that. I thought I would ask

24 Your Honor how you would like us to refer to those at this

25 point since I do have a couple of redirect questions for

0148

 1 Mr. Linse on the 1997 ICA.

 2 JUDGE TOREM: You can go ahead and refer to it

 3 that way. I'll mark the 1997 Interconnection Agreement as

 4 Bench Exhibit 1.

 5 MS. ANDERL: Okay, great.

 6 JUDGE TOREM: And the proposed 2009 ICA or

 7 Interconnection Agreement as Bench Exhibit 2, but you don't

 8 have to refer to them by their exhibit numbers, I think

 9 we'll be clear enough in the record as to which ICA's we're

10 referring to and go from there.

11 MS. ANDERL: Thank you, Your Honor.

12

13 REDIRECT EXAMINATION

14 BY MS. ANDERL:

15 Q. Mr. Linse, before we get to the 1997 ICA, let me

16 direct you to some questions that Mr. McNamer asked you

17 about whether you had checked with AT&T and Verizon with

18 regard to their ability to track inbound and outbound calls

19 to NCC, do you recall those questions?

20 A. Yes, I do.

21 Q. And in connection with Qwest's questions about

22 that issue, did Qwest ask NCC some data requests on AT&T and

23 Verizon's ability to track inbound and outbound calls?

24 A. Yes.

25 Q. And are you familiar with and did you review the

0149

 1 NCC answers to those data requests?

 2 A. Yes, I did review them.

 3 MS. ANDERL: Your Honor, I would like to offer now

 4 as an exhibit, an exhibit that I was going to offer on

 5 cross, it is the set of North County Communications

 6 responses to Qwest Corporation's first, second and third

 7 sets of data requests just bundled together as a packet.

 8 How many copies would the Bench like?

 9 JUDGE TOREM: I'll need one for now and then we'll

10 arrange to put, I think, four copies to the records center

11 should be sufficient for those on staff that are tracking

12 the case.

13 MS. ANDERL: Thank you. May I approach the

14 witness to give him a copy?

15 JUDGE TOREM: Certainly.

16 If you want to hand one up to me now that would be

17 great.

18 MS. ANDERL: Sorry, I just thought I teleported it

19 there to you. I apologize, Your Honor.

20 JUDGE TOREM: We don't have VNXX for exhibits I

21 don't think.

22 MS. ANDERL: And, Your Honor, how should we

23 identify this exhibit?

24 JUDGE TOREM: The main use of this is going to be

25 for cross-exam of Mr. Lesser; is that right?

0150

 1 MS. ANDERL: Yes.

 2 JUDGE TOREM: I think what we'll do is just mark

 3 this as TL-3X, that way we'll know it's associated with that

 4 witness mainly. But certainly this is going to be, it looks

 5 like three different documents as you've described it, two

 6 pages each, so for a total of six pages; is that correct,

 7 will be TL-3X?

 8 MS. ANDERL: Yes, Your Honor. Thank you.

 9 Q. (By Ms. Anderl) Mr. Linse, in connection with the

10 AT&T/Verizon issue we were just discussing did you assist me

11 in the preparation of certain data requests to NCC

12 addressing that topic?

13 A. Yes.

14 Q. Was one of those data requests Request No. 2?

15 A. I believe that was, yes.

16 Q. And on the second page of this six page packet do

17 you see Request No. 2 and NCC's response?

18 A. Yes, I see that.

19 Q. And then on the last page of this document did you

20 assist me in the preparation of a follow-up question that --

21 or questions that were Requests No. 11 and 12?

22 A. That's correct.

23 Q. And were those the--on the last page of that

24 document--the entirety of the responses that we received

25 from North County?

0151

 1 A. Yes, it was.

 2 MS. ANDERL: Your Honor, we'll save that document

 3 and move its admission with Mr. Lesser after he's

 4 authenticated it unless counsel is willing to stipulate its

 5 admission at that time?

 6 MR. McNAMER: I have no objection.

 7 JUDGE TOREM: All right. No objection from North

 8 County, so we'll admit the copy that's been marked as

 9 Exhibit TL-3X at this time. It looked like you were

10 referring to Pages 2 and 6 of that document?

11 MS. ANDERL: Yes, Your Honor.

12 JUDGE TOREM: Go ahead.

13 Q. (By Ms. Anderl) Now, Mr. Linse, I'm also going to

14 ask you a question about the 1997 Interconnection Agreement

15 that Qwest and NCC have, and I'm going to hand you up a copy

16 of that. Do you have that document in mind, you are

17 familiar with it?

18 A. I am aware of it.

19 MS. ANDERL: And Your Honor, this is one of

20 voluminous ones that I only have a couple of copies of. Let

21 me see how many I have. I have one for Your Honor.

22 JUDGE TOREM: And this is the 1997 agreement?

23 MS. ANDERL: Yes.

24 JUDGE TOREM: So, again, this is Exhibit B-1.

25 MS. ANDERL: And I provided one to opposing

0152

 1 counsel as well, left myself without a copy, but I think I

 2 can do this from memory.

 3 Q. (By Ms. Anderl) Mr. Linse, Mr. McNamer asked you

 4 a number of questions about ANI information?

 5 A. Yes.

 6 Q. Does the 1997 ICA have a definition for ANI?

 7 A. Yes, it does.

 8 Q. Can you please tell us what that definition is and

 9 then where it's located in this exhibit?

10 A. It is -- pardon me. It is located in Section 3

11 which is entitled definitions and it's definition letter "E"

12 as in Eric. And the definition reads, automatic number

13 identification for ANI means a Feature Group D signaling

14 parameter which refers to the number transmitted through a

15 network identifying the billing number of the calling party.

16 Q. And what is Feature Group D?

17 A. Feature Group D is a long distance trunk that is

18 used to route long distance traffic to interexchange

19 carriers.

20 Q. Does the definition of ANI anywhere reference the

21 provision of ANI over anything other than a Feature Group D

22 trunk?

23 A. No, it does not.

24 Q. Are you aware of whether the Interconnection

25 Agreement as currently configured requires Qwest to provide

0153

 1 ANI over local trunks or for local calls?

 2 A. No, I'm not.

 3 Q. Mr. McNamer asked you questions about whether it

 4 was Qwest's local call protocol to not provide ANI, do you

 5 recall that?

 6 A. Yes.

 7 Q. And are you aware of whether that is merely

 8 Qwest's practice or an industry protocol?

 9 A. In my conversations with other companies it's my

10 understanding that it is industry wide.

11 Q. With regard to the 240,000 minutes per DS1 is that

12 a cap that Qwest is proposing related to the use of MF

13 signaling?

14 A. Yes.

15 Q. If NCC were to choose to interconnect with SS7

16 signaling would Qwest impose the cap?

17 A. No.

18 Q. Mr. McNamer asked you some questions about Qwest's

19 remote call forwarding, let me just ask you a couple of

20 follow-up questions about that. When a customer remote call

21 forwards a call to another number if the second call is a

22 long distance call does that customer pay toll charges on

23 that?

24 A. They would pay based upon whatever long distance

25 service provider they subscribed to, yes.

0154

 1 Q. In those circumstances would then access charges

 2 apply?

 3 A. That's correct.

 4 Q. And neither of those is the case with the VNXX; is

 5 that correct?

 6 A. No, that's not the case with VNXX.

 7 Q. With regard to the use of Signaling System 7

 8 versus MF throughout Qwest's network does NCC, to your

 9 knowledge, have any interconnection trunks in the state of

10 Washington?

11 A. I'm not aware of any.

12 Q. With regard to the interconnection trunks that NCC

13 has in Oregon and Arizona do you know whether those offices

14 are -- Qwest offices are SS7 capable?

15 A. Yes, they are.

16 Q. Do you know how long they have been SS7 capable?

17 A. Not specifically for each office, but the majority

18 of Qwest offices was converted in the early to mid '90s to

19 SS7.

20 Q. And would a request for CLEC interconnection via

21 SS7 provoke an SS7 conversion in a Qwest central office that

22 was not at that point SS7 capable?

23 A. That's correct.

24 MS. ANDERL: Nothing further on redirect. Thank

25 you, Your Honor.

0155

 1 CROSS-EXAMINATION

 2 BY JUDGE TOREM:

 3 Q. Mr. Linse, I had one question back on that 240,000

 4 minute cap. We talked about the engineering and maybe some

 5 practical requirements. Do you have any knowledge of North

 6 County's use of minutes or what you have previously referred

 7 to as I believe it was CCS, call centum seconds?

 8 A. I'm not aware of the minutes or what North

 9 County's traffic looks like. We have standard practices

10 that monitor the volume of traffic over trunks, and it

11 automatically triggers notice to a CLEC if it goes above a

12 certain level, as far as blocking is concerned, and then the

13 companies would address that. So I mean it's -- I don't

14 know personally but it's kind of built into our system to

15 monitor that type of measurement, if you will.

16 Q. Well, I'm asking because earlier Mr. McNamer was

17 asking for your real world experience with programming

18 switches and operating them. And I just want to know real

19 world experience if 240,000 minutes is a meaningful cap for

20 this particular exchange carrier in their traffic with

21 Qwest, do you have any knowledge of that?

22 A. You know, again, it's -- from an engineering

23 perspective minutes of use doesn't equate really to usage as

24 far as the ability for calls to complete over a particular

25 trunk group.

0156

 1 Q. Do you know, and maybe Ms. Albersheim is the

 2 better witness for this, but billing wise would they not be

 3 getting paid with this cap under the past practices?

 4 A. Yeah, I think from a billing perspective

 5 Ms. Albersheim might be best to answer that question for

 6 you.

 7 Q. Okay. I will pose it to her later if it's not

 8 already posed to her.

 9 A. Okay.

10 JUDGE TOREM: Mr. McNamer, do you have additional

11 cross-exam questions for this witness?

12 MR. McNAMER: Can you just give me one minute?

13 (Brief discussion held off the record

14 between Mr. McNamer and Mr. Lesser.)

15 MR. McNAMER: We have no further questions.

16 JUDGE TOREM: Okay. Unless anybody else has

17 questions for Mr. Linse, do you have any follow up?

18 MS. ANDERL: No thank you, Your Honor.

19 JUDGE TOREM: Thank you, Mr. Linse, for your

20 testimony.

21 I take it we're ready for Ms. Albersheim?

22 MS. ANDERL: Qwest calls Ms. Albersheim to the

23 stand.

24 ///

25 ///

0157

 1 RENEE ALBERSHEIM,

 2 having been first duly sworn

 3 on oath was examined and

 4 testified as follows:

 5

 6 JUDGE TOREM: Once you get comfortable if you make

 7 sure your microphone is on and state and spell your first

 8 and last name for the record and then Ms. Anderl will ask

 9 some other questions to get you set up.

10 MS. ALBERSHEIM: My name is Renee, R-e-n-e-e,

11 A-l-b-e-r-s-h-e-i-m.

12

13 DIRECT EXAMINATION

14 BY MS. ANDERL:

15 Q. Ms. Albersheim, you prepared two pieces of

16 testimony and attached exhibits in connection with this

17 docket; is that correct?

18 A. Yes.

19 Q. And you have a correction to make to both your

20 direct testimony and your rebuttal testimony?

21 A. Yes, I do.

22 Q. Okay. Starting with your direct testimony and

23 looking at the document that was revised July 2nd, 2010 with

24 the agreed upon change or the unopposed change from 10,000

25 minutes to 240,000 minutes and please walk us by page and

0158

 1 then line number through the corrections you need to make.

 2 JUDGE TOREM: And for the record this is going to

 3 be Exhibit RA-1T; is that correct?

 4 MS. ANDERL: Yes, thank you, Your Honor. RA-1T.

 5 A. As revised July 2nd. The first change is on Page

 6 13, Line 7. This change should be for the number 87 it

 7 should be changed to 78.

 8 Q. (By Ms. Anderl) Okay.

 9 A. The second change is on the same page, Page 13,

10 Footnote 7, three numbers need to be changed here. The 34

11 is now 27. The 10 is now 25. And the 5 is now 6.

12 The next change is on Page 20, Line 2. And the 87

13 should be changed to 78.

14 And the last change is on Page 21, Line 8. Again,

15 the 87 should be changed to 78.

16 Q. Okay. Thank you, Ms. Albersheim. And then you

17 had attached to that testimony Exhibits RA-2 through RA-6.

18 Did you have any changes or corrections to make to those?

19 A. No.

20 Q. And then RA-7RT is your rebuttal testimony dated

21 June 17, 2010, do you have any changes or corrections to

22 make to that document?

23 A. Yes, one.

24 Q. And what's the page?

25 A. The page is Page 4, Line 19.

0159

 1 Q. Okay. Wait one minute.

 2 A. Uh-huh.

 3 Q. All right.

 4 A. And again the change is changing the 87 to 78.

 5 Q. And with regard to those changes did Qwest provide

 6 notice to NCC of those changes prior to the hearing today?

 7 A. Yes, with regard to the answer to a data request

 8 we, on reviewing the data in that data request, discovered

 9 that the numbers were wrong and submitted a supplemental

10 response with a corrected spreadsheet and corrected numbers.

11 And so they knew that the numbers were different, they

12 didn't know that we were changing the testimony, but that's

13 what I'm doing here.

14 Q. And with those changes is your testimony true and

15 correct?

16 A. Yes.

17 MS. ANDERL: Your Honor, we would move the

18 admission of the corrected testimony and the associated

19 exhibits, so RA-1T through RA-7 and tender the witness for

20 cross.

21 MR. McNAMER: No objection.

22 JUDGE TOREM: So, we'll admit those as corrected.

23 It appears to me that those corrections, Ms. Albersheim, all

24 had to do with the number of CLEC's participating in various

25 Qwest styled agreements in Washington?

0160

 1 MS. ALBERSHEIM: Yes, it had to do with how those

 2 agreements were categorized.

 3 JUDGE TOREM: All right. I recall the

 4 conversation with counsel over that, so I think I know where

 5 those numbers relate.

 6 Mr. McNamer, go ahead with your cross.

 7

 8 CROSS-EXAMINATION

 9 BY MR. McNAMER:

10 Q. Okay. Ms. Albersheim, are you aware of anything

11 in the law or any regulation that allows Qwest to dictate

12 the technology that CLEC's must use?

13 JUDGE TOREM: Can you make sure your microphone is

14 on or just pull it closer?

15 MR. McNAMER: Yes, it is, I'll repeat the

16 question.

17 Q. (By Mr. McNamer) Ms. Albersheim, can you tell me

18 whether there's anything in the law or a regulation that

19 allows Qwest to dictate the technology that CLEC's must use?

20 A. No.

21 Q. Isn't it true that up to a few months ago Qwest

22 was still using MF technology?

23 A. I don't think I can answer that quite the way

24 that's been asked. For what?

25 Q. Did it have MF -- was using MF technology at one

0161

 1 of its central offices?

 2 A. I understand that's true, Mr. Linse can tell you

 3 which offices and when.

 4 Q. Do you know whether there are currently any rural

 5 CLEC's that continue to use MF technology in Washington?

 6 A. I'm not aware of any that interconnect with Qwest

 7 except for North County.

 8 Q. Do you know of any other current ICA's where Qwest

 9 does not limit or penalize a CLEC for using MF technology?

10 A. Say that again?

11 Q. Trying to make it an easier question.

12 Do you know if there's any existing ICA's that

13 Qwest has with any other CLEC which doesn't prevent or

14 prohibit that CLEC from using MF technology?

15 A. I'm not aware of any other CLEC interconnecting

16 with Qwest that uses MF so the subject isn't part of those

17 agreements.

18 Q. Would all those agreements specifically state that

19 CLEC's will interconnect using SS7?

20 A. I believe SS7 is included in the terms of those

21 agreements.

22 Q. And, so, are you aware of any ICA's that either

23 don't discuss MF technology and, therefore, don't prohibit

24 it or specifically allow SS7 and MF technology?

25 A. Well, I haven't reviewed all of our agreements, so

0162

 1 I don't know all the terms in all of our agreements. This

 2 issue hasn't come up with any other CLEC that I'm aware of

 3 where we've had to interconnect using MF. So the terms in

 4 Section 7 of the agreements, to my knowledge, don't include

 5 the terms that we proposed here for North County because

 6 North County wishes to use MF.

 7 Q. If -- what would happen if North County began

 8 originating calls to Qwest using MF technology under the

 9 current ICA?

10 A. I don't believe the current ICA prohibits that.

11 Q. Are you sure?

12 A. I'm not sure.

13 Q. If it did prohibit it what would Qwest do in the

14 instance --

15 MS. ANDERL: And, Your Honor, let me just

16 interpose a clarifying objection. When Mr. McNamer refers

17 to the current ICA, I believe --

18 MR. McNAMER: Sorry, I misspoke.

19 Q. (By Mr. McNamer) So what I meant --

20 A. Okay, I was thinking the 1997.

21 Q. Sorry, sorry. Under the proposed ICA what would

22 happen if North County began originating calls to Qwest

23 using its MF technology?

24 A. Well, that would be in violation of the proposed

25 ICA.

0163

 1 Q. What would happen, would Qwest block the calls,

 2 what exactly would happen?

 3 A. I don't know the procedures they would follow but

 4 Qwest would certainly contact North County about those

 5 calls.

 6 Q. Does Qwest have the ability to turn off, I mean to

 7 stop terminating calls because North County uses MF

 8 technology?

 9 A. Are you talking about blocking?

10 Q. Yeah.

11 A. Yes.

12 Q. But you don't know exactly what would happen, you

13 would assume something like that would happen but you don't

14 know?

15 A. I would expect Qwest to contact North County

16 first.

17 Q. In relation to the 240,000 minute cap, can you

18 explain to me the reason behind that cap?

19 A. The cap is in place to protect Qwest from

20 arbitrage, not just from North County but from any company

21 that opts into this agreement, because other companies are

22 permitted to opt in to new Interconnection Agreements. The

23 number used here is based on North County's prior traffic

24 with Qwest, and it has a cushion built into it to allow for

25 more.

0164

 1 Q. Is it just a coincidence that the number is based

 2 on North County's prior traffic that happens to be the same

 3 number that engineering believes is a minimum capacity

 4 number?

 5 A. I believe that's a coincidence. This number was

 6 calculated based on North County's traffic.

 7 Q. And how was it calculated based on North County's

 8 traffic?

 9 A. Our billing staff used North County's traffic as a

10 basis for coming up with a formula to calculate that number.

11 Q. Do you know what that formula was, current traffic

12 plus some percentage?

13 A. Yes, I'm not sure what the percentage exactly was,

14 but it did include a cushion for increased traffic.

15 JUDGE TOREM: Excuse me, one moment.

16 Ms. Albersheim, if I were to ask to see those North County

17 pre-existing traffic numbers could you provide those?

18 MS. ALBERSHEIM: Yes.

19 JUDGE TOREM: Ms. Anderl, let me go ahead and make

20 that a bench request.

