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1 BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION

2 COMMISSION

3 In the Matter of the Continued )  
Costing and Pricing of ) Docket No. UT-003013  
4 Unbundled Network Elements and ) Volume VIII  
Transport and Termination. ) Pages 999 - 1208  
5 -----

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7 A hearing in the above matter was held on  
8 August 25, 2000, at 8:55 a.m., at 1300 South Evergreen  
9 Park Drive Southwest, Olympia, Washington, before  
10 Administrative Law Judge LAWRENCE BERG, Chairwoman  
11 MARILYN SHOWALTER, Commissioner RICHARD HEMSTAD.

12

The parties were present as follows:

13

14 QWEST CORPORATION, by LISA A. ANDERL,  
Attorney at Law, 1600 Seventh Avenue, Suite 3206,  
Seattle, Washington 98191.

15

16 THE WASHINGTON UTILITIES AND TRANSPORTATION  
COMMISSION, by SHANNON E. SMITH, Assistant Attorney  
General, 1400 South Evergreen Park Drive Southwest,  
17 Post Office Box 40128, Olympia, Washington 98504-0128.

18

19 VERIZON NORTHWEST, INC., by JENNIFER L.  
McCLELLAN and W. JEFFERY EDWARDS, Attorneys at Law,  
Hunton and Williams, 951 East Byrd Street, Richmond,  
Virginia 23219.

20

21 COVAD COMMUNICATIONS, by CLAY DEANHARDT,  
Attorney at Law, 4250 Burton Drive, Santa Clara,  
California 95054.

22

23 NEXTLINK WASHINGTON, ELECTRIC LIGHTWAVE,  
INC., ADVANCED TELCOM, INC., NEW EDGE NETWORKS, INC.,  
NORTHPOINT COMMUNICATIONS, McLEOD USA, AT&T, by GREGORY  
24 J. KOPTA, Attorney at Law, Davis, Wright, Tremaine,  
LLP, 1501 Fourth Avenue, Suite 2600, Seattle,  
25 Washington 98101.

01000

1 RHYTHMS LINKS, INC., TELIGENT SERVICES, INC.,  
2 TRACER, by ARTHUR A. BUTLER, Attorney at Law, Ater  
3 Wynne, 601 Union Street, Suite 5450, Seattle,  
4 Washington 98101-2327.

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Kathryn T. Wilson, CCR

Court Reporter

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1 WITNESS:

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RICHARD CABE

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01005

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

2 JUDGE BERG: Let's be on the record. Today's  
3 date is August 25, 2000. This is continued hearings in  
4 Docket No. UT-003013. For today's session, we will  
5 begin with cross-examination of Qwest witness Mark  
6 Reynolds, but before we begin, there are several  
7 administrative matters to get on the record.  
8 Mr. Deanhardt, I'll just note that there has been a  
9 distribution of Exhibit 6, which was the reduction of  
10 the easel drawing to a one-page exhibit. Would you  
11 provide just a little additional explanation for what  
12 you did?

13 MR. DEANHARDT: I have distributed Exhibit 6  
14 to the Bench and to all parties. What I have done is  
15 taken the easel chart that I created during the  
16 cross-examination of Mr. Thompson and reduced it to  
17 writing. I did combine the two pages so that the  
18 second page of the chart, the text that was on the  
19 second page of the chart is now at the end or at the  
20 bottom part of Exhibit 6. In between each different  
21 set of calculations, there were three phases of that  
22 cross-examination, and there is in the two columns both  
23 for CLEC and Qwest the word "end" that indicates where  
24 each of those phases ended and the next phase began.  
25 The other change that I made was in the chart, I had

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1 used the word "direct" in both directions.

2 In Exhibit 6, I have tried to simply take  
3 what we had put on the chart and make it correspond  
4 with each column without making it confusing by making  
5 it try to refer to both sides of the same place.

6 Mr. Thompson from Qwest has reviewed Exhibit 6 and I  
7 believe is in agreement that it accurately reflects  
8 what was on the chart, which I provided to him for his  
9 review in comparison with Exhibit 6.

10 JUDGE BERG: So my understanding is two  
11 sheets have been reduced to one, so the information on  
12 the left-hand side of the page roughly corresponds to  
13 Exhibit 41 or is derived, related to Exhibit 41, and  
14 the information on the right-hand side would be related  
15 to Exhibit 42?

16 MR. DEANHARDT: Actually, not quite. The  
17 sheet is divided into two columns, CLEC and Qwest.  
18 Going down the rows, the first two rows are Exhibit 41,  
19 and the third set of rows after the second "end" is  
20 what corresponds to Exhibit 42.

21 JUDGE BERG: Thank you very much, and I  
22 understand there is no objection from any other party  
23 to the substitution of the typed-up replacement Exhibit  
24 6 for the two large sheets that were produced.

25 MR. DEANHARDT: That's correct, Your Honor.



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1                   JUDGE BERG: So Exhibit 6 is typed up on a  
2 single page and will be received as a substitute for  
3 Exhibit 6 as previously admitted. Mr. Deanhardt, I  
4 understand that you also wanted to address Mr. Klick's  
5 rebuttal testimony stricken in the Commission's Sixth  
6 Supplemental Order.

7                   MR. DEANHARDT: That's correct, Your Honor.  
8 In reviewing Mr. Klick's testimony and comparing it to  
9 the Sixth Supplemental Order, and this is the testimony  
10 that's been marked as T-182, we determined that a  
11 portion of the testimony that had been stricken by page  
12 and line number was actually substantively contained  
13 material regarding collocation that the Commission had  
14 determined should remain in his testimony, so I have,  
15 prior to beginning the session today, conferred with  
16 both Qwest and Verizon and determined that subject to  
17 agreement, the testimony will be reinstated as follows:  
18 Exhibit T-182, Page 30, Line 15 through Page 32, Line  
19 5, except that on Page 31, the testimony that reads,  
20 "(2) They seek to charge CLEC's higher NRCs for  
21 provisioning which are a result of their own  
22 inefficient OSS systems," and that appears on Lines 17  
23 and 18 of Page 31. That remains stricken. On Page 32,  
24 the rows on the table that appears on Page 32 for  
25 install and disconnect remain stricken. All of the

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1 rest of the testimony between Page 30, Line 15, and  
2 Page 32, Line 5, is to be reinstated into the record.

3 JUDGE BERG: Are there any objections or  
4 opposition to that representation?

5 MS. ANDERL: No, Your Honor. Qwest agrees  
6 with that.

7 MR. EDWARDS: Verizon agrees.

8 JUDGE BERG: The testimony as described by  
9 Mr. Deanhardt will be reinstated into Mr. Klick's  
10 rebuttal testimony for the record. I'll address that  
11 in either a follow-up supplemental order or in the next  
12 order entered by the Commission in this proceeding so  
13 that it's clear that that's been done.

14 Anything else from the parties before we  
15 begin? Hearing nothing, let me ask that the reporter  
16 at this point in the transcript insert from the exhibit  
17 list as if read in full the description of exhibits in  
18 the marking of exhibits for Mr. Reynolds, T-140. In  
19 addition, Data Request WUTC 04-039 is identified as  
20 Exhibit 141. Also, I'll have the reporter insert  
21 exhibits described and numbered for Mr. Inouye, that  
22 being Exhibits T-130 through 134. Mr. Deanhardt, who  
23 will be your first witness when we finish with Qwest  
24 this morning?

25 MR. DEANHARDT: Mr. Klick, Your Honor, and

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1 then Dr. Cabe will be the second to the last for us.  
2 JUDGE BERG: Then at this time I would ask  
3 also that the description of exhibits for Mr. Klick,  
4 beginning with Exhibit T-180 through CT-182 and C-184  
5 through C-185, be inserted into the record as if read  
6 in full.

7 Mr. Reynolds: T-140 is Rebuttal Testimony  
8 (MSR-RbT1).

9 Mr. Inouye: T-130 is Rebuttal Testimony  
10 (CTI-T1). 131 is Witness Qualifications (CTI-2). 132  
11 is Oregon PUC Decision (CTI-3). 133 is Rate of Return  
12 Report (CTI-4). 134 is WA Intrastate Results of  
13 Operations.

14 Mr. Klick: T-180 is Response Testimony  
15 (JCK-1T). 181 is Curriculum Vitae. T-182 is  
16 Nonconfidential Rebuttal Testimony (JCK-RT). CT-182 is  
17 Confidential Rebuttal Testimony (JCK-RT). 183 is  
18 blank. C-184 is Line Sharing Costs (JCK-4). C-185 is  
19 Ordering and Provisioning Costs (JCK-5).

20 (Discussion off the record.)

21 (Witness sworn.)

22 JUDGE BERG: Ms. Anderl?

23 DIRECT EXAMINATION

24 BY MS. ANDERL:

25 Q. Good morning, Mr. Reynolds. Would you please

01010

1 state your name for the record?

2 A. My name is Mark Reynolds.

3 Q. Did you have cause to file in this docket  
4 rebuttal testimony that has been marked as Exhibit  
5 T-140?

6 A. Yes, I have.

7 Q. Do you have that before you?

8 A. Yes, I do.

9 Q. Do you have any changes or corrections to  
10 that testimony?

11 A. No, I do not.

12 MS. ANDERL: Your Honor, we would offer T-140  
13 and make Mr. Reynolds available for cross.

14 JUDGE BERG: Hearing no objection, T-140 is  
15 admitted.

16 MS. ANDERL: We would also stipulate the  
17 admission of Exhibit 141.

18 MS. SMITH: Thank you.

19 JUDGE BERG: Exhibit 141 is also admitted.

20 Any questions from the other parties? Dr. Gabel, I  
21 believe you had a question or questions for  
22 Mr. Reynolds.

23

24 CROSS-EXAMINATION

25 BY DR. GABEL:

01011

1 Q. Yes. First, Mr. Reynolds, could you  
2 summarize your position around Page 4 of your testimony  
3 regarding the degree to which it is appropriate for the  
4 Commission to take into account retail prices when  
5 setting the prices for UNEs?

6 A. Yes. I think our position more or less dates  
7 back to when the Commission was considering our  
8 unbundled loop rate, and at that point in time, it  
9 seems they made a specific decision not to take into  
10 account the retail rates or the subsidies that may have  
11 come from those retail services when setting the price  
12 for the unbundled loop. Instead, they chose to take a  
13 very specific TELRIC-based cost methodology to  
14 determine the costs and prices for UNEs, and they've  
15 consistently adhered to that to this point in time, and  
16 we certainly encourage them to continue to do that,  
17 because we think bringing in rate case issues and  
18 earnings issues will overly complicate this proceeding,  
19 and we believe that that's what the Congress had in  
20 mind when they specifically prohibited the  
21 consideration of earnings and rate-of-return type  
22 calculations in the determination of UNE rates.

23 Q. Am I correct, Mr. Reynolds, in the prior  
24 generic cost docket, it was U S West's position, and  
25 specifically, you testified that it was appropriate for

01012

1 the Commission to take into account retail rates when  
2 setting UNE prices?

3 A. We did testify at that point in time that as  
4 we were replacing formerly retail revenue streams with  
5 wholesale revenue streams, we should take into account  
6 the public interest of maintaining the Commission's  
7 public policy goals through a markup on the wholesale  
8 rates.

9 At that point in time, the FCC's pricing  
10 rules had been suspended and their interpretation of  
11 the Act had been suspended. I think about halfway  
12 through that docket, it became clear -- I can't  
13 remember exactly what court action took place, but it  
14 became clear the FCC's pricing rules were reinstated  
15 and that TELRIC would be the basis for those elements,  
16 and I believe U S West advocacy fell by the wayside,  
17 and I might add at that point in time, Staff was also  
18 somewhat favorable to the idea.

19 DR. GABEL: Thank you. I have no further  
20 questions.

21 JUDGE BERG: Any questions from the Bench?

22

23 CROSS-EXAMINATION

24 BY CHAIRWOMAN SHOWALTER:

25 Q. I just want to follow up a little bit on that

01013

1 discussion. If we decide what the cost of, say, line  
2 sharing is in this proceeding without respect to rates  
3 and just establish a cost -- we don't know if it's  
4 going to be zero or a dollar or nine dollars or ten  
5 dollars -- do you agree that it's nevertheless  
6 possible, absent other restrictions, to then go on,  
7 maybe not in this proceeding but in another, to look at  
8 the question of what that does to your revenue.

9           In other words, if the amount we determine is  
10 quite significant, say, as you suggest, half of a loop,  
11 is it your position that we are just blind to the  
12 consequences of that or blind in this particular  
13 proceeding or what?

14           A. I think the Commission does have a  
15 responsibility to evaluate their earnings of the  
16 companies to insure they are not overearning, but I do  
17 think they are offsetting things that happen as you put  
18 these rates into effect.

19           If you think about the unbundled loop rate,  
20 for example, of \$18.16, to U S West, that rate  
21 represents a replacement of two different types of  
22 revenue streams, either that comes from a business  
23 service, which may be well over \$50, or that comes from  
24 a residential service, and at that point in time, we  
25 thought it was important for the Commission to

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1 recognize that those revenue streams might be going  
2 away, but instead of, I guess, bogging this process  
3 down with worrying about the puts and takes of what  
4 happens to these wholesale elements in a competitive  
5 market, I think the Commission wisely chose at that  
6 time, as has Congress and the FCC, to concentrate on  
7 what the costs are and take a look at earnings in a  
8 separate proceeding, and quite possibly, that is what  
9 you are recommending.

10 But I don't think you can take one element  
11 like line sharing and say, We need to evaluate it very  
12 specifically in terms of these earnings, because there  
13 are so many other elements that have been put into  
14 place that have very similar ramification. Line  
15 sharing, for example, the high frequency portion of  
16 line sharing, I think it's been estimated that a  
17 competitive local exchange provider can provide up to  
18 16 business lines over that high frequency portion.  
19 That may well result in significant decrease in  
20 revenues to the local company because of that being  
21 available, and so there are all kinds of puts and takes  
22 that take place, but I do think that the Commission  
23 does have the authority and the responsibility to  
24 evaluate earnings, but I think they ought to do it in  
25 the context of an earnings type proceeding.



01015

1 Q. If we were to accept your recommendation and  
2 attribute half of the loop cost to the high frequency,  
3 would you agree that at least is a more significant  
4 cost, number in terms of magnitude than the typical  
5 puts and takes that you refer to or not?

6 A. I guess I would not primarily, because if you  
7 have safeguards in place, and there was a lot of  
8 discussion about the level of price for Qwest retail  
9 offering that might compete against that, and if you  
10 could insure that Qwest's price recovers that imputed  
11 rate, then that's the key that the market will sort  
12 itself out from there.

13 I might also add there are alternatives to  
14 that rate. I think that's been pointed out too in this  
15 proceeding, and if that rate doesn't hold up, I think  
16 it's going to be fairly clear over a relatively short  
17 period of time. The competitive providers not having  
18 the high frequency portion have tended to purchase the  
19 unbundled loop alone and offer a stand-alone data  
20 service. Most of them have chosen not to offer the  
21 more risky voice services, because the reason the voice  
22 services are more risky is you need a lot of  
23 subsidizing services to be able to compete with a  
24 company like Qwest.

25 So this is a significant offering for them

01016

1 because they can just concentrate on high frequency  
2 portion, but it isn't that they don't have other  
3 alternatives. They've had other alternatives in the  
4 past, and if our proposal is wrong, I think it will  
5 come to life fairly quickly.

6 Q. I just want to make sure I understood the  
7 first part of your answer. The other alternatives  
8 being purchasing the whole loop?

9 A. Yes, and offering an integrated service.

10 Q. And in terms of alternatives, how do you  
11 think that our decision here on the line-sharing  
12 contribution to the loop interplays with the other  
13 alternatives, meaning purchase of the whole loop, and  
14 also leap forward for a minute to sort of a UNE  
15 platform concept? When we look at all of the  
16 alternatives that will be available to CLECs for some  
17 price or other, how do you recommend we look at this  
18 decision here on line sharing in light of those other  
19 alternatives?

20 A. I don't want to minimize it, but if you think  
21 about the ability of a competitive provider to obtain  
22 UNE-P, for example, then they obtain the entire bundle  
23 of exchange services, including the loop. Now, to the  
24 extent that they want to line share with another  
25 competitive provider, and that's been called line

01017

1 splitting in this docket, they can do so at any rate  
2 they choose.

3           As you can see, there are very quick  
4 alternatives to whatever Qwest charges for its  
5 line-shared portion, high-frequency portion of the loop  
6 if they are line sharing with Qwest, so that's what I  
7 mean is that I think there are enough other  
8 alternatives that if our estimate of half the unbundled  
9 loop rate is incorrect, it's going to become apparent  
10 real quick.

11       Q.     Assume the other alternatives are available,  
12 it won't be purchased.

13       A.     Yes.  Maybe I could add one thing to that as  
14 well, some more incentive for Qwest.  If it becomes a  
15 reality that that portion is too high and we see a  
16 fairly heavy migration of customers to UNE-P merely to  
17 be able to obtain a lower price for the high frequency  
18 portion, that would concern Qwest right away.  These  
19 are customers that are buying not only basic exchange  
20 service from us but a complement of contributing  
21 services like long-distance access and features, and I  
22 think that that places real tension on the Company to  
23 insure that its whole package of prices is correct,  
24 because all of a sudden with this UNE-P phenomenon, a  
25 customer can take their entire service over to another

01018

1 provider, and that provider can determine the relative  
2 value of the loop, the high frequency portion of the  
3 loop to another provider, so with that tension, I think  
4 Qwest does have incentive to make sure it's priced  
5 right.

6 Q. Let's say later in Part B or whatever we  
7 establish a price for UNE-P migration that's fairly  
8 low, and let's say it is more attractive than paying  
9 half the loop cost for a line-sharing arrangement, so  
10 that will show that the price of line sharing is not  
11 such a great deal relative to the price of an UNE-P  
12 arrangement; is that right?

13 A. I think that's probably correct.

14 Q. Since our exercise here is to allocate cost,  
15 what do we do? We either were wrong on price so we  
16 have to change the price, but this was supposed to be  
17 based on cost, which, as has been pointed out, is a  
18 different proposition when you are dealing with joint  
19 costs, so would we then say we were wrong? Half the  
20 loop was too high a price, and since cost is somewhat  
21 discretionary in this instance, we are now going to  
22 lower the price and the cost? Is that what U S West  
23 would be coming back with?

24 A. Yeah. I would suggest I'm not sure the  
25 Commission would have to do anything there. I think if

01019

1 the competitive market sorts this thing out and it  
2 becomes apparent that we compete to retain our own  
3 customers with our retail services and the high  
4 frequency portion price at such a level that that  
5 package is unattractive to the package that a  
6 competitive provider can provide, certainly we will  
7 probably be back in here saying that it appears that  
8 the competitive market has sorted this thing out and we  
9 ascribed too much of the joint cost to the high  
10 frequency portion and we would like to reduce that.

11 I think what Dr. Fitzsimmons was trying to  
12 say is you don't know that by starting at zero. The  
13 only way you can determine that is to place a price in  
14 the market and find out what the market is going to do  
15 with it, and hopefully, I've been able to describe  
16 today that the market has ready alternatives with this  
17 UNE-P proposition.

18 Q. I think the point I'm thinking about at this  
19 moment is the difference between price and cost. If it  
20 turns out the price was set too high -- as you say, we  
21 will find out if there are available alternatives, but  
22 why does that mean that the cost was set too high?

23 A. In the world of UNE costing and pricing, they  
24 almost become synonymous. When we say we are setting a  
25 price for the high frequency portion, and we are taking

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1 half of the underlying \$18.16 unbundled loop rate, you  
2 have to remember that that rate was set based on  
3 predominantly cost. The reasonable profit included in  
4 that is a reasonable rate of return calculation, and so  
5 there is very little what we would call markup over  
6 that that would indicate that there is a strong  
7 difference between prices and cost.

8 The Commission decided that we are entitled  
9 to recovery of our common cost and that's about it. In  
10 a competitive market, prices would be pretty much  
11 driven to cost. So I think it's our position that when  
12 you split the unbundled loop rate in two, the high  
13 frequency portion of the UNE, that it is a price, but  
14 it's also very close to a cost.

15 Q. So once we have a competitive market, the  
16 assumption is that prices will be driven to cost;  
17 therefore, if no one was paying that price, it must be  
18 above cost.

19 A. Yes, I think that's fair. This is a very  
20 difficult element, obviously, by all the discussion  
21 we've had, to get our arms around in this joint cost  
22 type scenario, and I think it's telling, and you said  
23 something earlier that the competitive market will sort  
24 out the value of that loop.

25 Where does most of the value reside, and I

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1 think the UNE-P example of a competitor taking UNE-P  
2 and having the underlying loop with its relative value,  
3 if all the competitive provider can extract from  
4 another DLEC that wants to purchase the high frequency  
5 portion because that DLEC may also have other  
6 alternatives, wireless of how it offers its service, is  
7 instead of \$9.08, let's say it's \$2.50, and that  
8 becomes the going price. I think that's an important  
9 indication of what sort of contribution each of those  
10 services can make to the joint cost.

11 We are starting from the assumption that  
12 \$9.08 is a reasonable contribution to that joint cost.  
13 I think Dr. Fitzsimmons said there are no books that  
14 tell you exactly where to start. The competitive  
15 market will sort it out. I think that's how it  
16 happened.

17 Q. One more question, and you may not know the  
18 answer, but the issue is voice over Internet. Do you  
19 know whether or not 911 identification is possible on  
20 voice over Internet?

21 A. No, I don't know myself. I have heard  
22 conversations that they are working on it, but that's  
23 all I can share with you at this point.

24 Q. The issue I'm getting at is to what extent  
25 might the high end of a shared line be a total

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1 substitute for the whole line?

2 A. I think for a period of time for those types  
3 of ancillary but very necessary services that they may  
4 travel in tandem for awhile until one can obviate the  
5 need for another.

6 CHAIRWOMAN SHOWALTER: Thanks.

7 FURTHER CROSS-EXAMINATION

8 BY DR. GABEL:

9 Q. Mr. Reynolds, I want to follow up one thing  
10 that you were discussing with Chairwoman Showalter.  
11 You were talking about that the DLECs have the option  
12 of working out an agreement with a CLEC of choosing an  
13 unbundled loop and that's an alternative form of entry.

14 I just want to read one paragraph to you.  
15 This is from the FCC's decision when they first  
16 approved the interstate provision of DSL services. It  
17 was an application made by GTE, and it's Docket 98-79  
18 in October 30th, 1998, so this is it, I believe  
19 Paragraph 31, and this decision, of course, predates  
20 line sharing. The FCC stated: "When a requesting  
21 carrier purchases these unbundled network elements, the  
22 facilities in question are capable of supporting a  
23 variety of services in addition to ADSL, such as local  
24 exchange service and access services. Competitors need  
25 not recover their calls from ADSL service alone to have



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1 the same opportunity as GTE to recover the costs of  
2 network elements from all of the services they offer  
3 using those facilities. Thus, a carrier choosing to  
4 offer only data service over a facility that is capable  
5 of carrying more, such as GTE's ADSL offering, may not  
6 reap the entire revenue stream that the facility has to  
7 offer."

8 Are you familiar with that decision of the  
9 FCC?

10 A. I am not.

11 Q. But that view is rather consistent with what  
12 you are proposing here?

13 A. Yes, it is.

14 Q. My concern with what you were describing to  
15 the Chairwoman is that the FCC made the statement in  
16 1998. Nevertheless, they felt that that wasn't  
17 sufficient. They had to go one more step farther and  
18 order line sharing. If the competitive process that  
19 you've described was sufficient to insure that a  
20 competitive outcome would be achieved consistent with  
21 the 1996 Telecommunications Act, why, in light of this  
22 decision in 1998, do you think the FCC went ahead and  
23 ordered line sharing?

24 A. I actually think it's because line sharing  
25 predated by somewhat, I believe. Even though the topic

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1 has been argued, I don't think it had been ordered, and  
2 it wasn't clear that the ILECs had to do it, but I  
3 think UNE-P is the key to the fluidity of competing  
4 providers being able to get the whole complement of  
5 ILEC services in one fell swoop. They could get it and  
6 they could be set up and they could have it at their  
7 disposal, the underlying elements, and quickly compete  
8 back with other DLECs collocated in the offices. It  
9 all of a sudden becomes a reality that you can get a  
10 competing service to the ILEC service so quickly. I  
11 don't think back then that was ever envisioned. That  
12 would be my answer of how things have changed.

13 DR. GABEL: Thank you.

14 JUDGE BERG: Anything further from the Bench?  
15 Mr. Deanhardt?

16 CROSS-EXAMINATION

17 BY MR. DEANHARDT:

18 Q. At the beginning of your conversation with  
19 Dr. Gabel, you were talking about the relationship of  
20 the HUNE price to retail rates, or to retail revenues;  
21 do you recall that?

22 A. With Dr. Gabel?

23 Q. Yes.

24 A. Vaguely. If there is a specific piece you  
25 want to ask.

01025

1 Q. I was just setting my foundation. You would  
2 agree with me, wouldn't you, that the FCC in its  
3 line-sharing order, in fact, in recommending how the  
4 HUNE should be priced, made an explicit tie to at least  
5 the methodology that the ILEC used for determining the  
6 retail rates for its DSL services; correct?

7 A. I'm not that familiar with that order, but  
8 I've read it and I know generally what it requires. I  
9 will accept that subject to check.

10 Q. You also just had a fairly long discussion  
11 about revenues, and again suggested that revenues are  
12 potentially going to decrease over time based on the  
13 advent of line sharing; correct?

14 A. I just pointed out that that was a  
15 possibility that I think needed to be considered in  
16 conjunction with the possible increase in revenues.

17 Q. Qwest has been providing DSL services across  
18 the same loop that carries voice service for over a  
19 year and a half now; is that right?

20 A. I think that's correct. I might add not  
21 pervasively; that is, it has not been available in  
22 every wire center.

23 Q. Washington was one of the earliest states it  
24 was available in; correct?

25 A. That is correct.

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1 MR. DEANHARDT: Your Honor, I had not  
2 originally intended on doing this, but based on the  
3 Mr. Reynolds' testimony on questions from Dr. Gabel and  
4 the Commission, I'm going to ask him to take a look at  
5 this press release that I referred to before as July  
6 19th, 2000, and ultimately, I'll probably ask that it  
7 be admitted as an exhibit. I don't have sufficient  
8 copies at this point since I was not planning on using  
9 it, and I'm only doing so in impeachment, but what I  
10 can do is present counsel with copy and the Bench with  
11 a copy to share at this point, and I'll make sufficient  
12 copies at the next break.

13 JUDGE BERG: All right.

14 MR. DEANHARDT: If I may approach.

15 Q. (By Mr. Deanhardt) You know of no evidence  
16 in the record, do you, that suggests that Qwest's  
17 revenue generated from second lines sales or any other  
18 source has decreased by virtue of its own provision of  
19 DSL services or any other CLECs provision of any kind  
20 of DSL service.

21 A. I have not seen any evidence in this record  
22 to that effect.

23 MR. DEANHARDT: Your Honor, I guess we should  
24 give this an exhibit number at this time since it's  
25 being offered.

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1 JUDGE BERG: This will be Exhibit No. 142,  
2 and provide me with a description, Mr. Deanhardt.

3 MR. DEANHARDT: Exhibit 142 is a July 19th,  
4 2000 press release taken from the Qwest Web Site with  
5 the headline, "Qwest Communications Reports Strong  
6 Revenue and Ebitda for Second Quarter 2000."

7 Q. (By Mr. Deanhardt) Mr. Reynolds, do you  
8 recognize Exhibit 142 as being a document that comes  
9 from the Qwest Web Site? You may want to look at the  
10 footer on the bottom left-hand side of the document to  
11 assist you in making that determination.