21 MS. ANDERL: Your Honor, we were going to propose

22 admission of a data request response where NCC asked to

23 explain the reasoning behind the proposed cap of 10,000

24 minutes per month for billable MF traffic. And we, at that

25 point, were aware of the error and so we changed, in our

0165

 1 response, changed the 10,000 minutes to 240,000 minutes and

 2 then provided a narrative answer as well as a spreadsheet

 3 attached showing actual track. We're happy to pull that out

 4 of our data request responses and provide it up to you now

 5 or...

 6 JUDGE TOREM: Is that an exhibit you're intending

 7 to proffer later?

 8 MS. ANDERL: Yes, through Mr. Lesser. I can offer

 9 it now through Ms. Albersheim, she is one of the respondents

10 on the data request.

11 JUDGE TOREM: So long as that's going to be

12 offered and perhaps made as part of the record in some

13 sequence, we don't need to tear up the exhibits.

14 MS. ANDERL: Okay. The only thing I guess, and we

15 can deal with it at that time, is whether North County wants

16 us to submit the spreadsheet as a confidential document, I

17 can talk to Mr. McNamer over the lunch break or something.

18 MR. McNAMER: Yeah.

19 JUDGE TOREM: I'm trying to recall if we even do

20 not have a protective order, so it may be something that

21 need not come in if it has confidential information in it?

22 MS. ANDERL: I think it could come in, Your Honor,

23 under the rule, the WAC 480-07-160 that protects

24 confidential information, but counsel and I can work it out.

25 JUDGE TOREM: I think in this proceeding that

0166

 1 could work as well.

 2 Mr. McNamer, go ahead.

 3 Q. (By Mr. McNamer) Do you recall, I'm not going to

 4 refer to the specific numbers, but do you recall whether

 5 Qwest's position that that 240,000 allows for a specific

 6 percentage increase over prior years, is that the --

 7 A. It allows for additional traffic within the

 8 monthly total, if more is needed that can certainly be

 9 negotiated with Qwest. North County never provided an

10 alternative cap number to Qwest during negotiations.

11 Q. And so it sounds like $240,000(sic) is a

12 negotiable number; is that right?

13 A. It could be.

14 Q. And is there a -- I'm not going to say the

15 percentage because we can work backwards and figure out the

16 number, which might be confidential. Do you know how they

17 came up with the percentage that they used as the increase

18 that they're allowing for? Like let's just say it's 20

19 percent, do you know how they came up with, say, we'll allow

20 them a 20 percent growth?

21 A. No.

22 Q. Do you know whether they allowed -- the growth

23 that they allowed was a year to year growth or just a gross

24 growth that they could reach?

25 A. Well, this figure is monthly, so it's based on an

0167

 1 estimate of monthly traffic volume.

 2 Q. But it would necessarily since $240,000 -- I mean

 3 240,000 is a specific number it necessarily has to be the

 4 total amount of growth regardless of the period of time;

 5 right? So what I mean by that if they -- if the percentage

 6 was 20 percent, and my client happened to go 20 percent that

 7 next month, that means he couldn't grow any more forever if

 8 $240,000 was the cap -- I mean 240,000 was the cap?

 9 A. That doesn't follow. If he gets to the cap in one

10 month that doesn't necessarily mean he will in the next

11 month.

12 Q. I understand that. But assuming his minutes are

13 growing, as soon as he hits the cap it's not like that cap,

14 it's not like $240,000 which escalates -- I mean 240,000

15 which escalates to 320 in year two, which escalates to 380

16 in year three, it's 240,000 minutes without a restriction on

17 the period of time?

18 A. There is not a restriction on the period of time

19 for that, that is the monthly cap.

20 Q. Do you know what the line capacity is

21 approximately for the DS1 lines?

22 A. The line capacity?

23 Q. Yeah, how many minutes can you actually use on the

24 lines before they stop?

25 A. Okay, you're getting towards engineering which I

0168

 1 would defer to Mr. Linse on.

 2 Q. So you don't know?

 3 A. Only from what I've heard.

 4 Q. From a billing perspective have you ever seen

 5 bills which indicated that people were using more than a

 6 million minutes on a line?

 7 A. I haven't, no. Again, this is only necessitated

 8 by the fact that North County is using MF signaling which

 9 limits our ability to capture the information. If there

10 were SS7 signaling a cap would not be necessary.

11 Q. So for every other CLEC, other than North County,

12 you would pay 100 percent of the minutes regardless of

13 whether they went over 240 or not, there's no cap?

14 A. There are no caps for CLEC's using SS7, we would

15 pay if we agreed with the bills.

16 Q. Understood. For the relative use factor isn't it

17 true that the proposed formula for calculating relative use

18 counts calls that originate from Qwest and are terminated to

19 North County as if they originated from North County and

20 terminated to Qwest?

21 A. Could you ask that again?

22 Q. Sure. For the relative use factor, for the

23 formula to determine what the relative use is, isn't it true

24 that for some calls, calls to ISP's, that even though those

25 calls actually are coming from Qwest customers, and are

0169

 1 terminating with North County under your proposed formula,

 2 you're counting those calls as if they were calls

 3 originating from North County and terminating with Qwest,

 4 they're being counted against the terminated carrier, not

 5 the originated carrier?

 6 A. Are you speaking of VNXX calls?

 7 Q. ISP calls, any calls to ISP's?

 8 A. My understanding is that those are -- that is how

 9 VNXX calls are treated which usually are ISP calls, but I

10 don't believe the terms are specific to ISP.

11 Q. So for nonlocal VNXX traffic those calls are

12 counted against the terminating carrier, not against the

13 originating carrier?

14 A. Yes, that's consistent with this Commission's

15 ruling on VNXX.

16 Q. Now, can you explain to me -- and so I have two

17 questions, so for local ISP calls that's not counted

18 against?

19 A. You know, I would prefer to see the terms you're

20 talking about rather than trying to speculate here.

21 MS. ANDERL: Your Honor, I was just going to

22 interpose an objection not to the questions themselves but

23 to the witness being asked to answer questions about

24 essentially a document that she doesn't have in front of

25 her. We have before -- I have--that I was going to propose

0170

 1 as an exhibit that I was going to use with Mr. Lesser--the

 2 Exhibit H which is the calculation of the relative use

 3 factor from the proposed ICA, and I'd be happy to distribute

 4 that as an exhibit.

 5 MR. McNAMER: That would be great.

 6 JUDGE TOREM: All right. Let's distribute that,

 7 Mr. McNamer says he has no objection. So that may be

 8 getting them out of the order you'll be using them.

 9 MS. ANDERL: We can mark it as an exhibit for

10 Ms. Albersheim.

11 JUDGE TOREM: We'll do that then. This will

12 become RA-8, it's a one page exhibit. And where's this

13 document drawn from, Ms. Anderl?

14 MS. ANDERL: Your Honor, the proposed

15 Interconnection Agreement that was attached to Qwest

16 petition for arbitration contains Exhibits A through L or M,

17 I think, this is Exhibit H from that proposed ICA. So it's

18 a portion of Bench Exhibit 2.

19 Q. (By Mr. McNamer) So according to -- you have

20 Exhibit H in front of you, you've seen this before?

21 A. Yes.

22 Q. So when it says -- just to make this clear, when

23 it says minutes that are Qwest's responsibility, that means

24 minutes that are counted as Qwest's usage, and minutes that

25 are CLEC responsibility minutes are counted as CLEC usage to

0171

 1 determine relative use; is that correct?

 2 A. Yes.

 3 Q. And so for according to bullet point one under the

 4 first, under Qwest's responsibility, if Qwest sends an ISP

 5 traffic that's local to North County that's counted as Qwest

 6 usage?

 7 A. Yes.

 8 Q. Okay. And then the -- and then if you look at

 9 bullet point number one, two, three, four, five, six for

10 CLEC responsibility it says all VNXX MOU that Qwest sends to

11 CLEC. And then the next bullet point is all VNXX MOU that

12 transits Qwest to a network and is terminated to CLEC. Can

13 you explain to me those two bullet points starting with the

14 first one?

15 A. Per this Commission's orders VNXX traffic is to be

16 attributed to the terminating carrier which would be North

17 County in this situation. These two bullet points cover

18 both traffic originating from Qwest or traffic originating

19 from another carrier and transiting Qwest's network to North

20 County.

21 Q. And so for the second bullet point could this

22 be -- and so for the second bullet point even if it's

23 someone else's, some other CLEC that transits Qwest's

24 network and terminates with North County, North County gets

25 that counted against them, as well?

0172

 1 MS. ANDERL: Clarification, Your Honor, counsel

 2 asked about the second bullet point, did you mean the last

 3 one?

 4 Q. (By Mr. McNamer) Yeah, the last. The second of

 5 those two, the last one.

 6 A. The last VNXX bullet point?

 7 Q. Yes.

 8 A. Yes, that's correct.

 9 Q. Can you explain to me why you believe -- I

10 understand that the -- I've read the Commission's order and

11 it's my understanding, you can correct me if you have a

12 different understanding, my understanding of the

13 Commission's order is that VNXX traffic is legal traffic,

14 it's not prohibited but it's bill and keep and then access

15 charges apply. To the extent there are access charges

16 access charges apply; is that right?

17 A. It is bill and keep. I think in that situation

18 I'm not sure how access charges would apply.

19 Q. Okay. So why do you believe -- if the Commission

20 has found that VNXX is legal and that it's bill and keep,

21 why do you believe that leads to the conclusion that for the

22 purposes of relative use VNXX should be counted against the

23 terminating carrier?

24 A. Well, first of all, that's how the Commission has

25 ordered it but also if it's counted against Qwest then you

0173

 1 are billing Qwest for those minutes.

 2 Q. If -- what if it's just taken out all together?

 3 A. But the -- part of the problem here, and the

 4 reason that we put this into the agreement and the terms of

 5 Section 7.8 is because in our experience with your billing

 6 of us those minutes were not removed. It is Qwest's purpose

 7 to make sure that they are.

 8 Q. So if the billing -- so would Qwest then be okay

 9 if the relative use factor completely excluded all VNXX

10 minutes from the calculations all together, and so the only

11 minutes that were used in the relative use factor were

12 non-VNXX minutes?

13 A. That would be okay as long as it were explicitly

14 stated in the contract that that is to be done. That's part

15 of the problem with MF. We figured out from the bills we

16 received from you that those minutes were not excluded and

17 we would like to make sure that the contract contains a

18 provision that explicitly states that Qwest will not have to

19 pay for VNXX minutes. That's why those provisions are

20 included in our proposed language.

21 MR. McNAMER: Okay. Can I take a break to see if

22 I have anymore questions? I may not have anymore questions.

23 (Discussion held off the record between

24 Mr. McNamer and Mr. Lesser.)

25

0174

 1 Q. (By Mr. McNamer) I just have one more question.

 2 Can you explain why MUX charges are not in the RUF

 3 calculation?

 4 JUDGE TOREM: Can you spell that out for the court

 5 reporter?

 6 MR. McNAMER: M-U-X.

 7 A. No.

 8 Q. (By Mr. McNamer) You don't know why?

 9 A. No.

10 MR. McNAMER: I have no further questions.

11 JUDGE TOREM: Ms. Anderl?

12 MS. ANDERL: Thank you, Your Honor.

13

14 REDIRECT EXAMINATION

15 BY MS. ANDERL:

16 Q. Ms. Albersheim, just one area. Ms. McNamer just

17 asked you a question about whether it would be okay to

18 exclude the VNXX traffic from the calculation of the RUF,

19 and let me just walk through that with you?

20 A. Sure.

21 Q. So if under the current scenario the way Exhibit H

22 is written now?

23 A. Uh-huh.

24 Q. If Qwest sent 100 minutes of VNXX traffic and 10

25 minutes of regular traffic to NCC, in a very, very

0175

 1 simplified way that would -- what would that result in?

 2 A. I see, that would -- it would impact the

 3 percentage of traffic that is to be attributed to Qwest

 4 versus North County. So I guess it wouldn't be okay just to

 5 exclude it because it needs to be attributed in the proper

 6 way.

 7 Q. Okay. And so then we just, as long as we're clear

 8 on that, under the current -- the way Exhibit H is drafted

 9 now under the percentages that I just gave you, that 100

10 minutes of VNXX traffic would actually be attributed to NCC;

11 right?

12 A. Yes.

13 Q. And the 10 minutes of true local traffic would be

14 attributed to Qwest?

15 A. Yes.

16 Q. And that would be for the apportionment of the

17 relative responsibility for the LIS trunks?

18 A. Yes.

19 Q. And if the 100 minutes was excluded and there was

20 only 10 minutes of regular traffic, then that would result

21 in what?

22 A. Well, that would change the percentage attributed

23 to Qwest versus to North County which would not be an

24 accurate reflection of traffic passed over the trunk.

25 Q. So if VNXX were excluded it could potentially

0176

 1 result in more financial responsibility being attributed to

 2 Qwest?

 3 A. Yes.

 4 Q. And can you clarify whether that's acceptable to

 5 Qwest or no not?

 6 A. No, that's not acceptable to Qwest.

 7 MS. ANDERL: Nothing further on redirect.

 8 MR. McNAMER: I have a couple questions.

 9

10 RECROSS-EXAMINATION

11 BY MR. McNAMER:

12 Q. So you said on this issue of taking out VNXX, you

13 said you wanted to attribute it in a proper way, but do you

14 mean by proper way just the way that benefits Qwest?

15 A. No, I mean that it should be attributed

16 appropriately to the terminating carrier.

17 Q. But can you tell me where? Because I read the

18 order, all 92 pages of the order, I've read the order, can

19 you tell me where in the order it even mentions relative use

20 or mentions how VNXX should be attributed for the

21 calculation of relative use?

22 A. I can't tell you that.

23 Q. Is it your understanding that the order addresses

24 relative use in any way whatsoever?

25 A. I don't recall.

0177

 1 Q. But -- and so then if you don't remember it being

 2 in there, and don't recall if it addresses it at all, how do

 3 you jump to the conclusion that based on the order VNXX has

 4 to be attributed to the terminating carrier for the

 5 calculation of relative use?

 6 A. VNXX needs to be attributed to the terminating

 7 carrier in general. So I don't think that the Commission

 8 was speaking in terms of relative use or not, that is how

 9 they have ordered the VNXX be attributed.

10 MS. ANDERL: And, Your Honor, we might interpose

11 an objection at this point asking the witness to interpret a

12 92 page order that she does not have in front of her. We're

13 happy to cover our legal rationale with counsel either

14 privately offline or in briefing.

15 MR. McNAMER: I'm just asking her understanding of

16 it. She's made -- I mean there's a lot of testimony that

17 she said based on the Commission's order. So she's made

18 testimony that's based on the Commission's order, so I'm

19 just asking of her understanding of that order.

20 JUDGE TOREM: I'll allow the question. And,

21 Ms. Albersheim, if you don't know, again, as I've told the

22 previous witness, say so. If it's beyond your depth of

23 understanding of the order that's fine, as well.

24 It sounds to me, Mr. McNamer, that you're trying

25 to understand what the purpose of the VNXX numbers are in

0178

 1 the relative use factor calculation and whether or not they

 2 can be excluded in any way? And you're asking

 3 Ms. Albersheim to state, if so, is that a violation of the

 4 Commission order to the best of her knowledge, and if it's

 5 not a violation of the order can't we strike a deal on that?

 6 MR. McNAMER: That's right.

 7 JUDGE TOREM: So, Ms. Albersheim, if you want to

 8 comment essentially on that that would be great.

 9 MS. ALBERSHEIM: As I said before, our purpose is

10 to ensure that if VNXX minutes are sent across these trunks

11 they are properly captured, and that is what our language

12 intends to do. In the prior agreement we experienced issues

13 with bills we received from North County that included VNXX

14 traffic that was not attributed to North County but to

15 Qwest, therefore Qwest was billed for those minutes. We

16 would like the new agreement to make sure VNXX minutes are

17 properly attributed.

18 JUDGE TOREM: That will be a new contractual

19 provision that obligates the billing records to reflect as

20 much?

21 MS. ALBERSHEIM: Yes. And that is in Section 7.8

22 of the proposed agreement, the 2009 proposed agreement.

23 Q. (By Mr. McNamer) I just have one more question

24 about the billing issue you referenced. How did you know it

25 was VNXX traffic?

0179

 1 A. They had to analyze the traffic from other sources

 2 than from your MF signaling and determine that some of the

 3 traffic was indeed VNXX. And I believe we reported on how

 4 many of those bills we found VNXX traffic in in a response

 5 to one of your data requests.

 6 Q. But I mean my understanding, and I'm not a

 7 technician, my understanding of the VNXX traffic is that you

 8 wouldn't be able to figure out -- sort of the whole thing

 9 about VNXX is you can't figure out who the customer is. So

10 how were you guys able to figure out who the customer was?

11 A. Well, again, this was our billing staff, so I

12 would have to defer to them, I didn't get the details on how

13 they figured that out.

14 Q. Just interested in the methodology.

15 JUDGE TOREM: Ms. Albersheim, is this the sort of

16 thing that I think is known in the industry as phantom

17 traffic.

18 MS. ALBERSHEIM: No, I don't think that would

19 qualify as phantom traffic. As I understand it, that's

20 traffic where there isn't enough information to determine

21 either the source or -- well, I guess it would be the source

22 but I'm not an expert on phantom traffic.

23 JUDGE TOREM: Mr. McNamer, anything else?

24 MR. McNAMER: No more questions.

25 MS. ANDERL: A couple of follow-up, Your Honor.

0180

 1 FURTHER REDIRECT EXAMINATION

 2 BY MS. ANDERL:

 3 Q. Ms. Albersheim, you did read or review the

 4 Commission's order on VNXX?

 5 A. Yes, I did.

 6 Q. And is it your understanding that this relative

 7 use factor is applied to allocate the cost of the

 8 interconnection trunks between the companies?

 9 A. Not the cost of the trunks, the use.

10 Q. But that's applied then to price then, is it not?

11 A. You mean the fixed cost?

12 Q. It works into a formula in terms of who bears the

13 responsibility for those trunks?

14 A. Oh, okay, yes.

15 Q. And would it be fair to call those, the

16 interconnection trunks then, the methods by which the VNXX

17 traffic is transported?

18 A. Yes.

19 Q. And would you be able to accept, subject to your

20 checking, that the Commission, in at least the initial order

21 by the ALJ in the VNXX docket, stated that the CLEC's are

22 required to purchase transport for VNXX traffic from Qwest

23 Corporation at TELRIC rates?

24 MR. McNAMER: Calls for speculation. She's

25 reading something that's right in front of her but not in

0181

 1 front of her. I don't how she can testify to that.

 2 MS. ANDERL: I asked the witness if she would

 3 accept that subject to her check. It's a fairly accepted

 4 practice.