12 A. Yes, it appears to be from the Qwest Web  
13 Site.

14 Q. Is the document, as I just described it for  
15 the Commission, an accurate description of this  
16 document?

17 A. Yes. The title you read is the title at the  
18 top of the document.

19 Q. Would you please turn to Page 4 of the  
20 document and down beginning where it says "sales and  
21 revenues," and it continues onto Page 5 of the  
22 document. If you would please read through that, and  
23 I'm going to ask you when you have completed that if  
24 each of these five bullets reflect increases in Qwest  
25 revenues over the course of the second quarter of 2000.

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1 A. (Witness complies.) What was the question  
2 again?

3 Q. If each of these bullets reflect statements  
4 of increases in Qwest revenue from the second quarter  
5 of 2000.

6 A. I think they all do except for what would be  
7 the third bullet, and it appears to be a year-over-year  
8 annual percentage growth rate.

9 Q. That third bullet says that revenues from  
10 uswest.net and MegaBit services grew 157 percent year  
11 over year; correct?

12 A. That's what it says.

13 Q. And the MegaBit service is the DSL service  
14 that Qwest provides across its existing voice loops;  
15 correct?

16 A. Yes.

17 MR. DEANHARDT: Your Honor, I'd move for the  
18 admission of Exhibit 142.

19 MS. ANDERL: I guess I would ask for what  
20 purpose.

21 MR. DEANHARDT: Mr. Reynolds had testified  
22 earlier that we could expect revenues to decrease over  
23 time based on DSL being used across line sharing. I'm  
24 showing that, in fact, having Mr. Reynolds testify that  
25 DSL has been provided over the voice spectrum for the

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1 last year and a half and that over the course of the  
2 second quarter, there are significant increases in  
3 revenue, and therefore, I'm using this for impeachment  
4 of Mr. Reynolds' testimony in his projections. It has  
5 also been referred to, obviously, by other witnesses as  
6 we did a check earlier, but my main purpose in  
7 introducing it here is for impeachment of Mr. Reynolds'  
8 projections.

9 MS. ANDERL: Your Honor, I don't think it  
10 establishes that at all. One of the things  
11 Mr. Reynolds said was that there was potential decrease  
12 in revenues in other areas, including second line. The  
13 five bullet points here are notably absent in those  
14 five bullet points as any report in terms of revenues  
15 for the basic business or basic residential services,  
16 and so I think while this is interesting, I think we  
17 have to bear in mind that it's certainly not a complete  
18 earnings report on the Company, and I don't think it  
19 establishes anything close to what Mr. Deanhardt says,  
20 so I object to its admission.

21 I don't object to it being included as an  
22 illustrative exhibit. Certainly, Mr. Thompson was  
23 asked some questions subject to check from this very  
24 same press release. I think it does give some  
25 information that helps in some ways flesh out some of

01030

1 the things we've talked about here in the docket, but I  
2 very strongly object to it being admitted to prove what  
3 Mr. Deanhardt claims it does.

4 CHAIRWOMAN SHOWALTER: But if you don't  
5 object to it being admitted for one purpose but you do  
6 object to it being admitted for the other purpose,  
7 isn't it just admitted and we take it for what it is,  
8 or do we need to declare that we don't believe it  
9 impeaches Mr. Reynolds' testimony?

10 MS. ANDERL: If I have to choose, I guess I'd  
11 object to it. I think you can admit it for a limited  
12 purpose.

13 MR. DEANHARDT: One thing I would note it has  
14 been authenticated by Mr. Reynolds, and it is a Qwest  
15 document.

16 JUDGE BERG: I'm going to find that the  
17 objections go more towards the weight to be given  
18 rather than the relevance, and Exhibit 142 will be  
19 admitted.

20 Q. (By Mr. Deanhardt) Mr. Reynolds, how many  
21 UNE-P loops have been purchased in Washington to date?

22 A. I don't know.

23 Q. Would you agree with me that the number is  
24 probably far close to zero than to 100?

25 A. I honestly don't know.



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1 Q. Do you know if any UNE-P loops have been  
2 purchased in Washington to date?

3 A. I think if I answer that, I would impeach my  
4 prior two answers, so I will say I don't know.

5 Q. So while you were testifying that there are  
6 UNE-P alternatives that CLECs can have, you don't  
7 actually know if anybody is actually providing UNE-P  
8 services in Washington at this time, do you?

9 A. I don't know that, but I think that's  
10 primarily because of a timing situation where the UNE-P  
11 is really just coming to market, and so it wouldn't  
12 surprise me if the demand for UNE-P, the current demand  
13 is low. I think it's going to be very high though as  
14 the Company completes development of the offering and  
15 the rates and charges for UNE-P. I think it's going to  
16 be a very popular offer.

17 Q. You would agree with me, wouldn't you, that  
18 speed to market is an important factor in determining  
19 whether or not, in particular, a new company, can  
20 compete.

21 A. I think that's one of the factors, yes.

22 Q. So you would agree, for example, if the  
23 prices for CLEC DSL originally were too high as a  
24 result of a UNE price in excess of cost, that that CLEC  
25 may not be able to achieve rapid market penetration as

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1 compared to Qwest's lower prices based on the use of a  
2 zero dollar spectrum.

3 A. I guess I can't agree with that analysis. I  
4 think we've testified, or at least Qwest witnesses have  
5 testified, that we can withstand the imputation of that  
6 high frequency portion of the loop, and that would  
7 pretty much set the playing field as well.

8 Q. Since Mr. Thompson didn't know this, I'm  
9 assuming you do. Qwest did, in fact, advocate against  
10 line sharing both at the FCC and in the docket that  
11 preceded in Minnesota; correct?

12 A. I have read documents both ex partes with the  
13 FCC and I think formal comments of Qwest, formerly U S  
14 West, with the FCC where we did advocate against line  
15 sharing, yes.

16 Q. One of those documents, in fact, has been  
17 marked as an exhibit in this proceeding earlier this  
18 week; correct?

19 A. I'm unaware of that.

20 MR. DEANHARDT: Do you remember the number?

21 MS. ANDERL: I believe it was Exhibit No. 5,  
22 the June 1999 comments, but let me confirm that.

23 MR. DEANHARDT: Ms. Anderl is correct. That  
24 would be Exhibit 5, the comments of U S West  
25 Communications, Inc.

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1 Q. (By Mr. Deanhardt) Can I show you this to  
2 refresh your recollection that it's one of the  
3 documents you just referred to?

4 A. Sure.

5 JUDGE BERG: Mr. Deanhardt, I certainly see a  
6 line of questioning developing here, and I just would  
7 ask you to be mindful of the time and be sure that we  
8 are not going to be going over ground that we've been  
9 over with other witnesses or ground that really isn't  
10 going to take us where we need to go.

11 MR. DEANHARDT: I am not, Your Honor. Since  
12 Mr. Thompson was not able to answer my question, this  
13 is relevant to Mr. Reynolds' testimony. I want to  
14 establish that, and then I'm going to move on.

15 JUDGE BERG: It's the "move on" part I'm  
16 concerned about.

17 MR. DEANHARDT: It's very quickly.

18 Q. Is Exhibit 5 an example of a document that  
19 Qwest filed in opposition to line sharing?

20 A. Yes.

21 Q. Now for the "moving on" part. I want to find  
22 out if you are aware of a couple of things about  
23 voice-over IP or voice-over DSL. I know you said you  
24 weren't terribly familiar with it, but I'm going to see  
25 if you are aware of whether voice-over DSL can be

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1 provided across a loop if there is a power failure that  
2 shuts off the end user's computer or electronics?

3 A. I am not, no.

4 MR. DEANHARDT: Thank you, Your Honor. I'm  
5 finished.

6 MR. KOPTA: Mr. Deanhardt covered the area I  
7 was going to ask Mr. Reynolds about.

8 JUDGE BERG: Ms. Anderl?

9 REDIRECT EXAMINATION

10 BY MS. ANDERL:

11 Q. Mr. Reynolds, looking at Exhibit 142 on Page  
12 4, the bullet points that carry over to Page 5  
13 discussing sales and revenues, do you see anything in  
14 there where revenues from Qwest's local service  
15 offerings are discussed?

16 A. No.

17 Q. Can you tell anything about what those  
18 revenues have done in the past or what those revenues  
19 might do in the future from anything in those bullet  
20 points?

21 A. No.

22 Q. Have you had a chance to read the rest of the  
23 document?

24 A. No, I have not. It does appear to be a  
25 promotional document aimed at Wall Street and stock

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1 price, however, and should be assessed accordingly.

2 Q. Mr. Reynolds, you had a discussion with the  
3 Chairwoman and others about the price for the high  
4 frequency portion of the loop, and did I understand  
5 your testimony correctly to be describing Qwest's  
6 position as stating that half of the joint cost of the  
7 loop is essentially a reasonable allocation of that  
8 joint cost to the high frequency portion?

9 A. That's correct.

10 Q. Can the competitive market or market forces  
11 help tell us whether, in fact, the determination that  
12 is a reasonable allocation is a correct determination?

13 A. Yes.

14 Q. Was that then your discussion with regard to  
15 how, if a CLEC were to offer a high frequency portion  
16 of their own loop for something less than \$9, it might  
17 drive Qwest's price or allocation of the cost for that  
18 loop down below \$9 as well?

19 A. That's correct, and as I explained to the  
20 Chairwoman, the tension that's created there is not  
21 just a competition for the high frequency portion.  
22 It's a competition for the underlying basic exchange  
23 service and all the revenues streams it derived from.

24 MS. ANDERL: Thanks. That's all I had on  
25 redirect.

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1 JUDGE BERG: Ms. Smith, any questions?

2 MS. SMITH: No, thank you.

3 JUDGE BERG: All right. Mr. Reynolds, thank

4 you very much for being present and testifying this

5 morning. Mr. Inouye, if you will come and take the

6 witness stand.

7 (Witness sworn.)

8 DIRECT EXAMINATION

9 BY MS. ANDERL:

10 Q. Good morning, Mr. Inouye.

11 A. Good morning.

12 Q. Would you please state your name for the

13 record?

14 A. My name is Carl Inouye.

15 Q. Do you have before you your rebuttal

16 testimony as well as the three exhibits that were

17 attached to that testimony?

18 A. Yes, I do.

19 Q. Those were identified previously as Exhibit

20 T-130, Exhibit 131, 132 and 133. Do you have any

21 changes or corrections to make to that testimony or

22 exhibits?

23 A. I have one correction on Page 4 of my

24 testimony on Line 13. I picked up a wrong number. The

25 number that appears on my testimony, 9.77 should

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1 actually be 7.91, which, if I could direct the  
2 Commission to my exhibit, it would be Exhibit 131 on  
3 Page 1.

4 Q. I think you want to reference us to 133, the  
5 rate of return report.

6 A. Yes, that's right, Exhibit 133. You will  
7 notice that the column that's labeled "year to dated  
8 annualized" on the far right corner, the normalized  
9 regulated intrastate rate of return, down at the bottom  
10 is 7.91, which is the number I should have picked up in  
11 my testimony.

12 Q. With that correction, is your testimony true  
13 and correct to the best of your knowledge?

14 A. Yes, it is.

15 MS. ANDERL: Your Honor, we would offer  
16 Exhibits T-130 through 133 inclusive and make  
17 Mr. Inouye available for cross.

18 JUDGE BERG: Hearing no objections, Exhibits  
19 T-130 through 133 are admitted. Ms. Smith?

20 MS. SMITH: Thank you.

21 CROSS-EXAMINATION

22 BY MS. SMITH:

23 Q. Good morning. I'm Shannon Smith, and I'm  
24 representing Commission staff. Mr. Inouye, is it  
25 correct that Qwest files monthly financial reports of

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1 operation with the Washington Commission?

2 A. Yes, it is.

3 Q. Is one of those reports called the A-61  
4 report?

5 A. I believe the entire report is generally  
6 referred to as the A-61 report.

7 Q. Is the A-61 report a report of the Company's  
8 earnings for total company interstate operations,  
9 intrastate operations, and interstate operations on a  
10 Commission prescribed basis?

11 A. Yes, it is.

12 Q. Can you explain what's meant by "Commission  
13 basis"?

14 A. It's generally referred to as containing the  
15 certain adjustments that the Commission would normally  
16 make in a rate case proceeding. Probably the best  
17 example is when we have accounting procedures that the  
18 Commission has specifically directed the Company to  
19 undertake that is different than the FCC's, then a  
20 portion of the A-61 report identifies those  
21 adjustments. They are made to the financials that are  
22 reported to the Commission, and generally, that  
23 separate set of financials is referred to as the  
24 Commission basis.

25 Q. If I could refer you to your Exhibit 133, I



01039

1 believe it was Exhibit No. 4 to your testimony. Is it  
2 correct that the exhibit is labeled, "rate of return  
3 report/Commission basis"?

4 A. Yes.

5 Q. Is it correct that the column labeled,  
6 "unadjusted regulated intrastate," shows the monthly  
7 Commission basis return?

8 A. Could you just point to me which column on  
9 the report you are referring to?

10 Q. Yes. Under "monthly annualized," there is a  
11 column that says, "unadjusted regulated intrastate."

12 A. Yes.

13 Q. Which column of the exhibit shows the  
14 cumulative Commission basis return?

15 A. There are actually a number of columns that  
16 show cumulative Commission basis. If you look at Page  
17 1 of Exhibit 4, first of all, I believe it's correct  
18 that the column that says, "monthly annualized  
19 unadjusted regulated intrastate," is on a Commission  
20 basis. So is the column that's next to it, which says,  
21 "normalized regulated intrastate."

22 If you skip over three columns under the  
23 heading, "current cumulative 12-month intrastate,"  
24 that is on a Commission basis also. If you move to the  
25 next section to the right, under the section entitled,

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1 "year to date annualized," the column that says,  
2 "unadjusted regulated intrastate," is on a Commission  
3 basis as is the column next to it, "normalized  
4 regulated intrastate." That is on a Commission basis  
5 also.

6 Q. I guess I'm asking what column of the exhibit  
7 shows the cumulative Commission basis return.

8 A. I guess I'm confused, because there are  
9 several columns on this piece of paper that are  
10 cumulative in nature and also Commission basis.

11 Q. And how many of these are labeled  
12 "cumulative"?

13 A. This one that says cumulative, and that is  
14 the one in the section that says, "cumulative 12 months  
15 intrastate." However, that is not the only cumulative  
16 set of numbers that's on this piece of paper.

17 Q. If I could turn you to Page 2 of Exhibit 133,  
18 and look at the entry for December 1999 under the  
19 column that's labeled "cumulative intrastate." Do you  
20 see the return shown there is 12.66 percent?

21 A. Yes.

22 Q. Would that 12.66 percent be Qwest's 1999  
23 Commission basis return?

24 A. On a normalized basis, the answer would be  
25 yes, and again, I would point out that on this report

01041

1 the Company gives the Staff both the unadjusted and  
2 also the adjusted, in this case meaning normalized,  
3 cumulative rate of return for 1999, which is on this  
4 exhibit as the number on the far right corner of 9.53.

5 Q. Have the adjustments that the Company has  
6 made to the Commission basis return been audited by the  
7 Staff?

8 A. I'm not aware of if they've audited it or  
9 not.

10 MS. SMITH: That's all we have. Thank you.

11 JUDGE BERG: Any questions from the  
12 Commissioners? Ms. Anderl?

13 MS. ANDERL: No.

14 MS. SMITH: We are not offering 134.

15 JUDGE BERG: Mr. Inouye, thank you for your  
16 time and testimony here this morning. Let's continue  
17 for a half hour with the next witness before taking our  
18 morning break.

19 MS. ANDERL: Your Honor, might I have two  
20 minutes?

21 JUDGE BERG: All right. We'll take the  
22 15-minute break now. We will begin at 10:15.

23 (Recess.)

24 JUDGE BERG: Mr. Klick, would you please  
25 stand and raise your right hand?

01042

1 (Witness sworn.)

2 JUDGE BERG: Go ahead, Mr. Deanhardt.

3 DIRECT EXAMINATION

4 BY MR. DEANHARDT:

5 Q. Could you please state your name and business  
6 address for the record?

7 A. My name is John C. Klick, K-l-i-c-k. My  
8 business address is 66 Canal Center Plaza, Suite 670,  
9 Alexandria, Virginia, 22314.

10 Q. Do you have in front of you copies of  
11 Exhibits T-180 through C-185 in this docket?

12 A. I have T-180, 181, C-184 and C-185. I don't  
13 see a 183.

14 Q. I'm sorry, 183 is blank. Are these copies of  
15 your response testimony and rebuttal testimony and  
16 accompanying exhibits?

17 A. Yes.

18 Q. Were these testimony and exhibits prepared by  
19 you or under your control?

20 A. Yes.

21 MR. DEANHARDT: Your Honor, at this time we  
22 would move for the admission of T-180, Exhibit 181,  
23 T and CT-182, subject to the Sixth Supplemental Order,  
24 C-184, and we would not offer C-185 which has been  
25 stricken in accord with the Sixth Supplemental Order.

01043

1 JUDGE BERG: Before admitting those exhibits,  
2 Mr. Deanhardt, would you just confirm with this witness  
3 whether there are any changes?

4 MR. DEANHARDT: Are there any changes or  
5 corrections to be made to your testimony?

6 THE WITNESS: No.

7 JUDGE BERG: At this time, Exhibits T-180  
8 through CT-182 and Exhibit C-184 are admitted.

9 MR. DEANHARDT: Thank you, Your Honor. With  
10 that, I tender Mr. Klick for cross-examination.

11 JUDGE BERG: Mr. Edwards?

12 CROSS-EXAMINATION

13 BY MR. EDWARDS:

14 Q. Mr. Klick, would you refer, please, to your  
15 CV, which is Exhibit 181?

16 A. I have it.

17 Q. Would you agree with me that beginning on  
18 Page 2 of your CV, over to Pages 3, 4, 5, 6, 7, 8, and  
19 9, you reference testimony either prefiled or at  
20 hearings or in affidavits relating to  
21 telecommunications?

22 A. Yes, and there is also some on the top of  
23 Page 10, Mr. Edwards, which for some reason didn't get  
24 on the bottom of Page 9.

25 Q. I was looking at the dates on these, and it

01044

1 seems to me that the first testimony that you list was  
2 in September of 1996. Can you confirm that for me?

3 A. It sounds about right.

4 Q. Then I counted them, and I counted 74  
5 different pieces. Is that about right?

6 A. I haven't counted them.

7 Q. Subject to check, will you accept that?

8 A. Sure.

9 Q. So over the last four years, approximately 48  
10 months, you are averaging about a piece and a half of  
11 testimony a month; is that right?

12 A. Okay, 74 divided by 48.

13 Q. Has any of that testimony been filed on  
14 behalf of an incumbent local exchange provider?

15 A. No.

16 Q. You are not an engineer, are you?

17 A. No.

18 Q. You've never worked for a telephone company;  
19 correct?

20 A. Correct.

21 Q. You've never designed a central office?

22 A. I have not.

23 Q. You've never overseen the construction of a  
24 central office, have you?

25 A. No.

01045

1 Q. You've never implemented a collocation  
2 arrangement in a central office, have you?

3 A. No.

4 Q. And never implemented a line-sharing  
5 arrangement in a central office.

6 A. Correct.

7 Q. By education, you are not an economist; is  
8 that correct?

9 A. By education, I'm a mathematician.

10 Q. Do you consider yourself an economist?

11 A. A lot of my work over the last 30 years is in  
12 the area of economics, and I feel like I have a lot of  
13 on-the-job training in the economics area.

14 Q. But no formal education in that area?

15 A. I've taken economics courses, but I don't  
16 have an economics degree.

17 Q. Let me ask you to look at Exhibit T-180,  
18 which is your response testimony, Page 4, Line 4.

19 A. Yes.

20 Q. You state there that you were involved in  
21 developing a collocation cost model sponsored by MCI  
22 and AT&T; do you see that?

23 A. I do.

24 Q. Would you agree with me that the CCM is a  
25 model that was developed to determine costs and prices

01046

1 for collocation?

2 A. Yes.

3 Q. And that would be collocation in a central  
4 office?

5 A. Yes.

6 Q. You were not asked to submit that or respond  
7 to that model in this docket, were you?

8 A. No, I wasn't.

9 Q. I believe you were in the hearing room  
10 yesterday when Mr. Zulevic was testifying, and he was  
11 asked some questions regarding the manpower chart in  
12 his testimony. Do you remember those?

13 A. Yes.

14 Q. And in fact, that same chart is in, I  
15 believe, your responsive testimony; correct?

16 A. Yes.

17 Q. T-180?

18 A. Page 22.

19 Q. And as corrected by Mr. Zulevic, that chart  
20 is reflected in your testimony; right?

21 A. Yes.

22 Q. You relied, I take it, on the information  
23 provided you by Mr. Zulevic for the chart in your  
24 testimony; is that correct?

25 A. Yes.



01047

1 Q. He testified yesterday that he relied -- I'm  
2 summarizing, but I think what he was testifying to was  
3 he relied on the collocation cost model for some of the  
4 information in this chart; is that correct?

5 MR. DEANHARDT: Your Honor, objection to  
6 mischaracterization of prior testimony.

7 THE WITNESS: My recollection is he was asked  
8 about the types of activities that are involved in each  
9 of these items shown on the chart on Page 22 in Exhibit  
10 T-180, and what I think he responded was that he had  
11 looked at the types of activities shown under each of  
12 those items in the collocation cost model and developed  
13 estimates accordingly.

14 Q. (By Mr. Edwards) So is it fair to say that  
15 the activities on which he based the time periods or  
16 the activities are reflected in the collocation cost  
17 model?

18 A. I'm not sure I would agree with that. I  
19 think what I understood him to be saying is that the  
20 descriptions of the activities were what he relied upon  
21 in developing these time estimates.

22 Q. You would agree with me that the collocation  
23 cost model is based on a hypothetical central office;  
24 correct?

25 A. Its based on a model central office, that's

01048

1 right.

2 Q. It does not reflect an actual central office  
3 in Verizon's network, for example; correct?

4 A. It's not any specific central office in  
5 Verizon's network or any other ILEC's network.

6 Q. So to the extent that Mr. Zulevic relied on  
7 anything in the CCM, it would be based on, for whatever  
8 reason, the hypothetical office; is that correct.

9 A. I don't think so. In fact, that's the  
10 distinction I'm trying to draw here. Mr. Zulevic, as I  
11 heard his testimony, relied on a description of various  
12 engineering activities but not on any assumption about  
13 a hypothetical central office coming up to the time the  
14 estimates that matched that description, so what I  
15 understood him to be saying is in terms of a listing of  
16 the types of engineering that needed to be done, he's  
17 used a breakdown based on the CCM, but not in terms of  
18 developing his estimates in time, which I think I heard  
19 him testify were based on his experience in a variety  
20 of central offices.

21 Q. So it would be based on the description or  
22 the listing or however it's defined in the CCM of the  
23 relevant activities.

24 A. That's right. He's developed time estimates  
25 based on his experience for the activities as listed in

01049

1 the CCM.

2 Q. Did you do any comparison yourself of the  
3 time periods that are listed on Page 22 with the  
4 engineering and planning inputs into the Verizon cost  
5 studies filed in this docket?

6 A. No.

7 Q. Have you read or reviewed Mr. Behrle's  
8 rebuttal testimony that was filed on August 4th?

9 A. Yes.

10 Q. Why don't we look at that a minute.

11 MR. DEANHARDT: Your Honor, we are short some  
12 exhibits so I'm going to ask if I can approach the  
13 witness and look over his shoulder while he's looking  
14 at these exhibits.

15 JUDGE BERG: Any objection, Mr. Edwards?

16 MR. EDWARDS: No.

17 Q. (By Mr. Edwards) And that's Exhibit T-235.

18 JUDGE BERG: Mr. Deanhardt, I'll just ask  
19 that if, in fact, you have any objections to the  
20 questions that you return to the table and use the  
21 microphone to state objections.

22 MR. DEANHARDT: I will, Your Honor.

23 Q. Let me refer you to Page 5.

24 A. I have it.

25 Q. If you've reviewed Mr. Behrle's rebuttal

01050

1 testimony, I take it you know that at least for the  
2 engineering and planning estimates supporting the  
3 recurring cost, you made a comparison of the estimates  
4 in your testimony with what's contained in the Verizon  
5 cost study; is that correct?

6 A. Yes, shown on Table 1 of T-235.

7 Q. Mr. Behrle concluded that the Verizon study  
8 is a quarter hour less than the estimates you proposed;  
9 is that correct?

10 A. That's what he said, yes.

11 Q. I take it you would not have any criticisms  
12 of the engineering and planning estimates used to  
13 support the costs in the Verizon recurring study.

14 A. And likewise, I would assume he would have no  
15 criticism of mine.

16 Q. Let me ask you to refer back again to your  
17 responsive testimony T-180, Page 4, Line 10.

18 A. Yes.

19 Q. There, you reference your previous work,  
20 again, on behalf of AT&T and MCI in the development of  
21 the nonrecurring cost model, which is also known as the  
22 NRCM; correct?

23 A. Yes.

24 Q. It's been awhile since I've talked with you  
25 or anyone on the NRCM. Does it now reflect NRC costs

01051

1 related to line sharing?

2 A. To the best of my recollection, there is no  
3 specific item that relates to line sharing. As you may  
4 recall, the NRCM was a compendium of various  
5 activities, and for any one activity -- I'm sorry. I'm  
6 using that word twice, but for any sort of major  
7 activity, like placing an order, what the NRCM did was  
8 to add up a series of subactivities, times,  
9 probabilities and that kind of thing.

10 So in terms of that overall list of  
11 activities, which were comprised with some  
12 subactivities, there is none identified specifically  
13 for line sharing. One would have to go through the  
14 subactivities and figure out which ones applied and add  
15 them accordingly.

16 Q. There may be some overlap between the  
17 subactivities that are applied in the NRCM and those  
18 activities that would be applicable to line sharing?

19 A. Yes.

20 Q. Like the CCM, would you agree that the NRCM  
21 is based not on an actual central office but on a  
22 hypothetical set of assumptions?

23 A. Not in the same way. The NRCM is basically  
24 based on assumptions about a full flow-through  
25 electronic environment for OSS and assumptions about

01052

1 fallouts and the need for manual activity, so to the  
2 extent there would be ILECs that have implemented OSS  
3 systems like that, I wouldn't say it's hypothetical.  
4 It's not certainly in the same way that the CCM is.

5 Q. But there is certainly some assumptions that  
6 are made that underlie the NRCM that may not comport  
7 with reality in actual central offices; correct?

8 A. They could be made to comport by changing the  
9 assumptions, but at least the sort of standard  
10 assumptions assumed, as I said, a full flow-through  
11 electronic environment, to the extent such an  
12 environment does exist, one can modify the assumption,  
13 obviously.

14 Q. I take it you were not asked to submit the  
15 NRCM in this docket; is that correct?

16 A. Well, a portion of my testimony that was  
17 struck related to the NRCM.

18 Q. In your rebuttal testimony.

19 A. That's right.

20 Q. Let me ask you to turn to Page 8 of Exhibit  
21 T-180, Line 5, and the question begins there and the  
22 answer that concludes at Line 17. Is it fair to say  
23 there that your testimony is that you did not feel you  
24 could analyze Verizon's price proposals due to the fact  
25 that according to your quote there, Dr. Tanimura's

01053

1 testimony, the rates were currently under development?

2 A. Yes.

3 Q. You would agree with me that Verizon has  
4 proposed three different line-sharing configurations;  
5 correct?

6 A. Yes.

7 Q. Would you agree with me also that in  
8 Dr. Tanimura's direct testimony, pricing proposals  
9 were, in fact, put forth for Configurations 2 and 3?

10 A. Yes. There were pricing proposals put forth  
11 for Configurations 2 and 3.

12 Q. That the rates that Dr. Tanimura was  
13 referring to that were currently under development were  
14 rates for Configuration 1; correct?

15 A. That's correct.

16 Q. Let me ask you to look at Page 13, Line 10.  
17 Let me ask sort of a close-the-loop on that last set of  
18 questions. The first configuration, so it's clear for  
19 the record, that GTE proposed was the virtual  
20 collocation light configuration?