 5 JUDGE TOREM: I'll allow the question.

 6 Ms. Albersheim, you'll have an opportunity, once you step

 7 down, to take a look at that document. If you want to

 8 change your testimony just let me know and I'll put you back

 9 on.

10 A. I would accept that subject to check, yes.

11 Q. (By Ms. Anderl) Does the Exhibit H calculation of

12 the relative use factor by allocating VNXX minutes to the

13 CLEC implement that petition of the order?

14 A. Yes, it does.

15 MS. ANDERL: Nothing further.

16 Did we move and admit Exhibit 8, Your Honor?

17 MR. McNAMER: Nothing further.

18 JUDGE TOREM: I was about to go through that.

19 Ms. Albersheim, thank you for your testimony. I

20 think you're done testifying, but I would check.

21 MS. ALBERSHEIM: I will check.

22 JUDGE TOREM: For the record then for this witness

23 Exhibits RA-1T and then the follow on RA-2 through 6 were

24 offered as was RA-7T and RA-8, all of those are offered and

25 they are admitted.

0182

 1 We also had previously admitted PL-1T, PL-2, PL-3T

 2 TL-3X and Bench Exhibit 1 which was the original 1997

 3 Interconnection Agreement. We've referenced the proposed

 4 B-2, the proposed Interconnection Agreement, we haven't

 5 formally circulated that, but for the record we'll admit

 6 that so I can take notice of it or you can refer to it in

 7 your briefs as needed.

 8 MS. ANDERL: Thank you, Your Honor.

 9 JUDGE TOREM: That's where we stand on the

10 exhibits that have been offered and admitted.

11 It's now 11:30. We have Mr. Lesser still to be

12 put on unless Qwest has any additional witnesses?

13 MS. ANDERL: Those are all our witnesses, Your

14 Honor, thank you.

15 JUDGE TOREM: So then, Mr. McNamer, do you know

16 how long -- well, maybe it's more a question of Ms. Anderl

17 how long the cross-examination for Mr. Lesser might be

18 scheduled in your mind?

19 MS. ANDERL: This is a witness I've never

20 cross-examined before, so it's tougher to estimate, but I

21 would venture to say I have one to two hours with

22 cross-examination depending on how quickly things go.

23 JUDGE TOREM: So if we take a break now for lunch

24 would that be appropriate for all parties?

25 MR. McNAMER: Fine with us.

0183

 1 MS. ANDERL: That would be great.

 2 JUDGE TOREM: Let's do that. Is an hour, hour and

 3 a quarter? What's comfortable?

 4 MS. ANDERL: An hour and a quarter is usually what

 5 it turns out to be by the time you get in a car.

 6 JUDGE TOREM: Let's make sure if people are back

 7 aiming for a quarter to 1:00 I guess it would be at that

 8 point, if we're back on the record by 1:00 at the latest,

 9 but we'll aim for kind of gathering here at quarter to 1:00.

10 And if you need a few minutes to go through your notes at

11 that point just let me know. It sounds like we can

12 comfortably finish today, and we won't need to extend into

13 tomorrow one way or the other.

14 MS. ANDERL: Thank you.

15 JUDGE TOREM: Thank you. We will be at lunch

16 recess.

17 (Lunch break taken from 11:28 to

18 12:50 p.m.)

19 JUDGE TOREM: We have completed our lunch break,

20 we are ready to go back on the record. It's somewhere

21 between ten and five minutes to 1:00. Mr. Lesser is ready

22 to be sworn in.

23

24 TODD LESSER,

25 having been first duly sworn

0184

 1 on oath was examined and

 2 testified as follows:

 3

 4 JUDGE TOREM: If you can state and spell your

 5 first and last name for the court reporter?

 6 MR. LESSER: Sure. My name is Todd, T-o-d-d, last

 7 name Lesser, L-e-s-s-e-r.

 8

 9 DIRECT EXAMINATION

10 BY MR. McNAMER:

11 Q. Mr. Lesser, did you submit direct and rebuttal

12 testimony in this proceeding?

13 A. Yes.

14 Q. And is the testimony that was already submitted

15 true and correct?

16 A. Yes.

17 Q. Would you like to supplement the direct testimony

18 in any way right now?

19 A. Yes.

20 Q. Can I ask you a couple questions for that purpose?

21 JUDGE TOREM: These are the questions we

22 originally discussed?

23 MR. McNAMER: Yes.

24 JUDGE TOREM: Ms. Anderl, no objection to just

25 going over these?

0185

 1 MS. ANDERL: As long as it's as written, that's

 2 fine.

 3 Q. (By Mr. McNamer) Though Qwest has refused to

 4 provide you with any indication of the substantive changes

 5 that they made, what specific issues do you know exist with

 6 the proposed ICA?

 7 A. As mentioned, the proposed ICA illegally attempts

 8 to force NCC to switch to SS7. It also places an arbitrary

 9 cap on the number of minutes that NCC can bill Qwest,

10 initially 10,000, now 240,000. Further, the formula for the

11 relative use, RUF, has no bearing on actual relative use.

12 Finally, it contains a definition of VNXX which is unclear

13 and which is not mandated by any FCC rule or other legal

14 obligation.

15 Q. So how would you change these areas?

16 A. I would revert back to the original language used

17 in the current ICA which did not penalize or otherwise limit

18 NCC from using MF technology, did not place a cap on the

19 number of billable minutes contained in RUF based on actual

20 usage and did not ban VNXX traffic.

21 Q. Is that the total of your supplemental testimony?

22 A. Those --

23 Q. That's the only thing we added?

24 A. Yes.

25 Q. All right.

0186

 1 JUDGE TOREM: At this time are you offering and

 2 moving for admission of Exhibit TL-1T, TL-2T as verbally

 3 supplemented today?

 4 MR. McNAMER: I am.

 5 JUDGE TOREM: Any objections?

 6 MS. ANDERL: No.

 7 JUDGE TOREM: All right. So that testimony is

 8 admitted. Anything else before we tender the witness for

 9 cross-exam?

10 MR. McNAMER: No, I now tender him for cross.

11 MS. ANDERL: Thank you.

12

13 CROSS-EXAMINATION

14 BY MS. ANDERL:

15 Q. Good afternoon, Mr. Lesser. I'm Lisa Anderl, the

16 attorney for Qwest, I will be asking you some questions

17 today. Let's begin with some historical questions. Are

18 you -- were you the person who was involved in filing, with

19 the Washington Commission in 1997, an application for

20 registration of North County as a telecommunications

21 company?

22 A. Yes.

23 MS. ANDERL: I'm going to hand up and would ask to

24 be marked for identification as the next exhibit in line,

25 TL-4X, a copy of the Washington order granting that

0187

 1 registration.

 2 JUDGE TOREM: If you hand a copy up to me and make

 3 sure the witness and opposing counsel have copies.

 4 MS. ANDERL: Absolutely.

 5 JUDGE TOREM: So, this is a two-page document, and

 6 it's an order of Docket UT-970958?

 7 MS. ANDERL: Yes. Thank you for that

 8 identification, Your Honor.

 9 Q. (By Ms. Anderl) And if I may ask the witness, not

10 withstanding the dicy formatting on this, do you recognize

11 that as the order from this Commission granting you

12 authority to do business in the state as a

13 telecommunications company?

14 A. It's been 13 years since I've seen this document,

15 but it looks probably accurate.

16 MS. ANDERL: Okay. Your Honor, we move the

17 admission of TL-4X, and have some questions on it in a

18 moment.

19 MR. McNAMER: I have no objections other than

20 the -- my client's trepidation to say this is the exact

21 document since he hasn't seen it for 13 years, but I have no

22 objection.

23 JUDGE TOREM: It looks from the bottom of it,

24 Ms. Anderl, that you pulled it off the Commission's website?

25 MS. ANDERL: This is true.

0188

 1 JUDGE TOREM: And I'm also looking at formatting,

 2 who knows what word processing documentation they were using

 3 in October 1997. The date is somehow scrunched out of the

 4 dated line. But I imagine for purposes of looking this up

 5 one could find it and obtain the exact date it was entered,

 6 if needed.

 7 MS. ANDERL: That's my understanding, Your Honor.

 8 I was frankly surprised to find even the text of an order

 9 this old online but there it was.

10 JUDGE TOREM: Okay. We'll admit TL-4X, two page

11 document, the October 1997 order.

12 Q. (By Ms. Anderl) Mr. Lesser, is NCC a privately

13 held company as opposed to publicly traded?

14 A. Yes.

15 Q. How many employees do you have?

16 A. I don't really feel comfortable talking about, you

17 know, operations of the company when anyone can listen in on

18 this, I don't think it's a requirement or will lead to

19 anything that's actually necessary for this arbitration. If

20 the judge wants me --

21 JUDGE TOREM: Mr. Lesser, your attorney has to

22 make the objections not the witness.

23 MR. McNAMER: The objection would be if you're

24 going to go into confidential stuff about the business and

25 business operations then we need to make this part of the

0189

 1 testimony confidential and not have anybody on the line

 2 since we don't know who is on the line.

 3 JUDGE TOREM: Let me just inquire if it is a

 4 relevant issue for me to know more about the company, or

 5 what parts do you think might be relevant that we can focus

 6 in on?

 7 MS. ANDERL: We think it is relevant. It's mostly

 8 contextually, to some extent some background. Normally the

 9 arbitrations that we have are with publicly traded companies

10 with a lot of data about the company such as their size,

11 their annual revenue, their business plans. To some extent

12 the types of customers they have is something that's

13 available and provides a context for who is this carrier who

14 you're interconnecting with.

15 I certainly don't intend to go into confidential

16 information. As I said, most of this was just contextual or

17 background. I can skip the how many employees do you have

18 for right now and argue the relevance of that later.

19 But Mr. Lesser has made some allegations in his

20 direct testimony about being a small company, about how the

21 cost of the arbitration here in Washington could potentially

22 bankrupt them or put them out of business. Certainly based

23 on those allegations, which I did not intend to directly

24 pursue, I think I would have license to do that though, to

25 explore that testimony in terms of even asking questions

0190

 1 about the company's revenues in Washington, et cetera. I

 2 understand that some of that may be confidential, I don't

 3 intend to go there if I can get some of the basic background

 4 information.

 5 JUDGE TOREM: And I'm just looking at TL-4X, it

 6 appears that in the application, Mr. Lesser, to do business

 7 this recites the company's solely owned by you and who the

 8 registered agent is and a variety of other items that are

 9 required probably by the Commission for standard

10 information. If you go beyond that, Ms. Anderl, I'll wait

11 and see if there's an objection and see if Mr. McNamer and

12 Mr. Lesser can have some sort of communication as to what

13 Mr. Lesser might feel needs to be objected to without making

14 the objection himself.

15 So let's press on with the questioning, and if we

16 can avoid anything by making it confidential that would be

17 best. But if we need to, make a motion and we'll go from

18 there.

19 MS. ANDERL: We'll try that.

20 Q. (By Ms. Anderl) Mr. Lesser, withdrawing the

21 question about the number of employees, are you still the

22 CEO?

23 A. Yes.

24 Q. Are there other officers of the company?

25 MR. McNAMER: Object. Same basis, it's

0191

 1 confidential information.

 2 MS. ANDERL: Your Honor, I think that in order to

 3 have registered to do business with the state of Washington

 4 and in California and other states you would have to file a

 5 certificate of incorporation with an officer and other

 6 information on there, I don't think it's confidential.

 7 MR. McNAMER: Actually, as a California, Oregon

 8 and Washington attorney, who does corporate stuff, you do

 9 not have to do that. All you have to do is list your

10 incorporator, and that's it. You don't have to put any

11 members, you don't have to list different things, it depends

12 what kind of entity you are.

13 JUDGE TOREM: I'm just trying to decipher if that

14 information is already on file with the Commission based on

15 the previous exhibit.

16 MS. ANDERL: It doesn't appear to me that it is.

17 JUDGE TOREM: Ms. Anderl, I'm going to sustain the

18 objection for now. If there's a showing of relevance that

19 we need to go into a certain number of items I'll let you

20 repose those questions later if they prove critical to what

21 you're trying to get at, and we'll deal with them as a group

22 rather than individually trying to -- as I want to be

23 consistent as to what I might let in or not, and not

24 inconsistently say one thing is here and one is there, and

25 open myself up in the record, and maybe Mr. Lesser's

0192

 1 corporation, to a wily-nilly approach. So, we'll see what

 2 the objections come out as and then move on to all that's

 3 included if they need to be reposed later.

 4 Q. (By Ms. Anderl) All right. Mr. Lesser, in 1997

 5 the Commission's order recited you were the sole owner of

 6 NCC; is that still true?

 7 A. Yes.

 8 Q. Do you have any employees?

 9 MR. McNAMER: Objection. Same objection.

10 JUDGE TOREM: Sustained.

11 Q. (By Ms. Anderl) Mr. Lesser, what are NCC's annual

12 revenues?

13 MR. McNAMER: Objection.

14 JUDGE TOREM: Can you state the relevance more

15 where you're going on this one?

16 MS. ANDERL: Your Honor, I represented a minute

17 ago that I wasn't going to go there because I felt as though

18 I could maybe by asking some general questions about the

19 size and structure of the business not need to go into that,

20 but I do not think that Mr. Lesser ought to be permitted to

21 offer direct and rebuttal testimony that talks about what a

22 small company they are and how Qwest is bullying them and

23 then not answer any questions about the nature of their

24 company.

25 JUDGE TOREM: Mr. McNamer?

0193

 1 MR. McNAMER: Can I speak to my client about this

 2 whole line of questioning and might be able to have a better

 3 articulation of the different objections and how they might

 4 apply? I mean to that point I would like to see my client

 5 just to see if there's a few questions that can get her what

 6 she needs without being objectionable. To that point I have

 7 the exact same objections, confidential information. If we

 8 want to make it confidential my client can testify to

 9 confidentiality. But my client has no idea who's on the

10 line right now and offering up his revenue which is

11 obviously nonpublic information.

12 JUDGE TOREM: I understand that. I'm a bit

13 concerned about how much information is confidential. I

14 recognize it's a privately held company, and not being a

15 corporate attorney now or in the past, I'm just running

16 through in my mind what information a private entity might

17 be required to provide to a member of the public, let alone

18 to a State agency such as the Utilities & Transportation

19 Commission here in Washington that regulates their business.

20 Now, we do have the power to go in for raping

21 purposes to going in and inspect books. On the Telecom side

22 of the house I'm less than familiar to how and when we might

23 seek to review books. It may only be in response to billing

24 complaints or other such issues where we're looking. So,

25 I'm being extra cautious here and erring on the side of

0194

 1 excluding information.

 2 But I'm concerned that certain testimony, as

 3 Ms. Anderl's pointed out, covers a large part of

 4 affordability. And even your cross-examination today

 5 focused on costs of the central office and was going into

 6 areas that I think have been made part of the record, made

 7 relevant issues by your lines of argument. And I can't

 8 possibly be asked to rule on something if I'm not allowed to

 9 get information, and Ms. Anderl is the one providing it.

10 MR. McNAMER: I think there's a limited amount of

11 information, for instance, asking how much my client bills a

12 month in Washington only -- is that something that you --

13 JUDGE TOREM: I think you're right that the

14 Washington operations are what's relevant to this

15 Commission. So, Ms. Anderl, if you can briefly summarize

16 the areas you intend to go into, without losing all of your

17 element of surprise that comes with cross-exam, then perhaps

18 we can streamline this conversation between Mr. McNamer and

19 his client.

20 MR. McNAMER: And, of course, anything that

21 relates to how much it would cost to replace a central

22 office, that's fine.

23 JUDGE TOREM: Certainly. But I wonder about some

24 of the other finances that might be part of that. I can see

25 why Ms. Anderl wants to go there, and I can understand why

0195

 1 we may need to based on the three areas you lined out today

 2 about the costs between the multifrequency and the SS7

 3 technology and the billing and the 240,000 call limit,

 4 probably all have a financial nexus that's been made part of

 5 the issues in this case.

 6 So, I know at the end of the line it's a question

 7 of what parts of the Interconnection Agreement may or may

 8 not be something in arbitration setting ordered to be

 9 changed or not. But at the heart of this is--as it always

10 is--is what is the financial impact on the players. So why

11 don't we take a brief break. Unless Ms. Anderl seems to be

12 handing you a few of those questions, did you want to put

13 that on the record as to where we're going?

14 MS. ANDERL: You know, Your Honor, I can talk to

15 Mr. McNamer offline, and maybe we can streamline this, let

16 him talk to his client first. I did have one other

17 cross-examination exhibit kind of along these lines which

18 may or may not be objectionable, I may as well just hand

19 that up if you don't mind?

20 JUDGE TOREM: So, this will be TL-5X?

21 MS. ANDERL: Yes.

22 JUDGE TOREM: Looks to be a single page?

23 MS. ANDERL: It is.

24 JUDGE TOREM: This looks to be a printout from the

25 North County Communication's website summarizing their

0196

 1 corporate information?

 2 MS. ANDERL: Yes, Your Honor. That's what I would

 3 ask Mr. Lesser to verify if I were to ask him about this

 4 exhibit.

 5 JUDGE TOREM: So, holding that question in

 6 abeyance, are we ready to take about a ten minute break?

 7 MR. McNAMER: We can probably take less than that.

 8 MS. ANDERL: Five or ten.

 9 JUDGE TOREM: I'll come back in about five minutes

10 and see if we're ready. If counsel can propose a mutually

11 agreeable resolution that will be fine. And I'll step out

12 so you folks can stay here.

13 MS. ANDERL: Okay, thanks. And, Your Honor, we're

14 pretty safe if we turn the mics off, right, that nobody will

15 be on?

16 JUDGE TOREM: Yes, the microphones are what feeds

17 into the Bridge line. So, we'll be at recess for about five

18 minutes.

19 (Break taken from 1:06 to 1:13 p.m.)

20 JUDGE TOREM: All right. I've asked someone in

21 our Telecom section just to pull the docket number we

22 referred to in the previous exhibit and take a look at what

23 has been provided to the Commission so I'm not keeping out

24 of the record here anything that might be already in the

25 public record.

0197

 1 MS. ANDERL: Okay.

 2 JUDGE TOREM: I take it we've gone back on the

 3 record if you're typing what I'm saying, so that's fine.

 4 So, it's about a quarter after, we're back on the record. I

 5 understand counsel have reached an agreement, so hopefully

 6 we have no more objectionable questions in this area, we'll

 7 see where we go.

 8 MR. McNAMER: As part of the agreement -- to the

 9 extent we have direct testimony which talks about generally

10 how this will affect our -- that we'll go out of business,

11 those sort of questions, we are happy to withdraw those

12 questions so there aren't specific questions about the

13 company's overall revenues and that sort of thing.

14 JUDGE TOREM: We'll see where this leads us.

15 Ms. Anderl, go ahead.

16 MS. ANDERL: Thank you, Your Honor. I would just

17 propose as a practical matter, Mr. Lesser and I can work

18 on -- Mr. McNamer and I can work on agreeing what those

19 questions and answers should be post hearing and submit the

20 revised testimony.