21 A. Yes. As I understood at the time in the  
22 initial direct testimony, there was a discussion of ICB  
23 and a discussion that it was currently under  
24 development, so that's what this specific quotation in  
25 my testimony refers to.

01054

1 Q. And then there were rates that were proposed  
2 for the other two configurations.

3 A. There were rates, Mr. Edwards, but in looking  
4 at the rates proposed by Dr. Tanimura and then some of  
5 the underlying documentation provided, for example, by  
6 Ms. Casey, at least in the direct testimony, I was  
7 unable to match up rates in Dr. Tanimura's testimony  
8 with the underlying documentation that has been  
9 provided. So part of my reasons for not trying to  
10 restate things at that point is I wasn't frankly sure  
11 whether or not I had the right documentation, whether  
12 the numbers in Dr. Tanimura's testimony were right and  
13 so on, so there were those kinds of problems as well.

14 Q. But you didn't state those problems on Page  
15 8; correct?

16 A. I didn't state them on Page 8, but at the top  
17 of Page 7, in the concluding sentence of the carryover  
18 paragraph on the prior page, I say the ILEC studies are  
19 misleading, incomplete, and poorly explained, so  
20 obviously, those problems existed as well.

21 Q. One of things that we were going to do is I'm  
22 going to explore that statement that you just referred  
23 to, that broad general statement, and then take you  
24 back to what your specific criticisms are, and your  
25 explanation takes me there more quickly than I



01055

1 anticipated because in response to my previous question  
2 about why you could not analyze Verizon's rates at that  
3 time, we first talked about the fact that the rates for  
4 configuration were under development, and that's what  
5 your testimony is, and now on the stand, you've  
6 testified as to other reasons that you could not do  
7 that that are not in your prefiled testimony that I can  
8 see. So my question is, would you agree with me that  
9 in your prefiled responsive testimony, you do not state  
10 those specific problems that you've now testified to on  
11 the stand today?

12 A. Let me look at Page 18 of Dr. Tanimura's  
13 direct, if I can.

14 Q. It should be T-320.

15 MR. DEANHARDT: If Mr. Edwards is asking  
16 about all of Mr. Klick's response testimony, then I  
17 think the witness should also be given an opportunity  
18 to review his entire response testimony before  
19 responding to the question.

20 JUDGE BERG: Mr. Edwards, do I have a  
21 question pending?

22 MR. EDWARDS: The question, I think, is --  
23 the answer was Mr. Klick wanted to look at  
24 Dr. Tanimura's direct testimony. I think the question  
25 is whether the reason that he's testified today to why

01056

1 he could not analyze the prices proposed by Verizon as  
2 to Configurations 2 and 3, why he didn't state those in  
3 the testimony, his prefiled testimony.

4 THE WITNESS: I think I did on the language  
5 at the top of Page 7. Exhibit 320 is the revised  
6 direct testimony of Dr. Tanimura, which was filed on  
7 the same date as Exhibit T-180, that is July 21, 2000,  
8 so obviously, this reference to Page 18 of  
9 Dr. Tanimura's direct testimony can't be to Exhibit  
10 320.

11 Q. Look at Page 19, Line 22.

12 A. What I'm looking for is the May 19th direct  
13 testimony of Dr. Tanimura, which is obviously what I  
14 was referring to.

15 MR. EDWARDS: May I approach the witness?

16 JUDGE BERG: Before you do that, let's be off  
17 the record.

18 (Discussion off the record.)

19 JUDGE BERG: Mr. Klick, do you have the  
20 question that Mr. Edwards last asked in mind?

21 THE WITNESS: I do, and it is the case that  
22 the reference at Page 8 of Exhibit T-180, Lines 11  
23 through 14 relates specifically to the first  
24 configuration set forth in Dr. Tanimura's revised  
25 direct testimony, which is Exhibit 320 at Page 19.

01057

1 Q. (By Mr. Edwards) My question was, to  
2 summarize again, I was asking why you didn't address  
3 the proposed rates from Verizon for Configurations 2  
4 and 3 in your responsive testimony, and you referred me  
5 back to Page 7 of T-180 as the ILEC studies are  
6 misleading, incomplete, and poorly explained, which I  
7 was trying to explore with you, and you stated some  
8 reasons from the stand, and my question was why didn't  
9 you state those reasons in your prefile testimony  
10 specifically?

11 MR. DEANHARDT: Actually, Your Honor, I  
12 believe the original question was did he state them.

13 JUDGE BERG: I believe that's right. Let's  
14 start there.

15 THE WITNESS: I thought that I said before  
16 that they were stated at the top of Page 7. I would  
17 agree that they are not stated again in response to the  
18 question, Have you restated the cost proposed by Qwest  
19 and GTE for line sharing.

20 Q. (By Mr. Edwards) You didn't state here that  
21 you couldn't find the cost support in Ms. Casey's  
22 testimony supporting the proposed prices from  
23 Dr. Tanimura from Configurations 2 and 3, did you?

24 A. At this particular location on Page 8, I did  
25 not.

01058

1 Q. In fact, in your responsive testimony you did  
2 not.

3 A. With specific reference to Ms. Casey, that's  
4 correct. I have what I would view as a more general  
5 reference to these kinds of problems at the top of Page  
6 7.

7 Q. Let me ask you to look at Page 13, Line 10 of  
8 Exhibit T-180.

9 A. Page 13, Line 10?

10 Q. Yes, sir. There you have a question and  
11 answer regarding assumptions about cable rack  
12 occupancy, and your testimony is that those assumptions  
13 are important with respect to developing efficient  
14 forward-looking costs; correct?

15 A. Yes.

16 Q. Am I correct then that in your responsive  
17 testimony, which is T-180, and your rebuttal testimony,  
18 which is CT-182, you never address cable rack occupancy  
19 assumptions again?

20 MR. DEANHARDT: Your Honor, I would ask that  
21 the witness be allowed an opportunity to review his  
22 testimony if we are going to have broad questions about  
23 what is and is not there.

24 MR. EDWARDS: The witness has filed testimony  
25 that has broad, sweeping, generalized statements, and

01059

1 what I want to do is explore whether there are any  
2 specific statements made specifically with respect to  
3 Verizon's cost studies.

4 MR. DEANHARDT: I have no problem with the  
5 question. I just want the witness to have an  
6 opportunity to review his testimony so that he can  
7 accurately answer it rather than having to rely on his  
8 recollection of 40 or 50 pages of testimony.

9 JUDGE BERG: I don't think anyone is pressing  
10 Mr. Klick for a quick answer. We are patient people  
11 here.

12 THE WITNESS: Let me make sure I understand  
13 the question. With respect to Verizon, is that the  
14 question?

15 MR. EDWARDS: Correct.

16 THE WITNESS: That is correct.

17 Q. (By Mr. Edwards) On Page 13, Line 23, again  
18 of Exhibit T-180, you have a question and answer  
19 regarding land and building costs; correct?

20 A. Yes.

21 Q. Would it also be correct then that in your  
22 responsive testimony and in your rebuttal testimony,  
23 Exhibit CT-182, you never make a criticism of the land  
24 and building costs supporting any Verizon study?

25 A. That's almost right, Mr. Edwards, that I

01060

1 would -- as you know in my testimony, I do take issue  
2 with the ICB nature of Configuration 1, and to the  
3 extent part of that ICB might involve land and building  
4 modifications, I would say that I have addressed it,  
5 but in terms of any kind of specific calculation, the  
6 answer is no, I have not.

7 Q. You have not criticized the land and building  
8 assumptions used in a Verizon cost study; correct?

9 A. Right. What I've said in my rebuttal  
10 testimony is that even at that point, I've had a hard  
11 time working backwards from Dr. Tanimura's testimony to  
12 the supporting testimony and to the underlying work  
13 papers, and in many cases, to the best of my ability,  
14 I've been unable to match it up. So in my view, it  
15 basically wasn't appropriate to try to restate it  
16 because I couldn't get to the point of being able to  
17 match up what's in the testimony with what's in the  
18 supporting testimony and what's in the work papers, so  
19 I have not tried to restate Verizon's cost study for  
20 that reason, so I haven't obviously, therefore, tried  
21 to restate pieces of it or comment on pieces of it.

22 Q. It's not your testimony today that you don't  
23 know what the land and building assumptions are in  
24 Verizon's cost study?

25 A. I'd have to go back and try to look.

01061

1 Q. So you don't know what they are?

2 A. I don't know sitting here.

3 Q. Do you know whether you were able to find  
4 them in any of your review of the cost study?

5 A. I don't recall.

6 Q. You agree with me that nowhere in your  
7 testimony do you say in Verizon's cost studies, "I  
8 can't find their land and building assumptions."

9 A. I'll agree with that.

10 Q. If fact, you never mention land and building  
11 cost assumptions in conjunction with Verizon's cost  
12 studies anywhere else in your testimony; correct?

13 A. Correct.

14 Q. Let me ask you to look at Page 14 of Exhibit  
15 T-180, the testimony that begins around Line 12, let's  
16 say.

17 A. Right.

18 Q. There, you talk in general terms about cost  
19 recovery for asbestos removal is one item; do you see  
20 that?

21 A. I do.

22 Q. Do you agree with me that asbestos removal is  
23 not contained in any Verizon cost study in this docket;  
24 correct?

25 A. It's certainly not in any that I've been able

01062

1 to find, any cost study submitted by Verizon, but  
2 again, parts of Verizon's testimony is that with  
3 respect to Configuration 1, there is going to be an  
4 individual case basis assessment on virtual  
5 collocation, and I don't know what that means, and if  
6 it means that building renovation charges might be  
7 included, then this testimony would be relevant to  
8 that. Since I don't know what it means and I didn't  
9 see any explanation of it in their testimony, I have  
10 these kinds of general statements in here to the effect  
11 that if it were to include that, I would disagree, so  
12 that's the reason this is here.

13 Q. Let's go ahead and address that issue. Let's  
14 look at Exhibit T-325, which is Tanimura's responsive  
15 testimony.

16 MR. DEANHARDT: Again, Your Honor, I would  
17 ask if I can approach the witness.

18 MR. EDWARDS: No objection.

19 THE WITNESS: I have it.

20 Q. (By Mr. Edwards) Page 15, Line 17; do you  
21 see that?

22 A. Yes.

23 Q. In the attachment to that testimony, which is  
24 Exhibit T-326 -- do you see that?

25 A. Yes.



01063

1 Q. In response to my previous questions about  
2 asbestos removal and also on land and building costs,  
3 you stated several times that Verizon is proposing ICB  
4 pricing with respect to its first line-sharing  
5 configuration. My question is, don't you agree with  
6 me, Mr. Klick, that in the testimony that I've just  
7 referred you to of Dr. Tanimura and his exhibit,  
8 Verizon, in fact, proposes specific prices for the  
9 first configuration?

10 A. They do, but there is also testimony filed by  
11 a GTE witness on August 4th, I believe, in which it  
12 states that a component of the first configuration is  
13 virtual collocation, which is still going to be  
14 addressed on an ICB basis. So frankly, I'm confused  
15 about whether this Exhibit 326 moots that statement or  
16 whether these costs are going to be in addition to some  
17 ICB for virtual collocation. It's simply not clear to  
18 me. In the direct testimony, they talked about an ICB,  
19 and in the response testimony, we had this Exhibit 326,  
20 which I agree contains specific costs for this  
21 line-sharing configuration, but then in the August 4th  
22 testimony, once again, there is discussion of ICB for  
23 this configuration.

24 So frankly, I don't know at this point what  
25 GTE is proposing for this configuration. Are they

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1 proposing what's in Exhibit 326 alone, or are they  
2 proposing to add to it some ICB for virtual  
3 collocation? I don't know. I can't tell from reading  
4 the testimony. I've certainly seen the work papers  
5 that support Exhibit 326, and I don't see any building  
6 modification costs there, but what I don't know is what  
7 else is going to be covered by this ICB for virtual  
8 collocation, which is referred to in one of the other  
9 support pieces of testimony, so that's my problem  
10 still.

11 Q. If you would assume with me that there is no  
12 ICB pricing for the first configuration and that what  
13 Verizon is proposing is, in fact, contained in Exhibit  
14 T-326, and it is what it states it is, then your  
15 concern regarding ICB pricing for Configuration 1 would  
16 be alleviated, wouldn't it?

17 A. If what you are telling me is the statement  
18 on August 4th by -- I can't recall which witness it  
19 was -- that there was still ICB pricing under  
20 Configuration 1 is wrong, and that these are the only  
21 costs that relate to Configuration 1, then I would  
22 agree there is no building modification costs that I  
23 could find in Exhibit 326.

24 Q. Would you agree with me also there is no ICB  
25 pricing proposal for Configuration 1?

01065

1 A. No. I just got finished saying --

2 Q. Based on my assumption that I just laid on  
3 out.

4 A. You are asking me to assume there is none,  
5 then would I agree there is none?

6 Q. If you assume for me that the prices being  
7 proposed by Verizon as contained in Exhibit T-326 for  
8 Configuration 1 are what they say they are, proposed  
9 prices for Configuration 1, then would you agree with  
10 me there is no ICB pricing proposed for Configuration  
11 1?

12 A. I guess I can only answer this question by  
13 saying I read testimony by one of your witnesses that  
14 says ICB pricing still applies for Configuration 1 and  
15 I see this. So I've assumed, based on that, that added  
16 to this was going to be some ICB pricing for virtual  
17 collocation. If you are telling me that's wrong, I've  
18 misunderstood the testimony or it didn't say --

19 Q. I think that you have misunderstood the  
20 testimony. That's what my question is related to.

21 A. Then I can only say if what you are asking me  
22 to assume is that I misunderstood the testimony, then I  
23 would have to answer that, Okay, if that's the  
24 assumption you want me to make, and this is the only  
25 thing being offered, then this is not included,

01066

1 obviously, in the ICB pricing.

2 Q. Let me refer you back again to Page 14 of  
3 your responsive testimony, T-180. Back on Lines 14 and  
4 15, we were talking about asbestos removal. You also  
5 reference building modifications to meet ADA  
6 compliance. Again, I ask in your responsive and  
7 rebuttal testimony, I didn't see any specific  
8 criticisms of the Verizon sponsored cost study that it  
9 included costs for ADA compliance; is that correct?

10 A. Yeah. It's the same set of answers we've  
11 been through already; that my concern with ICB pricing  
12 is what's being referred to in these statements on Page  
13 14 of Exhibit T-180.

14 Q. Did you review Verizon's collocation cost  
15 study?

16 A. Yes.

17 Q. But you didn't file any testimony related to  
18 it, did you?

19 A. No. I guess, Mr. Edwards, there are some --  
20 let me be clear about that. There are some statements  
21 in this responsive testimony, Exhibit T-180, that  
22 probably relate to issues of collocation, but my focus  
23 here is on line sharing, not collocation.

24 Q. And I did not see any specific criticisms of  
25 Verizon's collocation study in your testimony; is that

01067

1 correct?

2 A. That is correct.

3 Q. Let me refer you, please, to Page 12, again  
4 of your response testimony, Exhibit T-180, Line 17, and  
5 specifically, the question you have there. Would it be  
6 your testimony that in determining the ILEC's,  
7 Verizon's, or Qwest's collocation or line-sharing  
8 costs, it's your belief that those costs should not be  
9 based on Qwest or Verizon's actual out-of-pocket  
10 expenses?

11 A. Yes. What I'm saying here is that ICB  
12 pricing in general is a problem because it is -- it's  
13 what Mr. Knowles referred to yesterday as a lack of  
14 certainty on the part of potential entrants about what  
15 it's going to cost and a lack of certainty about how  
16 efficiently those costs are being incurred, so that I  
17 think ICB pricing as a general proposition is a problem  
18 for CLECs because it creates uncertainties about cost,  
19 and therefore, about the value of entering a particular  
20 market.

21 Q. Would you agree with me that the only concern  
22 you have regarding ICB pricing with respect to Verizon  
23 was with respect to the first line-sharing  
24 configuration?

25 A. Generally, yes.

01068

1 MR. DEANHARDT: Your Honor, I apologize. I'm  
2 going to have to ask that Mr. Butler continue to defend  
3 Mr. Klick for a moment while I step out.

4 THE WITNESS: In terms of line sharing, yes.  
5 Q. (By Mr. Edwards) In terms of anything that's  
6 in your testimony.

7 A. I think the statement about ICB pricing in  
8 the question asks for calculating costs for collocation  
9 and line sharing, so the answer to this question  
10 relates to both. So what I'm saying here is as a  
11 general proposition, whether it's for collocation  
12 generally or splitter collocation specifically, ICB  
13 pricing is a problem.

14 Q. But with respect specifically to Verizon's  
15 cost studies in this docket, you've testified that you  
16 did not file any testimony with respect to the  
17 collocation cost study, and then with respect to the  
18 line-sharing cost study, I read your testimony to only  
19 talk about ICB pricing with respect to the first  
20 configuration; is that correct?

21 A. That's right. I agree with all that.

22 Q. If you accept the assumption I gave you  
23 previously when we were talking about the proposed  
24 prices for the first configuration, then your concern  
25 with respect to ICB pricing as to Verizon's first

01069

1 line-sharing configuration is also alleviated; correct?

2 A. I'm assuming that ICB's off the table under  
3 the first configuration, then my concerns would be  
4 alleviated in that regard.

5 Q. Let me get back to the out-of-pocket expense  
6 question, and let me ask it a different way. If I read  
7 your testimony correctly, you state that certain  
8 assumptions ought to be made to determine the  
9 appropriate line-sharing related costs that ought to be  
10 recovered and regardless of whether those assumptions,  
11 regarding electronic flow-through, for example,  
12 actually exist. Would that be true?

13 A. Can I have that question back, please? I'm  
14 sorry.

15 Q. Let me restate it. Would you agree with me  
16 that to determine the appropriate cost that an ILEC  
17 ought to recover for line sharing, your testimony is  
18 that this Commission ought to assume 100 percent  
19 electronic flow-through?

20 A. Now I'm confused, because that's a piece of  
21 my testimony that's been struck. I don't understand.  
22 Are we going to talk about that or not? I'm just  
23 confused.

24 Q. Let me see if I can help. Why don't you look  
25 at T-180, Page 10, Line 5. I don't think that

01070

1 testimony there has been struck. Perhaps it should  
2 have been.

3 A. Okay. And the question is, is it my opinion  
4 that in developing costs for line sharing, we ought to  
5 assume in calculating install and disconnect costs full  
6 electronic flow-through? The answer is yes.

7 Q. Or any costs, just 100 percent flow-through.

8 A. That would be my opinion, yes. Particularly  
9 if the CLECs are going to be asked to pay for modifying  
10 these systems so they can achieve full electronic  
11 flow-through, it seems inappropriate to at the same  
12 time charge them as though full electronic flow-through  
13 didn't exist. I don't see how that is consistent with  
14 any notion of fairness or consistent with the  
15 competitive market.

16 Q. That would be true regardless of whether 100  
17 percent full electronic flow-through has actually been  
18 achieved.

19 A. That's right. In Dr. Tanimura's August 4th  
20 testimony, he talks at length how about in competitive  
21 markets, the developmental costs are recovered after  
22 the fact, and what it seems to me would be particularly  
23 unfair would be to ask CLECs to pay for costs of  
24 converting a system while at the same time denying them  
25 the benefit, because we haven't yet achieved full



01071

1 electronic flow-through, and we've only achieved 27  
2 percent or whatever it is, GTE studies assume.

3 Dr. Tanimura has got it exactly right. In a  
4 competitive market, you couldn't recover the cost of  
5 the transition until you're also able to provide the  
6 service that those costs create, and here, it seems to  
7 me on this particular issue we are in danger of asking  
8 CLECs to pay twice, once in the form of the cost of  
9 making the conversion and second, in the form of not  
10 giving them the cost-reducing offset, so yes.

11 Q. Wouldn't you agree with me that this  
12 commission has attempted to do that by requiring  
13 proposed rates reflecting electronic flow-through and  
14 also reflecting manual ordering, for example?

15 A. I think that this Commission has tried to do  
16 that.

17 Q. Let me just ask one follow-up question. Turn  
18 to Page 29 of your responsive testimony, if you would.

19 A. Okay.

20 Q. Line 14, the first paragraph after the word  
21 "first"; do you see that?

22 A. Yes.

23 Q. Is your testimony there that Paragraph 482 of  
24 the Commission's Eighth Supplemental Order requires 100  
25 percent full electronic flow-through?

01072

1 A. Without that order in front of me, I can't  
2 recall precisely how it's worded --

3 Q. I've got that.

4 A. I would appreciate that, thank you.

5 MR. EDWARDS: May I approach the witness?

6 MR. DEANHARDT: May I approach as well? The  
7 record should probably reflect that I reentered the  
8 room just before the discussion of flow-through began,  
9 and I appreciate the indulgence.

10 JUDGE BERG: You are welcome.

11 Q. (By Mr. Edwards) The question is whether  
12 it's your testimony that Paragraph 482 of the Eighth  
13 Supplemental Interim Order requires 100 percent full  
14 electronic flow-through?

15 A. I read Paragraph 482 to be the culmination of  
16 a discussion that's obviously not fully visible here,  
17 but my recollection of the discussion was the concern  
18 that precisely I'm discussing here, which is that it  
19 would be inappropriate to both charge the CLECs for the  
20 price of making these improvements and to fail to give  
21 them the benefit of the full electronic flow-through.

22 I don't think any system is going to have  
23 full electronic flow-through for all orders, and even  
24 if it were possible, there is going to be fallout and  
25 manual intervention required for a certain proportion

01073

1 of those, but it seems to me that one ought not to make  
2 the calculation in such a way that you get charged for  
3 the transition costs without getting the full benefit  
4 of the cost savings that those transactions are  
5 supposed to generate.

6         So I would read Paragraph 482 as trying to  
7 solve that problem, as you suggested earlier, and I  
8 don't know that that problem is solved by taking a  
9 snapshot of today and saying, "Today we are at 27  
10 percent, so that's what we are going to use." It seems  
11 to me what we ought to be looking at is what the goal  
12 of the expenditures was in terms of success at  
13 flow-through and the use of that.

14         MR. DEANHARDT: Your Honor, I'd like the  
15 record to reflect that the documents the witness has  
16 been shown is the first and 98th page of the Eighth  
17 Supplemental Order in Docket No. UT-960371.

18         JUDGE BERG: Thank you, Mr. Deanhardt.

19         Q.         (By Mr. Edwards) Getting back to my question  
20 again, what I did is I looked at Page 29 of your  
21 testimony. I looked at your reference. I read your  
22 testimony. I went and looked at the paragraph in the  
23 order, and my question is, is it your testimony that  
24 the paragraph and the order that you cite requires 100  
25 percent full electronic flow-through?

01074

1       A.       I don't think this particular paragraph  
2 requires full electronic flow-through.  Although, I do  
3 think -- there is no language in that, obviously, that  
4 says "full electronic flow-through," but in reading the  
5 discussion that led to Paragraph 482, it's my view that  
6 what the Commission was trying to accomplish, as I said  
7 before, was sort of the CLECs being hit twice, if you  
8 will.

9       Q.       Mr. Klick, I do want to turn now to what I  
10 see as some specific criticisms you do make and ask you  
11 first to look at your responsive testimony, T-180, Page  
12 24, Line 23.

13       A.       Yes.

14       Q.       As Criticism No. 1, I see that your criticism  
15 is that GTE did not propose a line-sharing  
16 configuration with an MDF-mounted splitter; is that  
17 correct?

18       A.       Yes.

19       Q.       Have you read any of the testimony filed by  
20 any of the Verizon witnesses explaining why that's not  
21 a configuration that Verizon offers?

22       A.       I believe I've read all of the rebuttal and  
23 responsive testimony by Verizon's witnesses.

24       Q.       Am I correct that nowhere in your testimony  
25 do you address the substance of those reasons?

01075

1       A.       My recollection, Mr. Edwards, is that most of  
2 that discussion occurred in the August 4th testimony;  
3 although, there may be some discussion in the earlier  
4 testimony, but this is an area in which I'm relying to  
5 some extent on Mr. Zulevic, and we heard him testify  
6 yesterday he didn't see any engineering impediment to  
7 frame-mounted splitters as a general proposition.

8               So yes, I've read that testimony, but in  
9 terms of configurations, I'm relying on Mr. Zulevic's  
10 expertise as a central office engineer, and as a  
11 result, simply stating here that nowhere did GTE  
12 propose that option, which Mr. Zulevic believes is  
13 technically feasible.

14       Q.       But you don't address it in your testimony;  
15 right?

16       A.       Right.

17       Q.       Then on Page 25, Line 10, this is where you  
18 criticize the cable length between the MDF and the  
19 splitter used in the Verizon study; correct?

20       A.       Right.

21       Q.       I take it then you've read in Mr. Behrle's  
22 rebuttal testimony his response to your criticism?

23       A.       I have, and as I read that response, it  
24 simply says we averaged a bunch of cable lengths and  
25 got 175.

01076

1 Q. And then he goes on to compare it to actual  
2 collocation lengths to verify that figure; correct?

3 A. My recollection is that he's got some sample  
4 of actual collocation lengths. Part of the issue here  
5 is that Mr. Behrle has assumed the same cable length  
6 for all three cables, if you will, and I'm not sure  
7 that's consistent with the collocation cable lengths  
8 that he cites in his August 4th testimony.

9 Q. The basic disagreement you have here is that  
10 you think the cable lengths ought to be based on an  
11 assumption that the MDF is located only 25 feet from  
12 the splitter as opposed to where it may actually be  
13 located in the central offices; correct?

14 A. There are two pieces to this. There is the  
15 cable from the MDF to the splitter, and then there is  
16 the cable from the splitter to a collocation area where  
17 the DSLAM may be located and then there is, of course,  
18 the cable length back, and if you envision what would  
19 be a sensible arrangement whereby the splitter is  
20 located somewhere between the MDF and the DSLAM, it's  
21 hard to imagine how you could have 175-foot cable  
22 lengths for each of them.

23 If the cable back from the DSLAM to the MDF  
24 is 175 feet, then one would assume the sum of the other  
25 cables would be close to 175 feet, but in fact, he's

01077

1 got 175 feet for both, which would require a splitter  
2 way off to the side and what I would consider to be a  
3 rather inefficient configuration. So part of my  
4 concern with this whole thing is that it doesn't really  
5 seem consistent with an efficient layout, an in-line  
6 layout, if you will, for the splitter, regardless of  
7 whether it's 40 feet away or 100 feet away.

8 Q. In your testimony though, you are only  
9 talking about cable length between the splitter and the  
10 MDF; correct?

11 A. No. This testimony talks about MDF to the  
12 splitter being 175 feet, but the cable carrying voice  
13 back from the splitter to the MDF is 125 feet, so  
14 that's two cables.

15 Q. But it's only between the splitter and the  
16 MDF. It's not to the DSLAM and the collocation area  
17 you are talking about.

18 A. In this particular item, I'm identifying an  
19 inconsistency between 175 feet in one direction and 125  
20 in another. But in fact, you asked me Mr. Behrle's  
21 testimony, and he identifies that he assumed 175 for  
22 two of the cables, 125 for the third, and he's saying  
23 if we had fixed the third, it would be 175 too.

24 Q. Again, I don't want to go to Mr. Behrle's  
25 testimony. I disagree with your interpretation of it,

01078

1 but my question is really with respect to your  
2 criticism, which I don't see any criticism of the  
3 length of the cable from the splitter to the  
4 collocation area or to the DSLAM, wherever it's  
5 located.

6 A. I'm not sure that's right. As I read this,  
7 my first two sentences are general discussions of the  
8 length of cable, and then I say, "In addition, GTE  
9 assumes that the cable that carries voice and data is  
10 175, but the voice carrying cable back is only 125."

11 So the first two sentences in general talk  
12 about cable lengths, and the second sentence, the one  
13 we've been focusing on, is an in addition that focused  
14 on an inconsistency between cable from the MDF to  
15 splitter and cable back from the splitter to the MDF.  
16 So that specific thing, yes, relates to only the two  
17 cables, but the other one relates to all three.