21 JUDGE TOREM: Okay.

22 MS. ANDERL: But we're willing to accept that now

23 for purposes of moving this forward.

24 Q. (By Ms. Anderl) Okay. Mr. Lesser, more

25 questions. I handed out before we broke a document that's

0198

 1 marked for identification as Exhibit TL-5X that does appear

 2 to be a North County Communication's website page.

 3 Mr. Lesser, can you identify that exhibit and describe for

 4 me in your words what that is?

 5 A. Yes, this is an e-mail that --

 6 Q. I'm sorry, the website.

 7 A. Looks like a printout from our web page.

 8 Q. Okay. Is that corporate information there that

 9 describes the primary business areas, is that an accurate

10 description of your primary business areas?

11 A. It's a very general one. Many places always ask

12 you, do you have a web page? So we paid someone to create a

13 web page for us. That's why we say we provide local dial

14 tone and CLEC services, and then we kind of listed a few

15 things we do under that. But it's not encompassing

16 everything, it's not a tell-all document.

17 Q. But it's accurate as far as it goes?

18 A. Yeah, in different parts of the country, yes.

19 MS. ANDERL: Okay. Your Honor, we move admission

20 of that document, TL-5X.

21 JUDGE TOREM: Okay, it's been offered. Any

22 objection?

23 MR. McNAMER: No objection.

24 JUDGE TOREM: It will be admitted.

25

0199

 1 Q. (By Ms. Anderl) In what states do you do business

 2 in, Mr. Lesser, as a telecommunications company?

 3 A. We are approved in Hawaii, California, Oregon,

 4 Washington, Arizona, Illinois, West Virginia, New York, New

 5 Jersey, Pennsylvania, Texas and Missouri.

 6 Q. And do you actually have customers in all of those

 7 states?

 8 A. No.

 9 Q. Are you offering services in all of those states

10 yet?

11 A. I guess it depends on what your definition of

12 offering services is.

13 Q. Well, let's --

14 A. We have authority to operate in those states.

15 Q. Are you holding yourself out to do business in any

16 way advertising or soliciting customers?

17 A. Yes.

18 Q. Now, the types of businesses that you offer as

19 described on Exhibit TL-5, those generate largely traffic

20 that is inbound to NCC's customers; is that true?

21 A. No.

22 Q. If you have a customer who is a call center what

23 is the likely balance of traffic going to be?

24 A. Depends on what type of call center it is.

25 There's outbound call centers that take a whole bunch of

0200

 1 telemarketing calls which we have. There's inbound call

 2 centers that receive, you know, 800 numbers, it just depends

 3 on what that customer's usage is. But the term call center

 4 in itself is not indicative of more inbound or more

 5 outbound.

 6 Q. Does the description on the third bullet point,

 7 ISP's, does that tend to signify more inbound or more

 8 outbound?

 9 A. Well, not necessarily. I mean if it's dial up ISP

10 traffic, by it's definition it's going to be inbound. If

11 it's ISP traffic where you're providing Internet bandwidth

12 that's not either. If you're providing circuits that's not

13 either.

14 Q. Prior to filing an application for NCC in

15 Washington in 1997 were you employed by any other

16 telecommunications companies?

17 A. Yes.

18 Q. Can you give me a brief work history?

19 A. I -- you mean the names or just what --

20 Q. Yes, the names.

21 A. I worked for a company called Info Connections and

22 then prior to that a company called Comtel Communications.

23 Q. Now, if you turn back to the Commission's

24 decision -- or Commission order that's marked as Exhibit

25 TL-4X, the last sentence in the first paragraph there says

0201

 1 that North County intends to eventually install an XL switch

 2 in the state of Washington for provision of services, do you

 3 see that?

 4 A. What document is this?

 5 Q. TL-4X, the Commission decision in the order

 6 authorizing your registration of the telecommunications

 7 company.

 8 MR. McNAMER: First paragraph, first page.

 9 Q. (By Ms. Anderl) Page 1 of 2, first paragraph,

10 last sentence?

11 A. Okay, yes.

12 Q. Yes. Is that -- do you recall that as having been

13 a part of your applications to the Commission?

14 A. No.

15 Q. Do you know what an XL switch is?

16 A. Yes.

17 Q. What is it?

18 A. Central office switch made by Excel Corporation.

19 Q. Did you install such a switch in the state of

20 Washington for provision of services?

21 A. No.

22 Q. Do you still intend to do that?

23 A. We haven't decided.

24 Q. Did you install any switch in Washington for the

25 provision of service in Washington?

0202

 1 A. No. We signed an SPOP agreement, Single Point of

 2 Presence agreement with Qwest some multiple years ago, and

 3 we only offer service in Vancouver, Washington which is in

 4 the Portland LATA. So the only traffic in question in

 5 Washington is traffic in the Portland LATA. So, at this

 6 point -- or for the last 13 years we've only interconnected

 7 with Qwest in Portland.

 8 MS. ANDERL: Your Honor, if I might just for the

 9 court reporter, LATA is L-A-T-A, all caps.

10 Q. (By Ms. Anderl) At the time of your application

11 with the Washington Commission did you file a tariff that

12 showed that you mirrored the incumbent local exchange

13 company calling areas?

14 A. I don't recall.

15 Q. Do you still do that?

16 A. Do we still --

17 Q. If you did file a tariff of your local exchange

18 calling areas, as this Commission's represented that you

19 did, is that your current practice?

20 A. We follow whatever is in our tariff.

21 Q. And where would one find a copy of your tariff for

22 service in Washington?

23 A. Filed with the Washington Public Utilities

24 Commission.

25 Q. And if the Commission no longer accepted those

0203

 1 tariffs for filing from CLEC's where would one find a copy,

 2 is it posted on your website?

 3 A. I believe so.

 4 Q. Do you know where on your website?

 5 A. No. I think we have a tab for tariffs.

 6 Q. And have you filed on that tab your FCC tariff, to

 7 the best of your recollection?

 8 A. Our technicians were suppose to put it on there.

 9 I asked them to.

10 Q. All right. And I found that, and we'll ask you

11 some questions about that in a minute. Would there be any

12 place else -- if the Washington tariff is not on your

13 website would there be anywhere else a person could obtain

14 such a copy?

15 A. Yes, they could ask us for it. Before providing

16 service we would either do it under contract or under

17 tariff.

18 Q. Do you serve customers in Washington today?

19 A. Yes.

20 Q. And when you say you serve customers in Washington

21 what exactly do you mean by that? Are your customers

22 physically located in Washington?

23 A. Yes.

24 Q. And do they have Washington telephone numbers?

25 A. Yes.

0204

 1 Q. And are they all in the Portland LATA?

 2 A. Yes.

 3 Q. How many customers do you have in Washington?

 4 MR. McNAMER: Objection.

 5 JUDGE TOREM: On what basis?

 6 MR. McNAMER: Confidentiality. Same basis, it's

 7 nonpublic information.

 8 JUDGE TOREM: Ms. Anderl?

 9 MR. McNAMER: Also I don't understand the

10 relevance.

11 MS. ANDERL: Still trying to get an understanding

12 of this company's operations. The state -- we have some

13 ideas about what they're doing, but, of course, it's not on

14 the record unless it's on the record. I thought that

15 counsel said that they did not have an objection to

16 Washington revenues or Washington billings. Maybe I will

17 withdraw the question as to the number of customers and ask

18 it another way.

19 JUDGE TOREM: Okay. So consider that one

20 withdrawn.

21 Q. (By Ms. Anderl) Did you file an annual report

22 with the Washington Commission this year for 2009 calendar

23 year operations?

24 A. Should have.

25 Q. Did you pay a regulatory fee?

0205

 1 A. Should have.

 2 Q. Do you know what that was?

 3 A. No.

 4 Q. Do you know what your Washington revenues were?

 5 A. No.

 6 Q. Do you know what your Washington billings to Qwest

 7 were?

 8 A. Yes.

 9 Q. For 2009?

10 A. Yes.

11 Q. What were those?

12 A. We actually have a billing dispute with Qwest that

13 we haven't billed them for two years because we're

14 attempting to kind of work this whole situation out, and

15 with interconnection, but the last time we billed them our

16 local interconnection fees were only approximately $300 a

17 month.

18 Q. That was for the state of Washington?

19 A. Yes, very little.

20 Q. And the last time that NCC billed Qwest for

21 Washington was in August of 2008 for July 2008 charges?

22 A. That sounds about right, it was approximately $300

23 in reciprocal compensation fees.

24 Q. Were there any fees other than reciprocal

25 compensation?

0206

 1 A. I don't believe so. Of course, I haven't seen

 2 that document in two years.

 3 Q. Do you have any interconnection trunks with Qwest

 4 in the state of Washington?

 5 A. I don't really know how to answer that. I mean --

 6 Q. Do you know what an interconnection trunk is?

 7 A. Yes, but we have an SPOP agreement where we agreed

 8 to a single point of interconnection, and we have the single

 9 point of interconnection which includes the Portland LATA

10 which includes Vancouver, Washington, is in downtown

11 Portland. So, I'm not attempting to be evasive, I just

12 don't know if you would define those as interconnection

13 trunks in Washington or you would define them as

14 interconnection trunks in Oregon, but the Washington traffic

15 flows over those interconnection trunks, but they are

16 physically located in Oregon.

17 Q. Okay. When we talk about an A location and a Z

18 location, one point on one end of the trunk and a point on

19 the other end where the networks are connected, both the A

20 and the Z locations are in Oregon for your trunks,

21 interconnection trunks with Qwest?

22 A. Yes. But I would also like to clarify that Qwest

23 tandem for the Vancouver, Washington central office is also

24 in Portland. So, we both own for Vancouver traffic off the

25 Qwest Portland tandem. So, this is not an unusual thing

0207

 1 that this is set up this way. What's unusual is that the

 2 Portland LATA crosses state lines. And generally around the

 3 country is the LATA lines do not cross state lines, but this

 4 is a very unusual situation.

 5 Q. For your customers in Washington what services do

 6 you provide them?

 7 A. Local dial tone.

 8 Q. And what do you mean when you say local dial tone?

 9 A. We provide phone service.

10 Q. Okay. And what are the -- do you have an NPA, all

11 caps, dash, NXX that you use for Washington?

12 A. Yes.

13 Q. And that is 360-847?

14 A. I believe so.

15 Q. How many of those telephone numbers do you have

16 assigned to customers?

17 A. I don't recall.

18 Q. Is that the only NPA-NXX traffic that you have for

19 Washington?

20 A. Yes.

21 Q. Or numbers?

22 A. Yes.

23 Q. And do you know where your customers are located,

24 you said they were in the Portland LATA in the state of

25 Washington?

0208

 1 A. Yes.

 2 Q. Do you offer 911 service?

 3 A. Not in Washington.

 4 Q. Do you offer operator services?

 5 A. No.

 6 Q. Do you -- are you --

 7 A. Not in Washington.

 8 Q. All right. Do you offer local number portability

 9 in Washington?

10 A. Yes.

11 Q. So if any customer who was assigned a 360-847

12 telephone number within that 10,000 block wanted to port

13 their number and go to a different carrier you would allow

14 that?

15 A. Absolutely.

16 Q. And you're technically capable of accomplishing

17 that?

18 A. Yes.

19 Q. Are you aware of whether or not there is a

20 requirement in Washington to offer 911 service if you offer

21 local service?

22 A. I'm sure there's a requirement to offer it for a

23 outbound phone line, but if you have an inbound phone line

24 only there's no requirement of it. For example, Qwest

25 offers something called DID trunks. A DID trunk is an

0209

 1 inbound only line and is not capable of 911.

 2 The reason we do not offer 911 service in

 3 Washington is because none of our customers have requested

 4 to use our North County Communications local phone lines to

 5 make outbound calls, thereby there's no need for them to

 6 dial 911.

 7 Q. So when you say you offer local dial tone to

 8 Washington customers that is exclusively for inbound

 9 traffic?

10 A. We offer it both ways, our customers are only

11 asking for inbound only.

12 Q. Are the lines that you provisioned to them capable

13 of outbound dialing?

14 A. No. We provisioned them exactly how they

15 requested them to be ordered.

16 Q. So you do not -- you provide local service in

17 Washington that is not set up to allow outbound calling?

18 A. Correct.

19 Q. Okay.

20 A. But if a customer requested outbound calling we

21 would take the necessary steps to allow them to make

22 outbound calls. But one of those steps would be if you have

23 an outbound line for local calls we would have to

24 interconnect with 911 trunks. And the reason for that is

25 you don't want someone to be able to pick up a phone that

0210

 1 dials phone numbers and they dial 911 and the call fails.

 2 Q. Mr. Lesser, do you know what the LERG is?

 3 A. Yes.

 4 Q. Does the LERG contain a field in it with regard to

 5 NPA-NXX listings as to whether or not that particular

 6 NPA-NXX is number portability enabled?

 7 A. Can you ask the question one more time?

 8 Q. Probably not exactly the same way.

 9 A. I will attempt to answer what I think it says.

10 One of the fields in the LERG is if the number is -- if

11 they're portable or not.

12 Q. Thank you. Would you accept, subject to your

13 check, that the LERG currently indicates that 360-847, the

14 portability indicator, is an "N" for no?

15 A. It's possible.

16 Q. Why would that be?

17 A. Well, the first issue is we didn't put that entry

18 into the LERG. At the time Qwest offered a service where

19 they would do your LERG entries for you, and Qwest actually

20 controls that LERG entry. And subsequently -- well, at the

21 time there was no number portability. Now there is number

22 portability and Qwest hasn't updated that record. I haven't

23 pursued it with Qwest to get them to update it because we've

24 not received a request from one of our customers to port

25 their numbers. If we did receive a request then I would

0211

 1 have to attempt to find out someone at Qwest who would know

 2 how to do that.

 3 Q. So, back to the questions about inbound versus

 4 outbound calling, is it fair to say that based on the

 5 description that you've given me of the service that you

 6 offer to your customers in Washington, traffic would be in

 7 Washington exclusively one way to the NCC customers?

 8 A. The NCC customers that are using NCC's local

 9 interconnection trunks, but we do provide services through

10 resellers that are other companies that do provide, you

11 know, making calls.

12 Q. Give me an example of that?

13 A. Well, for example, we route calls that are

14 interstate calls to Washington, but we don't use our local

15 interconnection trunks, our trunks we have with Qwest, we

16 use other companies to route those calls, you know, like XO,

17 for example, or Electric Lightwave.

18 Q. And so those are interexchange calls?

19 A. Yes.

20 Q. Mr. Lesser, how do you define local traffic?

21 A. That's a very difficult question to answer because

22 it depends on each public utilities commission defines local

23 traffic in a different way. Certain states, approximately

24 anything over 12 miles is considered long distance traffic.

25 Other areas have really big calling patterns that they

0212

 1 consider local traffic. Some public utilities use terms

 2 like extended local calling area. Other ones use terms such

 3 as, I don't even know what it stands for, ZUM calls, Z-U-M.

 4 So I don't have any other definition other than when I wear

 5 my Washington "hat" a local call is whatever the Washington

 6 Public Utilities Commission says a local call is.

 7 Q. Okay. How would you define VNXX traffic?

 8 A. While in Washington I would define VNXX traffic

 9 the way the Washington Public Utilities Commission defines

10 it. I wouldn't define it the way Qwest is attempting to do

11 in the local interconnection trunk. For example, under

12 Qwest's definition of VNXX traffic, remote call forwarding

13 lines that Qwest offers itself would not be allowed to apply

14 to reciprocal compensation traffic. Well, clearly Qwest

15 charges reciprocal compensation traffic for a remote call

16 forwarding line. So I don't feel comfortable with Qwest's

17 definition of VNXX.

18 I feel comfortable with how the Washington Public

19 Utilities Commission chose to define VNXX. And that is why

20 I would prefer to have no language in there, similar to I

21 believe it's the Interconnection Agreement with one of the

22 ones that was provided was Echelon, that said both parties

23 simply agreed to follow whatever the Commission defines as

24 VNXX traffic.

25 Q. And if the parties disagree as to what the

0213

 1 Commission defines as VNXX traffic, as we apparently do in

 2 this case, how do you resolve that?

 3 A. I assume many times you have a question about a

 4 public utilities commission order you either file something

 5 for a clarification with the public utilities commission or

 6 some other legal means to do it. But I frankly don't know

 7 what the procedures are if you don't understand what a

 8 Commission order is how you do it. Maybe you simply ask

 9 staff here.

10 Q. And if there's a debate about which parties'

11 definition in this arbitration most appropriately implements

12 the Commission's decision on VNXX do you think that that's a

13 decision this arbitrator can make?

14 A. Since we didn't propose a VNXX definition, we said

15 we simply will go with what the Commission defines as VNXX.

16 Q. If the arbitrator agrees that Qwest's definition

17 complies with what the Commission previously ordered is that

18 acceptable to NCC?

19 MR. McNAMER: I don't know why this is relevant.

20 MS. ANDERL: Well, I've been trying to explore

21 whether there is actually a competing language proposal and

22 what the appropriate resolution of that competing language

23 proposal would be, or if in fact what NCC is recommending is

24 just that we have a contract that doesn't resolve this

25 dispute and then we bring the dispute back to the Commission

0214

 1 for another day for resolution. That's obviously going to

 2 impact the way we brief this case and what we argue to the

 3 Commission is the appropriate route to take.

 4 A. I can probably answer that. That's very much why

 5 I'm perplexed that we've not had a single carrier in any

 6 state across the country take us back to renegotiate an

 7 Interconnection Agreement. Number one, is my reading of the

 8 Telecom Act, I don't think it allows that.

 9 Number two, is all the Interconnection Agreements

10 have a change of law. Now, when we started both our

11 interconnections 13 years ago there was no such thing as

12 VNXX. But it's reasonable to assume there's going to be

13 changes of laws, and as long as an agreement has a change of

14 law provision, which every Interconnection Agreement at

15 every public utilities commission with every carrier that I

16 am in, and all the states I mentioned, has a change of law

17 provision, that happens all the time. I mean it doesn't --

18 you don't have to re -- you don't have to put in new

19 definitions in your Interconnection Agreement. All you have

20 to say is we will follow the current laws. I mean, for

21 example, ISP traffic. There was no requirements for there

22 to be a separate rate that you paid on ISP traffic when we

23 started. But the FCC did their famous ISP order which

24 requires us to follow that, didn't require us to amend our

25 Interconnection Agreement because our Interconnection

0215

 1 Agreement had a change of law provision.

 2 Q. (By Ms. Anderl) The parties did amend their

 3 Interconnection Agreement to adopt an ISP amendment though,

 4 didn't they?

 5 A. I don't recall, but it was -- either way you have

 6 to follow the laws. Whether you change your Interconnection

 7 Agreement or not you can't do something illegal by doing

 8 that. But if one party requests to amend the

 9 Interconnection Agreement, which I think Qwest did

10 approximately right before we did this, and that's frankly

11 why I was surprised. I mean Qwest did not request

12 arbitration, did not request an Interconnection Agreement

13 change two plus years ago, they send me huge documents

14 saying we want to amend the Interconnection Agreement, we

15 want to do all the change of law provisions to make it

16 current to make it follow every single law out there. They

17 sent it to us. I had the document reviewed. We changed

18 some words, we agreed on it and then we submitted it to the

19 Washington Public Utilities Commission for approval. Once

20 that happened, right away Qwest then requested

21 arbitration -- or requested negotiations again. And I'm

22 still perplexed why they did that when we had an agreement

23 that was following all the laws.

24 Q. Qwest sent you the proposed ICA that's Exhibit 2

25 in this document in June of 2008; isn't that right?

0216

 1 A. Yes.

 2 Q. Is NCC willing to exchange VNXX traffic, as

 3 defined by this Commission, with Qwest on a bill and keep

 4 basis?

 5 A. I am willing to follow any Commission order. We

 6 don't have any VNXX traffic in Washington. Now, I know you

 7 guys said it but--and with all due respect, you know, I

 8 don't want to spend a lot of time criticizing your

 9 experts--but to know where VNX traffic is, unless they have

10 a crystal ball, you have to know what the rate center is and

11 you have to know where the customer is located. Now, unless

12 you're telling me that Qwest has some spy that knows where

13 every one of my customers are, there's no possible way that

14 they can say we have VNXX traffic.

15 So when your witness says, oh, well, there's some

16 way we're doing it, but I don't know how, it's because they

17 made it up. There's no way to physically know until you

18 physically know where the customer is. I mean read the

19 definition of VNXX traffic. So have I looked at VNXX

20 traffic and followed all the rules, no, because we don't

21 have any. So it's not worth my time. If we started to get

22 VNXX traffic I'll abide by the rules, just as if we have a

23 customer that needs to make outbound calls I'll learn what

24 all the rules are for 911 traffic. But I'm not going to

25 learn the rules of how to do 911 traffic, how to do

0217

 1 co-location in Washington, how to do all the features that

 2 we're not selling. We only provide the services that the

 3 customer has asked us to provide.

 4 Q. So is NCC willing to enter into an Interconnection

 5 Agreement with Qwest that treats VNXX traffic in accordance

 6 with the Washington Commission's decision for purposes of

 7 reciprocal compensation?

 8 A. To answer that question it would require me to

 9 divulge attorney-client privilege.

10 MS. ANDERL: Your Honor, I'm afraid I don't

11 understand the witness's objections.

12 JUDGE TOREM: Nor do I. You're asserting a

13 privilege as to would you be willing to enter such an

14 agreement? You're the CEO of the company, and I don't see

15 how the attorney makes any of those decision. You may

16 advise, but you're the decider on this one.

17 A. You're absolutely right, when I think of the

18 question answered that way. Would I be willing to? No.

19 Would I be willing to of my own free volition change our

20 Interconnection Agreement from what we have now, other than

21 a change of law provisions? Absolutely not, we're not

22 changing anything.

23 JUDGE TOREM: I'm not sure that's the question.

24 Ms. Anderl, is the question about changing the

25 Interconnection Agreement or just a standalone agreement

0218

 1 about this VNXX traffic that you're hypothesizing here?

 2 Q. (By Ms. Anderl) Yes. And I'm not trying to trick

 3 Mr. Lesser into agreeing to change the ICA when I know that

 4 they don't want to change the ICA. What I'm trying to ask

 5 Mr. Lesser is whether he's willing to enter into a provision

 6 addressing VNXX traffic, whether there's in the context of a

 7 new ICA, or an amendment to the old ICA, that treats VNXX

 8 traffic consistently with how the Commission ordered it to

 9 be treated for purposes of reciprocal compensation?

10 A. Absolutely.

11 Q. And same question with regard to a contract term

12 that treats VNXX as NCC originated traffic for purposes of

13 the calculation of the relative use factor consistent with

14 the Commission's decision that the CLEC paid for transport?

15 MR. McNAMER: I'm going to have to object to that

16 one because I think it mischaracterizes -- it's

17 argumentative because what it's doing in the question is

18 mischaracterizing what the Commission's order is. So the

19 question is are you willing to treat it like the Commission

20 tells you to be treated -- tells it to be treated? But my

21 position, which I think I made clear on cross, was that

22 that's not what the Commission's order said. The

23 Commission's order doesn't address relative use, so I think

24 her question is argumentative.

25

0219

 1 MS. ANDERL: Let me withdraw that question and ask

 2 a different question.

 3 Q. (By Ms. Anderl) Is NCC willing to pay -- if NCC

 4 has VNXX traffic is NCC willing to pay for the transport

 5 facilities for that traffic?

 6 A. If that's what the Commission order says.

 7 Q. Then, yes, if that's what the Commission order

 8 says?

 9 A. Yes. Again, I just need you to know, I've never

10 read the Washington Public Utilities Commission VNXX orders

11 because we don't have any traffic. It's a big document. If

12 I read it, by the time it really applied I would have to

13 read it again because I would forget. It's difficult.

14 Qwest has experts for every state. We're operating in so

15 many different states I don't have someone who just is an

16 expert in Washington. And all the Interconnection

17 Agreements.

18 I'd love to be the one that had the same

19 Interconnection Agreements in all my states because, you

20 know, Qwest wants us to use theirs, Verizon wants us to use

21 theirs, AT&T wants us to use theirs. They have different

22 ones for each state. They all blend together. And every

23 Commission has different orders for different rules. So if

24 you're going to ask me really specific questions about VNXX

25 orders in Washington I can't answer them. All I can tell

0220

 1 you is I will follow whatever the Commission rules are.

 2 Q. How do you find out what those Commission rules

 3 are, do you have people on your staff who advise you about

 4 that?

 5 A. Well, in this case if I wanted to offer VNXX

 6 traffic I know that my attorney, without divulging

 7 attorney-client privilege, sent me a document of the rules

 8 for VNXX traffic, and I saved it on my computer. So what I

 9 would do if I wanted to offer VNXX traffic, first I would

10 read it so I had a baseline of what the prior history was,

11 then I would send an e-mail, and I don't -- I feel

12 comfortable divulging this without fully disclosing

13 attorney-client privilege, I would send an email to one of

14 my attorneys and say, has there been any updates in the

15 laws? Or I would go to the Washington Utilities Commission

16 web page myself and search for it. Just depends what my

17 workload was at the time if I would research it myself or if

18 I would have an attorney do it.

19 Q. These attorneys that you're talking about, are

20 these outside counsel?

21 MR. McNAMER: I guess objection.

22 JUDGE TOREM: On what basis?

23 MR. McNAMER: I mean I don't -- first of all, I

24 think that -- I'm not sure how this is relevant to anything,

25 but also it's confidential with what attorneys he consults

0221

 1 with and whether they're outside counsel or inside counsel.

 2 I think it's also completely irrelevant. Why does it matter

 3 if they're inside counsel or outside counsel?

 4 JUDGE TOREM: Ms. Anderl?

 5 MS. ANDERL: I was, again, just trying to figure

 6 out the extent to which Mr. Lesser was relying on his own

 7 expertise, expertise from employees within his company or

 8 from expertise from outside consultants or experts. I'm,

 9 again, just trying to get an understanding of the nature of

10 his decision-making process, his ability to comply with the

11 laws in the state of Washington and, you know, just

12 contextually the nature of the negotiations and the

13 Interconnection Agreement. It's very, very hard not to

14 be -- have an understanding of who it is we're dealing with.

15 MR. McNAMER: She's asking a hypothetical about

16 something that might happen in the future and who he might

17 consult with in the future if that thing happens, and she's

18 asking whether that would be an outside attorney or inside

19 attorney. We've already established it would be an

20 attorney.

21 JUDGE TOREM: Mr. McNamer, I'm going to sustain

22 your objection, but it's not without understanding where

23 Ms. Anderl is coming from and trying to sort out just who,

24 if anyone, falls under the North County Communications

25 rubric besides Mr. Lesser, who if anyone he consults with,

0222

 1 hires, talks to. The shadow of this I'm -- I have my own

 2 questions and forming my own opinions, but I want to be

 3 cautious, as I said earlier, not to unintentionally violate

 4 any laws of privacy that that corporation is entitled to.

 5 There's a variety of information that the

 6 Commission requires, and I have access to that now, there's

 7 a variety of information that I think an Interconnection

 8 Agreement requires between your client and Qwest and I want

 9 to make sure that Qwest has access to that and nothing more.

10 So I'm leaning in the direction of sustaining this

11 objection, but eventually there will be something I will

12 have to overrule, I'm sure --

13 MR. McNAMER: I understand.

14 JUDGE TOREM: -- just on the basis of your

15 client's testimony as he's given in writing previously and

16 verbally today. Ms. Anderl, you can resume.

17 MS. ANDERL: Thank you, Your Honor.

18 I'd like to offer or take up to the witness Bench

19 Exhibit No. 1 which is the 1997 Interconnection Agreement.

20 I believe I previously provided copies and if I

21 may approach the witness, Your Honor?

22 JUDGE TOREM: Yes. If you can give me an

23 additional copy of TL-4X? I think in my request for some

24 supplemental documentation that got left back at the ranch.

25 MS. ANDERL: Sure, I have an extra here somewhere.

0223

 1 There might be two but it's extra.

 2 JUDGE TOREM: Here's that other one.

 3 MS. ANDERL: Thanks.

 4 Q. (By Ms. Anderl) Mr. Lesser, I've placed in front

 5 of you a document that's been marked for identification, and

 6 admitted I guess, as Bench Exhibit 1, it's the 1997

 7 Interconnection Agreement between Qwest -- or U.S. West and

 8 North County, do you recognize that document?

 9 A. Yes.

10 Q. And are you the one who signed it?

11 A. Yes. It's not complete but I was the one who

12 signed it.

13 Q. What's it missing?

14 A. It's missing all the amendments.

15 Q. Some of the amendments and pricing exhibits?

16 A. I don't know if it's missing the pricing exhibits,

17 I do notice that it's missing the amendments.

18 Q. Do you know how many amendments the parties have

19 entered into?

20 A. I don't recall. I just remember the last one was

21 approximately a change of law provision approximately a year

22 and a half ago, two years ago maybe.

23 Q. Was that for the TROO provision?

24 A. I don't recall. I just remember that Qwest came

25 to us and said we wanted to update our agreement to include

0224

 1 all change of law provisions, and that's what we did.

 2 Q. Could you turn to Page 3 in the document that's in

 3 front of you. And do you recognize that as a page that has

 4 some of the definitions on it?

 5 A. You mean under table of contents Page iii.

 6 Q. Not little "i" Page 3 but arabic Page 3?

 7 A. Yes.

 8 Q. Do you see the definition there for ANI?

 9 A. Yes.

10 Q. Can you point me to any place in this

11 Interconnection Agreement that requires Qwest to provide ANI

12 over local interconnection trunks?

13 A. First, let me define multiple things. Now, ANI

14 stands for automatic number identification, just to point

15 out that, you know --

16 JUDGE TOREM: Mr. Lesser, we've already had this

17 particular definition read into the record. So I think it

18 can speak for itself.

19 A. Okay. ANI refers to Feature Group D signaling

20 parameter, but that is not the only thing ANI includes. You

21 can have ANI on Feature Group B trunks, you can have ANI on

22 Feature Group C trunks, you can have ANI on local

23 interconnection trunks. Now, I've had ANI on all those

24 things so I would have to say while this definition

25 describes what ANI is, it doesn't include all its uses.

0225

 1 Now, there is somewhere in the document, because

 2 we did have an e-mail exchange with Qwest, and this was

 3 sometime ago, five years ago maybe, I would have to look for

 4 that e-mail exchange. I know you were looking at some

 5 e-mails that you provided me here as an exhibit that you're

 6 going to show in a few minutes from three years ago, so

 7 maybe you have the full e-mail exchange. But we asked Qwest

 8 to provide us with ANI over the local interconnection trunks

 9 to help resolve all these issues. We said to you that the

10 switch is capable. We said that other phone companies have

11 given us ANI over local interconnection trunks, they have

12 the same switch as you. It's just a parameter, you just

13 type it in, no different than setting a switch to be

14 unlimited local calling versus measure break business

15 calling. It's just a class, it's a class of service plan.

16 These switches are several million dollars and are

17 very powerful and can be highly configured because they're

18 used in all different types of applications. They don't

19 just counter peg counts. So there is a provision somewhere

20 in here that talked about you providing calling party

21 information.

22 Now, calling party information sometimes can be

23 ANI, and sometimes can be just what would be displayed on

24 caller I.D. For example, if I have a trunk my trunk may

25 just give me ANI of the BTN which is the billing telephone

0226

 1 number. Now, the caller I.D. may be the specific extension

 2 on a PBX. So sometimes you have the calling party telephone

 3 number separate from the ANI. Other times ANI is the exact

 4 same thing as calling party number.

 5 Now, in the agreement I believe it says they will

 6 provide us calling party information and Qwest's response to

 7 that e-mail says it doesn't say we have to require ANI.

 8 Now, I didn't pursue it, but I feel that they were wrong. I

 9 felt that they can provide us, they can technically provide

10 us ANI, and ANI would be providing us with calling party

11 information.

12 JUDGE TOREM: So was the answer to that yes or no?

13 MR. LESSER: Yes.

14 JUDGE TOREM: Yes, there's something in the

15 agreement that requires Qwest to provide North County with

16 ANI?

17 Q. (By Ms. Anderl) Over local trunks?

18 A. Yes, if you -- because -- yes.

19 Q. And then where is that?

20 A. I would have to spend some time, I don't have a

21 search. But somewhere on there it talks about calling party

22 information that they're suppose to provide. And I sent an

23 e-mail, maybe even to Anne Marie Brunk, I could search for

24 it on my computer, I probably have a copy of it.

25 JUDGE TOREM: If I understand, we can identify

0227

 1 that if necessary today or in briefs later, but if I

 2 understand your answer it's that this exhibit, somewhere in

 3 it, requires Qwest to provide calling party information and

 4 you think that that means ANI? And I'm sure there's a

 5 disagreement exactly as to what that is. And you've given a

 6 pretty good thorough explanation as to how those might be

 7 interpreted differently?

 8 MR. LESSER: Right. It was just something I

 9 didn't think of at the time. That's why I'm very wary.

10 When you read Interconnection Agreements --

11 JUDGE TOREM: Weary for the record or wary, it

12 could be both.

13 MR. LESSER: It could be both, yeah.

14 Anthony, I had a conversation with him, and I

15 explained to him sometimes we use the same acronym to mean

16 multiple different things, and sometimes I will have five

17 different ways of describing something technical. When you

18 have a document like this sometimes you miss things because

19 you don't think well, what if. Like Qwest's VNXX

20 definition, if you take it literally it does include remote

21 call forwarding. Well, their testimony was, yep, remote

22 call forwarding lines are not VNXX traffic. When I read

23 that definition I think it does, that it doesn't allow

24 reciprocal compensation on remote call forwarding lines. So

25 with this document it was very -- you know, it defines ANI

0228

 1 and it defines calling party information. I don't even know

 2 if it necessarily says they'll provide ANI over SS7. I

 3 think it even excludes that.

 4 Well, SS7 and calling party information is a

 5 parameter of SS7. For MF there is no calling party

 6 parameter, it's just ANI. So, again, it's a very

 7 complicated thing. But I think the intent in this document,

 8 at least my intent when signing it, is that they would

 9 provide ANI to us over MF. And I was surprised that they

10 wouldn't do it because it would have resolved all the

11 problems. It doesn't cost them anything. And I could then

12 clearly, even if they choose not to--and I'm sure I'll have

13 time to testify to that later--track it themselves, I could

14 provide them with every call record. And I could say,

15 here's every call we received. We received 1,000 phone

16 calls, this is the phone number that it came from, this is

17 where it terminated. You can clearly see is it an intraLATA

18 toll? is it local? is it wireless? We could tell all that

19 because we would have a record, an EMI record to provide to

20 swap records with Qwest.

21 JUDGE TOREM: Why don't we get to where

22 Ms. Anderl's asking the questions, it's her cross-exam at

23 the moment. When you have a chance with Mr. McNamer to ask

24 questions we can cover anything else you need to supplement.

25 Ms. Anderl?

0229

 1 Q. (By Ms. Anderl) So, Mr. Lesser, is there a

 2 provision in that contract that's in front of you that

 3 identifies ANI by that acronym as information that Qwest has

 4 to provide to NCC on local trunks?

 5 A. I seem to recall that it doesn't use the word ANI

 6 anywhere else in the document, it only uses the term calling

 7 party information. I could be wrong, it's been several

 8 years since I've read that document.

 9 Q. Now, if you thought that the document required

10 Qwest to provide ANI over local trunks, and Qwest was not

11 doing that, why did you not pursue that?

12 A. It wasn't worth hiring an attorney $300 an hour to

13 file a complaint with the public utilities commission,

14 probably end up with a bill over maybe a couple hundred

15 thousand dollars to fight over it for $300 in reciprocal

16 compensation traffic.

17 Q. Do you have plans to operate in the state of

18 Washington outside of the Portland LATA?

19 A. It's asking me to answer a hypothetical, and I'm

20 not sure.

21 Q. It's not a hypothetical, I'm asking you if you

22 have plans?

23 A. Yes.

24 Q. And what's the timeline on those plans?

25 A. I have no timeline.

0230

 1 Q. What is the geographic scope of your plan?

 2 A. We're approved in the entire state. Eventually

 3 some day we'd like to provide service throughout the state.

 4 I should add we've had plans to do that for 13 years and so

 5 far we're only in Vancouver, Washington.

 6 Q. Mr. Lesser, let me ask you a question about the

 7 document that has been distributed as Exhibit TL-6X.

 8 MS. ANDERL: Your Honor, did I hand that up to you

 9 as well, the e-mail?

10 JUDGE TOREM: Please, because it certainly hasn't

11 been distributed to me yet.

12 MS. ANDERL: Okay. I believe I did give it to the

13 parties.

14 JUDGE TOREM: So this is the one page document.

15 It looks to be an e-mail from February 13, 2007 from

16 Mr. Lesser to Anne Marie Brunk, and her response follows the

17 next day on February 14th, 2007.

18 Q. (By Ms. Anderl) Yes. Let me just ask Mr. Lesser

19 if he can identify this document as the judge described it?

20 A. Yes, this is part, only part of an e-mail chain

21 between Anne Marie Brunk, spelled B-r-u-n-k, and myself on

22 or around February 14, 2007 requesting Qwest to purchase our

23 CNAM, spelled C-N-A-M, and LIDB, spelled L-I-D-B, all

24 capitals for both of those, under the same terms and

25 conditions that Qwest was selling us their CNAM and LIDB

0231

 1 information.