18 Q. Let me take it a step back to one of the  
19 questions I originally asked is that in your last  
20 sentence of your answer, you say that, "These length  
21 assumptions are too long to be for a central office  
22 that is purportedly forward-looking in nature"; do you  
23 see that?

24 A. Right.

25 Q. Is your criticism the cable lengths ought not



01079

1 to be not based on the actual cable lengths that had  
2 been incurred but instead on some hypothetical design  
3 that caps the cable length at some length?

4 A. No. My testimony is that three cables all  
5 the same length doesn't match very well an efficient  
6 design; that in terms of the overall distance from the  
7 collocation area or the DSLAM to the MDF, I think we  
8 are not that far apart. I've used 165 feet. This says  
9 175, but I've assumed that the splitter would be  
10 located somewhere in line between the MDF and the  
11 DSLAM, and Mr. Behrle, it seems to me by virtue of --  
12 he's got an equilateral triangle, if you will. He's  
13 got 175, 175, 175 can only be if it's far out of line.

14 So part of my criticism here is that doesn't  
15 make a lot of sense to me. So whether it's 40 feet or  
16 25 feet or 100 feet, one would assume that you wouldn't  
17 have three cables of equal length unless you have a  
18 very inefficient location of splitter between the MDF  
19 and the DSLAM.

20 Q. The 165 feet you use is out of the CCM;  
21 correct?

22 A. 165 feet is consistent with the CCM.  
23 Mr. Behrle has averaged a bunch of numbers to get 175.  
24 As I said, that particular distance isn't hugely  
25 different in our two studies. It's this three cables

01080

1 all the same length that I have a problem with.

2 Q. If I understand your testimony just now  
3 regarding the location of the splitter, and if I  
4 understand Mr. Zulevic's testimony regarding the  
5 location of the splitter, you say it should be midpoint  
6 between the MDF and the collocation area, and he says  
7 it should be within 25 feet of the MDF; am I correct?

8 A. No. Mr. Zulevic is the expert here. He says  
9 that in vast majority of COs, you can find room for a  
10 splitter within 25 feet of the MDF. My point here is a  
11 more general one, which is even if you reject that  
12 assumption and moved it out midway between or 100 feet  
13 away from the MDF, you wouldn't get three cables of  
14 equal distance. You couldn't, unless you put the  
15 splitter way out of line. So I'm not rejecting  
16 Mr. Zulevic's 25-foot location of the splitter if he  
17 used it.

18 Q. Let's move to your rebuttal testimony,  
19 Exhibit CT-182. Let me ask you to look at Page 22,  
20 Lines 10 through 12.

21 A. Yes.

22 Q. Actually, at the top of that page is your  
23 criticism of ICB pricing, and I think that horse is  
24 dead. If we look at Lines 10 through 12, you say  
25 there, "I can find no backup support for the monthly

01081

1 recurring rate in Exhibit RT-6," which is  
2 Dr. Tanimura's exhibit that we talked about earlier.

3 A. Right.

4 Q. Let's look at Dr. Tanimura's responsive  
5 direct testimony, T-325.

6 A. Okay.

7 Q. Page 15.

8 MR. DEANHARDT: Your Honor, if I may approach  
9 again.

10 MR. EDWARDS: That's fine.

11 JUDGE BERG: I prefer that Mr. Deanhardt ask  
12 for each time he approaches, but I understand there is  
13 no objection.

14 Q. (By Mr. Edwards) If you look at Lines 15 and  
15 16, you see there that Dr. Tanimura says he refers to  
16 Mr. Behrle for the cost support for the recurring rates  
17 contained in Exhibit RT-6 to his testimony, which is  
18 Exhibit 326.

19 A. I do see that, and it's clear at the top of  
20 Page 16 where he says, "Based on the costs developed by  
21 Mr. Behrle and Ms. Casey inconsistent with Verizon  
22 Northwest general pricing principles -- are shown in  
23 Exhibit RT-6.

24 Q. If you'd look at Exhibit T-233, which is  
25 Mr. Behrle's responsive direct, if you look at Page 2,

01082

1 beginning on Line 2, would you agree with me that  
2 Mr. Behrle testifies that the whole purpose of this  
3 testimony is to present the costs that support the  
4 monthly recurring charges that are in Dr. Tanimura's  
5 Exhibit 326?

6 A. Yes.

7 Q. Did you review Mr. Behrle's responsive  
8 testimony?

9 A. I did.

10 Q. So is your testimony and rebuttal testimony  
11 back on Page 22 of Exhibit CT-182, you say you could  
12 find no backup support for the recurring rates?

13 A. Okay. I see what you are driving at, and I  
14 guess what I was trying to say here is I go to  
15 Mr. Behrle's backup, which is shown in Exhibit 234, and  
16 I see these numbers here, but there are a lot of other  
17 numbers that are used to derive this 33 -- I apologize.

18 The numbers shown on Exhibit 234 that I can't  
19 find any real support for, for example, the Lines 1  
20 through 11 of Exhibit 234, are a series of factors that  
21 are used, and I'm aware that there are backup pages  
22 that show that each of these factors is an average of  
23 other factors, but my point here is that you can't push  
24 very far back into this and really understand what's in  
25 these numbers because you can't understand what's in,

01083

1 for example, these factors. (Witness indicating.)

2 Q. Going back to your rebuttal testimony again  
3 on Page 22 where you say in Line 10, "I can find no  
4 backup support," would it be more accurate to say that  
5 the backup support you found, in your opinion, wasn't  
6 sufficient?

7 A. Yeah. That's a fair way of putting it, I  
8 agree.

9 Q. Then did you ask that any data requests be  
10 filed for additional backup on Mr. Behrle's support in  
11 his responsive testimony?

12 A. We did. There were data requests filed for  
13 some of these factors, for example, and we did get a  
14 response, and my point merely is that the response  
15 doesn't take you anywhere. It's just a bunch of  
16 numbers that are averaged together.

17 Q. So even after looking at the response, you  
18 don't think it's enough.

19 A. Right.

20 Q. Did you state that in your testimony  
21 anywhere?

22 A. I thought I stated it in the piece we were  
23 just talking about.

24 Q. Did you reference those responses and say  
25 they are incomplete?

01084

1 A. Not specifically.

2 Q. Let's look at Lines 12 through 15 for a  
3 minute.

4 A. Of what? I'm sorry.

5 Q. Again, Page 22, Exhibit CT-182, Lines 12  
6 through 15. There, you are talking about the costs,  
7 and I was switching to the recurring costs, recurring  
8 prices or recurring costs. You said that the cost  
9 backup for the nonrecurring rate appears to include the  
10 cost of the splitter, even though this scenario is  
11 supposed to assume that the CLEC owns the splitter. Do  
12 you see that?

13 A. Yes.

14 Q. Let me ask you to look at Ms. Casey's  
15 responsive testimony, which is Exhibit T-253.

16 A. I've got it.

17 Q. Page 4, Lines 8 through 10, would you agree  
18 with me there that Ms. Casey testifies that the costs  
19 include the installation of the CLEC-owned splitter.

20 A. Yes.

21 Q. You would agree with me that it would be  
22 appropriate to include the cost of the installation;  
23 correct?

24 A. Yes. But my point in T-182 is when I looked  
25 at Exhibit No. LC-4C of Page 2 of 2, it looked to me

01085

1 like there was more there than the installation.

2 Q. Did you see the testimony of Ms. Casey filed  
3 that said it includes only the installation?

4 A. This testimony we just referred to?

5 Q. Right.

6 A. Yes.

7 Q. If you had a question about that, did you ask  
8 a data request?

9 A. I don't recall that a data request was asked  
10 about that. I just looked at the exhibit.

11 JUDGE BERG: I'll just indicate the Exhibit  
12 LC-2C as revised is Exhibit C-252.

13 MR. EDWARDS: It's actually LC-4C.

14 JUDGE BERG: Would be C-254.

15 Q. (By Mr. Edwards) If the cost just includes  
16 the installation costs and not the splitter itself,  
17 would you agree with me that that would be appropriate?

18 A. I'm looking at Exhibit 254, and I've got  
19 material costs that look to me like it includes more,  
20 that it includes, as I said, the cost of the splitter.

21 Q. Material for the cost of the splitter or  
22 other material costs?

23 A. It looks like part of the splitter.

24 Q. Which part?

25 A. The splitter module.

01086

1 Q. If Ms. Casey's testimony that I referred you  
2 to then is incorrect and that something other than the  
3 installation is included, that's what your criticism  
4 would refer to, installation of the splitter.

5 A. Right. What I would be saying is if the CLEC  
6 is owning the splitter, there would be no reason to  
7 have included in this the cost of the splitter.

8 Q. But if it only includes the cost of  
9 installation, that would be correct.

10 A. Yes. That would strike me as -- well, I  
11 guess it would depend on who is doing the installation,  
12 but I wouldn't have the same criticism if it only  
13 included the cost of the installation.

14 Q. If the ILEC does the installation, the  
15 installation costs should be recovered.

16 A. Absolutely.

17 Q. Let me take you back to your reference to  
18 LC-4C, which is Exhibit C-254.

19 A. Okay.

20 Q. I think I see where you are referring to, and  
21 in the total line, the reference appears to be splitter  
22 assembly cost; is that correct?

23 A. Yes.

24 Q. And "assembly" would be installation;  
25 correct?



01087

1 A. Well, third column in from the right, Column  
2 L, includes money for material, which was the source of  
3 my confusion.

4 Q. Back on Page 22 of Exhibit CT-182, the last  
5 criticism that you have there at the bottom of the  
6 page, that Dr. Tanimura states that the cost  
7 calculations underlying the cross-connects provided by  
8 Ms. Casey, but you couldn't find those?

9 A. Right.

10 Q. Let me ask you to look at the Exhibit LC-2C,  
11 which is Exhibit C-252. It would be attached to  
12 Ms. Casey's direct testimony. If you look at Pages  
13 4-WA 11, and 4-WA 12.

14 A. I've got something that does not have page  
15 numbers that look like that.

16 JUDGE BERG: Let's be off the record.

17 (Discussion off the record.)

18 Q. Let me see if I can summarize where we are.  
19 I had referred to Page 22 of your rebuttal testimony  
20 and your criticism that Dr. Tanimura's cost  
21 calculations underlying cross-connects he stated are  
22 provided by Ms. Casey, but you could find no mention of  
23 them either in her written testimony or her work  
24 papers, and then I referred you to Exhibit C-252, which  
25 is the cost study attached to Ms. Casey's direct

01088

1 testimony, and referred you specifically to Pages  
2 4-WA 11 and 4-WA 12. Do you see those?

3 A. I do.

4 Q. Although the nomenclature is slightly  
5 different -- they are referred to as "jumpers" in  
6 Ms. Casey's testimony and cross-connects in  
7 Dr. Tanimura's testimony -- would you agree with me  
8 that this is the backup cost support for Dr. Tanimura's  
9 rates?

10 A. It may be. I'm looking now at Exhibit 326  
11 and comparing the figures I see on Pages 4-WA 11 and 12  
12 of Exhibit 252 to the figures I'm seeing under  
13 "provisioning" on Exhibit 326, and I see that it's  
14 possible that these -- the numbers don't match up.  
15 Although, it's possible that the numbers on Exhibit 252  
16 are a subset of what's shown on Exhibit 326. I'd have  
17 to see more.

18 Q. They wouldn't match up exactly because there  
19 is a fixed allocator applied; correct?

20 A. Right. It looks to me that the differential  
21 is bigger than just the application of the fixed  
22 allocator.

23 Q. Your testimony is then, I guess, that may be  
24 the cost of --

25 A. I'll be honest with you, Mr. Edwards. I

01089

1 don't know that I recall seeing these two sheets, but  
2 even so, sitting here, I'm not able to confirm just by  
3 doing either just a straight comparison or adding a  
4 fixed allocator that these are, in fact, the support  
5 for what's in Exhibit 326, but evidently, I missed  
6 these sheets in 252 or I would have looked further.

7 MR. EDWARDS: I appreciate your patience,  
8 Mr. Klick. That's all the questions I have.

9 JUDGE BERG: We are going to take a lunch  
10 break at this time. We'll be back on the record at  
11 1:20.

12 (Lunch recess taken at 11:50 a.m.)  
13  
14  
15

16 AFTERNOON SESSION

17 (1:22 p.m.)

18 JUDGE BERG: We'll be back on the record,  
19 Mr. Klick. I'll just remind you that you remain  
20 subject to the oath that you took earlier today. At  
21 this point in time, Verizon has completed its first  
22 round of cross-examination of the witness. Ms. Anderl,  
23 do you have questions for this witness?

24 MS. ANDERL: Yes, I do, Your Honor. Thank  
25 you.

01090

CROSS-EXAMINATION

1

2 BY MS. ANDERL:

3 Q. Good afternoon, Mr. Klick. I know we've been  
4 in hearings together, but I don't know if we've ever  
5 talked.

6 A. I don't believe we have.

7 Q. I'm Lisa Anderl, and I represent Qwest, and I  
8 have the following questions for you today. With  
9 regard to your testimony, Exhibits T-180 and 182, did  
10 you prepare that testimony?

11 A. Yes.

12 Q. Did you receive any assistance in its  
13 preparation?

14 A. There were a couple of people in my office in  
15 particular that worked with me on it.

16 Q. Can you say who they are?

17 A. Yes. One of them is named Brian Pitkin, and  
18 the other is named Hallie Pitkin.

19 Q. Anyone else?

20 A. I don't believe so.

21 Q. You're appearing on behalf of both Covad and  
22 Rhythms today?

23 A. Yes, ma'am.

24 Q. I'd like to ask you a few questions about  
25 what you did to prepare for your testimony. I know

01091

1 that you testified as a witness in Docket 960369, what  
2 we refer to as the old generic docket. Have you read  
3 all of the Commission's orders in that first generic  
4 docket?

5 A. I don't believe I've read them all. I think  
6 I've read several of them.

7 Q. Did you review any of them in preparation for  
8 your testimony today?

9 A. I certainly reviewed them, the ones I have in  
10 mind, before preparing the testimony that is Exhibit  
11 T-180 and 182, but I don't believe I've looked at them  
12 in preparation for this hearing, per se.

13 Q. What about the Commission's orders in this  
14 docket to date, do you recall having read any of those  
15 specifically?

16 A. I think so. I've read some.

17 Q. You don't recall them by order number?

18 A. I'm sorry. I'm amazed you can all remember  
19 them.

20 Q. Did you read Mr. Zulevic's testimony?

21 A. Yes.

22 Q. With regard to the Qwest witnesses, whose  
23 testimony did you read, if you can recall, or I can  
24 walk you through them.

25 A. Walking me through them is safer. I believe

01092

1 I've read all of the testimony filed by witnesses for  
2 Qwest and Verizon, but I may have missed somebody.  
3 Q. Dr. Fitzsimmons?  
4 A. Yes.  
5 Q. Mr. Thompson?  
6 A. Yes.  
7 Q. Mr. Brotherson?  
8 A. I believe so.  
9 Q. Mr. Hubbard?  
10 A. Yes.  
11 Q. Ms. Million?  
12 A. Yes.  
13 Q. Ms. Brohl?  
14 A. Yes.  
15 Q. Mr. Inouye?  
16 A. I'm not sure about that one.  
17 Q. You might have missed that one.  
18 Mr. Reynolds?  
19 A. Yes, I believe so.  
20 Q. Did you also read Dr. Cabe's testimony?  
21 A. Yes.  
22 Q. You've stated generally throughout your  
23 testimony, and I don't think you need a page reference  
24 at this time, but that you relied in your testimony on  
25 assumptions about a forward-looking network that were

01093

1 provided to you by Mr. Zulevic. Was that a fair  
2 characterization?

3 A. Relied upon sort of forward-looking  
4 assumptions in terms of splitter placement and so on  
5 provided by Mr. Zulevic, yes.

6 Q. You are not an engineer; is that correct?

7 A. We established that this morning, yes.

8 Q. But you are a mathematician.

9 A. Yes.

10 Q. Did you speak with anyone other than  
11 Mr. Zulevic with regard to any of the assumptions that  
12 you may have used or relied upon in your testimony?

13 A. Certainly, I've discussed them to the  
14 individuals in my firm that we've identified already.

15 Q. Are either one of those individuals  
16 engineers?

17 A. No.

18 Q. So for engineering assumptions specifically,  
19 are you relying on information provided to you by  
20 Mr. Zulevic?

21 A. That's correct.

22 Q. Have you ever personally toured or walked  
23 through a Qwest central office in Washington?

24 A. No.

25 Q. Turning to your Exhibit T-180, your

01094

1 responsive testimony, and I'm looking on Page 14 at  
2 Footnote 10, you state that Qwest could require that  
3 all of the cage constructions performed in its central  
4 offices require use of installers with joint degrees in  
5 electrical engineering and architectural design; do you  
6 see that?

7 A. Yes, ma'am.

8 Q. It's not your testimony in this docket that  
9 Qwest does impose such a requirement, is it?

10 A. No. I'm simply suggesting that it's possible  
11 for inefficiencies to find their way into the  
12 expenditures that ILECs make, and I use this  
13 as somewhat of a facetious example, but merely to point  
14 out that one has to be careful that such inefficiencies  
15 don't inadvertently or advertently end up in costs that  
16 are passed through to CLECs, so that's the point.

17 Q. Flipping back in that same testimony to Page  
18 12, you discuss ICB or individual case basis pricing?

19 A. Yes, ma'am.

20 Q. Are there any ICB rates in the Qwest proposal  
21 in this docket with which you take issue?

22 A. I don't believe I've seen any.

23 Q. Turning to Page 13 of that same testimony, on  
24 Line 13, you discuss assumptions with regard to relay  
25 and cable racks having to be installed for the



01095

1 exclusive use of a single competing CLEC or a small  
2 number of CLECs; do you see that?

3 A. Yes, ma'am.

4 Q. Isn't it true that Qwest's proposal in this  
5 docket for splitter collocation allows the CLEC to  
6 lease a shelf at a time within a single relay rack?

7 A. I believe that's correct. However, some of  
8 the assumptions that I recall underlying that  
9 calculation, and my recollection is that there were  
10 two. One is an assumption of eight splitter shelves  
11 per rack, and the other is that there is a fill factor  
12 used, would have the effect, potentially, of creating  
13 this same kind of problem.

14 In other words, it assumes that the rack will  
15 be used or could assume, could reflect an assumption  
16 that the rack will be used by CLECs only and won't be  
17 shared with ILEC functionalities that could also use  
18 the rack. So to some extent, I think that I would say  
19 that this particular criticism could apply to the way  
20 in which Qwest developed those costs.

21 Q. We'll talk about the 8 shelves versus twelve  
22 shelves in a little while. With regard to the fill  
23 factor assumption, is it your proposal that the fill  
24 factor assumption be set at 100 percent or that there  
25 not be a fill factor assumption, essentially?

01096

1       A.       That's correct.  What I've used in my  
2 restatement is 12 shelves per rack, which I think is a  
3 conservative assumption of what's required for splitter  
4 functionality.

5       Q.       If Qwest were to agree with you on the issue  
6 of fill factor, aside from the appropriate number of  
7 shelves, then all we would be debating would be whether  
8 it was an appropriate assumption to have 8 shelves or  
9 12 shelves or some other assumption; is that right?

10      A.       That's right.

11      Q.       Is it correct that to the extent that Qwest's  
12 proposal, leaving aside the number of shelves for a  
13 moment, but that Qwest's proposal allowing for splitter  
14 collocation on a shelf-at-a-time basis is the same as  
15 what you propose allowing for splitter collocation on a  
16 shelf-at-a-time basis?

17      A.       I think that's correct.

18      Q.       Isn't it also true, referring to this same  
19 testimony that we've been looking at at Lines 13, that  
20 Qwest's collocation model assumes a combination of both  
21 dedicated and shared cable racking?

22      A.       That's my recollection, yes.

23      Q.       On the same page, Line 24, you state that in  
24 many states, ILECs have proposed large charges for  
25 collocation by competitors to defray the costs of

01097

1 building modifications. Do you see that?

2 A. Yes, ma'am.

3 Q. What do you mean by "large"?

4 A. In some of the studies I've seen for  
5 collocation in an individual CO, it's my recollection  
6 that the vast preponderance of the costs were covered  
7 by building modifications. I think I've seen one study  
8 where it was over one million dollars in building  
9 modifications to install proposed installation of the  
10 collocation cage. Another study I've seen was  
11 somewhere in the range of 700 or 800 thousand dollars  
12 of building modifications associated with collocation  
13 cage construction, so those would certainly be large,  
14 in my view.

15 Q. Were you through with your answer?

16 A. I've seen others that aren't nearly that big.

17 Q. The million dollars or three quarters of a  
18 million dollars that you've seen in studies, those  
19 weren't in Qwest's study in Washington, were they?

20 A. They were not.

21 Q. On Page 14, you continue to talk about other  
22 expenditures, which I believe you contend are  
23 inappropriate to charge to the CLECs, such as  
24 demolishing existing walls or removing doors. Do you  
25 see that?

01098

1 A. I do.

2 Q. Have you found any site preparation charges  
3 in Qwest's collocation study that attempt to recover  
4 costs for expenditures, such as demolishing existing  
5 walls?

6 A. I don't recall any. As I said with  
7 Mr. Edwards this morning, the focus of my testimony has  
8 been the line sharing side of things, and I did look at  
9 the Qwest collocation study, and I don't recall seeing  
10 certainly any major such charges, but I'm not sure I  
11 could say confidently that I didn't see any. I just  
12 don't recall looking at this carefully in the  
13 collocation area.

14 Q. Would your answers be the same if I were to  
15 ask you those questions with regards to moving doors?

16 A. Yes.

17 Q. Or asbestos removal?

18 A. Yes, ma'am.

19 Q. Or meeting the requirements of the ADA?

20 A. Yes, they would.

21 Q. Mr. Deanhardt and I had a brief conversation  
22 wherein he inquired if I was going to be able to resist  
23 asking you about the pricing of the high frequency UNE,  
24 and I'm attempting to do so. Is it correct that your  
25 testimony essentially echos the testimony on that topic

01099

1 of Dr. Cabe and that Dr. Cabe is the main witness to  
2 address the pricing of the high frequency portion of  
3 the loop?

4 A. I think it's fair to say he's the main  
5 witness addressing that issue.

6 Q. Mr. Klick, would it be fair to say that in  
7 your experience over the past four years since the  
8 passage of the Telecommunications Act, you've been  
9 fairly familiar with the telecommunications industry?

10 A. Yes.

11 Q. Have you consulted to a fairly large number  
12 of clients?

13 A. Fairly large number. Not as large as I'd  
14 like.

15 Q. You would agree, would you not, that the  
16 pricing exercises that we are engaged in in these types  
17 of dockets are generally ones that seek to mimic to the  
18 maximum extent possible circumstances, including  
19 prices, that would exist in a competitive market?

20 A. I would agree with that.

21 Q. That's good, because it's right out of your  
22 testimony.

23 A. I thought I recognized it.

24 Q. Do you know whether or not Covad or Rhythms  
25 have approached any CLECs who lease unbundled loops

01100

1 from an ILEC and asked those CLECs whether they would  
2 be willing to lease to Covad the high frequency portion  
3 of the loop for no cost?

4 A. I do not know the answer to that.

5 Q. If I were to ask you that same question  
6 without limiting it to Covad or Rhythms, do you have  
7 any experience that would give you any knowledge about  
8 that type of a scenario?

9 A. In which a CLEC has been approached by  
10 another CLEC to lease the high frequency portion of the  
11 loop?

12 Q. Yes.

13 A. I don't think I have any knowledge about  
14 situations like that. I don't recall any specifics.

15 Q. Flipping forward in your Exhibit T-180 to  
16 Page 18, have you reviewed the price proposals that  
17 Mr. Thompson set forth in his rebuttal exhibit, which  
18 was marked for this record as Exhibit 22?

19 A. Is that the August 4th proposal?

20 Q. Yes, it is.

21 A. I have looked at it, and yes.

22 Q. The following question applies only to the  
23 rate elements but not necessarily the particular rates  
24 that are identified in that document. Do you have that  
25 in mind?

01101

1 A. Yes.

2 Q. In other words, the pricing proposal but not  
3 the prices themselves.

4 A. Got it.

5 Q. Do the rate elements proposed by Mr. Thompson  
6 in that Exhibit 22 reflect the designs for splitter  
7 collocation in Mr. Zulevic's testimony, and I'd be  
8 happy to show you.

9 A. That would be helpful to me. I recall it  
10 slightly different.

11 MS. ANDERL: It's JLT-11, Mr. Thompson's last  
12 exhibit on his prefiled testimony. It's Exhibit 22 for  
13 the record.

14 Q. (By Ms. Anderl) Do you need me to repeat the  
15 question that is pending, or do you still need time to  
16 review that?

17 A. I'll tell you what would be helpful for me in  
18 answering this question is there is a description in  
19 Mr. Thompson's testimony of these four options, and I  
20 can sort of pick up a little bit of that from the way  
21 it's described on the sheets you've handed me from  
22 Exhibit 22, but it would be helpful if I could look at  
23 the description of these options in his testimony, his  
24 August 4th testimony.

25 Q. I'd be happy to do that, Mr. Klick. There

01102

1 might be a way to shortcut that though, and maybe I  
2 could just ask it another way. In your reply  
3 testimony, Exhibit T-182 on Page 8, you reference the  
4 Minnesota proceeding, and you reference that in that  
5 docket, Mr. Thompson revised Qwest's prices to provide  
6 prices for the three line-sharing configurations  
7 recommended both in Minnesota and here by Mr. Zulevic  
8 to the extent that Mr. Thompson's Exhibit 22, in terms  
9 of pricing proposal, not necessarily the rates,  
10 reflects those same modifications.

11 A. What I recall reading in his August 4th  
12 testimony didn't describe an option in which the  
13 splitter was located in the CLEC's collocation area.  
14 That's my recollection, and looking at the five pages  
15 you've given me as Exhibit 22, that pretty much  
16 confirms what I recall reading in his testimony. My  
17 recollection is that none of the options shown on  
18 Exhibit 22 related to splitter location, splitter being  
19 located in the CLEC's collocation area, which is one of  
20 the three options in Mr. Zulevic's testimony. So  
21 that's how I remember it without looking at  
22 Mr. Thompson's August 4th testimony, and if I'm wrong  
23 about that, looking at the testimony would help me  
24 remember.

25 Q. If you assume, Mr. Klick, that the CLEC has



01103

1 existing DSO terminations and the splitter is in the  
2 CLEC collocation area, would you need any more or  
3 different rate elements than the ones that are proposed  
4 on Exhibit 22 for the CLEC collocation line sharing?

5 A. I perhaps failed to listen to the starting  
6 point of your question. I think in terms of rate  
7 elements, the rate elements contemplated by Mr. Zulevic  
8 would be covered, I believe, by the rate elements shown  
9 on the various pages of Exhibit 22. I think that some  
10 of the -- I thought your question was did it cover each  
11 of the configurations, and I probably misunderstood the  
12 question. But I think in terms of rate elements, the  
13 rate elements shown on these sheets would conform to  
14 the rate elements in any of the three scenarios  
15 identified by Mr. Zulevic. Although obviously, some of  
16 the details in terms of cable lengths and that sort of  
17 thing might be different.

18 Q. I don't recall how I asked it, but thank you  
19 for clarifying it in your response. Looking at Page 20  
20 of your response testimony --

21 A. T-180?

22 Q. Yes. -- I just want to ask you a couple  
23 questions about line-sharing collocation where the  
24 splitter is located on the distribution frame. Do you  
25 have that in mind?

01104

1 A. Yes.

2 Q. Were you in the hearing room yesterday when  
3 Mr. Zulevic testified that line-sharing collocation  
4 with the splitter located on the MDF is available to  
5 CLECs in Washington?

6 A. I was in the room for Mr. Zulevic's  
7 testimony. I recall him saying he had seen it in some  
8 Colorado COs. He hadn't seen it in any Washington  
9 Qwest central offices, but I don't specifically recall  
10 him saying it was available.