 2 Q. But if you look at the bottom four paragraphs, is

 3 it correct that the paragraphs with the right facing caret

 4 next to them are the questions, and the paragraphs

 5 immediately below those are your answers?

 6 A. Yes.

 7 Q. Now on -- when you say our equipment is SS7 in San

 8 Diego, what does that mean?

 9 A. It means we have SS7 equipment in San Diego.

10 Q. Does it mean you have a switch that's SS7 capable

11 in San Diego?

12 A. If you're asking me if we have a switch that is

13 SS7 capable in San Diego, the answer is yes. But that's not

14 necessarily -- doesn't say that in this document. It just

15 says our equipment is SS7 in San Diego.

16 Q. What equipment are you talking about?

17 A. We have SS7 databases in San Diego, we have a

18 switch that's SS7 in San Diego.

19 Q. What switch is that? Can you identify the

20 technical vendor name and model of the switch?

21 A. I don't have the model but it's a Lucent switch.

22 Q. Do you have any other switches in your network?

23 A. Yes.

24 Q. Where are they?

25 A. We have switches in Sacramento; San Francisco;

0232

 1 Los Angeles; Tucson; Phoenix; DeKalb, Illinois. We have two

 2 switches in Charleston, West Virginia, I believe that's it.

 3 Q. Which ones of those switches are SS7 capable?

 4 A. San Diego and one of the switches in West

 5 Virginia.

 6 Q. And that's all?

 7 A. Yes.

 8 Q. And you also have links to a signaling transfer

 9 point, SS7 links?

10 A. Yes.

11 Q. Can you explain what that involves? And

12 specifically I'm asking you about the last two lines in this

13 e-mail. You state our STP is located in San Diego, what

14 does that mean?

15 A. She asked the question as for Qwest purchasing

16 NCC's ICNAM information I need more information in order to

17 assist you with this question. Where is the STP located

18 that contains specific NCC data related to ICNAM? And what

19 are the connection requirements to connect to your STP? And

20 I responded that our signal transfer point, STP, is located

21 in San Diego.

22 Q. What type of switch do you have in San Francisco?

23 A. Lucent.

24 Q. Is -- what about Sacramento?

25 A. Lucent.

0233

 1 Q. What about L.A.?

 2 A. Lucent.

 3 Q. Tucson?

 4 A. Lucent.

 5 Q. Phoenix?

 6 A. Lucent.

 7 Q. DeKalb?

 8 A. Lucent.

 9 Q. And the two switches in Charleston?

10 A. Ericsson and Lucent.

11 Q. Do you know whether or not the LERG indicates that

12 you're operating Nortel DMS-100's?

13 A. It does.

14 Q. Do you know why that is?

15 A. Because at the time we installed our switch the

16 model number we had was not in the LERG and we set up our

17 switches to do the features for MF signaling that a Northern

18 Telecom DMS-100 is. We just emulate the DMS-100.

19 MS. ANDERL: Your Honor, if I haven't before moved

20 the admission of TL-6X, I would do so now.

21 MR. McNAMER: No objection.

22 JUDGE TOREM: That will be marked and admitted.

23 Q. (By Ms. Anderl) Other than Verisign,

24 V-e-r-i-s-i-g-n, which is the company identified at the

25 bottom of that e-mail, are there any other SS7 hub

0234

 1 providers, or any other companies to which NCC has SS7

 2 connectivity?

 3 A. No.

 4 Q. Let me ask you some questions about your

 5 Interconnection Agreement in California. Do you have an

 6 agreement, an Interconnection Agreement with -- well, signed

 7 at the time with PacBell?

 8 A. Yes.

 9 Q. And who is PacBell now?

10 A. AT&T.

11 Q. And if I were to show you a copy of that PacBell

12 agreement would you be able to identify it?

13 A. Probably.

14 Q. Let's try then.

15 A. I mean I'll trust you. You can -- again, it's a

16 300 page document or so, and I don't have it memorized, but

17 I can look at an Interconnection Agreement, if it says North

18 County Communications on it and Pacific Bell Phone, and it's

19 coming from you, I would have to say it's probably our

20 Interconnection Agreement.

21 Q. I can show it to your counsel first.

22 A. I can tell you he doesn't have it memorized

23 either.

24 MS. ANDERL: Excuse me, Your Honor.

25 (Discussion held off the record between

0235

 1 counsel.)

 2 MS. ANDERL: Your Honor, this is one of the

 3 voluminous documents that I was describing in my e-mail that

 4 I would ask, subject to counsel's objection or stipulation

 5 or otherwise, that we just be able to ask the witness a

 6 couple of questions from, admit only those pages that are

 7 relevant to either my cross or his redirect, and subject to

 8 the rule of completeness, if they want the whole document

 9 I'm happy to make the requisite number of copies, but you

10 can see it from here.

11 JUDGE TOREM: Yes, it has to be two plus inches

12 thick and it seems to me that you're only going to use a few

13 pages?

14 MS. ANDERL: That's true.

15 JUDGE TOREM: Why don't you publish that to the

16 witness.

17 Will you be subjecting me to the full copy of it,

18 as well?

19 MS. ANDERL: I can take it up to you now so you

20 can see it while we question on it, and then I can provide

21 you with just the admitted pages down the road if that's all

22 right with you?

23 JUDGE TOREM: That's fine.

24 MS. ANDERL: Okay. Here you go, Your Honor.

25 JUDGE TOREM: Might be better to describe this one

0236

 1 with the use of a scale than a ruler.

 2 MS. ANDERL: That's true.

 3 Q. (By Ms. Anderl) Mr. Lesser, I've handed you up a

 4 document that we're going to eventually mark excerpts from

 5 as Exhibit TL-7, I believe.

 6 So let me just ask you, subject to the odd format

 7 and the copying with a half a page during the -- only a half

 8 a page of text on each of the first 20 or 30 pages and then

 9 the regular portrait format for the rest of the document,

10 does that look to you like the agreement that you have

11 between Pacific Bell and your company?

12 A. Yes, this was the agreement that initially the

13 company -- well, I won't go too far back, was Pacific

14 Telephone, then they became Pacific Bell, then they became

15 SPC, then they became AT&T.

16 Q. And this was entered into in 1998 approximately?

17 A. I don't recall but probably.

18 Q. Are you the person that decided to enter into this

19 contract?

20 A. Yes.

21 Q. How did you decide to enter into this particular

22 agreement?

23 A. I don't recall.

24 Q. Do you know if you've read every page of this

25 agreement?

0237

 1 A. Yes, 12 years ago approximately.

 2 Q. And can you turn to the first -- well, the first

 3 page is the cover sheet, the second page, physical page, is

 4 the table of contents; is that right?

 5 A. Yes.

 6 Q. And then the third page shows the attachments?

 7 A. Yes.

 8 Q. Okay. And Attachment 18 is listed as the

 9 Interconnection Attachment; is that right?

10 A. My eyesight isn't that good, yes.

11 Q. It's very tiny print. If you can find Attachment

12 18, please, it's towards the back of the document?

13 JUDGE TOREM: Appears to be the last 30 pages.

14 Q. (By Ms. Anderl) Do you have that?

15 A. Yes.

16 Q. And can you turn to Page 4 of 30?

17 A. I'm there.

18 Q. Does that have on it a Paragraph 1.4 that says

19 signaling protocol?

20 A. It starts the page before on Page 3, yes.

21 Q. And I wonder if we're on the same -- literally on

22 the same page then, let me just double-check.

23 JUDGE TOREM: Mr. Lesser, are you looking in the

24 center of the page, Paragraph 1.4, starts on Page 4 of 30?

25 MS. ANDERL: May I approach, Your Honor?

0238

 1 MR. LESSER: Well, mine it appears on Attachment

 2 18, Page 3, 1.4. Signaling protocol is on my Page 3. Page

 3 4 has the continuation of that paragraph and then in the

 4 middle of that page, on Page 4, is 1.5 signaling.

 5 JUDGE TOREM: All right. It looks like there

 6 might be a different printout.

 7 MS. ANDERL: Yeah, we might have a pagination

 8 error. If I may approach the witness, Your Honor?

 9 JUDGE TOREM: Please. Why don't you clarify he's

10 looking at the same thing that you are.

11 MS. ANDERL: Yeah.

12 (Discussion held off the record.)

13 JUDGE TOREM: We're going to re-collect this TL-7X

14 exhibit and figure out exactly which pages correspond?

15 MS. ANDERL: Yes.

16 MR. McNAMER: Would now be a good time for a break

17 anyway, maybe like a five minute break?

18 JUDGE TOREM: Ms. Anderl, did you want to get any

19 other questions in before we break?

20 MS. ANDERL: No, we can take a break now, and then

21 I can figure out what's wrong with these documents.

22 JUDGE TOREM: All right. It's now about 2:20,

23 we'll come back in about 10 minutes.

24 MS. ANDERL: Thank you.

25 (Break taken from 2:20 to 2:36 p.m.)

0239

 1 JUDGE TOREM: Ms. Anderl, you checked through

 2 these piles of papers that's marked as TL-7X, and I now have

 3 a new copy, Mr. Lesser has a copy. Want to redirect us to

 4 those pages again?

 5 MS. ANDERL: Sure, Your Honor, thank you.

 6 Q. (By Ms. Anderl) If we go to the very last

 7 document which indicates -- well, the bottom of the stack,

 8 Attachment 18 says interconnection and then it says Page 4

 9 of 30 or -- right, Pages 1 through 30 of 30. And Page 4

10 should, in the middle of it, have a 1.4 signaling protocol

11 on it?

12 A. Yes.

13 MS. ANDERL: Okay. Are you there, Your Honor?

14 JUDGE TOREM: I am.

15 Q. (By Ms. Anderl) Mr. Lesser, could you read the

16 first sentence of the second paragraph of that under

17 signaling protocol?

18 A. The parties agree that the interconnection using

19 SS7 is preferred.

20 Q. Okay. And then the agreement goes on to allow for

21 the use of MF if SS7 is not available?

22 A. Yes.

23 Q. Or if the CLEC is unable to use SS7?

24 A. Yes.

25 Q. And then further down in that Section 1.4 is there

0240

 1 a list of five service problems that MF might cause?

 2 A. It may cause.

 3 Q. Might, may?

 4 A. Yeah. We never had any.

 5 Q. And this is a term that -- the term that's in your

 6 Interconnection Agreement with Pacific Bell?

 7 A. Yes.

 8 Q. Why would you agree with Pacific Bell that SS7

 9 interconnection is preferred?

10 A. You kind of pick and choose your battles. If they

11 want to use the word preferred but they allowed me to have

12 MF, that's all I cared about. Just as, for example, they

13 talked about these may cause service problems. I knew they

14 were wrong. They wanted to put it in, they said may, I

15 didn't have a problem because in 13 years I haven't had any

16 call failures on 1010 XXX or 10 XXX cut through, all these

17 I've had zero problems with MF with AT&T.

18 Q. Okay.

19 A. Sometimes lawyers get involved and I know they --

20 it was once explained to me they used to get billed by the

21 word or the syllable. And you read these Interconnection

22 Agreements and a layperson would have this thing be 15

23 pages, but when you get the attorneys involved it turns into

24 a several hundred page document.

25 Q. About how many pages is this document?

0241

 1 A. I have no idea, hundreds.

 2 Q. And if you turn to Attachment 1, which is about 15

 3 pages in, and it's the kind of weird format where there's

 4 only text on the left-hand side of the page?

 5 A. And this was not amended; correct?

 6 Q. It's in the very beginning of the document.

 7 A. Yes.

 8 Q. If you go to the definition section under

 9 Definition No. 8, you see there the definition for ANI?

10 A. Yes.

11 Q. Is that substantially the same definition that's

12 in the Qwest Interconnection Agreement for ANI?

13 A. I believe it's verbatim. But, you know, I think

14 the definition speaks for itself, but it just gives an

15 example. It's not the complete definition of ANI, it just

16 gives one example of when ANI is used. Because obviously

17 you can get ANI over Feature Group B, but that thing just

18 talks about Feature Group D.

19 Q. Is it your understanding as a layperson that the

20 terms contained in the Interconnection Agreement are what

21 govern the parties' relationship to each other from a legal

22 standpoint?

23 A. I wouldn't define myself as a layperson the amount

24 of times I've testified and read Interconnection Agreements.

25 I mean I've testified as technical experts in front of the

0242

 1 FCC, the Federal Trade Commission. I know I've read the

 2 LSSGR. I've helped design switches. I know what ANI is.

 3 And you can get ANI over Feature Group B, you can get it

 4 over "D." And when this thing specifically -- I mean you

 5 have to read the wording --

 6 JUDGE TOREM: Mr. Lesser?

 7 MR. LESSER: Yes.

 8 JUDGE TOREM: Can you just answer her question?

 9 Q. (By Ms. Anderl) When I said layperson, sorry,

10 that was not precise. As a nonattorney would you agree that

11 the terms and conditions in the Interconnection Agreement

12 are what govern the parties' relationship to each other?

13 A. Not completely.

14 Q. Do you have any agreements with AT&T that are not

15 tariffed or contained in this Interconnection Agreement?

16 A. Sure.

17 Q. Such as?

18 A. I have it with every carrier. Sometimes you agree

19 to, you know, when you send bills how you'll do the billing,

20 who will track the records. I have agreements like that

21 with Qwest that are not in the agreement, it's just a way of

22 doing things. I mean these documents from experience

23 have -- you know, working as a CLEC since 1996 I'll refer to

24 them almost as a guideline. But when it comes down to

25 certain practical reasons you can't -- like, for example,

0243

 1 ANI. ANI can apply over Feature Group B, C, D

 2 Interconnection Agreement and that's why they just kind of

 3 gave a definition of, you know, that automatic number

 4 identification or ANI means a Feature Group D signaling

 5 parameter but it can also mean other things, and they

 6 realize that. So when it means other things, and you point

 7 that out, they don't all the sudden say, oh, ANI doesn't

 8 mean Feature Group B because you show the documents.

 9 A lot of times if you look at this Interconnection

10 Agreement it references a lot of Bellcor documents. And

11 because it was written by attorneys, not necessarily

12 technicians, they don't always fully understand what these

13 terms mean. If you look at the references, the Bellcor

14 documents, they explain what ANI is. And the Bellcor

15 documents show ANI can be used over Feature Group B, or ANI

16 can be used over Feature Group C. This is why I'd have to

17 say it's a guideline. I mean you -- more than anything

18 else. I mean, yes, there are certain provisions in there

19 that there's no room for interpretation, and there's other

20 provisions in there, like this ANI, where there is.

21 Q. Let me just ask you a couple of questions about --

22 MS. ANDERL: And, Your Honor, for this document I

23 think we're going to just move the admission of the pages I

24 referenced. So, you know, the cover page and the table of

25 contents, the definition page that contains the definition

0244

 1 Mr. Lesser read and Pages 4 and 5 of Attachment 18?

 2 MR. McNAMER: No objection.

 3 JUDGE TOREM: All right. Then as paginated it

 4 sounds like it would be six, seven, eight pages total. I'll

 5 have you submit that exhibit electronically, and by Monday

 6 of next week file three or four copies for records center.

 7 So if you'll send in one for me, and to all the parties as

 8 needed and three or four copies for records center by Monday

 9 of next week. That will be TL-7X, that will be admitted at

10 this time, again, with the promise to provide however it

11 boils down.

12 MS. ANDERL: Yes, I'll identify those pages when I

13 submit it.

14 MR. LESSER: You know, I thought about something

15 else if you would like me to add other contradictions in the

16 document concerning ANI?

17 MS. ANDERL: Not really. Thank you. You can do

18 that on redirect with your counsel.

19 Q. (By Ms. Anderl) Let me ask you, there's been a

20 document that's been admitted as Qwest's data request to

21 NCC, the first, second and third sets, that was previously

22 provided as Exhibit TL-3X. Do you have a copy of that

23 available to you, or I can hand it to your counsel?

24 A. Yes, I have it.

25 Q. Okay.

0245

 1 A. No, maybe -- I'm not sure if I do have it, I mixed

 2 the 5X with the 3X.

 3 Q. We'll provide a copy to you through your counsel.

 4 Mr. Lesser, do you see that six page document

 5 before you now?

 6 A. Yes.

 7 Q. And then on Page 2 of the second page of that

 8 document were you the person who wrote the response to

 9 requests one through five?

10 A. Yes.

11 Q. And on the 4th page were you the person who wrote

12 the response to requests six through ten?

13 A. Yes.

14 Q. And on the 6th page were you the person who wrote

15 the response to requests 11 and 12?

16 A. I don't -- oh, yes.

17 MS. ANDERL: Your Honor, I don't recall if we

18 have -- I think Mr. McNamer previously stipulated admission

19 of this document?

20 JUDGE TOREM: Correct.

21 MR. McNAMER: Yep.

22 Q. (By Ms. Anderl) Now, with Verizon and AT&T--and

23 if there's not one response that's accurate overall, you can

24 segregate your responses--but do you exchange traffic with

25 Verizon and AT&T over SS7 signaled interconnection trunks or

0246

 1 multifrequency?

 2 A. Both.

 3 Q. Does it vary by state or switch or some other

 4 breakdown?

 5 A. By switch.

 6 Q. So the switches that you previously identified as

 7 SS7 capable are the ones that have SS7 interconnection

 8 trunks?

 9 A. And MF.

10 Q. And is the traffic over those trunks one way or

11 two way?

12 A. Two way.

13 Q. And it's your testimony that Verizon sends you the

14 information with regard to how much you should bill them

15 each month?

16 (Brief interruption as court reporter

17 plugs power cable into machine.)

18 Q. (By Ms. Anderl) Was there a question pending?

19 A. Yes. I would first like to kind of add to your

20 question. Explain. Because I assume your follow-up

21 question is going to be AT&T. Each carrier deals with it

22 differently. AT&T sends us a bill for all the outbound

23 calls we make, whether it be over an SS7 or an MF trunk

24 group for both, they can track both our outbound calls.

25 They, for inbound calls of our SS7 and MF trunk groups, they

0247

 1 track both of those. They give me a report every month for

 2 the inbound calls and they tell me how much of it's local

 3 and how much is intraLATA toll, and then I send them a bill.

 4 We agree to use their minutes.

 5 With Verizon they bill me for outbound calls over

 6 the local interconnection trunks that are MF or SS7, both.

 7 And for the incoming calls to me I send them a bill based on

 8 my minutes. Sometimes they come back and they disagree with

 9 the minutes and then they say this is what we show and we

10 negotiate back and forth and adjust the bill if it's

11 appropriate.

12 Q. I have some questions for you about your

13 responsive -- or your reply testimony dated June 28th. Can

14 you -- do have a copy of that in front of you?

15 A. I have a document dated May 19th for direct

16 testimony. I do not have, I believe, the document you

17 mentioned.

18 MR. McNAMER: I only have one, so if you have one?

19 MS. ANDERL: I don't. Let me see if we have an

20 extra copy. We'll get a copy of Mr. Lesser's reply.

21 May I, Your Honor?

22 JUDGE TOREM: Yes.

23 Q. (By Ms. Anderl) Okay. Mr. Lesser, here you go,

24 ignore the underline.

25 A. Okay.

0248

 1 Q. I've handed you a document that we have as your

 2 file to testimony. Let me know if you see anything that you

 3 don't recognize as having been yours. But we'll just go

 4 based on that. Can you turn to Page 9?

 5 A. Yes.

 6 Q. You say there near the last question on the page,

 7 Mr. Linse says that other CLEC's interconnect with Qwest

 8 using MF?

 9 A. Yes.

10 Q. Where does he say that?

11 A. Well --

12 Q. I mean are you responding to a particular piece of

13 his direct testimony there or to a data request response?

14 A. I don't recall. I do recall that we asked the

15 question does -- we asked either for a list -- are there any

16 CLEC's that interconnect with Qwest by MF. And Qwest

17 refused to answer the question and then came back and said,

18 well, every CLEC interconnects with us by SS7. What they

19 didn't say is were there carriers that still had MF trunk

20 groups? And then I believe there was a document that talked

21 about that there were some ILEC's that still connected up

22 with MF.

23 And part of this, unfortunately, is we're in three

24 arbitrations with Qwest, in Oregon, Washington and Arizona.

25 And they're all happening at the same time, and I don't

0249

 1 remember -- and all the same parties are involved. I just

 2 don't remember where it is. I just know that I was told

 3 that there are CLEC's that interconnect with Qwest by MF.

 4 And whether I've been told that verbally during our

 5 negotiations or in testimony. I thought it was in

 6 testimony, but maybe I was wrong.

 7 Q. Now, turn to Page 17 of that same testimony, and

 8 on the fourth line down from the top you state, "this is one

 9 of the main reasons we don't send outbound calls over our

10 interconnection trunks in Washington"?

11 JUDGE TOREM: Which page?

12 MS. ANDERL: Seventeen, Your Honor, Line 4.

13 A. Okay.

14 Q. (By Ms. Anderl) So is it true that you do not

15 send outbound calls over your interconnection trunks in

16 Washington?

17 A. We make some test calls.

18 Q. When you talk about your interconnection trunks in

19 Washington, what trunks are you talking about?

20 A. The trunks that carry Washington traffic, the ones

21 from the Qwest tandem in Portland that the Vancouver,

22 Washington switch and our switch both subtend.

23 Q. You state that one of the main reasons you don't

24 send outbound calls over those trunks is because Qwest has

25 to date refused to purchase your CNAM data; is that right?

0250

 1 A. Correct.

 2 Q. Okay. Now, when you say outbound calls you mean

 3 calls from NCC customers to Qwest customers?

 4 A. Yes.

 5 Q. Okay. And then later you say, in the very next

 6 sentence, you say we use other carriers to route the calls

 7 to Qwest?

 8 A. Yes.

 9 Q. Is that testimony true?

10 A. Yes.

11 Q. What other carriers do you use?

12 A. That's proprietary information.

13 MS. ANDERL: Your Honor, I believe I'm entitled to

14 an answer. We can go into a confidential session.

15 MR. McNAMER: I'm fine if we go into a

16 confidential session.

17 MR. LESSER: I can explain, Your Honor. I can

18 even say this, Qwest does not tell me every carrier that

19 they have that has Qwest long distance. They're not giving

20 me a list of all their carriers that they have as a

21 customer. I mean, they're a competitor of mine.

22 JUDGE TOREM: I understand.

23 MR. LESSER: I'm not trying to be evasive, I just

24 don't want this on the record that my other competitors can

25 read too, or them.

0251

 1 Q. (By Ms. Anderl) Well, let's -- before we go into

 2 the confidential session let me ask another preliminary

 3 question. When you say don't send outbound calls over our

 4 interconnection trunks in Washington are you talking about

 5 local calls?

 6 A. That's what the local interconnection trunks are

 7 for, yes.

 8 Q. Okay. When you say that you use other carriers to

 9 route the calls to Qwest are you also talking about local

10 calls?

11 A. Yes.

12 MS. ANDERL: I believe we would like to go into a

13 confidential session, Your Honor, and get the answer to

14 this.

15 JUDGE TOREM: All right. For anyone that's on the

16 conference Bridge it's now 3:00, we're going to turn off the

17 conference Bridge. I'm looking to see, actually, I can mute

18 the send button on here, so I don't have to turn it off, but

19 you're not going to be able to hear what goes on with the

20 control panel we have here. I forgot we had that ability.

21 So we're going to unmute the Bridge, we'll let you know when

22 I come back on.

23 Ms. Anderl, how long will this line of questioning

24 be?

25 MS. ANDERL: Shouldn't be very long, Your Honor,

0252

 1 maybe 10 minutes.

 2 JUDGE TOREM: So hopefully by ten after 3:00 there

 3 might be some sound being broadcast again on the line. I'm

 4 going to mute that.

 5 MR. McNAMER: Can I also ask who this gentleman is

 6 right here?

 7 MS. ANDERL: Yes. The other person in the hearing

 8 room is Bill Easton, he's a Qwest witness, as well. He

 9 works in the same organization as Ms. Albersheim does. I do

10 not -- since there's no protective order in this matter

11 nobody is a signatory, but we would commit that all Qwest

12 persons present in the room would agree to be bound by the

13 requirements for treating confidential information that are

14 contained in the Washington rules. Alternatively, since

15 Mr. Easton is not a witness in this docket we could ask him

16 to leave.

17 JUDGE TOREM: Counsel?

18 MR. McNAMER: Do you care?

19 MR. LESSER: No.

20 JUDGE TOREM: All right. So, with all the

21 witnesses in the room that are testifying in this docket, or

22 not, we'll treat the following session as confidential and

23 the transcript will be so marked.

24 MS. ANDERL: Thank you, Your Honor.

25 JUDGE TOREM: Go ahead, and we'll start that

0253

 1 confidential session now and repose the question.

 2 (The following portion of this

 3 transcript was removed and placed in a

 4 separate transcript is marked CONFIDENTIAL.)

 5 Q. (By Ms. Anderl) Thank you, Your Honor. Before we

 6 went out of confidential session I had directed Mr. Lesser

 7 to Bench Exhibit 1, Section Roman Numeral V as in "V,"

 8 Subsection, capital A and asked him to please read that

 9 provision into the record.

10 A. Reciprocal traffic exchange addresses the exchange

11 of traffic between North County end users and U.S. West end

12 users. If such traffic is local the provision of this

13 agreement shall apply. Where either party acts as an

14 intraLATA toll provider or intraLATA -- interexchange

15 carrier or where either party interconnects and delivers

16 traffic to the other from the third parties each party shall

17 bill such third parties the appropriate charges pursuant to

18 its respective carriers or contractual offerings for such

19 third-party terminations. Absent a separately negotiated

20 agreement to the contrary the parties will directly exchange

21 traffic between their respective networks without the use of

22 third-party traffic providers -- or transit providers.

23 Q. Thank you. Mr. Lesser, staying on Page 17 of your

24 testimony you describe there Qwest's data request response

25 to NCC's data request No. 21, do you see that?

0254

 1 A. And I just want to add, reading that paragraph

 2 made me think of another answer I may not have answered

 3 accurately of one of your previous questions. What page is

 4 this?

 5 Q. We're on Page 17. And if you want to go ahead and

 6 correct an inaccurate statement that you believe you made,

 7 go ahead and do that now.

 8 A. I believe you asked me if the agreement allows me

 9 to route traffic. And after reading that I would say, yes,

10 as long as you have an agreement with that other carrier.

11 For example, you have an Interconnection Agreement with

12 Qwest that allows you to the bill them reciprocal

13 compensation for traffic that they terminate on your

14 network. So I would think I'm in compliance with that

15 provision because you have an interconnection with that

16 carrier for the termination of traffic. And you're billing

17 XO for termination of traffic.

18 Q. That's what you think that provision reads?

19 A. Yes.

20 Q. Go back to your testimony on Page 17, the

21 rebuttal?

22 A. Yes.

23 Q. And there you discuss Qwest's response to NCC data

24 request No. 21, is that right, middle of the page?

25 A. Qwest now admits they can track incoming minutes?

0255

 1 Q. Yes.

 2 A. Yes.

 3 Q. And the next question is a discussion of Qwest's

 4 data request No. 16?

 5 A. Okay.

 6 Q. Is that right?

 7 A. Yes.

 8 Q. And on the next page, Page No. 18, at the bottom

 9 of the page you also discuss a Qwest data request response

10 No. 14; is that also right?

11 A. I believe so, yes.

12 Q. And so you had read and reviewed Qwest's data

13 request responses to the NCC data request prior to

14 formulating that testimony; right?

15 A. I don't recall, I would assume so.

16 MS. ANDERL: Your Honor, what I'm going to offer

17 up now is the next cross-examination exhibit in line, I

18 believe we are at TL-9?

19 JUDGE TOREM: I think we're at eight.

20 MS. ANDERL: Oh, 8X. Okay. If I may, Your Honor?

21 Q. (By Ms. Anderl) Mr. Lesser, I've handed you a

22 packet of documents that reflect--and your counsel as

23 well--that reflect Qwest's data request responses to NCC's

24 first, second and third sets of data requests; do you see

25 that?

0256

 1 A. Yes.

 2 Q. And were you -- I don't want to ask you anything

 3 that's privileged but were you involved in recreating the

 4 requests themselves, the data requests themselves?

 5 A. I think that's privileged, but yes.

 6 Q. And did you review the responses when they came

 7 in?

 8 A. Yes.

 9 Q. And are these the -- do these appear to be the

10 responses that Qwest provided to you?

11 A. I'll trust you that they are, but I don't

12 remember.

13 Q. And with regard to -- as we go toward the back of

14 the document, maybe it's easier to count from the back

15 forward, the seventh page in from the back, is that the

16 question and answer that addresses the rationale for the cap

17 on the number of minutes?

18 (Ms. Anderl shows the witness.)

19 A. I believe so, yes.

20 MS. ANDERL: Your Honor, what we are looking at is

21 a full page narrative with an attachment that is a table, a

22 spreadsheet.

23 JUDGE TOREM: This is in the third group of

24 stapled documents within this --

25 MS. ANDERL: Yes.

0257

 1 JUDGE TOREM: -- from July 7th that's labeled NCC

 2 3-1 at the top?

 3 MS. ANDERL: Yes, Your Honor.

 4 JUDGE TOREM: So the question is?

 5 Q. (By Ms. Anderl) I wanted to just confirm with

 6 Mr. Lesser that we were all on the same page that this

 7 appeared to be the NCC request and Qwest's response

 8 regarding the rationale for the cap on the minutes?

 9 A. I think the document speaks for itself, I believe

10 that is that.

11 Q. And the table that is attached, have you had a

12 chance to review that document?

13 A. No.

14 Q. Do you see that Qwest represents that it is a

15 document that was prepared based on the total terminating

16 minutes of use per NCC's reciprocal compensation invoices?

17 A. Appears to be the case.

18 Q. And you see that it reflexes a usage cycle of

19 approximately 19 months or so from January of 2007 to July

20 of 2008?

21 A. Yes.

22 Q. And then that would -- that end date would be

23 consistent with the date that you said you stopped billing

24 Qwest?

25 A. Yes.

0258

 1 Q. And these are all, all the trunks in service here

 2 in the far left column, those are codes that represent

 3 central offices in Oregon; is that right?

 4 A. Yes.

 5 Q. And do you have any reason -- looking at these

 6 numbers, do you have any reason to doubt that they

 7 accurately reflect the total terminating minutes of use per

 8 reciprocal compensation invoices?

 9 MR. McNAMER: Objection, calls for speculation.

10 JUDGE TOREM: Overruled.

11 A. It's been two years but maybe.

12 Q. (By Ms. Anderl) Maybe they're accurate and maybe

13 they're not?

14 A. Yeah. I mean it's been two years. They look like

15 they could be accurate, but I can't tell you for sure.

16 Q. And do you have --

17 A. I'll tell you this, if Nancy Batz prepared

18 them--and I trust Nancy Batz, and I'm sure she's the one who

19 prepared them, and she really knows what she's doing--then

20 they're accurate but I just can't tell you, my memory is not

21 that good on things like that.

22 Q. And you see that Nancy Batz is one of the persons

23 listed as a respondent?

24 A. No, I didn't know that, but I just know Nancy

25 handles those things.

0259

 1 Q. Well, thank you. If you look at the bottom,

 2 bottom line as it were, does that appear to show then the

 3 minutes of use based on actual use per DS1 trunk?

 4 A. Yes.

 5 Q. And without reading any numbers into the record,

 6 every single one of those per month minutes of use is under

 7 the 240,000?

 8 A. I don't know if it gives a breakdown per T1 of

 9 minutes of use.

10 Q. Do you see the very -- the furthest left cell on

11 the bottom, bottom left?

12 A. Okay. I can tell you that's an average, that does

13 not mean that --

14 Q. I see what you're saying.

15 A. -- you know, for example, that CLLI code, C-L-L-I,

16 from -- which is from -- like I'll just pick the bottom one,

17 for example, PTLDOR 13C9T didn't have a million minutes and

18 the CLLI code above that PTLDOR 1350T had 200,000 minutes,

19 and you average the two together and it's 600,000 minutes.

20 All this is is an average of all our T1's. And I can tell

21 you from experience, based on different locales, sometimes

22 we have higher utilization. Like, for example, Tucson, that

23 one I received a -- I won't -- I don't want to go on too

24 far.

25 Q. Okay. Well, then maybe we should stop there.

0260

 1 Mr. Lesser, this packet of documents that's been

 2 marked as TL-8X, does that contain the data request

 3 responses from Qwest that you referred to in your reply

 4 testimony?

 5 A. I believe so.

 6 MS. ANDERL: Your Honor, we would offer this

 7 packet?

 8 MR. McNAMER: Object, I object.

 9 JUDGE TOREM: On what basis?

10 MR. McNAMER: For the most recent thing that she's

11 offering this exhibit it wasn't authenticated by any of her

12 witnesses. So there's been no testimony that authenticates

13 this, and there's no testimony that supports this other than

14 his testimony that this may be right. So I don't think this

15 is evidence that can come in without her having put on a

16 witness to authenticate the evidence.

17 I mean all of the answers here, to the extent that

18 she didn't go over them with her own witnesses, it's not

19 evidence, it's not direct evidence, it's not supplemental

20 evidence. And she had a chance to put on this evidence. If

21 she wanted this evidence put on she needed someone to

22 authenticate it. So to the extent that she didn't have any

23 of this authenticated I object to all of it.

24 JUDGE TOREM: I am going to overrule the

25 authentication issue, but I will direct to Ms. Anderl that

0261

 1 we haven't used the majority of what's in front of me. I

 2 know I'm familiar with some of this from the discovery

 3 dispute that I resolved last month. But which pages of this

 4 are relevant for the inquiries you just made, just the ones

 5 that are referred to in his testimony and this 3-1 that we

 6 just discussed with the table?

 7 MS. ANDERL: Yes. And there are more than just

 8 the ones that I called out in his testimony. He refers to

 9 other data requests in his testimony, as well. I agree that

10 not all of them. Certainly I don't mind going through and

11 pulling the ones out that I believe are not referred to and

12 we can then debate whether that's accurate or not, but --

13 JUDGE TOREM: Well, I'm not going to have you

14 debate the authenticity or the accuracy, I'll give it

15 appropriate weight based on the supporting testimony. I

16 understand that for cross-examination we have a little bit

17 wider scope of what can be used. But I think I do

18 appreciate if we can cut this down to what the relevant

19 pages are rather than wholesale offer everything that you

20 responded to in the course of the litigation. If we go that

21 route we will just get 300 page documents wily-nilly.

22 MS. ANDERL: No, I didn't intend that. It's

23 simply -- there's quite a bit of information, I think, that

24 Mr. Lesser put in that said, well, Qwest said this and Qwest

25 said that, and a lot of it was in the discovery. So I

0262

 1 wanted to make sure we had the appropriate context, because

 2 in some cases he's interpreting Qwest's data request

 3 responses, and I think it's only fair on cross-examination

 4 to present those responses so that they can speak for

 5 themselves.

 6 JUDGE TOREM: Right. And that's why I'm admitting

 7 the ones that you referenced. If there are other pages that

 8 you think are worth excerpting from this then let's identify

 9 those to opposing counsel and mark the pages accordingly.

10 So let's hold TL-8X out now, and you'll decide

11 which pages of it will become the actual exhibit that will

12 be offered. But for right now it's still three different

13 sets of responses from Qwest and North County's data

14 requests. There are three different sets and let's sort

15 through which ones of those and then I guess re-fabricate

16 this exhibit a little bit later this afternoon.

17 MS. ANDERL: Certainly, Your Honor.

18 JUDGE TOREM: Let's set that aside for now. What

19 other questions do you have for this witness?

20 MS. ANDERL: If I might have a minute to review my

21 notes, that may have been all of them.

22 (Brief break as Ms. Anderl reviews her

23 notes.)

24 MS. ANDERL: Your Honor, just one other area, one

25 more exhibit and authentication, a couple of questions and

0263

 1 we'll be done.

 2 JUDGE TOREM: Okay.

 3 MS. ANDERL: So, the next exhibit I'm going to

 4 mark will be 9X, TL-9X. And it's a portion of North County

 5 Communications Corporation's FCC Tariff No. 2. And I've

 6 handed that document up to the bench and the witness and to

 7 opposing counsel.

 8 Q. (By Ms. Anderl) Mr. Lesser, do you recognize the

 9 document that I've placed in front of you by its cover

10 sheet?

11 A. Yes.

12 Q. And it indicates on the bottom that it was issued

13 by Todd Lesser, President, is that you?

14 A. Yes.

15 Q. And the first 10 sheets are excerpted, and then

16 you will see that there's a gap, and then there is original

17 sheet No. 56, and then another gap, and original sheets 67

18 through 75. And the only reason I didn't include them all

19 is because -- well, I had nothing of interest in the

20 excluded sheets but I can provide a complete copy if either

21 counsel or Your Honor wants one. Does that, based on the

22 opportunity that you've had at this moment to review that

23 document, Mr. Lesser, does that appear to be excerpts from

24 your Interstate Access Services tariff on file with the FCC?

25 A. Yes.

0264

 1 Q. And on page original sheet No. 8, and the

 2 pagination on this is in the upper right-hand corner?

 3 A. Yes.

 4 Q. You have a definition for common channel

 5 signaling?

 6 A. Yes.

 7 Q. And that's an out-of-band signaling?

 8 A. Yes.

 9 JUDGE TOREM: Let me just be clear for the record.

10 This is actually the first revised sheet No. 8 that canceled

11 the original sheet No. 8 in the language of our tariffs?