11 MR. DEANHARDT: Ms. Anderl, we would  
12 stipulate that it is available here.

13 MS. ANDERL: Thank you.

14 Q. (By Ms. Anderl) Mr. Klick, it's available in  
15 Washington. Thank you, Mr. Deanhardt, and you did  
16 answer the second part of my question, which is you  
17 also heard him state that to his knowledge, no such  
18 collocation is occurring in Washington.

19 Within that factual context, I'd like to ask  
20 you a question about your testimony here on Page 20,  
21 which is, if, in fact, line-sharing collocation with  
22 the splitter located on the main distribution frame is  
23 the most efficient forward-looking configuration, why  
24 isn't any CLEC doing it in Washington?

25 A. I don't know the answer to that. I've not

01105

1 talked to various CLECs about why they are or aren't  
2 doing particular things.

3 Q. On Lines 16 and 17, if you just read the  
4 sentence that's there to yourself, and if I were to  
5 read that back to you changing just a few of the words  
6 as follows, let me ask you if you would agree that that  
7 sentence remains true: Neither the ILEC nor the  
8 consumers should be forced to defray the costs of a  
9 CLEC's inefficient architecture decisions.

10 A. I think that if a CLEC were to, of its own  
11 volition, elect to do something less than the most  
12 efficient way that the ILEC ought not to be on the hook  
13 for that. On the other hand, if the ILEC forces a less  
14 efficient approach, then the ILEC should be on the hook  
15 for it.

16 Q. On Pages 21 and 22, you talk about the  
17 planning and engineering time estimates.

18 A. Yes, ma'am.

19 Q. Did you participate in the development or  
20 preparation of these time estimates?

21 A. Not really. That was Mr. Zulevic's  
22 expertise. We did, I think, participate to the extent  
23 of having identified the categories of engineering that  
24 we've seen in other analyses of collocation just to  
25 make sure we had as complete a list as possible, but in

01106

1 terms of what those estimates are, the actual time  
2 values, that's Mr. Zulevic.

3 Q. So that when you state that you worked with  
4 him to develop costs, would it be fair to say that your  
5 input was primarily with regard to the categories, and  
6 Mr. Zulevic's was primarily with regard to the time  
7 estimates?

8 A. Yes, ma'am.

9 Q. Turning to your testimony on Page 24 of that  
10 same Exhibit T-180, you have another discussion at  
11 Lines 7 through 9 about parties not being permitted to  
12 compose inefficient configurations on one another. Do  
13 you see that?

14 A. Yes, I do.

15 Q. Can you identify any instances in Washington  
16 where Qwest has required Covad to implement a different  
17 collocation arrangement than Covad requested?

18 A. No, I can't.

19 Q. Same question with regard to Rhythms.

20 A. Same answer.

21 Q. Mr. Klick, my next questions are going to be  
22 in connection with your reply testimony, Exhibit T-182.

23 A. Interesting. It says "rebuttal" on the cover  
24 and "reply" on the header.

25 Q. On Page 9 of that testimony, in the answer

01107

1 that starts at Line 6, I know that you filed this  
2 testimony on the same day that Mr. Thompson filed his  
3 rebuttal, August 4th. Have you had a chance to review  
4 Mr. Thompson's rebuttal testimony to the extent that it  
5 addresses the ability of CLECs to use existing tie  
6 cables?

7 A. Yes, I've read the testimony, and I recall  
8 that discussion vaguely.

9 Q. To the extent that Qwest permits CLECs to use  
10 existing unused tie cables, does that to some extent  
11 take into account the different demand that you are  
12 discussing there at Lines 6 through 8?

13 A. I suppose it would. I had something  
14 different in mind in this discussion, and that has to  
15 do with the steps I've taken in my restatement of  
16 Mr. Thompson's second round of testimony, but I would  
17 suppose that to some extent it would, yes.

18 Q. Flipping forward to your testimony on Page  
19 21, Lines 12 through 15, is that the area of your  
20 testimony then that's closer to the situation I was  
21 just asking you about?

22 A. Yes, ma'am.

23 Q. And then does Qwest's willingness to allow  
24 CLECs to use their existing previously unused tie  
25 cables address the concern you raise in that portion of

01108

1 your testimony?

2 A. I think so. Although, I'd want to go back  
3 and look at what the cost implications were in  
4 Mr. Thompson's testimony and how that's taken into  
5 account, but that's generally the issue, yes.

6 Q. In reviewing Mr. Zulevic's testimony and  
7 listening to him yesterday, you should be aware that he  
8 has agreed that there are at least some central office  
9 configurations where the use of an intermediate  
10 distribution frame is the most efficient configuration.  
11 Do you recall that?

12 A. Yes, I do.

13 Q. Does your restatement of Qwest's costs, and  
14 we'll get into that in more detail in just a minute,  
15 but does your restatement anywhere reflect the use of  
16 an intermediate distribution frame?

17 A. In a sense, I think it does, and let me  
18 explain that. Basically, what I've done is calculate  
19 the costs from the distribution frame to the splitter  
20 and to the DSLAM and so on. In those few central  
21 offices where an IDF would be, as Mr. Zulevic  
22 testified, the efficient configuration, the sort of  
23 model I have would cover the cost from the intermediate  
24 distribution frame to the splitter and to the DSLAM.

25 It's my understanding that in those limited

01109

1 circumstances where an IDF is efficient that the costs  
2 of the cabling from the MDF to the IDF are covered by a  
3 different rate element, the interconnection tie pair,  
4 which I understand is the subject of some dispute  
5 between the parties. The costs I've developed or the  
6 model I've developed here would apply for the portion  
7 of the costs from the IDF to the splitter and those  
8 cases that Mr. Zulevic referred to yesterday where such  
9 an arrangement is most efficient, and in other central  
10 offices, it covers the cost from the MDF to the  
11 splitter, and in that sense, yes, I think they do.

12 Q. Do you include anywhere in your restatement  
13 any costs that might be necessary to modify existing  
14 central offices so that they look like a  
15 forward-looking central office before the collocation  
16 starts?

17 A. No. As Mr. Zulevic testified yesterday, I  
18 don't think any of the assumptions we've made here  
19 require any assumption about a different central office  
20 configuration. I think what Mr. Zulevic was describing  
21 is all of his assumptions are realistic and based on  
22 his experiences with existing U S West central offices  
23 or Qwest central offices.

24 Any of our studies require modeling and  
25 utilize modeling to some extent, and one has to model

01110

1 them unless one is going to go out and look at every  
2 single Qwest central office, for example. So none of  
3 the assumptions I've made particularly require an  
4 assumption about a different central office  
5 configuration.

6 Q. Did you hear Mr. Zulevic testify that in  
7 order to use a COSMIC frame in the way that he was  
8 suggesting, it might be necessary to add panels to  
9 modules or to install modules?

10 A. I did hear that testimony.

11 Q. He didn't provide you with any assumptions in  
12 connection with adding panels to modules or installing  
13 modules, did he?

14 A. No, he did not.

15 Q. And therefore would not have included any  
16 assumptions along those lines or any costs associated  
17 with those assumptions in your restatements, would you?

18 A. To the extent that I'm starting with  
19 Mr. Thompson's numbers and modifying them for  
20 differences in cable lengths and number of blocks  
21 required, to the extent Mr. Thompson has incorporated  
22 such expenditures, I've got them in mine. To the  
23 extent he hasn't, I would be missing them in mine. I  
24 also recall Mr. Zulevic testifying he didn't think it  
25 was a particularly expensive thing to do.



01111

1 Q. On Page 20 of your testimony, T-182, and this  
2 is CT-182 because Page 20 is a confidential page, but  
3 the information I'm asking you about is not  
4 confidential, I don't think, the proprietary data  
5 starts on Line 8; right?

6 A. That is correct.

7 Q. And then the information in the two tables  
8 above it is not considered proprietary by either your  
9 clients or mine.

10 A. I believe that's correct.

11 Q. I can represent that mine does not. Looking  
12 in the first table there, where it says "splitter  
13 located in CLEC collocation area" --

14 A. Yes, ma'am.

15 Q. -- do you have a reference to Mr. Zulevic's  
16 testimony to support the 150 horizontal feet, and the  
17 reason I ask -- it's not a pop quiz -- I couldn't find  
18 it there, and I noted that in the box above that one,  
19 you state that your distances are based on Zulevic's  
20 testimony, and in this box, you do not make that same  
21 statement, so I was just curious about that.

22 A. If you look on the prior page, I describe the  
23 165 feet as an assumption I've made, and I explain sort  
24 of the basis for that assumption, and then in the  
25 assumptions above where I refer to Mr. Zulevic,

01112

1 Mr. Zulevic cites a 25-foot distance from the MDF to  
2 the splitter, and so what's reflected in the middle box  
3 there is my 165 feet modified by Mr. Zulevic's 25-foot  
4 assumption about the location of the splitter.

5 It's probably a very inartful way of saying  
6 that, but basically, I started with my 165 feet and  
7 said if you're 25 feet from -- it's actually 150 feet,  
8 as it says here in the box, plus seven-and-a-half  
9 cabling on either end. If you start with my 150 feet  
10 and subtract Mr. Zulevic's 25 feet, you get 125 feet,  
11 and then adding the seven-and-a-half feet on either end  
12 gets you the 140 feet.

13 So what I'm trying to say inartfully in that  
14 box is I'm using Mr. Zulevic's 25-foot assumption to  
15 get the cable lengths shown under "value" in that  
16 middle box and my 150-foot assumption from the prior  
17 page.

18 Q. And that assumption is from where?

19 A. This assumption is an assumption I've made  
20 about the average distance from the MDF to the  
21 collocation area. I made that assumption based, as I  
22 said, on the criteria set forth below that there would  
23 be a three-story CO, 100 by 120 feet, and I calculated  
24 the average distance between the close and the far.  
25 That assumption is consistent with an assumption made

01113

1 in the AT&T/MCI collocation cost model, but as I look  
2 at the various assumptions that ILECs have made here,  
3 it's similar.

4 Q. Mr. Klick, are you familiar with something  
5 called NEBS standards or Network Equipment Building  
6 Standards?

7 A. I believe I've heard people use that acronym,  
8 but I wouldn't say I'm familiar with it. I've heard of  
9 it.

10 Q. Do you have an understanding of the type of  
11 information that is contained in the NEBS standards,  
12 other than what one might be able to glean from the  
13 name, Network Equipment Building Standards?

14 A. No, I really don't.

15 Q. How about the NEC, have you heard of that,  
16 the National Electric Code?

17 A. Yes, I've heard of that.

18 Q. Do you know what that is?

19 A. Not in any detail.

20 Q. How about Qwest's technical publications, are  
21 you familiar with those in general?

22 A. I think I've seen some of those from time to  
23 time. Again, I'm not sure I'd say I'm familiar with  
24 them.

25 Q. Do you have an understanding of whether or

01114

1 not equipment in a central office is or is not required  
2 to meet the standard set forth in all three of those  
3 groupings that we just identified, the NEBS standards,  
4 the National Electric Code and the Qwest technical  
5 publications?

6 A. That Qwest requires equipment installed to  
7 meet all three of those standards?

8 Q. Yes.

9 A. I think I've heard such things, yes. I  
10 assume Verizon wouldn't require it to meet Qwest's  
11 technical publications, for example.

12 Q. I guess I have one other question in your  
13 testimony before we move on to your Exhibit C-184. On  
14 Page 13 of your rebuttal testimony, T-182, Lines 7 and  
15 8 there, let me ask you if it is your testimony that  
16 the price of the splitter is included in Qwest's cost  
17 analysis?

18 A. My recollection is that it is not, and just  
19 to be clear, I've seen Mr. Thompson's August 4th  
20 material, and particularly what's in Exhibit 22, but I,  
21 at least, haven't seen any underlying calculations, but  
22 it does indicate on here that opposite the label  
23 splitter, there is an item that says "cost," so what  
24 I'm assuming that means is that there is nothing there  
25 if the CLEC provides the splitter.

01115

1 Q. And that's consistent with your  
2 recommendation; is that right?

3 A. Yes.

4 Q. Could I ask you to please turn to C-184. Let  
5 me just clarify that the first page is a summary page;  
6 is that correct?

7 A. For cross-connect bay and planning, yes,  
8 ma'am.

9 Q. Then Pages 2 and 3 provide the backup or the  
10 detail for the summary statement on Page 1, maybe not  
11 the backup but the detail or calculations.

12 A. In part, yes.

13 Q. Is it correct that Page 2 is the Qwest  
14 proposal, and Page 3 is your restatement?

15 A. Let me be as clear as I can. If you look at  
16 Page 2 in the bottom right, the last line on the  
17 right-hand box, there are two numbers there, one for  
18 bay recurring and one for bay nonrecurrent. If you  
19 come back to Page 1, you will see those two figures in  
20 the columns labeled, Qwest bay per shelf and RC and  
21 MRC, so what's on Page 2 is the backup only for those  
22 two numbers, and then what's on Page 3, and you are  
23 right, is the backup for my modification to those two  
24 numbers which shows up in the right-hand box on Page 1  
25 of C-184. Behind pages 2 and 3 are similar backups for

01116

1 the numbers that appear on Page 1.

2 Q. Thank you for that clarification. Turn to  
3 Page 3, or stay there if that's where you are. Assume  
4 for a moment that Qwest has agreed with you that the  
5 fill factor assumption is properly set at 100 percent.  
6 You've indicated on the top of that page that the  
7 number of shelves per bay that you are modeling or  
8 calculating there is 12; is that correct?

9 A. Yes.

10 Q. Qwest has assumed 8; is that right?

11 A. Yes.

12 Q. Can I ask you, Mr. Klick, to accept subject  
13 to your check that if the number of shelves per bay on  
14 your Page 3 were changed from 12 to 8 that that would  
15 change the figure at the bottom right under "bay  
16 nonrecurring," -- and I'm going to just read these  
17 numbers. I think it's fine -- from \$241.40 to  
18 approximately \$632?

19 A. It doesn't sound right.

20 Q. Can you tell me why?

21 A. Sure. If instead of dividing by 12 I'm  
22 dividing by 8, the numbers ought to be twelve eighths.

23 Q. So that's one-and-a-half times?

24 A. One-and-a-half times, that's right.

25 Q. So isn't one-and-a-half times 240 about 362?

01117

1 A. I thought you said 600 something.

2 Q. If I transposed the numbers, I apologize. I  
3 sometimes do that. I meant 362.

4 A. That's right. I would agree with that.

5 JUDGE BERG: These aren't confidential  
6 numbers, are they?

7 MS. ANDERL: Not anymore, no.

8 Q. (By Ms. Anderl) Let's look in the upper  
9 left-hand box on this page where you've listed  
10 expenses, and the fourth or fifth item down is called  
11 ground wire.

12 A. Yes.

13 Q. And you've indicated that there would be no  
14 expense incurred for ground wire because grounding wire  
15 is unnecessary for line sharing is your statement on  
16 that exhibit; is that correct?

17 A. Yes.

18 Q. Did Mr. Zulevic provide you with that  
19 information to indicate to you that that is a correct  
20 assumption?

21 A. In fairness to Mr. Zulevic, we had a  
22 discussion quite a while ago about this issue, and I  
23 don't believe I've discussed it with him in the context  
24 of this testimony, but I zeroed it out based on that  
25 discussion that I had with him weeks ago.

01118

1 Q. It's your testimony that he told you it was  
2 okay not to include ground wire?

3 A. That's right. That's my recollection.

4 Q. Do you know one way or the other whether or  
5 not a bay which contains shelves and splitters needs to  
6 be grounded, the bay itself?

7 A. I would have no independent knowledge on  
8 that.

9 Q. So if someone were to tell you that such  
10 grounding were required by either NEBS standards or the  
11 National Electric Code, would you accept that that item  
12 should be put back into the analysis?

13 A. I would, yes.

14 Q. Now, you have on Page 6 of 17, and that one  
15 is a difficult one to identify because the Page No. 6  
16 is stamped over with a confidential designation. Do  
17 you see it? Page 5 is still legible as Page 5, so it's  
18 simply the one after that.

19 Mr. Klick, in the first big box on that page,  
20 about a third of the way down, you have a heading  
21 called "cost of cable and placement cable." Do you see  
22 that?

23 A. Yes, ma'am.

24 Q. Then you have a designation placement four  
25 25-pair cables and then a number there. What does that



01119

1 number represent?

2 A. As it says over on the right-hand side -- I  
3 understand the confusion here, so let me start by going  
4 back to the prior page, which is Page 5, which is a  
5 reproduction of Mr. Thompson's calculation, and you  
6 will see in that same location placement four 25-pair  
7 cables and then a number.

8 Q. Yes, I do see that.

9 A. If you come back to Page 6, what I've done  
10 opposite placement four 25-pair cables is divide  
11 Mr. Thompson's number by four, and the reason I did  
12 that was because I was seeking to estimate the cost of  
13 placing one 100-pair cable as opposed to four 25-pair  
14 cables.

15 Q. That's what I thought you were doing, and we  
16 were going to get there, but I think you've gotten us  
17 there more quickly. Did you personally do any analysis  
18 to determine whether or not one could place a single  
19 100-pair cable in exactly one fourth of the amount of  
20 time as it would take to place four 25-pair cables?

21 A. No.

22 Q. So this is just an estimate?

23 A. That's correct.

24 Q. Then you multiplied that number by the  
25 assumed cable length to produce a price for placing a

01120

1 single cable; is that right?

2 A. That's right, and those cable lengths relate  
3 back to the charts we were looking at before on one of  
4 the blue pages.

5 Q. That's fine. I wasn't going to ask about  
6 that, but thank you. As you continue down that  
7 calculation, I note that you then calculate the actual  
8 cost of the cable itself based on 25-pair cable, and  
9 that in order to then bump that assumption up to be the  
10 equivalent of a 100-pair cable, you end up having to  
11 multiply by 4, is that right, the line that says the  
12 number of 25-pair cables including connections to  
13 splitter, and there is a 4 there?

14 A. Yeah. The effect of not making any  
15 modification here would be to say that a 100-pair cable  
16 is the equivalent of four 25-pair cables, which  
17 probably overstates the cost somewhat, but I didn't  
18 have any particular way -- I know that it's not  
19 one-fourth.

20 Q. Did you do any investigation to determine  
21 whether 100-pair cables with the connectorized ends  
22 were available absent some sort of a special order?

23 A. No.

24 Q. Or as to what the cost of that 100-pair cable  
25 would be independent of the assumption that it would be

01121

1 four times the 25-pair cable cost?

2 A. No.

3 Q. On Page 9 of this same exhibit -- I don't  
4 believe that you were in the room, but has your counsel  
5 represented to you whether or not Qwest responded to a  
6 request for information on the record about whether or  
7 not Qwest will allow a CLEC to self-provision through  
8 an approved vendor block placement cable and cable  
9 placement?

10 A. I was not in the room, and I haven't had any  
11 discussions with counsel on that issue.

12 Q. Turn to Page 17, please. In the common  
13 splitter area configuration that you have laid out in  
14 the middle of that page --

15 A. Yes.

16 Q. -- is it your testimony that the cost of  
17 planning for splitter -- when would that apply?

18 A. This is a per request figure.

19 Q. So up to a certain number of splitters or per  
20 bay, up to a single relay rack or bay or some other  
21 quantification?

22 A. That's a good question. The way that this is  
23 developed, if you think about a single request that  
24 were for two shelves, then what this would say is you  
25 would pay the figure opposite cost of planning for

01122

1 splitter plus twice the figure shown opposite cost of  
2 planning for rack per shelf, so a single request for  
3 two shelves would be the sum of the first plus twice  
4 the second.

5 A single request, two single requests for one  
6 shelf each would be two times the first plus two times  
7 the second.

8 Q. That does answer my question, thank you.

9 MS. ANDERL: Your Honor, may I have a moment?

10 JUDGE BERG: Yes.

11 MS. ANDERL: That concludes my questions.

12 JUDGE BERG: Dr. Gabel?

13

14

CROSS-EXAMINATION

15 BY DR. GABEL:

16 Q. Good afternoon, Mr. Klick. I'd like to begin  
17 by following up on two areas which you were asked about  
18 by Mr. Edwards prior to lunch. I want to make sure I  
19 understand the point, first, with the line of  
20 questioning dealing with ICB. Could you identify that  
21 acronym?

22 A. Individual case basis.

23 Q. Do you have before you Exhibit 327, which is  
24 Dr. Tanimura's rebuttal testimony?

25 MR. DEANHARDT: We'll have to get those if

01123

1 you just give us a second.

2 Q. I'd like to ask you to turn to Page 23, Lines  
3 11 to 18. Mr. Edwards was asking you about ICB this  
4 morning, and I want to make sure I understand your  
5 position on it. Is it your understanding when  
6 Dr. Tanimura is talking about an ICB here, this is ICB  
7 for Configuration No. 1 placement of splitters or  
8 virtual collocation?

9 A. It's not clear to me, and I interpret it as  
10 applying potentially to Configuration No. 1 because it  
11 says GTE's interstate virtual collocation tariff does  
12 not contain the appropriate rate elements to support  
13 arrangements such as line sharing, so having read  
14 earlier in an earlier round of testimony with respect  
15 to Configuration No. 1 a discussion of ICB and then  
16 seeing this, it just wasn't clear to me whether the  
17 costs shown in, I believe it's 326, mooted this issue  
18 or not, and you've identified the piece that I was  
19 speaking of this morning that led me to think ICB may  
20 still be relevant to Configuration No. 1.

21 Q. Now could I ask you to turn to Exhibit 254,  
22 which Mr. Edwards also questioned you about this  
23 morning. You looked at or discussed with Mr. Edwards  
24 both the numbers on Page 1 and Page 2. Do any of these  
25 numbers appear as rate elements? What I had trouble

01124

1 following after listening to this area of  
2 cross-examination is what from these two sheets shows  
3 up on the rate sheets, or are they then transferred to  
4 some other costing witness and then further process?

5 A. If you will look at 326, which is the item we  
6 just talked about -- it's the attachment to Exhibit  
7 325 -- you will see a figure in Line 8 of Exhibit 326,  
8 and that's the same figure as is shown at the bottom on  
9 Line 14 of Exhibit 254, so I think the answer is that  
10 what's in 254 flows directly into 326.

11 Q. Looking at 254, that's the sum of the value  
12 that appears on Lines 11 and 12 of the first sheet of  
13 Exhibit 254?

14 A. That's right.

15 Q. And the item on Sheet 1, Line 11, does that  
16 come from the prior page?

17 A. What it is is Line 7 times the factor gives  
18 you the figures shown on Line 11.

19 Q. That factor that appears on Line 11, is that  
20 an installation cost factor?

21 A. I do not believe it is. Can I use the name  
22 of the factor?

23 MR. EDWARDS: Yeah.

24 THE WITNESS: It's a material loading factor,  
25 and there is a work paper that breaks that factor down

01125

1 into, it's my recollection, two components, and I can  
2 -- one is a supply factor and one is a minor material  
3 factor, and the supply factor is probably about  
4 three-quarters of what's shown here as the material  
5 loading factor.

6 Q. Just then as a request from the Bench, could  
7 you provide that work paper that you've just  
8 identified?

9 A. I think I can, yes.

10 JUDGE BERG: That will be Bench Request No.  
11 5, and Dr. Gabel, would you relate the exhibit page and  
12 line number reference again or the factor number?

13 DR. GABEL: Yes. Exhibit C-54, Line 11, the  
14 work paper associated with the material loading factor.

15 MR. DEANHARDT: I believe that's Exhibit  
16 C-254.

17 MR. EDWARDS: I don't know that I have an  
18 objection to that, but I do have a comment, perhaps an  
19 objection. The exhibit is Ms. Casey's, and while I  
20 have the utmost respect for Mr. Klick's ability to  
21 support her number with her work paper, perhaps the  
22 proper person to ask that request to would be  
23 Ms. Casey.

24 MR. DEANHARDT: And actually, I would agree.

25 JUDGE BERG: We'll hold the question for

01126

1 Ms. Casey, but this is a request from the Bench to  
2 Verizon.

3 DR. GABEL: Actually, if you can just  
4 identify where in Ms. Casey's work papers that number  
5 appears, that would be sufficient.

6 MR. EDWARDS: All right.

7 THE WITNESS: There is both a paper where the  
8 number appears, and there is also a description, an  
9 actual verbal description of what the components are.

10 MR. EDWARDS: I need to confirm what it is  
11 with Ms. Casey. We accept that as a record request to  
12 us.

13 JUDGE BERG: If it can be solved with  
14 information that's already in the record, then that  
15 will suffice.

16 MR. EDWARDS: I apologize, but can I hear the  
17 request one more time?

18 DR. GABEL: I would like to be pointed to the  
19 place in Ms. Casey's work papers where she identifies  
20 how the material load factor that appears on Line 11,  
21 Page 1 of Exhibit C-254 is developed.

22 On a path of asking Bench requests, I have a  
23 Bench request as a follow-up to Ms. Anderl's line of  
24 questions, and that is you provide the Bench with an  
25 electronic copy of your exhibit C-184.



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1 THE WITNESS: That's fine.

2 MR. DEANHARDT: Dr. Gabel, would you prefer  
3 that on disk, or can we e-mail that to you?

4 JUDGE BERG: It's preferable that we have it  
5 on disk.

6 Q. (By Dr. Gabel) Mr. Klick, are you familiar  
7 with SBC's Project Pronto?

8 A. To some extent, yes.

9 Q. Could you provide a description of Project  
10 Pronto?

11 A. It's my understanding that SBC's Project  
12 Pronto is an effort across all of the SBC owned ILECs  
13 to make DSL service widely available.

14 Q. Does Project Pronto involve an upgrade of  
15 local loop facilities of that DSL service to become  
16 more widely available?

17 A. It does, and my recollection of some of the  
18 press that I've seen about it suggests they are trying  
19 to make it available to some 780 million customers  
20 across their family system.

21 Q. Is this a kind of an upgrade that you would  
22 expect other incumbent local exchange carriers to do to  
23 upgrade their network so they can provide advanced  
24 telecommunications services?

25 A. It is. I think from what I know about this

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1 nationwide, SBC has been the most aggressive ILEC in  
2 terms of committing resources and making promises about  
3 doing it, but I do see indications that other ILECs are  
4 beginning to move in that direction as well.

5 Q. When these network upgrades are undertaken by  
6 incumbent local exchange carriers, would you agree or  
7 disagree with the characterization that advanced  
8 telecommunications services are one of the causers of  
9 these network upgrades?

10 A. I would agree that advanced  
11 telecommunications services are one of the cost  
12 causers.

13 Q. Would you concur that when the upgrade to the  
14 platform takes place that a DLEC or a CLEC that wants  
15 to provide advanced telecommunications services over  
16 those platforms also has opportunity to provide a  
17 better quality product to retail customers than they  
18 would be able to provide absent such an upgrade?

19 A. Clearly, the upgrade permits a more extended  
20 reach for a DLEC or a CLEC, and in some capacities, I  
21 think there would be an improved quality as well.

22 Q. I suspect, Mr. Klick, you know where I'm  
23 heading with this line of questioning. Am I correct  
24 it's your position that your clients, Covad and  
25 Rhythms, should not be making a contribution to loop

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1 costs at this time on a recurring basis to what some of  
2 the parties have characterized as the joint cost of the  
3 loop?

4 A. It's my position that at this time, the HUNE,  
5 as we're calling it, should have a cost of zero.

6 Q. If a company like Covad or Rhythms is able to  
7 provide a better product because of this network  
8 upgrade, why is it your belief that Covad or Rhythms  
9 shouldn't be making a regular contribution for the cost  
10 of the network upgrade?

11 A. I think that this gets complex because one  
12 has to be careful that those same costs aren't already  
13 being recovered in either the retail rates already  
14 being charged or in the UNE loop rates that are being  
15 charged or that will be charged the next time those  
16 rates are set, and I think again, Dr. Cabe is sort of  
17 the primary witness on this, but I think our  
18 fundamental position is that you shouldn't have costs  
19 -- in a competitive market standard, there would be no  
20 way to charge rates for the combination of those  
21 services that exceed their forward-looking costs, so  
22 the fundamental point would be that, and I would be  
23 concerned about how those costs might find themselves  
24 in either the retail rates and or the UNE rates that  
25 are being set for the loop.

01130

1 Q. Can I ask you to turn to your Exhibit 182,  
2 Page 14, Lines 7 through 14, the rebuttal testimony,  
3 C-182. Mr. Klick, I'm going to present this question  
4 to you, but perhaps Ms. Anderl and Mr. Deanhardt can  
5 provide some guidance here.

6 As I understand this portion of your  
7 testimony, here you're expressing some problems you had  
8 with the documentation.

9 DR. GABEL: Was this cleared up through your  
10 discussion yesterday of Exhibit C-43, Mr. Deanhardt?  
11 Is this related to C-43?

12 MR. DEANHARDT: I would have to show it to  
13 Mr. Klick, and he's not aware of what happened  
14 yesterday, and I can do that.

15 JUDGE BERG: Off the record.

16 (Discussion off the record.)

17 THE WITNESS: I believe so, Dr. Gabel. If I  
18 can point you, for example, to Page 2 of Exhibit C-184,  
19 you will note that there are two investment numbers  
20 shown there. One I cite Attachment B to Qwest response  
21 to Rhythms Request 3-10 and the other cites to  
22 Attachment A, and you will see there in the upper  
23 left-hand box the number that Mr. Deanhardt is showing  
24 me as having been resolved, and you are absolutely  
25 right. The language that I had in mine was I couldn't

01131

1 figure out the difference between these two investment  
2 numbers, and as I understand what I'm being told is  
3 that the upper left-hand one is no longer operative.

4 The problem I had was that the detail leading  
5 to the total investment number came up with a number in  
6 the upper left hand and then the factors were applied  
7 to the investment in the right hand, so in my  
8 restatement, I had no choice but to use the left-hand  
9 investment and apply the factors to it.

10 Q. As an additional request from the Bench,  
11 could you indicate how you would modify your Exhibit  
12 C-184 to reflect the clarification that Mr. Deanhardt  
13 has now provided you on C-43?

14 MR. DEANHARDT: Dr. Gabel, one thing I would  
15 suggest -- unfortunately, Mr. Thompson has now left,  
16 because this may get more confusing than that, because  
17 if I can, and I'm trying not to cross a line here, but  
18 if I do, please tell me, but my understanding of what  
19 Mr. Thompson has proposed in his rebuttal testimony,  
20 that underlying information may not, and I don't know,  
21 may have been in anything that -- the materials I'm  
22 sure were, but some of that information may not have  
23 been in what Mr. Klick saw in preparing C-184.

24 What has not happened, which is something we  
25 did do in Minnesota, was for Mr. Klick and Mr. Thompson

01132

1 to get together and compare those documents and see  
2 what the differences are. I guess all I'm suggesting  
3 is that what you are asking, we maybe able to do, but  
4 it may still be based on incorrect information  
5 according to what Qwest's final proposal was, and so  
6 therefore may not advance the record.

7 MS. ANDERL: And I wish Mr. Thompson were  
8 here, but I kind of tend to agree with Mr. Deanhardt on  
9 that, and maybe the best thing would be for counsel and  
10 witnesses to consult off line and either come back with  
11 a proposal or status update next week.

12 MR. DEANHARDT: I think that would be best,  
13 because I do think we find there would still be  
14 confusion, and if we can maybe have time, if not  
15 sometime next week then after the hearing to sit down  
16 on a conference call with Mr. Klick and Mr. Thompson  
17 with the spreadsheets in front of us.

18 I assume that what you are asking for, in  
19 essence, is that you want a reconciliation between  
20 something that shows the differences between Klick's  
21 proposal and Thompson's proposal and that explains  
22 where those differences are. That's the nut you're  
23 getting at?

24 DR. GABEL: Perhaps that's what I was getting  
25 at is I just wanted to see if Mr. Klick's Exhibit C-184

01133

1 reflects effectively the stipulation that was made  
2 yesterday regarding C-43, and if it doesn't, how C-184  
3 needs to be updated or modified.

4 MR. DEANHARDT: I think we should, if that's  
5 okay with the Bench, consult with everybody and try to  
6 present you with that after getting everybody together.

7 JUDGE BERG: Does counsel want to leave this  
8 for a follow-up item on August 30th? Let's do it that  
9 way, and let's also set this up as Bench Request 7, and  
10 the parties will just respond to the best of their  
11 ability.

12 MR. DEANHARDT: Your Honor, we may try to do  
13 it before that because August 30th, if things go well,  
14 I do not intend to be here, but on or before August  
15 30th, we'll get you an answer.

16 JUDGE BERG: Let's move on.

17 DR. GABEL: I have no further questions.  
18 Thank you.

19 JUDGE BERG: Off the record.

20 (Discussion off the record.)

21 JUDGE BERG: There are no further questions  
22 from the Bench. The practice has been to check with  
23 cross-examining counsel to see if they have any  
24 additional questions before going to redirect.  
25 Mr. Edwards?

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1 MR. EDWARDS: No questions.

2 MS. ANDERL: None, Your Honor.

3 JUDGE BERG: Mr. Deanhardt?

4 REDIRECT EXAMINATION

5 BY MR. DEANHARDT:

6 Q. Mr. Klick, you were having a conversation  
7 with Mr. Edwards about Ms. Casey's work papers and  
8 whether or not the price of splitters were included in  
9 the virtual collocation cost study. Could you please  
10 identify the exhibit that this refers to and explain  
11 your conclusion after further looking at the exhibit?

12 A. Yes. I looked at this exhibit in a little  
13 more detail over the lunch hour, and what I had  
14 testified was that it appeared to me that the cost of  
15 the splitter was included in the amount shown under  
16 total installation costs on Exhibit 254, which then  
17 wends its way into Exhibit 326.

18 Looking at this over the lunch hour, it's  
19 pretty clear to me that that's not an accurate  
20 statement. What does happen is that the material cost  
21 of the splitter gets used to compute the material  
22 loading amount shown on Exhibit 254, which does wend  
23 its way, in addition to installation, into the figures  
24 shown for installation, so my statement that the cost  
25 of the splitter gets included is incorrect. However,



01135

1 some noninstallation dollars, in fact, more than half  
2 the dollars, are a function of applying a material  
3 loading factor to that cost, so that's what I was able  
4 to determine in looking at this again over lunch.

5 Q. I believe you said that was C-254?

6 A. Yes.

7 Q. Also, Ms. Anderl asked you questions about  
8 CLECs collocating with splitters on the distribution  
9 frame, and I'm wondering, are you aware whether or not  
10 at the time that the CLECs developed the central office  
11 deployment list referenced in the Interim Line Sharing  
12 Agreement, Qwest had made it known to the CLECs that  
13 they would be able to place splitters on the  
14 distribution frame in anything other than the central  
15 offices with less than 10 thousand access lines?

16 A. I'm not really sure, Mr. Deanhardt, about  
17 that.

18 MR. DEANHARDT: I have no further questions.

19 JUDGE BERG: Any other cross?

20 MS. ANDERL: No, Your Honor.

21 DR. GABEL: No.

22 JUDGE BERG: Mr. Klick, thank you very much  
23 for your testimony. You are excused from the witness  
24 stand. We will take a break until 3:20.

25 (Recess.)

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1 JUDGE BERG: We are going to conclude this  
2 week's hearing with Dr. Richard Cabe.

3 (Witness sworn.)

4 DIRECT EXAMINATION

5 BY MR. DEANHARDT:

6 Q. Good afternoon, Dr. Cabe. Could you please  
7 state your name and business address for the record?

8 A. My name is Richard Cabe, and my business  
9 address is 219 I Street -- the letter "I" -- Salida,  
10 Colorado.

11 Q. Do you have in front of you what has been  
12 marked as Exhibits T-190 through T-202?

13 A. Yes, I do.

14 Q. And are those copies of your testimony and  
15 accompanying exhibits?

16 A. Yes, they are.

17 Q. Was your testimony prepared by you or under  
18 your direction and control?

19 A. Yes, it was.

20 Q. Were these exhibits either prepared by or  
21 selected by you or under your direction and control?

22 A. Yes, they were.

23 Q. Do you have any corrections to make to any of  
24 your testimonies?

25 A. Yes, I do. I found two words that I must

01137

1 have misspelled so badly that the spell checker changed  
2 the word.

3 Q. Which exhibit number?

4 A. In T-190, on Page 20 at Line 14, the last  
5 word on the line, "providing," should be "proving."

6 Q. Do you have another change, Dr. Cabe?

7 A. Yes. In T-202 at Page 14, it's the line  
8 between 12 and 13, the word "imposed" should be  
9 "impossible."

10 Q. Do you have any other changes to your  
11 testimony or exhibits, Dr. Cabe?

12 A. No, I don't.

13 Q. If I asked you the questions contained in  
14 your testimony again today, would you answer them in  
15 the same way?

16 A. Yes, I would.

17 MR. DEANHARDT: Your Honor, I would move for  
18 admission of Exhibits T-190 through T-202.

19 MS. ANDERL: No objections.

20 MS. McCLELLAN: No objections.

21 JUDGE BERG: We are looking for the  
22 correction on T-202, Page 14.

23 MR. DEANHARDT: I don't recall if we ever had  
24 these actually identified for the record the way that  
25 we have done with the other witnesses.

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1 JUDGE BERG: I think you are right. I don't  
2 think we have. Let me state for the record that along  
3 with the qualifications of the witness that the  
4 reporter should enter into the transcript the  
5 description and exhibit numbers that have been assigned  
6 to the various Exhibits T-190 through T-202 as if they  
7 were fully read into the transcript at this point.

8 T-190 is Direct Testimony (RC-1T). 191 is  
9 Witness Qualifications (RC-2). 192 is Interim Line  
10 Sharing Agreement (RC-3). 193 is MN Data Request to  
11 U S West (RC-4). Exhibit T-194 is Response Testimony  
12 (RC-5T). Exhibit 195 is Covad 01-022 (RC-6). 196 is  
13 Covad 01-021 (RC-7). 197 is Covad 01-046 (RC-8). 198  
14 is RLI 03-001 (RC-9). 199 is Verizon News Release  
15 (RC-10). 200 is RLI 03-008 (RC-11). 201 is RLI 04-019  
16 (RC-12). T-202 is Rebuttal Testimony (RC-13T). 203 is  
17 GTE 01.

18 JUDGE BERG: Exhibits T-190 through T-202 are  
19 admitted.

20 MR. DEANHARDT: With that, Your Honor,  
21 Dr. Cabe is offered for cross-examination.

22 JUDGE BERG: Who would like to lead;  
23 Ms. McClellan?

24 CROSS-EXAMINATION

25 BY MS. McCLELLAN:

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1 MS. McCLELLAN: Thank you, Your Honor, and  
2 before I start, I spoke with Mr. Butler and  
3 Mr. Deanhardt, and they agreed to stipulate to the  
4 admission of Exhibit 203.

5 MR. DEANHARDT: That's correct. I'm sorry.  
6 I forgot to mention it.

7 JUDGE BERG: Exhibit 203 is admitted.

8 Q. (By Ms. McClellan) Good afternoon, Dr. Cabe.  
9 I would like to ask you just a few questions about your  
10 Exhibit T-190, your direct testimony, starting on Page  
11 7. At Line 13 and 14, you state that you are not aware  
12 of any line-sharing agreement with GTE and that you  
13 don't believe GTE is currently making line sharing  
14 available in Washington. Do you see that?

15 A. Yes, I do.

16 Q. Since you filed this testimony, Verizon has  
17 executed an agreement with at least three CLECs in  
18 Washington; is that correct?

19 A. I wasn't aware of that.

20 Q. Would you accept subject to check that they  
21 have executed an agreement with four CLECs. That would  
22 be Covad, Rhythms, Northpoint and New Edge?

23 A. I would accept that.

24 MR. DEANHARDT: Your Honor, to help move  
25 things along, I will stipulate that there is an

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1 agreement between Covad and GTE for line sharing in  
2 Washington.

3 Q. Now let's turn to Page 16. At Line 13, you  
4 state that you are not aware of any ILECs in Washington  
5 that has proposed creating a separate DSL subsidiary.  
6 Do you see that?

7 A. Yes, I do.

8 Q. Are you aware that Verizon indeed does have a  
9 separate affiliate providing DSL services called  
10 Genuity?

11 A. I was aware of this. That was May 19th.

12 Q. Starting on Page 18 at Line 20 and carrying  
13 over to Page 19 Line 8, you recommend, and I'm  
14 paraphrasing here, you recommend that regardless of the  
15 actual splitter placement for line sharing, the  
16 Commission should place pricing for jumper placement  
17 and removal and for tie cable placement on placement of  
18 splitters at the MDF. Is that a correct  
19 characterization of your testimony?

20 A. Yes, it is.

21 Q. Does this mean that you want the Commission  
22 to set one price for a splitter configuration  
23 regardless of whether the splitter is located in the  
24 CLECs collocation area or on the MDF?

25 A. If the ILEC refuses to make available the

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1 most efficient arrangement location of splitters on the  
2 MDF, then the ILEC should not also be able to impose  
3 the additional cost of that inefficient location in its  
4 rates.

5 Q. Suppose the CLEC chooses to place the  
6 splitter in its collocation area.

7 A. In that case, the location on the MDF must  
8 not have been the most efficient arrangement for that  
9 particular CLEC and that particular circumstance, and  
10 if the ILEC was not in any way impeding the most  
11 efficient location, then prices should be determined on  
12 the basis of the CLECs chosen splitter placement.

13 Q. So under your proposal, the applicable price  
14 would be contingent solely on where the CLEC prefers to  
15 put its splitter?

16 A. Yes, that's correct.

17 Q. How do you define "efficient"?

18 A. Cost minimizing and considering all other  
19 costs that are involved.

20 Q. Would it only consider costs?

21 A. Well, I'm an economist, and I can  
22 characterize a lot of things under the rubric of cost,  
23 so yeah, I would only include cost.

24 Q. You did not file any testimony criticizing  
25 any specific cost studies or pricing proposals of

01142

1 Verizon in this docket, did you?

2 A. That is correct.

3 MS. McCLELLAN: No further questions. Thank  
4 you.

5 JUDGE BERG: Ms. Anderl?

6 MS. ANDERL: Thank you, Your Honor.

7 CROSS-EXAMINATION

8 BY MS. ANDERL:

9 Q. Good afternoon, Dr. Cabe. Are you here on  
10 behalf of both Rhythms and Covad in this proceeding?

11 A. That's correct.

12 Q. Let me ask you some questions about your  
13 familiarity with where we are to date, Dr. Cabe. Have  
14 you appeared or provided testimony in the Commission's  
15 first generic cost docket, No. 960369?

16 A. In the most recent phase of that, I made an  
17 appearance on behalf of MCI WorldCom on the issue of  
18 deaveraging.

19 Q. Was that the extent of your involvement in  
20 that docket?

21 A. I believe that I also provided some advice to  
22 MCI WorldCom on the question of -- there was a proposal  
23 for a flat rate interconnection charge, as I recall.

24 Q. Let me ask you a few questions to clarify  
25 what you do and do not cover in your testimony. You



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1 have filed three pieces of testimony; is that right?

2 A. That's correct.

3 Q. Anywhere in those testimonies, do you offer  
4 testimony regarding the costs and prices for physical  
5 collocation?

6 A. No, I don't.

7 Q. Do you offer any testimony regarding the  
8 costs for OSS development and enhancement generally  
9 apart from line sharing?

10 A. No, I don't.

11 Q. What about for OSS maintenance costs apart  
12 from line sharing?

13 A. No, I don't.

14 Q. Do you offer testimony with regard to the  
15 appropriate pricing for the high frequency portion of  
16 the loop?

17 A. Yes, I do.

18 Q. Do you also offer testimony about the  
19 appropriate line treatment of OSS costs associated with  
20 providing line sharing?

21 A. Yes, I do.

22 Q. You're an economist; is that right?

23 A. That's correct.

24 Q. As an economist, it's your recommendation to  
25 the Commission today that the price for the

01144

1 line-sharing UNE should be zero dollars; is that right?

2 A. Yes, it is.

3 Q. Would you agree, as other witnesses have  
4 testified in this docket, that what we are about trying  
5 to do in this proceeding is mimic to the greatest  
6 extent possible circumstances, including prices, that  
7 would exist in a competitive environment?

8 A. Yes. That's a reasonable characterization.

9 Q. Is it your testimony that your pricing  
10 recommendation does that?

11 A. Yes, it is.

12 Q. Let me ask you specifically with regard to  
13 your testimony, Exhibit T-202, Page 8. Can you give me  
14 an example, any example, where unregulated trade has  
15 resulted in the pricing of a productive asset that is  
16 in limited supply at a zero price?

17 A. Yes, I'd be happy to. In studying  
18 Dr. Fitzsimmons' example of chicken breasts and wings,  
19 I tried to find an example that was a reasonable analog  
20 to the situation that we have before us, which is loops  
21 or services, analog voice services and line sharing,  
22 and for various reasons, I believe the example of  
23 chicken breasts and wings is completely inappropriate.

24 The example that I came up with is the  
25 example of -- let me give the example in the form of a

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1 story. Suppose that I go to an architect and I engage  
2 the architect to design a house for me, and the  
3 architect designs the house and produces plans for the  
4 house that allow for the various trades to construct  
5 the house, and the architect provides copies of these  
6 plans to the plumber and the general contractor and so  
7 forth. The house is built. I pay the architect.  
8 Suppose I pay the architect \$5,000.

9         After the house is built, I go back to the  
10 architect and I say, "It's occurred to me that at some  
11 later date, I may need to repair or remodel this house,  
12 and I'd like to have a copy of the plans. To save you  
13 the cost of producing a copy for me on paper, I would  
14 accept a copy in electronic form." I believe that this  
15 is an example that's much more closely analogous to the  
16 situation of loops and line sharing for a couple of  
17 reasons. One thing that should be noted is that the  
18 architect can provide a copy of the plans in electronic  
19 form at a cost of zero, and no one has claimed that the  
20 cost of line sharing is anything other than zero in  
21 this proceeding. So the architect can do that.

22         Another thing to note about the example  
23 that's different from chicken breasts and wings that  
24 the plans are only useful to me, I who own the house  
25 that was built from these plans, and I'm the only one

01146

1 who will benefit from having these things. That's  
2 exactly the circumstance of a subscriber who would like  
3 to have line sharing over a loop that is dedicated to  
4 that particular subscriber. Line sharing over that  
5 loop is of absolutely no use to any other subscriber.

6         When I ask for a set of plans, the architect  
7 might respond, "These plans are worth something to you;  
8 therefore, they are a valuable asset. Even though  
9 these plans would cost me zero to provide to you, they  
10 are a valuable asset and I'm not going to give them  
11 away. I will sell them to you, and absent evidence to  
12 the contrary, I think the appropriate price should  
13 reflect the fact that there are two possible uses for  
14 these plans: use of the plan during construction and  
15 use of the plans after construction.

16         The architect could then conclude that the  
17 appropriate price of these plans was half of the  
18 architect's fee, or \$2,500, and that's how that would  
19 be offered to me. That's a possibility. However, that  
20 will absolutely not work if the architect is subject to  
21 competition for the architect's services. Word would  
22 very quickly get out, if the market is functioning  
23 properly, that this architect seeks to charge a high  
24 rate for something that is an adjunct to his or her  
25 services that costs absolutely zero to provide to the

01147

1 customer. That would definitely harm the architect's  
2 business, and if there is competition for architect  
3 services in this market, the architect would simply  
4 provide the plans at no charge and hope that the  
5 architect gets some of the business and the remodeling  
6 or repairs if they are ever required.

7 My testimony goes through that logic in a  
8 little bit more formal sense, and I forget exactly  
9 where it is my testimony. I believe it's in the  
10 rebuttal testimony.

11 Q. Does that conclude your answer, Dr. Cabe?

12 A. Yes, it does.

13 Q. Now let's go back and analyze your story for  
14 a moment. The question that I asked you was for an  
15 example of where in unregulated trade a productive  
16 asset that is in limited supply has been priced at  
17 zero. Is that a fair characterization of what you  
18 believe I asked you?

19 A. Yes, it is.

20 Q. In your story, what is the productive asset,  
21 and I want to caution you, when you told the story, you  
22 didn't refer to the plans as a productive asset. You  
23 refer to them as a valuable asset, and I want to  
24 understand from your testimony what is the productive  
25 asset in your story?

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1       A.       The productive asset in my story is the  
2 plans.  If I'm building a house anew, for example, and  
3 I already have the plans, those plans will assist in  
4 the production of the house.  It's a productive asset.

5       Q.       On what basis do you reach the conclusion  
6 that those plans are in limited supply to the extent  
7 they have been provided to various subcontractors in  
8 order for them to perform their functions?  And before  
9 you answer that question, let me tell you we've been  
10 doing analogies all week.  We understand none of them  
11 is perfect, and we've been looking for a good one, so  
12 when I ask these questions, it's to try to refine these  
13 things.

14       A.       Sure.  I believe that it's in limited supply,  
15 because if you've ever been around a construction site  
16 and seen the plans that the trades people use, by the  
17 end of the process, they are likely to be pretty well  
18 destroyed.  Trades people also scatter after the  
19 construction project is over.  It's hard to find them.

20       Q.       Then to the extent that an individual had to  
21 file those plans with the county building department  
22 for receipt of a building permit and could, in fact, go  
23 and obtain a copy of those plans from the county  
24 building department for nothing more than the  
25 photocopying costs, would you continue to characterize

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1 those plans as a productive asset in limited supply?

2 A. In some jurisdictions, it may be the case  
3 that plans have to be filed with a public body so would  
4 not be in limited supply except for the cost of the  
5 photocopying.

6 Q. In your story, you have paid the architect  
7 \$5,000 to design the house and prepare the plans; is  
8 that right?

9 A. That is correct.

10 Q. So do you continue to believe though that the  
11 additional copy that you might be provided later would  
12 be provided at a zero price?

13 A. Yes, absolutely. If the initial contract  
14 didn't provide for me to receive a copy of the plans,  
15 and I only asked for those plans as an afterthought  
16 after the architect had already been paid, the  
17 architect is under no obligation to provide them to me,  
18 and in the situation where the architect is a  
19 monopolist, I would expect the architect to choose a  
20 price that reflects what the market will bear, and the  
21 explanation of dividing some number by two to come up  
22 with a price is really just an excuse for a price.  
23 It's not any estimate of cost or anything like that.

24 Q. Now let me ask you a final question on this  
25 story. What if your neighbor says to himself, "God, I

01150

1 just love that house that Dr. Cabe had built, and I  
2 myself would like to have a house just like it." Would  
3 you expect that your neighbor could go to the architect  
4 and say, "I understand that you have a productive asset  
5 that is in limited supply consisting of Dr. Cabe's  
6 house plans, and I also understand you have those at a  
7 zero price," and expect the architect to produce an  
8 identical copy of those plans to your neighbor for  
9 nothing? Is that what you would expect would happen?

10 A. No, that's not what I would expect to happen,  
11 and there was a couple of problems there. As I noted,  
12 line sharing is only useful to the subscriber to whom a  
13 particular loop is dedicated. It's not useful to the  
14 neighbor, and that's an important characteristic of  
15 line sharing. The intellectual property and the  
16 design, not the plans themselves, but the design  
17 probably still rests in the architect, and the  
18 architect is entitled to do something for them.

19 Q. In a line sharing situation, isn't it correct  
20 that the line sharing is useful to both the subscriber  
21 to the loop and to the data CLEC who wishes to share a  
22 line by using a high frequency portion of the loop?

23 A. The data CLEC is only an instrument of the  
24 consumer. The data CLEC serves the consumer by using  
25 access to the loop. The line sharing on that loop



01151

1 without the consumer is of absolutely no use to the  
2 data CLEC. The data CLEC can only use that for serving  
3 that specific consumer, and the consumer is in a  
4 position to choose among data CLECs to determine which  
5 data CLEC the consumer would choose to be his or her  
6 agent, and that's probably not a correct legal use of  
7 the word "agent," but in the economic sense, the data  
8 CLEC is an agent, if you will, of the consumer, and  
9 that's all.

10 Q. I'm not sure whether you agreed or disagreed,  
11 so let me just try the question one more time. Is line  
12 sharing useful to both the end-user subscriber and the  
13 data LEC who might provide data services over the high  
14 frequency portion of the loop?

15 A. No. The line-sharing arrangement on that  
16 loop is only useful to the consumer. Insofar as the  
17 consumer must find a data CLEC to act on his or her  
18 behalf in setting up a line-sharing arrangement and  
19 providing equipment at the customer's premises to split  
20 the analog voice services from the digital data  
21 services on that loop, insofar as that's what's  
22 involved, the data CLEC is just providing a service to  
23 the consumer.

24 Q. Are you familiar with the desire by some  
25 CLECs and DLECs to do something called "line

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1 splitting"?

2 A. I have heard reference to that, and if you  
3 could define it for me if you are going to ask a  
4 question about it, I would appreciate it.

5 Q. For purposes of my questions, could you  
6 assume that line sharing means that the incumbent  
7 provides the voice service and a CLEC provides the data  
8 service on a shared line, and that for line splitting,  
9 a CLEC leases a loop, provides the voice service and  
10 other ancillary services on that loop, and then leases  
11 the high frequency portion to another CLEC or DLEC?

12 A. Thank you.

13 Q. And you have heard of that line splitting  
14 arrangement that might be something in the future?

15 A. Yes, I have.

16 Q. Now, you are here on behalf of Covad and  
17 Rhythms today, and both of those companies are  
18 generally referred to as data CLECs or DLECs; is that  
19 right?

20 A. That is correct.

21 Q. But you've also consulted to other clients,  
22 such as MCI, who perhaps don't have a reputation of  
23 being that focused on the data business; is that also  
24 right?

25 A. That is correct.

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1 Q. To the extent that MCI or another one of your  
2 non data CLEC clients were to be leasing loops from an  
3 incumbent and providing voice services over those  
4 loops, would it be your recommendation to those clients  
5 that they allow data LECs to share those loops with MCI  
6 and use the high frequency portion of that loop at a  
7 zero price?

8 A. My recommendation to a client in that  
9 position, such as MCI WorldCom or AT&T, would be that  
10 if there is competition for actual loops so that there  
11 are enough CLECs out there using UNE loops, leasing the  
12 entire UNE loop, so there is actually competition among  
13 them to provide analog voice grade over those UNE  
14 loops, then they will have no option but to seek  
15 arrangements with data CLECs to provide their customers  
16 with data services as an adjunct to their voice  
17 services in order to stay competitive. If the  
18 architect refused to provide a costless adjunct to the  
19 architect services, the architect couldn't possibly  
20 hope to survive in a competitive market for architect  
21 services.

22 In exactly the same fashion, if there was a  
23 competitive market for analog voice services, either  
24 over UNE loops or from alternate-based facility  
25 providers or whatever source, if there is actual

01154

1 competition for those analog voice-grade services, then  
2 competitors in that market are not going to be able to  
3 deny their customers access to a costless adjunct to  
4 their services, or otherwise, they will lose a great  
5 deal of business.

6 Q. So did I understand your answer correctly  
7 that you, yes, would advise MCI that they must provide  
8 that high frequency portion of the loop for no cost to  
9 the data LEC?

10 A. Technically, my answer was that they had no  
11 choice but to do so. If competition is actually in  
12 place for the analog voice services that they are  
13 selling -- now, that is sort of a leap of faith,  
14 because if there is only less than, say, five percent  
15 of analog voice service loops provided by anybody other  
16 than the incumbent local exchange company, then it's  
17 hard to assume that that competition is in place.

18 Q. Do you know if any data LECs have reached  
19 arrangements with CLECs to line split wherein the data  
20 LEC pays a price for the high frequency portion?