12 MS. ANDERL: That's correct. Thank you, Your

13 Honor, for the correction.

14 JUDGE TOREM: So that's the only sheet No. 8 that

15 we'll be referring to, but I don't want the record to be

16 confusing later.

17 MS. ANDERL: Thank you.

18 Q. (By Ms. Anderl) Then do you see on first revised

19 sheet No. 10, canceling original sheet No. 10, a definition

20 for Signaling System 7.

21 A. I think I jumped from original sheet 9 to 56. Oh,

22 and then it goes back to 10.

23 Q. Oh, okay.

24 A. They were just stapled wrong, but, yes, I see a

25 definition of SS7.

0265

 1 Q. Are there some access services that you offered to

 2 your customers that require SS7 connectivity?

 3 A. No.

 4 Q. Are there some where it's permitted?

 5 A. Yes.

 6 Q. And is an example of that described on the bottom

 7 of original sheet No. 56, the paragraph that starts in

 8 addition?

 9 A. Yes.

10 Q. And then for your -- the billing and collections

11 services, the description of which starts on Page 69?

12 A. Yes.

13 Q. That's a database service that you provide to your

14 end users?

15 A. Billing name and address?

16 Q. Yeah, is that right, the database service?

17 A. I don't know if I would refer to that as a

18 database service. It just means that if someone gives an

19 ANI or we will give them back the billing name and address

20 of the customer.

21 Q. Okay. And on page original sheet No. 70, 4.1.1 C

22 it says the company will provide the most current BNA,

23 that's all caps, BNA information resident in its database;

24 is that right?

25 A. Yes.

0266

 1 MS. ANDERL: Your Honor, we move the admission of

 2 TL-9X and would have no further questions at this time.

 3 MR. McNAMER: No objection.

 4 JUDGE TOREM: All right. TL-9X is admitted.

 5 We're going to hear the revised version of TL-8X

 6 at some point later to close up shop and evidence that Qwest

 7 wants to offer on cross-exam.

 8 MS. ANDERL: Yes, I think if we have another five

 9 minute break I can probably identify the documents that I

10 want to admit.

11 MR. McNAMER: I would like another five minute

12 break before I start my redirect.

13 JUDGE TOREM: Can you estimate the length of your

14 redirect exam?

15 MR. McNAMER: Twenty minutes.

16 JUDGE TOREM: Let's go ahead and make it 10

17 minutes. At 20 minutes to 4:00 we'll come back. We'll be

18 at recess until then.

19 (Break taken from 3:29 to 3:44 p.m.)

20 JUDGE TOREM: We're ready to go back on the

21 record. Sorry that took me a little longer to get back.

22 We'll go to your redirect.

23 MR. McNAMER: Sure.

24 ///

25 ///

0267

 1 REDIRECT EXAMINATION

 2 BY MR. McNAMER:

 3 Q. The first thing I want to address, Mr. Lesser, is

 4 the judge's -- the judge pointed out that you seemed

 5 reticent to answer some questions about your company. And I

 6 just wanted to give you a chance to explain your reticence a

 7 little bit?

 8 A. Yeah. We have been in litigation a long time with

 9 Verizon. And we sued Verizon in Illinois. And we were

10 the -- in their entire history we're the only company that

11 got a judgment that they used their monopoly status to put

12 us out of business. And they've done a lot of unethical

13 things. They hired a private investigator to talk to an old

14 girlfriend of mine. They hired a special law firm to dig up

15 dirt about companies. And their whole speciality is to try

16 to kind of basically blackmail you to get their settlement.

17 And I've just received advice from counsel, don't answer any

18 questions you don't have to. And I don't mean to be evasive

19 here. And Qwest has always been very ethical. I think

20 they're wrong technically on things, but they've never lied.

21 But these other people have changed documents and did every

22 unethical thing in the book. So that's why I just can't

23 answer those questions.

24 Q. So can you explain how Qwest can track MF if it

25 wanted to, how would it do that?

0268

 1 A. Okay. Well, there's several different ways. I

 2 mean I should explain, these are several million dollar

 3 switches that are highly configurable, and they've been

 4 using them for years.

 5 Now, you can track MF in multiple different ways.

 6 For example, let's assume I stay MF. Since the rest of

 7 their network is SS7 they have a record of every call that

 8 comes in and every call that goes out. Well, they know the

 9 call goes to me because they can tell that by the phone

10 number that's dialed. So, if they did calculations on their

11 internal SS7 network they can calculate the minutes. That's

12 how I assume -- I mean I've never asked AT&T how they do it,

13 but that's how they do it even with my MF trunk groups. I

14 mean I have SS7 with them in some areas but I have MF in

15 others. And they track it that way. So that's one way to

16 track it.

17 The second way to track it is really the way that

18 was done, you know, since 1984. I mean these switches --

19 and it's all documented in the LSSGR. They have something

20 called call detail recording, and every time someone makes a

21 call you just write a record. And they can keep track of

22 all those records in the tandem for our trunk group. And

23 it's just, again, a class of service option that you just

24 enter in and they can record all those calls and then use

25 that to validate our bills.

0269

 1 Q. When you say class of service option you can just

 2 enter in, what do you mean by that?

 3 A. It's an option. It's very similar to you can

 4 order a car and you can order air conditioning or you can

 5 order it without air conditioning, you can order it by

 6 color. When you build a trunk group in their switch there's

 7 a whole bunch of different options that you click, you know,

 8 similar to a web page, you click a box. Do you want air

 9 conditioning? Do you want tinted roofs? Well, you click

10 all the different things you want. And one of those things

11 are record the calls and send it to the call detail report.

12 So even basic switches, you can have a $1,000

13 phone system at a law firm, keeps track of every outbound

14 call it makes, every inbound call, which extension it goes

15 to. You can even set it to program an account code. So,

16 it's a really -- it's a basic telecom thing. And Qwest

17 apparently is choosing not to use that feature.

18 Q. How do you know that, how do you know how Qwest's

19 switches work?

20 MS. ANDERL: Your Honor, I'm going to object at

21 this point. I believe this is an entire area of the

22 technical capabilities of the switch, what can they do? how

23 do you know what they can do? that I fairly carefully

24 avoided on my cross-examination and did not open up. This

25 is to supplemental direct testimony.

0270

 1 JUDGE TOREM: I concur. Are we having redirect

 2 here or is it going to be supplemental testimony.

 3 MR. McNAMER: Well, if Your Honor believes it's

 4 supplemental testimony and allows me to do supplemental

 5 testimony I can do that. But I think it's redirect because

 6 one of the issues that came up on direct was the issue of --

 7 I believe the issue of cap on minutes that came up on

 8 direct. And this relates to the cap -- I mean the ability

 9 of Qwest to track relates to ANI which she spent a ton of

10 time on, which will be a follow-up question on this, and it

11 also relates to the cap. And so this is just background.

12 My next questions will be about ANI and about the cap.

13 JUDGE TOREM: Let's move to those questions.

14 Q. (By Mr. McNamer) So, just to summarize, you know

15 for a fact that they can track it if they wanted to; is that

16 correct?

17 A. Yes.

18 Q. And have you asked them to track it?

19 A. Yes.

20 Q. And how would they track it, I mean what would

21 they provide you?

22 A. They could do exactly what AT&T provides me. AT&T

23 sends me an e-mail every month saying here's all your local

24 calls, all your intraLATA toll calls and then I use their

25 data set that they give me and I create a bill to send them.

0271

 1 Q. And they in your -- in the cross questioning there

 2 was a lot of questions about whether or not the definition,

 3 the old definition of ANI included local traffic. When you

 4 entered into this agreement 13 -- the original agreement 13

 5 years ago, did Qwest ever make any claims that they couldn't

 6 track your minutes?

 7 A. No.

 8 Q. And so up until this dispute arose, relating both

 9 to the tracking issue and to their request for a new ICA,

10 did you have any need to get the ANI from them?

11 A. No.

12 Q. But now that they're claiming in this proceeding

13 that they can't track your minutes, and using that claim as

14 a basis for capping your minutes at 240,000 and not allowing

15 your to originate, at this time their provision of ANI is

16 important; correct?

17 A. Yes, absolutely.

18 Q. And if they provided you the ANI, which you've

19 already told us that they're completely capable of doing,

20 and other people do, if they provided you that then they

21 wouldn't have any reason or any excuse for not paying the

22 full amount of minutes that you use; is that correct?

23 A. Correct.

24 Q. And they wouldn't have any ability to try to limit

25 your origination of calls; correct?

0272

 1 A. Correct.

 2 Q. Because they would have all the information that

 3 they say they need?

 4 A. Yes.

 5 Q. Then you would be able to provide them with a bill

 6 that says, that gives them the geographic?

 7 A. Yes. What you do is it's called swapping EMI

 8 records which stands for, I think its -- I don't know what

 9 EMI is, maybe electromechanical interface or something. You

10 create a dataset. And in that dataset there's a standard,

11 industry standard billing protocol where you give the

12 originating ANI, you give the terminating phone number and

13 then you even say what type of call it is, if it's local,

14 intraLATA toll, interLATA toll. And so what we would do is

15 we would give them a bill and we would say -- and if they

16 asked for it we would say here's the backup data. And all

17 the phone numbers that -- all the ANI's that they gave me I

18 would give them the dataset to justify our bill. And it's,

19 again, to turn on ANI, it's click a box.

20 Q. And right now does Qwest segregate your bill

21 jurisdictionally, segregate your trunk groups

22 jurisdictionally?

23 A. Yes. Like on one of the documents that Nancy Batz

24 prepared showed I have different trunk groups and they

25 showed three, I think it was three different tandems. And

0273

 1 those tandems, one is a long distance tandem, one is a Qwest

 2 local tandem and the third one I forget what it is. But

 3 they segregate them all, all different types of traffic.

 4 Q. So even right now, just based on which tandems the

 5 calls are coming from, Qwest can tell whether it's local or

 6 long distance?

 7 A. Yes. I mean even their rudimentary peg count way

 8 of doing it by counting out the minutes and calls without

 9 having, you know, an idea of what the phone numbers are you

10 can still track it down that way, too.

11 Q. And do you have -- I think you may have heard

12 testimony by Mr. Linse that Qwest converted an end office

13 for $30,000 that they just converted from MF to SS7. Do

14 your MF offices, at least the one in Portland which you use

15 for Washington, do you have the capability of converting it

16 to SS7?

17 A. No. I mean the term is we call it a forklift

18 upgrade. Our switch is not SS7 capable. We would have to

19 totally get rid of our switch and put in a new one.

20 Q. Are some MF switches able to upgrade, upgradeable

21 to SS7?

22 A. Yes. When you have a contract with Lucent or

23 Northern Telecom these switches are very powerful and you

24 buy the options you need. If you need it to be a call

25 center, you know, because some people don't use them as

0274

 1 central offices, they use them as a huge office PDX like a

 2 university. So you buy the package and then they turn on

 3 those options as available software packages or options in

 4 the switch.

 5 So some of the switches if you want to turn on the

 6 SS7 it may require hardware upgrades and it will definitely

 7 require you to buy that license from Lucent or Northern

 8 Telecom to turn on that capability. It's not a -- they

 9 don't give you the switch and say you can do whatever you

10 want with it.

11 Q. But the ones you have for Washington don't even

12 allow you the ability to do that?

13 A. Correct.

14 Q. Is there any reason to have a 240,000 minutes per

15 DSI cap on billable minutes?

16 A. No. I'll give you an example why. And this is

17 from an engineering and billing standpoint. I received an

18 e-mail during this hearing. I get something called the TGSR

19 report from Qwest. Qwest tells me whenever my trunk groups

20 are busying out. I have a trunk group in Tucson that has

21 two T1's in it, 48 lines. Now, if you do the math, you

22 know, busy -- you know, 24 lines, busy 24 hours a day, you

23 know, for one month, that equals close to a million minutes.

24 Now, these T1's have close to 2 million minutes on it

25 between the two. And the report that Qwest tells me is that

0275

 1 I only need -- I have a 1.9 percent blockage and they're

 2 requesting that I only order one more T1. So under their

 3 engineering analysis they say I should have 72 trunks.

 4 Well, under this Interconnection Agreement for me

 5 to get paid for all of those I would have to order 10 T1's,

 6 eight additional ones that even according to their

 7 engineering analysis would be sitting their idle because I

 8 only need one more T1.

 9 Q. So, just to summarize what you just said, Qwest in

10 Arizona right now you have two DS1 lines?

11 A. Yes.

12 Q. Each of them is working at about a million minutes

13 a month?

14 A. Yes.

15 Q. And Qwest literally during this hearing sent you

16 an e-mail update or something that said your one point

17 something percent over, we want you to order a new line?

18 A. Yes.

19 Q. But if you were working under the terms of this

20 agreement with Qwest also this would require you to have 2.1

21 million minutes which would require you to order eight new

22 lines?

23 A. Yes, or equivalent to -- to have 2.4 million

24 minutes at 240,000 times ten I would have to have 10 T1's or

25 otherwise I couldn't bill them for all the minutes. And

0276

 1 that's just not what the industry does. The industry bills

 2 you on usage. Even for them, if I made a whole bunch of

 3 outbound calls under my existing agreement they're not going

 4 to say, oh, at 240,000 minutes it's free. They're going to

 5 bill me the whole million minutes.

 6 Q. And, so, is your position that if -- the fact that

 7 Qwest has switched to SS7, do you have any problem with the

 8 fact that Qwest decided to switch to SS7?

 9 A. No. We have another saying in the industry, like

10 a computer, it's as fast as the day I bought it. Now,

11 sometimes you get these young guys that say, oh, why don't

12 you get the latest and greatest computer? I'm going to say,

13 well, it's as fast as the day I bought it. If it's doing

14 the job you don't need to upgrade it. And for me, my MF

15 trunk groups and my switch is working perfect, it's worked

16 for 13 years. Will I have SS7 in ten years? Actually,

17 probably not, I'll probably switch to Voiceover IP because I

18 think SS7 is, you know, for certain things, but most people

19 are moving to Voiceover IP, most other companies I talk to

20 interconnect by Voiceover IP now. So I'll probably skip

21 that technology, go from MF to Voiceover IP. But if I had

22 an application where a customer says, you know, needs the

23 features that SS7 has I would order it.

24 Q. Other than being arbitrary, the $240,000 -- the

25 240,000 minutes being arbitrary, does it effectively end up

0277

 1 forcing you to use your network inefficiently?

 2 A. Yes. For example, that Tucson example. From an

 3 engineering standpoint--this is separate from billing--I

 4 need three T1's, I need 72 trunks. But because there's this

 5 financial incentive where I can't bill them for those

 6 minutes I would have to order a total of 10 T1's and have

 7 seven of them sit idle which is a total inefficient use of

 8 the network.

 9 MR. McNAMER: I don't think I have any other

10 questions.

11 JUDGE TOREM: Any recross?

12 MS. ANDERL: May I have a minute?

13 (Brief break as Ms. Anderl speaks with

14 her witnesses.)

15 MS. ANDERL: I don't have any recross.

16 JUDGE TOREM: All right. Any other evidence for

17 North County?

18 MR. McNAMER: No, Your Honor.

19 JUDGE TOREM: Then I think the only other issue we

20 have to take care of on the record today is the excerpts

21 from what was originally proposed as TL-8X. Ms. Anderl, did

22 you have a chance to go through those?

23 MS. ANDERL: Yes. Mr. McNamer and I spoke. We'll

24 withdraw from the third set questions and responses two

25 through five. And so that would keep in the first set, the

0278

 1 second set and response 3-1 which is the information with

 2 regard to the 240,000 minutes.

 3 JUDGE TOREM: Okay. So just the last several

 4 pages after the table are being pulled?

 5 MS. ANDERL: Yes, let me -- I think it's the last.

 6 I just lost my packet.

 7 JUDGE TOREM: I'll just describe it then. It's

 8 the June 15th responses, the July 9th supplemental response

 9 to data request 1-11, the June 23rd second set of responses,

10 and the July 7th responses but only to the first question,

11 first data request?

12 MS. ANDERL: That is what that exhibit will be now

13 as offered, yes.

14 JUDGE TOREM: Okay. So what we're leaving out for

15 completeness is request Nos. 2 through 5, the last four

16 pages?

17 MS. ANDERL: Yes.

18 JUDGE TOREM: That's the TL-8X that you want to

19 offer?

20 MS. ANDERL: Yes, it is, Your Honor.

21 JUDGE TOREM: Any objection?

22 MR. McNAMER: Same foundation authentication

23 objection which you already ruled upon.

24 JUDGE TOREM: Again, the reason for that is if

25 they have been referred to by your witness, and also

0279

 1 discussed in some degree, then I'm going to allow those. As

 2 far as the authentication, I want to note that I'm going to

 3 look at the weight of the evidence on what's used here, but

 4 it will allow some use during the briefing for both of you.

 5 If I don't find that there's adequate authenticity or

 6 adequate background for it then I just won't give it much

 7 weight in writing up the arbitration decision. So that will

 8 be admitted as recomposed.

 9 Counsel, anything else for the record today then

10 respective of both of your clients?

11 MS. ANDERL: No, Your Honor.

12 JUDGE TOREM: We have a due date, just to

13 reconfirm, of August 10th, and that will be simultaneous

14 briefs, due at close of business on that particular, I think

15 it's a Tuesday, yes, Tuesday the 10th.

16 MS. ANDERL: So that's 3 p.m., Your Honor?

17 JUDGE TOREM: If you're going to file it

18 electronically by 3 p.m. according to our rules. And then

19 the hard copy would be due by noon the following day. Or

20 you can just submit the hard copy, have it served and

21 entered here by 5:00 on the due date itself.

22 MS. ANDERL: Thank you.

23 JUDGE TOREM: Mr. McNamer, anything else?

24 MR. McNAMER: No, Your Honor.

25 JUDGE TOREM: Okay. As far as ordering

0280

 1 transcripts, see the court reporter because the Commission

 2 always orders the original plus one. And I believes there's

 3 other protocols for the folks appearing in front that want

 4 to order their own copies of the transcript.

 5 Okay. Then we are adjourned here at about five

 6 after 4:00.

 7 (Whereupon, the proceedings concluded

 8 at 4:05 p.m.)

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 1 C E R T I F I C A T E

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 3 I, TAMI LYNN VONDRAN, a Certified Court Reporter,

 4 do hereby certify that I reported in machine shorthand the

 5 foregoing proceedings in the above-entitled cause; that the

 6 foregoing transcript was prepared under my personal

 7 supervision and constitutes a true record of the testimony

 8 of the said witnesses and proceeding.

 9 I further certify that I am not an attorney or

10 counsel of any parties, nor a relative or employee of any

11 attorney or counsel connected with the action, nor

12 financially interested in the action.

13 DATED at Edgewood, Washington this 26th day of

14 July, 2010.

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 Tami Lynn Vondran, CCR

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