21 A. I'm not aware of any such arrangements, and  
22 I wouldn't expect that to be the case today because  
23 there isn't competition for the analog voice-grade  
24 services that would force the result of a zero price  
25 for line sharing.

01155

1 Q. Dr. Cabe, what is a common cost?

2 A. A common cost is a cost of the company that  
3 is not incremental to any service or group of services  
4 at all in the company.

5 Q. What's a shared cost?

6 A. A shared cost is a cost that is incremental  
7 to some group of services provided by the company but  
8 isn't incremental to any individual service within that  
9 group.

10 Q. What's a joint cost?

11 A. A joint cost is similar to a shared cost in  
12 that it is incremental to a group of services, but the  
13 group of services in the definition of a joint cost,  
14 the group of services have to be provided in fixed  
15 proportions. Their quantities are in fixed  
16 proportions.

17 Q. Dr. Cabe, your view of loop costs in a  
18 line-sharing environment has evolved from your direct  
19 testimony wherein you represented that the loop was, in  
20 fact, a joint cost of the high frequency and low  
21 frequency portions of the spectrum to a position that  
22 you maybe explained in your second round of testimony  
23 and adhered to, I guess, in your third round of  
24 testimony that they are not joint costs. They are  
25 something else that we've never really heard about

01156

1 before because the two products, the voice-grade  
2 service and the high frequency portion, are sequential.  
3 Is that about right?

4 A. I referred to the relationship among the  
5 products as sequential or asymmetric. It might be  
6 better to think of them as not equally available on a  
7 stand-alone basis, because that's what's really going  
8 on. It's not really the timing, which is suggested by  
9 the word sequential, but the fact is that line sharing  
10 and the UNE loop or the analog services provided over a  
11 loop are not equally available on a stand-alone basis.  
12 The UNE loop or the analog services provided over a  
13 loop is available on a stand-alone basis, but line  
14 sharing is not available on a stand-alone basis. It  
15 can only be purchased as an adjunct to the UNE loop --  
16 It can only be purchased as an adjunct to analog  
17 voice-grade services provided over that loop.

18 Q. I didn't mean to put words in your mouth, but  
19 I thought you had used the word "sequential."

20 A. I believe I did use the word sequential, and  
21 I also used the word asymmetric.

22 Q. So in your view, the \$18.16 that has been  
23 established as the TELRIC of the loop in Washington is  
24 what kind of a cost, and maybe it's a kind we haven't  
25 talked about yet because we have talked about joint,

01157

1 shared, and common.

2 A. I would call that a TELRIC plus common plus  
3 reasonable share of common cost.

4 Q. Of what?

5 A. Of the loop.

6 Q. For the provision of voice-grade service,  
7 which you would agree uses the loop, I think when you  
8 are providing voice services, what is the cost of the  
9 loop? Is it a direct cost, a shared cost, a joint  
10 cost?

11 A. Well, the \$18.16 or whatever it is is a  
12 TELRIC plus reasonable share of common cost cost, and  
13 TELRIC is incremental cost, but the FCC prescribed that  
14 TELRIC should, as much as possible, assign shared  
15 costs, so the costs that are common to a group should  
16 be assigned to the services within that group, so  
17 TELRIC includes a bunch of shared costs, and prices,  
18 the \$18.16 or whatever it is, also include a reasonable  
19 share of common cost.

20 Q. Would you accept that there are companies who  
21 have been providing DSL service in an environment prior  
22 to the availability of line sharing who have leased  
23 entire loops from an incumbent only to use the high  
24 frequency portion of the loop?

25 A. Until very recently, that was the only way a

01158

1 competitive company could provide DSL service because  
2 line sharing wasn't available from ILECs.

3 Q. So in that situation, if someone were to add  
4 voice-grade service to a line that's being used to  
5 provide an xDSL service today, would your analysis with  
6 regard to asymmetrical or sequential characters of the  
7 products still pertain but be reversed?

8 A. No, I don't think so, because there is no --  
9 I would have to think about that a little bit, but it  
10 certainly wouldn't be reversed immediately because the  
11 nature of the asymmetric or sequential character, the  
12 failure of equal availability on a stand-alone basis  
13 for loops and line sharing comes from the FCC's  
14 determination that line sharing is only available on an  
15 active loop, a loop that's currently in use, and if for  
16 some reason, analog voice service on that loop is  
17 terminated, then the line-sharing arrangement  
18 terminates immediately, so it's impossible to comply  
19 with the FCC's rules and have line sharing a high  
20 frequency portion of the loop, or whatever you want to  
21 call it, absent analog voice-grade services being  
22 provided over that same loop.

23 Q. To the extent that line splitting removes the  
24 requirement that voice-grade service be provided first;  
25 in other words, that it changes the definition, and



01159

1 line sharing may require voice-grade service but line  
2 splitting doesn't necessarily, would that change your  
3 analysis?

4 A. Line splitting, as you've defined it to me,  
5 involves the voice-grade service coming first, but it's  
6 really not the coming first that matters. I'm  
7 reluctant to give you an answer because I'd like to  
8 think about it. I'd like to think about, for example,  
9 whether to what extent the CLEC leasing the UNE loop is  
10 able to give this data CLEC access, but I suppose  
11 you're saying the ILEC leasing the UNE loop is allowing  
12 line splitting so they will do whatever is necessary to  
13 make the arrangement to put the connections in place.  
14 I'm not sure. That's a hypothetical that I just don't  
15 have an answer to.

16 Q. That's fair. We've been trying to come at  
17 the problem from a lot of directions. Let me just ask  
18 you a little cleanup question here. On your direct  
19 testimony, T-190, Page 20, GTE, now Verizon, asked you  
20 a question about this section of your testimony and  
21 your response, and a data request has been admitted as  
22 Exhibit 203, and that's the question about whether  
23 costs of forward-looking OSS have been included in  
24 GTE's prices specifically. Do you recall that data  
25 request?

01160

1 MR. DEANHARDT: Counsel, if I can show it to  
2 him. We didn't because Ms. McClellan was not going to  
3 ask him any questions.

4 MS. ANDERL: I'm sorry. I thought he had it.

5 Q. (By Ms. Anderl) At T-190, Page 20, Lines 9  
6 through 11.

7 A. I've refreshed my memory.

8 Q. In looking at both the testimony I cited you  
9 to and Exhibit 203, if I were to ask you the same  
10 question with regard to Qwest's or U S West's UNE  
11 prices, would your answer be the same?

12 A. I'm not aware of a specific citation or  
13 reference to a Commission order that reaches -- yes.

14 Q. Thank you. I had some other things I wanted  
15 to cover, but let me get this one out of the way.  
16 Mr. Deanhardt asked several Qwest witnesses about  
17 whether or not Qwest had filed a letter or made any  
18 other sort of formal commitment to the FCC or any other  
19 governmental body stating that it would impute \$10 to  
20 its MegaBit pricing, and you were not here for those  
21 questions, but I would ask Mr. Deanhardt if that is a  
22 fair characterization of his questions?

23 MR. DEANHARDT: Yes.

24 Q. With that assumption in mind that  
25 Mr. Deanhardt asked those questions, let me ask you if

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1 Qwest were to send such a letter, would that change  
2 Covad's or Rhythms' position on what the appropriate  
3 price for the high frequency UNE is?

4 A. I'm afraid I lost something. I can accept  
5 Mr. Deanhardt's representation now, and if you could  
6 read the question without that interruption, I'll have  
7 it in my mind.

8 Q. Mr. Deanhardt asked Qwest witnesses whether  
9 Qwest had filed a letter the FCC or any other  
10 governmental body setting forth a commitment that it  
11 would continue to impute \$10 to its MegaBit pricing,  
12 and my question to you is if Qwest were to send such a  
13 letter or make some other type of written commitment to  
14 the FCC or any other governmental body, would that  
15 change Covad's position or Rhythms' position on what  
16 the appropriate price for the high frequency loop is?

17 A. First, I'm not an employee of Rhythms or  
18 Covad so I can't speak for them.

19 Q. Would it change your recommendation?

20 A. I'm sorry, Ms. Anderl --

21 CHAIRWOMAN SHOWALTER: Ms. Anderl, I'm not  
22 sure you said the Company would impute \$10 allocator  
23 for the price of the loop. I don't know if that would  
24 help him.

25 MS. ANDERL: If that's a clarification that's

01162

1 needed. I guess I'm too close to the docket. \$10 or  
2 the same price that it charged for the high frequency  
3 portion of the UNE to the price of its MegaBit service.

4 THE WITNESS: No, that wouldn't change my  
5 position at all, and the reason for that is there are a  
6 bunch of reasons to set the price of the high frequency  
7 portion of the loop at zero, and the price squeeze that  
8 would be controlled by an imputation test is only one  
9 small part of it. Everybody acknowledges that the cost  
10 of the line-sharing arrangement is zero. Given that,  
11 the first reason that comes to mind for pricing the  
12 line-sharing arrangement at zero is that it would be  
13 unfair to consumers to do otherwise because the  
14 consumers have already paid for them, and if you set  
15 the price of the high frequency portion of the loop any  
16 higher than zero, then consumers are going to have to  
17 pay again.

18 Economists aren't known as arbiters of  
19 fairness, and I'm not really making a recommendation  
20 based on that, but my economic analysis suggests that's  
21 what will happen is the consumers will wind up paying  
22 for the loop twice or paying more than the full cost of  
23 the loop, and I just mention that as a concern that the  
24 Commission may want to keep in mind. My recommendation  
25 of the zero price is based essentially on efficiency

01163

1 considerations. To set a price greater than zero is  
2 discriminatory, and that's prohibited by the Act first,  
3 and the reason it's prohibited by the Act, in my  
4 economist's reading of the Act, is that discriminatory  
5 prices of these unbundled network elements that  
6 companies such as Qwest are compelled to provide in  
7 order to -- basically, the requirement flows from an  
8 antitrust case a long time ago, and it's sort of a  
9 remedy in an antitrust case that's been forwarded  
10 through the courts and through the legislative branch  
11 into this law that they provide these UNEs in order to  
12 facilitate the development of the competitive market.

13         If you allow a discriminatory price, that is  
14 going to impede the development of the competitive  
15 market. It will impede the development of the  
16 competitive market in at least two distinct ways.  
17 First, it will impede competition as between the ILEC  
18 and the data CLECs that hope to compete with it.  
19 That's obvious, and in each of my three pieces of  
20 testimony I raise that concern, and it really hasn't  
21 been rebutted in Qwest's responses to my testimony.  
22 The competition between data CLECs and the ILEC, Qwest,  
23 will be impaired by its setting a price greater than  
24 zero.

25                 It's also the case that competition as

01164

1 between DSL-based services that rely on loops and other  
2 services, other high-speed data services, that  
3 competition will also be impaired by this  
4 discriminatory price, and the way that would work is  
5 that if nonloop-based technology, such as wireless  
6 broadband or cable technology or satellite technology,  
7 technologies other than DSL that don't require a loop,  
8 if those technologies are winning favor among consumers  
9 while DSL service, which relies on loops, is overpriced  
10 because of a nonzero price for the high frequency  
11 portion of the loop, then what's going to happen is  
12 that the marketplace will make the wrong decision as to  
13 which technology is the best.

14 Now, competition is supposed to respond to  
15 the actions of the marketplace, but data CLECs who must  
16 pay the nonzero price for the high frequency portion of  
17 the LEC are absolutely unable to respond because they  
18 have to pay this price, this nonzero price above cost  
19 price for the high frequency portion of the loop, and  
20 it's a cost to them. They cannot go below their actual  
21 costs in order to compete with nonloop-based  
22 technologies like wireless broadband or whatever. Now,  
23 Qwest could, if it wanted to, reduce its price, and if  
24 an imputation rule was in place, Qwest would have to  
25 make arrangements with that imputation rule.

01165

1           In the hypothetical that Ms. Anderl proposed  
2 to me, Qwest makes a commitment in writing to the FCC  
3 or to some other body that it won't engage in this  
4 price freeze. As I say in my testimony, the price  
5 squeeze is only one piece of the problem. The  
6 fundamental problem is that the price is  
7 discriminatory, and that isn't solved by an imputation  
8 rule. People say imputation rules because imputation  
9 rules typically are not just a representation in a  
10 letter. Imputation rules are typically in a  
11 Commission's rules, and they provide, they define price  
12 squeeze and they define imputation tests, and they say  
13 how these things are satisfied, and if there was such a  
14 rule in place that Qwest had to go through in order to  
15 reduce price in order to compete with wireless  
16 broadband or cable broadband services or whatever, then  
17 there would be this administrative procedure that would  
18 have to be dealt with, and it would be much more likely  
19 to be effective in preventing a price squeeze than a  
20 simple letter representation from Qwest that they  
21 wouldn't engage in a price squeeze, and the process of  
22 the price of DSL ratcheting down in order to compete  
23 with these other technologies is first strictly under  
24 Qwest's control. Data CLECs have no control over it  
25 whatsoever. It's strictly Qwest that can do that, and

01166

1 the process of doing it is likely to be a very messy  
2 process.

3 I don't mean to malign my friends at U S  
4 West, but the incentives sent up by that situation are  
5 not for U S West to decide, Well, I need to lower the  
6 price of DSL services in order to compete with  
7 nonloop-based technologies for broadband, and in order  
8 to do so, I'm going to have to reduce the price of the  
9 high frequency portion of the loop so I'll just notify  
10 everybody, give all the CLECs an opportunity to prepare  
11 their marketing plans in accordance with that and so  
12 forth.

13 What Qwest has an incentive to do is to  
14 decide that it wants to lower the price of the high  
15 frequency portion of the loop, and so the way they deal  
16 with that is by starting a promotion or a rebate  
17 program or something like that that arguably isn't a  
18 violation of the imputation rule, and the imputation  
19 rule will be invoked when some data CLEC complains to  
20 this Commission that Qwest has violated its commitment  
21 or the imputation rule, and I discuss in my testimony  
22 ways in which that ratcheting process through an  
23 application of an administrative process to effect an  
24 imputation rule is anticompetitive in its own  
25 character.



01167

1 I'm sorry that I've gone on, but I believe  
2 than an imputation rule would make matters worse than  
3 simply -- well, the letter representation would make  
4 matters worse relative to an actual imputation rule  
5 that defines the imputation test and so forth, and  
6 neither of these is anything like a reasonable  
7 substitute for an actual nondiscriminatory price. I'm  
8 sorry that I've gone on.

9 Q. That was a very long answer, Dr. Cabe. I  
10 understand that was your explanation as to why you were  
11 not going to change your position in light of a letter.

12 Let me ask you if there are any economic  
13 treatises that you have cited to in any of your  
14 testimony or that you are aware of that support your  
15 claim that the sequential or asymmetrical occurrence of  
16 costs makes them not joint costs but rather something  
17 else?

18 A. No. I believe I said in my testimony that  
19 I'm not aware of any analysis at all.

20 Q. I thought you had, but I couldn't find it.  
21 Do you agree with me that the high-frequency portion of  
22 the loop is a UNE, an unbundled network element?

23 A. The FCC just defined it as such.

24 Q. Do you also agree that the pricing principles  
25 set forth by the FCC allow TELRIC pricing of unbundled

01168

1 network elements to include all of the direct costs of  
2 the network elements as well as a reasonable allocation  
3 of joint and common costs?

4 A. Yes, I do.

5 Q. We've previously defined common costs as  
6 costs that are not incremental to any service or group  
7 of services in the Company; is that right?

8 A. That's correct.

9 Q. So there are common costs which could be  
10 allocated to the loop; is that right? I'm sorry, to  
11 the HUNE?

12 A. You certainly could do that. I wouldn't  
13 recommend it, but you could do it.

14 Q. Would that be because, in your opinion, such  
15 an allocation would not be reasonable?

16 A. That's correct.

17 Q. If, Dr. Cabe, you were wrong about that, and  
18 the market would, in fact, produce some other kind of a  
19 result, and the market, if we let it work, would  
20 demonstrate to us that there was some amount of either  
21 a joint or common cost that could or should reasonably  
22 be allocated to the high frequency portion of the UNE,  
23 then isn't it true that if this commission prices the  
24 high frequency portion of the loop at zero, we will  
25 never get a chance to know whether it would have been

01169

1 reasonable to allocate a portion of joint common costs?

2 A. No. I think that we would learn that as soon  
3 as the competition develops. As soon as the  
4 competition develops -- for example, if competition  
5 develops for loop UNEs, then they will no longer meet  
6 the FCC's necessary impaired standard, and ILECs will  
7 not longer be required to provide them. At that point,  
8 UNE pricing is moot. It's irrelevant, and at that  
9 point, we will have found out what the real competitive  
10 market does.

11 Q. So you are saying we have to get to a  
12 competitive market before we can find out what a  
13 competitive market does.

14 A. I've given you my professional opinion about  
15 what a competitive market would do, but a competitive  
16 market for voice-grade local service is a big  
17 counterfactual. That's a stretch, and I can't  
18 guarantee that the market outcome that we can only  
19 observe after competition develops is going to allocate  
20 absolutely zero common cost to these things. I can't  
21 promise that.

22 Q. If data LECs are able to obtain the high  
23 frequency portion of the loop from Qwest or Verizon --  
24 let's just say Qwest -- at a zero rate, do you believe  
25 that this will more quickly drive competition for the

01170

1 loop itself, a competitive market for the loop itself,  
2 or will it tend to keep people buying loops from the  
3 incumbent?

4 A. That's an even longer-term experiment in the  
5 market, I believe, because the Act provided for three  
6 ways for CLECs to come in and compete in the provision  
7 of voice-grade services and UNE loops. Purchasing UNE  
8 loops and using them to provide voice-grade services is  
9 one of them, and I think that's more likely to provide  
10 a competitive market in analog voice-grade services  
11 before we have actual physical facilities providing  
12 competition for the physical transmission medium that's  
13 provided by a loop.

14 MS. ANDERL: Your Honor, I have quite a few  
15 notes here but probably not very many questions, so if  
16 I might have just a moment to walk through them.

17 (Pause in the proceedings.)

18 Q. (By Ms. Anderl) Dr. Cabe, you express  
19 concern in your testimony about double recovery; is  
20 that right?

21 A. Yes.

22 Q. Have you read Mr. Zulevic's direct testimony  
23 in this docket?

24 A. Yes. It's been awhile.

25 Q. I don't think you need it. On Page 4 of his

01171

1 testimony, so that your counsel can look if he'd like,  
2 Mr. Zulevic states that with the advent of line-sharing  
3 technology, customers will no longer have to pay for a  
4 second loop. Do you, as a general rule, agree with  
5 that proposition?

6 A. Will no longer have to pay for a second loop  
7 to receive DSL service.

8 Q. I'd accept that modification. It's true,  
9 isn't it, that some customers might buy second lines  
10 for other reasons?

11 A. Yes. That's the qualification.

12 Q. When you suggest that there may be double  
13 recovery if we place a positive price on the  
14 high-frequency loop, have you taken into account the  
15 number of customers who may no longer be paying for a  
16 second loop?

17 A. I considered that, and for one thing, a lot  
18 of the customers who have taken second loops for data  
19 services have taken those loops since Qwest's current  
20 prices were put into place. So that additional volume  
21 wasn't really taken into account in establishing those  
22 prices, and my analysis is that the Commission set  
23 those prices initially with a view to allowing Qwest,  
24 formally U S West, an opportunity to recover all of its  
25 direct costs and a reasonable return to its invested

01172

1 capital and the enterprise and that if the Commission  
2 had been mistaken in designing those rates initially,  
3 or if circumstances had changed, such as people  
4 dropping second loops, then it would be entirely  
5 appropriate, and I would expect Qwest promptly to come  
6 before the Commission with their evidence showing that  
7 those retail rates needed to be changed. That's not  
8 what's at issue in this case, as Dr. Fitzsimmons'  
9 testimony and Mr. Thompson's testimony have pointed out  
10 in a couple of places.

11 Q. Would you accept subject to your check that  
12 the basis residential rate in Washington is \$12.50?

13 A. I'm not going to check. I accept that  
14 representation.

15 Q. Everybody knows it's true. Would you also  
16 accept that residential service typically carries a  
17 subscriber line charge of an additional \$4.35?

18 A. I'll accept that.

19 Q. Let's look at a scenario where a customer is  
20 currently buying two lines from Qwest, two 1-FR  
21 services; do you have that in mind?

22 A. Yes.

23 Q. I don't actually know if the subscriber line  
24 charge is different on the second line or not. Let's  
25 assume it's the same, \$4.35.

01173

1 A. I can accept that.

2 Q. That customer would be paying Qwest two times  
3 \$16.85 per month for those 1-FR services; isn't that  
4 right?

5 A. That's correct. That doesn't include all of  
6 the other voice-grade services that are being purchased  
7 in conjunction with that, and it's a retail rate that's  
8 really not at issue here.

9 Q. Right. Let's assume they don't have any  
10 other services, which I think is possible. If that  
11 customer uses one loop for computer access or one of  
12 its 1-FR services for computer access only and then  
13 discontinues that service in order to subscribe to a  
14 DSL service over the shared loop, what is the result on  
15 Qwest's revenues each month under your pricing proposal  
16 where Qwest receives a zero for the shared line?

17 A. The implication on Qwest's retail revenues  
18 from that customer was whatever you added up. I  
19 haven't been writing it down, but there is a reduction  
20 in revenue, certainly. I might add there is probably a  
21 reduction in cost as well. In the long run, there is  
22 the reduction of cost needing to provide that loop. In  
23 the short run, there is the reduction in cost  
24 associated with having that Internet traffic on the  
25 dial-up connection go through Qwest's switch and local

01174

1 transport network, and I don't know specifically about  
2 Qwest, and I haven't really analyzed the issue, but I  
3 know that many ILECs have alleged that's a very  
4 important cost, having increasingly large volumes of  
5 Internet traffic go over a dial-up connection which  
6 takes it through the switch and the local transport  
7 network. Whereas if you put that traffic on DSL, it no  
8 longer goes through the switch and the local transport  
9 network and imposes costs on Qwest.

10 Q. So it's your testimony that you really can't  
11 tell in the bigger picture what the overall impact on a  
12 company's costs and revenues are going to be just by  
13 looking at this isolated example?

14 A. That's correct. You gave me a specific  
15 customer. The Commission designs rates in order to  
16 recover total costs on average, not for specific  
17 customers, and I presume that there is no credible  
18 evidence to the contrary, credible evidence to the  
19 effect that this Commission's rates fail to recover  
20 Qwest's cost, for if there was such evidence, I'm sure  
21 Qwest would have found an opportunity to present it to  
22 the Commission.

23 Q. You don't believe that this is an appropriate  
24 proceeding to address the impacts to Qwest's retail  
25 revenues, do you?



01175

1 A. No, I don't.

2 Q. I have some questions for you about one of  
3 your exhibits. It is No. 200, and if you would turn to  
4 that document, please, it's the Qwest data request  
5 response to Rhythms Data Request 03-008.

6 JUDGE BERG: That was also identified as  
7 RC-11.

8 THE WITNESS: I have it.

9 Q. (By Ms. Anderl) The general line of  
10 questions that we are going to cover with this document  
11 concern whether or not the OSS modifications Qwest  
12 undertook to its systems in order to implement line  
13 sharing benefitted Qwest's OSS, and whether or not any  
14 of those modifications were necessary for the  
15 provisioning of MegaBit. Do you have that general  
16 issue in mind?

17 A. Yes, I do.

18 Q. You address both of those topics in your  
19 testimony, don't you?

20 A. Yes, I do.

21 Q. Would you turn to the second page of Exhibit  
22 200, and under Subsection b --

23 A. I see that.

24 Q. --are you aware of whether or not when Qwest  
25 provides MegaBit service to its end-user customers, it

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1 has been required to modify its OSS systems in any way  
2 for the purposes of recognizing a second service  
3 provider on the customer's line?

4 A. Yes, that's something that will have to be  
5 done.

6 Q. When Qwest provides MegaBit service to its  
7 end-user customer, it will have to modify its OSS?

8 A. I'm sorry. I misunderstood. That will only  
9 have to be done if Qwest's retail DSL service is  
10 provided through a separate affiliate.

11 Q. And if it is not, which it is not today, then  
12 no such modification would be necessary, to your  
13 knowledge?

14 A. That's correct, to my knowledge, but I'm not  
15 confident about the premise of the question that it is  
16 not today because Qwest, the former Qwest, was also  
17 providing retail DSL services, and the response of the  
18 data request posed by Rhythms or Covad concerning  
19 corporate structure as of today wasn't clear about  
20 that. So it may be that the former Qwest provider of  
21 DSL services is still providing DSL services, and it's  
22 through a separate subsidiary then that -- I don't know  
23 anything about the corporate structure right now.

24 Q. I understand. In fact, Qwest provided you  
25 with a data request response that indicated that there

01177

1 was no separate subsidiary at the time the response was  
2 filed; is that right?

3 A. What I remember from the response to that was  
4 that no determinations have been made as to corporate  
5 structure for the provision of retail DSL services and  
6 local exchange services. I'd have to look at the  
7 specific response to that data request.

8 Q. So we don't have to go through this all, and  
9 I'm not going to ask you to accept it subject to check,  
10 but let's say hypothetically that to the extent that  
11 both of the services are provided out of the same  
12 entity and the DSL not provided by a subsidiary, would  
13 the systems within Qwest have to be modified to  
14 recognize two providers for the provision of MegaBit  
15 and voice service by Qwest?

16 A. No.

17 Q. And that is the assumption I would like you  
18 to keep in mind possibly as reality, but I will just  
19 have you take it as a hypothetical. When a customer  
20 orders MegaBit from Qwest then, it wouldn't be  
21 necessary for Qwest's OSS to necessarily recognize that  
22 the order for MegaBit constituted a request for line  
23 sharing, as you and I have used that term, would they?

24 A. Under the definition that line sharing occurs  
25 only with a competitive LEC of a different entity, you

01178

1 are right.

2 Q. To the extent that Qwest's current OSS is set  
3 up on the billing side to recognize only one customer  
4 and one provider of services, would those OSS need to  
5 be modified when Qwest provides voice service and DSL  
6 to the same customer?

7 A. No. If the same entity is doing it, and the  
8 reason for part of that is that the same entity  
9 wouldn't pay a line sharing charge. If you want to  
10 impose a line sharing charge, then that goes to the DSL  
11 provider, and the local service charge for the cost of  
12 the loop go to the local service customer, and so it's  
13 only -- it's not the fact of line sharing that causes  
14 some of that cost. It's the fact of imposing a nonzero  
15 charge for line sharing which requires you to recognize  
16 two customers on the same loop, and I recommend there  
17 is no reason to charge a nonzero line sharing charge,  
18 and therefore, those costs are absolutely unnecessary.  
19 They are costs that flow only from creating that new  
20 price element charged for the line-sharing arrangement.

21 Q. If aside from the billing system, isn't it  
22 true that other systems also need to be modified to  
23 recognize two providers on the line for purposes of,  
24 for example, repair?

25 A. Yes, certainly for repair.

01179

1 Q. Are you aware of whether or not Qwest's OSS  
2 would have to be modified in that way when it provides  
3 voice and MegaBit to a single end-user customer?

4 A. I'm not aware of that.

5 MS. ANDERL: I'm just going to consult for a  
6 moment, Your Honor. Your Honor, that concludes my  
7 cross. I apologize for running over my estimate.

8 JUDGE BERG: Ms. Smith?

9 MS. SMITH: No, thank you.

10 JUDGE BERG: Dr. Gabel?

11 CROSS-EXAMINATION

12 BY DR. GABEL:

13 Q. First, I'd like to follow up on Ms. Anderl's  
14 questioning, Dr. Cabe, with you about joint cost and  
15 what constitutes a joint cost. Am I correct that in  
16 part, you believe that the shared loop is not a joint  
17 cost because of the sequential nature in which the loop  
18 is put to use.

19 A. Yes. In part, but it's not really the  
20 sequential character. It's the fact that the two  
21 services using the loop are not equally available on a  
22 stand-alone basis. If they were equally available on a  
23 stand-alone basis, it may come to the same thing. I'm  
24 not sure, but it's not the fact of the timing when the  
25 two things are ordered.

01180

1 Q. Am I also correct in a response to a question  
2 from Ms. Anderl, you defined a joint cost as a cost  
3 that arises when an input is provided in fixed  
4 proportions?

5 A. When the outputs are made in fixed  
6 proportions.

7 Q. Am I also correct from your direct testimony  
8 that you stated you have taught graduate level  
9 industrial organization classes?

10 A. Yes, I have.

11 Q. Are you familiar with the Handbook of  
12 Industrial Organization?

13 A. Yes, I am.

14 Q. Have you read parts of that book?

15 A. Both volumes, the entire 1,400 pages or so?  
16 I've read parts of it.

17 Q. Would you characterize it as a standard book  
18 where economists may go for guidance on issues arising  
19 in industrial organization?

20 A. It's meant to be a handbook, a reference  
21 item. I can't say I'm going to agree with everything  
22 in it.

23 Q. Are you familiar with the handbook's  
24 definition of a joint good?

25 A. No. As a matter of fact, I didn't think to

01181

1 go look there.

2 Q. Let me read it to you. This appears at Page  
3 17. John Panzar, who is one of the editors of the  
4 handbook, defines a joint good as an input, quote,  
5 "that is once acquired for use in producing one good,  
6 they are costlessly available for use in the production  
7 of others," end of quote, and this appears at Page 17.  
8 Do you have that definition in mind?

9 A. The joint good is the input that once  
10 acquired becomes costlessly available for the second  
11 output.

12 Q. Yes. Is there anything in this definition  
13 that appears in the Handbook of Industrial Organization  
14 that suggests that the input has to be used in fixed  
15 proportions by the outputs?

16 A. This is a definition of a joint good, an  
17 input, which we are going to call a joint good, and it  
18 doesn't imply anything about the outputs being in fixed  
19 proportions.

20 Q. And you would consider the loop an input for  
21 both voice services and high frequency or for ADSL  
22 service?

23 A. For line-shared ADSL service, yes.

24 Q. Is there anything in this definition that  
25 suggests that a joint input to the production of two

01182

1 outputs cannot be provided in a sequential nature?

2 A. There is nothing in there that contemplates  
3 the possibility of one of the outputs having to be  
4 provided before the second output is offered for sale  
5 and also that that second output has to be offered only  
6 to the person who purchases the first output, the unit  
7 of the first output that was produced with the specific  
8 joint input that we are talking about.

9 Q. I'd like to turn to a second topic. I'd like  
10 to first refer to your rebuttal testimony, just  
11 identify a few different passages. At Page 5, Line 5,  
12 I believe you state that a nonzero UNE charge would  
13 discourage the adoption of advanced telecommunications  
14 services, and then at Page 7, Lines 15 to 16, you said  
15 that there would be a zero price for line sharing in a  
16 competitive market, and then lastly, at Page 20, Line  
17 6, I believe you stated at any allocation of loop costs  
18 to line-sharing arrangements is absolutely contrary to  
19 the public interest. Are those fair representations of  
20 your rebuttal testimony?

21 A. Sure.

22 Q. I believe you were in the room when I asked  
23 Mr. Klick about Project Pronto.

24 A. Yes, I was.

25 Q. Are you familiar with Project Pronto?



01183

1 A. Generally, yes.

2 Q. Would you accept the general proposition that  
3 on a regular basis, common local exchange carriers  
4 upgrade their networks so they can provide new  
5 services, including advanced telecommunications  
6 services?

7 A. Certainly, and reduce costs. That's a big  
8 part of the rationale for Project Pronto in the  
9 investor briefings.

10 Q. Is it your position then in a competitive  
11 market that voice services would pay for 100 percent of  
12 the network upgrades that are undertaken in part for  
13 the provision of advanced telecommunications services?

14 A. In the Project Pronto architecture, the thing  
15 that's analogous to line sharing on an all-copper loop  
16 is only a tiny portion of the loop, distribution  
17 portion, which is all copper, even in Project Pronto.  
18 So that for that, if there were competition, yes, I  
19 would agree.

20 On the other hand, in a Project Pronto type  
21 of architecture, there are incremental costs to making  
22 line sharing possible on the feeder portion of the  
23 loop, which goes over fiber optic cable and requires  
24 electronics, and it should be noted that an ILEC  
25 adopting an architecture like Project Pronto -- I

01184

1 believe SBC spent six billion dollars on the project  
2 over some three years. This is a very large strategic  
3 decision. SBC investor briefings characterize  
4 themselves, the project, as turning the company into a  
5 datacentric company.

6         So they have made a big strategic change, and  
7 it's justified in part by cost reductions. It's  
8 justified in part by new revenues or advanced services.  
9 It's certainly not undertaken for the benefit of CLECs.  
10 Arguably, it really will harm CLECs. For instance, in  
11 SBC's accessible letter setting out the terms and  
12 conditions under which they will offer CLECs access to  
13 this architecture, they don't intend to make line  
14 sharing over this architecture available as a UNE.  
15 They are restricting the options that will be available  
16 to CLECs.

17         The architecture used involves ATM,  
18 asynchronous transfer mode. It's not new at all, but  
19 one of the things that's very desirable about ATM is  
20 that it has a bunch of different qualities of service  
21 levels, or it's more complicated than just levels, and  
22 the one quality of service level that is the least  
23 useful is called unspecified bit rate, and that's the  
24 only one that SBC is making available to competitive  
25 local exchange companies. I don't want anybody to get

01185

1 the mistaken impression that SBC, out of the kindness  
2 of its heart and desire to push back the digital divide  
3 and make high-speed data services available to  
4 everybody, they haven't undertaken this and are now  
5 offering to share it with CLECs. It's not like that.

6 Q. Let me present the question to you in a  
7 separate way, strictly hypothetical. Forget about  
8 Project Pronto. Instead, refer back to an issue that  
9 was before this Commission in the generic cost docket,  
10 and that was the use of loaded copper cables, and  
11 testimony was given about how loaded copper cables was  
12 not a forward-looking technology; that it was fine in  
13 an environment where only voice services were provided,  
14 but in an environment where advanced data services were  
15 going to be provided or just high-speed data services  
16 were going to be provided, load coils would never be  
17 included in the network architecture.

18 So the assumptions I want you to make are  
19 that this market is competitive, which is the standard  
20 you say we should use. Imagine there is a company that  
21 provides voice services, and they can do it using load  
22 coils, and the cost of doing that is \$16 a month, and  
23 then you have a second firm, a competitive firm,  
24 decided not to use load coils, and therefore, the cost  
25 is \$18 a month, so --

01186

1 A. Can you give me the prices again, please?

2 Q. With load coils and only voice service, it's  
3 \$16 a month. Without load coils, it's \$18 a month, and  
4 in that situation, the company that is using the  
5 network architecture without load coils, could it  
6 charge \$18 a month for voice services?

7 A. If so, it will be a transitory rent that they  
8 can collect from the advantage that they have right at  
9 that moment. What I would expect to happen in that  
10 circumstance is that the company that does have load  
11 coils would make a decision whether they want to  
12 compete, and if they make the decision that they want  
13 to compete in this market, they are going to undertake  
14 a broad-scale project to remove load coils, and they  
15 are going to initiate competition, and if price  
16 competition is effective, what it will do is it will  
17 drive that two-dollar margin down to nothing.

18 Q. You said that there would be a rent of two  
19 dollars in competitive markets. Are there rents?

20 A. Well, rents can arise in competitive markets,  
21 and they are either rents that accrue to somebody  
22 having better assets or greater skills, or as David  
23 Ricardo would have said, the more productive land.  
24 Those are rents that can persist, but in the situation  
25 that we are talking about, those rents are going to go

01187

1 away.

2 Q. I'd like to turn to another topic, and this  
3 is to follow up on a question that I asked Mr. Klick  
4 earlier this afternoon. Did you understand Mr. Klick  
5 to represent that one concern he has about a nonzero  
6 price for the UNE is that an incumbent local exchange  
7 company may be overrecovering the cost of the loop?  
8 They may be doubling recovering the cost of the loop.  
9 That's a concern you share?

10 A. Yes, it is.

11 Q. And therefore, one possible course is to  
12 adopt a zero UNE price at this time, and that way, the  
13 Commission would avoid any overrecovery.

14 A. That's correct.

15 Q. Would you also concur that Section 252-D1 of  
16 the Act -- that's the pricing standard established in  
17 the Act for unbundled network elements -- says that  
18 prices for unbundled network elements must be quote,  
19 "determined without reference to a rate of return or  
20 other rate-base proceeding." Are you familiar with  
21 that pricing standard?

22 A. Yes, I am.

23 Q. Would the Commission have the legal authority  
24 under the 1996 Telecommunications Act to adopt a zero  
25 price today for the UNE and then in a rate case say,

01188

1 Well, we are going to lower voice prices in the rate  
2 case and simultaneously, we are going to increase the  
3 price of the UNE in order to maintain revenue  
4 neutrality, or does the Act prohibit the Commission  
5 setting prices for UNEs in a rate case, and therefore,  
6 that alternative is not available?

7 A. I'm afraid it's a legal question that I just  
8 don't have an answer for.

9 DR. GABEL: Thank you. I have no further  
10 questions.

11 JUDGE BERG: Commissioners?

12 CROSS-EXAMINATION

13 BY CHAIRWOMAN SHOWALTER:

14 Q. Going back to your analogy of the architect,  
15 tell me in that analogy, who is the ILEC, who is the  
16 CLEC, and who is the customer?

17 A. In that analogy, the ILEC is the architect,  
18 and the customer and the CLEC are the person who  
19 engaged the architect's services, and I treat them as  
20 being the same because I'm confident that competition  
21 among the CLECs will be vigorous, and that competition  
22 forces them to be nothing but an instrument of the  
23 consumer.

24 Q. That leads to the next question. When you  
25 said that the DLEC -- I can't read my writing, but I

01189

1 think Ms. Anderl asked you a question about whether the  
2 loop is useful only to the customer and not the DLEC,  
3 and I believe you answered yes, it's useful only to the  
4 customer and not to the DLEC.

5 A. That is correct.

6 Q. In that case, if you would look around this  
7 room, why is it that you have been hired by the DLECs  
8 to argue this point strenuously, and that's the  
9 attorneys who are here, and in fact, the Public Counsel  
10 isn't even here. Why would we be here if this loop is  
11 not useful to the DLECs?

12 A. The DLECs are here seeking to serve  
13 customers.

14 Q. Aren't they also seeking to make a profit?

15 A. They hope to make money in the process.

16 Q. Are you assuming an identity between the  
17 consumer and a DLEC or CLEC?

18 A. I'm assuming that the DLEC is just an  
19 instrument of the consumers' wishes, and the DLECs that  
20 are successful will be those who figure out most  
21 accurately what the consumers' wishes are and are in a  
22 position to most efficiently serve those desires, so  
23 it's a mistake to regard the DLECs as the object here.  
24 They are instruments. The objects are the consumers.

25 Q. Also in your analogy, I think you were

01190

1 suggesting that if the architect has already drawn up  
2 the plans and been paid for those plans once that are  
3 given away for free or that someone else will come and  
4 beat them to it.

5 A. If the architect refuses to give away this  
6 adjunct to their services which is costless to the  
7 architect, then the architect isn't going to survive in  
8 a market that's competitive for architect services.  
9 Other architects will take their business.

10 Q. Until it gets down to be free.

11 A. Right. If it's a costless adjunct to some  
12 service that I offer, then competition -- if I'm  
13 offering a service and there is this costless adjunct  
14 to it that consumers value, competition for the service  
15 that I charge for is going to force me to make that  
16 available to consumers at cost, zero.

17 Q. So where are you on Napster?

18 A. That's different. That's intellectual  
19 property rights.

20 Q. It is something that is of value to people  
21 that's free, and therefore, it's --

22 A. Any kind of economic analysis is done in the  
23 legal institutional context of what it is, and if we  
24 have laws that provide for patents or intellectual  
25 property in other forms, to say otherwise would be to



01191

1 suggest that a distribution network for toothpaste  
2 would be similar in cost to a distribution network for  
3 heroin. That's what happens when you ignore the laws.

4 Q. Try to imagine a world that may be two to  
5 three years out from now, and imagine that competition  
6 is working quite well and that we have customers who  
7 want voice only, customers who want bandwidth only. We  
8 have companies who provide voice only. We have  
9 companies who provide bandwidth only. We have  
10 companies who provide the combination of all those  
11 companies I mentioned. Some are ILECs and some are  
12 CLECs. There is a diversity of both companies and  
13 services they provide and consumers who want those  
14 services.

15 In that world, should there be any difference  
16 between the provision of voice and xDSL provided by a  
17 historical ILEC versus a DLEC? Should we get to a  
18 point where a loop is a loop, and if you get only  
19 voice, you've got to pay for the loop? If you get only  
20 xDSL, you've got to pay for the loop, but if you want  
21 both, you might get it through two CLECs or two ILECs,  
22 for that matter, in the future world.

23 A. Right. First, that's a very attractive  
24 prospect that I tried to imagine two or three years or  
25 shortly after the Act was passed, and it hasn't

01192

1 happened. In that world, or for that matter in today's  
2 world, a loop is a transmission medium. What a loop is  
3 it's a transmission medium that's dedicated to a  
4 specific customer, and the business of how data  
5 services are provided and how many channels are derived  
6 on a particular loop is irrelevant to the pricing of  
7 loops. A loop is a transmission medium dedicated to a  
8 single consumer, and that's how it ought to be priced,  
9 and that's how a competitive market would price it.

10 Q. In that future world, would you expect that  
11 if somebody got voice from an historical ILEC, they  
12 would pay more than voice from the competitor?

13 A. No. In this competitive world, the ILEC  
14 isn't going to be able to survive. That's our  
15 assumption. They are not going to be able to survive  
16 if they are providing the same service at a higher  
17 price, and the other thing is that in this competitive  
18 world, the requirement that is on us right now imposed  
19 by the FCC, which says that you cannot have line  
20 sharing on a dry loop. You can't buy --

21 Q. I wanted to ask you about that. You've  
22 asserted a lot of givens here that strikes me as  
23 creating a very static world. You say, We are only  
24 talking about line sharing because the FCC has defined  
25 it as first voice, then xDSL, and meanwhile, the

01193

1 Commission has already set prices over the years for  
2 the voice part, so that's fixed, can't change that;  
3 therefore, the only thing we can do is charge zero, but  
4 aren't we supposed to be engaged in an exercise that  
5 gets us from here to there, here meaning today and  
6 there meaning three years from now? Should we presume  
7 we can't ever go and change an order? In other words,  
8 do we have to assume that whatever we've done on rate  
9 setting to date is our beginning point for how we  
10 assess costs to this xDSL service?

11 A. I don't think there is anything that prevents  
12 you from going back and reconsidering an order. I  
13 believe really firmly that zero is the price that would  
14 come up in a market if there was competition for voice  
15 analog services. Zero is the price that would come up  
16 for the line-sharing arrangement.

17 Q. Why is that? It seems to me there is really  
18 quite a bit more interest in the xDSL and that that may  
19 become more prevalent, especially when you can call  
20 people over it, which you can, and that those who might  
21 decide to also have the old telephone might become a  
22 shrinking group, so why this primacy of voice? Isn't  
23 it just historical fact, but that's not necessarily  
24 where the future is?

25 A. When the FCC's restriction goes away, which

01194

1 it will, when the FCC's restriction says you can't  
2 order line sharing on a loop that's not active, when  
3 that restriction goes away, then we are going to have a  
4 market where -- that will go away when the market has  
5 reached a point that there is effective competition for  
6 loops, and I don't know what form that effective  
7 competition is going to take.

8           A lot of the competition may be for voice  
9 service over cable modems. That's one possibility.  
10 Any of these broadband services are capable of  
11 providing voice-grade services, and I don't know which  
12 of these technologies is going to win, and I don't  
13 think the answer will be entirely clear in two or three  
14 years either. What I'm confident about is if you want  
15 to allow the marketplace to decide which combination of  
16 technical characteristics and qualitative  
17 characteristics of the service provided by these  
18 different technologies together with the price of each  
19 of these different technologies, if you want to let the  
20 market decide what it prefers, what you need to do at  
21 this point is set the price of the line-sharing  
22 arrangement at zero. Anything else that you do is  
23 going to impede the development of the market between  
24 CLECs and ILECs, for DSL-based services, and it's going  
25 to impede the development of competition between DSL

01195

1 services provided by both CLECs and ILECs and  
2 alternative technologies, broadband, wireless, et  
3 cetera.

4 Q. You've said that the voice and xDSL are not  
5 equally available on a stand-alone basis. Do you mean  
6 that as a statement of fact in the real world, or do  
7 you mean that as a statement that the FCC has defined  
8 it that way or both?

9 A. First, the only reason that line sharing is  
10 available at all is because the FCC mandated it, and  
11 then to answer your question, the way that the FCC  
12 mandated it was that you cannot order line sharing on a  
13 dry loop. That's in the order. The dry loop language  
14 is from the FCC order. They said that a CLEC cannot  
15 come in and say to an ILEC, "You have a loop that runs  
16 from here to John's house, and John is not currently  
17 subscribing to your voice service, but I'd like to have  
18 line sharing over that loop." You can't do that.

19 Furthermore, if you are in a line-sharing  
20 arrangement for John's loop, and John decides to  
21 terminate service with the ILEC analog voice service,  
22 the line-sharing arrangement goes away. So that takes  
23 care of the concern about providing voice service over  
24 DSL and avoiding the cost of the loop. You can't do  
25 that using the line-sharing arrangement. If I'm a data

01196

1 CLEC providing broadband Internet access to a customer  
2 in a line-sharing arrangement, and they get their  
3 analog voice service from the ILEC, and I convince that  
4 customer to drop the ILEC and take their voice service  
5 from me as well as broadband service, and I can provide  
6 it over the bandwidth I'm getting in the high frequency  
7 portion of the loop, when that customer goes to the  
8 ILEC and says, "I don't need your analog voice service  
9 anymore," all of a sudden, that consumer and me, the  
10 data CLEC, the instrument of the consumer, we are going  
11 to have to pay the full cost of the loop.

12 Q. Maybe the distinction I'm trying to get at is  
13 between a legal construct, which I think is created by  
14 the FCC and the underlying physics of it, which surely  
15 you would agree that line sharing is possible on a  
16 physical line, whichever sequence occurs or whichever  
17 set of providers, CLECs or ILECs want to provide that.  
18 That's physically possible.

19 A. That's true, but you wouldn't do it. If you  
20 start from a dry loop and you are going to provide data  
21 service on there, you are not going to bother to split  
22 off the frequency, the part of the spectrum that would  
23 be used by analog voice service. You are going to use  
24 all the spectrum that's available on that loop if you  
25 are starting from scratch.

01197

1 Q. Who is the "you" in this case?

2 A. You the consumer and your agent, a data CLEC  
3 who sets this up for you.

4 Q. I don't know if that's true or not. When I  
5 look at my own household, we have a couple of  
6 computers. Our use of phones and computers has  
7 changed, actually, over the years to be more computer  
8 intensive and less phone intensive.

9 A. I must have misunderstood. I thought you  
10 were only going to use the data. You also want analog  
11 voice on this loop.

12 Q. I think I was making a more abstract point or  
13 raising a more abstract issue that the situation we  
14 find ourselves in that's created by FCC orders or prior  
15 rate sets is one thing, and I'm not trying to diminish  
16 it, but I'm trying to distinguish it from the  
17 underlying physical characteristics of this system and  
18 how taking that into account and taking into account  
19 that regulatory judgments do change over time in order  
20 to get to some end state; whereas the physics don't  
21 change until new technology comes along.

22 So part of the exercise, I think, is to look  
23 a little beyond the precise state of regulatory orders  
24 that exist today to the end state that we want to get  
25 to, and just as an aside, people have been kind of

01198

1 throwing in the Eighth Circuit as if suddenly it's law  
2 today. I don't know that it is or isn't, and I don't  
3 think it should be taken for granted in this proceeding  
4 that it is or isn't, and regardless, it may not be here  
5 tomorrow, so if we are too bound by today's state of  
6 regulatory orders, it seems to me, we could be a little  
7 myopic.

8 A. Right. I think it's always true whenever you  
9 set rates or take any other regulatory action, you do  
10 so with a finite view into the future and also with a  
11 view to the end point, the world that you would hope to  
12 get to. The world that I would hope to get to is a  
13 world where there is competition for all  
14 telecommunications services where we've done everything  
15 that we can to push back the digital divide to make  
16 these services available at prices that can be afforded  
17 by the largest possible audience we can get to, and  
18 when I look ahead for a time horizon of the next  
19 several years, more than two or three but less than 10,  
20 what appears to me is most -- the best way to advance  
21 those goals, the best way that I can see is  
22 establishing the zero price because that will  
23 facilitate competition from the CLECs for the ILECs.  
24 That will force the ILECs as well as the CLECs to do  
25 everything that they can to compete in their desire to



01199

1 service customers' wishes, and that will take us a long  
2 way over the next three to five years, I think.

3 Q. This question might be somewhat similar to  
4 one of the questions of Dr. Gabel, but he's an  
5 economist and I'm a lawyer so I have a little different  
6 take on it. John Rawls the philosopher, one of whose  
7 contributions is the justice theory is that the fairest  
8 rule is the one that you would apply not knowing what  
9 your position in society is. So supposing you don't  
10 know whether you are a voice provider whose niche is to  
11 try to make the most out of the portion of the loop  
12 that provides voice, and you don't know or you might be  
13 an xDSL or you might be an ILEC, but shouldn't we be  
14 keeping all those players in mind, or do you say we  
15 really can't think about the voice provider -- I just  
16 lifted the veil, but we really can't think about that  
17 because the FCC told us the sequence is voice is  
18 occurring, and now only our starting point is voice is  
19 provided, voice covers the costs, and the only variable  
20 here is what to charge the xDSL.

21 A. I would suggest to you that if you want to  
22 use a veil of ignorance -- that's what John Rawls  
23 called it -- if you want to apply his principle of  
24 justice, the people that you should have in mind are  
25 the consumers, not the companies. The companies are

01200

1 only here to serve the consumers, and if my clients  
2 fail to serve the consumers, I want them to go out of  
3 business, and likewise, if the ILEC fails to serve the  
4 consumers, I want them to go out of business. I want  
5 them to be placed by somebody that does a better job.

6         If you want to make a decision from behind a  
7 veil of ignorance, I would recommend that you keep in  
8 mind the different kinds of consumers that are out  
9 there, and there are people who are never going to want  
10 anything more than voice service, and indeed, analog  
11 voice service has certain advantages. The nice thing  
12 about analog voice service is that if all you want is  
13 voice service and you want it to work when the power is  
14 out, that's what you need, because it doesn't rely on  
15 any fancy electronics at your residence that these  
16 other technologies will. I would keep all the  
17 different kinds of consumers in mind when I step behind  
18 the veil of ignorance, and I would try to adopt a  
19 policy that promotes the welfare of the least -- I  
20 forget exactly what Rawls' words were, but basically he  
21 was saying design a practice that will inure to the  
22 benefit of the least well off in this new world.

23         So I would keep the consumers in mind, and I  
24 would make the same recommendation that you can sort of  
25 tell what might happen over the next three to five

01201

1 years if you make the data CLECs, if you give them  
2 decent access to the underlying loops, this dedicated  
3 medium of transmission, then we can hope for  
4 competition to develop within the DSL-based broadband  
5 market, and we can hope for competition between DSL and  
6 other technologies to move in the direction of the  
7 technology that serves society's interest best, and  
8 that's what we can foresee at this point. I wouldn't  
9 worry too much about fairness among the companies.

10 Q. So in your example, we do have all kinds of  
11 consumers, but the immediate issue is only the  
12 consumers are ones that want both DSL and voice.  
13 That's what we are talking about?

14 A. Right.

15 Q. But you would agree, I think, that we also  
16 have to keep in mind the voice-only types and what's  
17 happening to the system that they are relying on.

18 A. Right. The voice-only types aren't affected  
19 at all. This system doesn't impose any new costs on  
20 the provision of voice only. Nobody is contesting  
21 that. Everybody acknowledges that that's the case.

22 Q. It may have repercussions, I would think. I  
23 being a person who gave up a line, but I think your  
24 answer to that was, Well, at the point at which the  
25 ILEC needs more support for the lines they still have,

01202

1 they've got to come back for a rate increase.

2 A. Right. They should certainly come to the  
3 Commission. If it turns out that circumstances change,  
4 then you are going to have to do an ordinary regulatory  
5 sort of analysis of that, but from Tom Spinks'  
6 testimony, that doesn't look like that's anytime to  
7 being close in the offing as far as Qwest is concerned.

8 Q. I guess the last question I want to ask is  
9 your concern about double recovery and that if we  
10 charge a positive amount, the company would  
11 overcollect, and I know this is not a rate proceeding,  
12 but I want to ask you if whatever the ILEC charged the  
13 CLEC were credited to the consumers' bill so that the  
14 consumer is paying just the same amount and the ILEC is  
15 paying just the same amount on that loop in that  
16 transaction, will you first agree there wouldn't be  
17 double recovery with that mechanism?

18 A. No. If that mechanism was accurately  
19 implemented, there wouldn't be double recovery.

20 Q. In the absence of FCC orders and other  
21 regulatory constraints, as an economist, what is your  
22 problem with that mechanism? Let's just say we set it  
23 at \$4.00, so CLEC pays \$4.00. Any customer getting  
24 that CLEC gets a credit of \$4.00.

25 A. First I would say that as far as the customer

01203

1 is concerned, if the customer understands accurately  
2 what is going on, it's going to amount to the same  
3 thing as a zero price for the high-frequency portion.  
4 If the customer really understands, I suspect there is  
5 going to be a serious educational effort required to  
6 get consumers to understand that, and it's going to be  
7 exacerbated in a situation where it applies in U S West  
8 territory but doesn't apply in adjacent Verizon  
9 territory. In that case, the price of DSL service is  
10 going to be lower in Verizon territory since Verizon  
11 hasn't sought to impose this charge on the line-sharing  
12 arrangement, and in U S West territory there is a  
13 higher price but you get a rebate, and I can imagine a  
14 scenario where Verizon customers ask, Well, why don't I  
15 get a rebate, and you have to explain to them it's  
16 available to them at a lower price, and Qwest customers  
17 want to know why the price of DSL service in their  
18 territory is higher than it is in Verizon territory,  
19 and you have to explain, No, you get a rebate that  
20 takes care of that.

21 Another big consideration is the fact that  
22 Ms. Brohl has testified -- as I understand her  
23 testimony, and it came out in some questions that  
24 Ms. Anderl had for me -- when you impose a charge on a  
25 line-sharing arrangement, then what that does is it

01204

1 creates a situation where you have two customers on the  
2 same loop, and one of those customers is the data CLEC  
3 who has to pay something towards the cost of the loop,  
4 and also the customer pays something, so they have to  
5 modify their OSSs. So this rebate arrangement creates  
6 new costs where otherwise there were none.

7 Q. But that would be what I would call maybe  
8 practical reasons why it wouldn't be worth it, but  
9 let's just set those practical reasons aside. From the  
10 consumers' point of view, there is no difference, but  
11 the consumer is paying the same amount for the loop but  
12 just for two different loops, the ILEC and the CLEC.  
13 Economically, when you look at the CLEC having to pay  
14 the \$4.00 versus having to pay zero, but in my  
15 hypothetical, the ILEC gets the same, is there any  
16 difference between those two scenarios?

17 A. I think there is, and setting aside the  
18 additional cost of accounting and marketing and so  
19 forth, one issue is that you create a marketing problem  
20 that's going to be worse for the CLECs than the ILECs,  
21 and the reason for that is Qwest can put together a  
22 market aimed at Qwest customers specific to them.  
23 Verizon can put together a marketing program for  
24 Verizon customers specific to them, and a data CLEC has  
25 the difficult task of trying to get customers to

01205

1 understand this distinction. They are offering a  
2 higher price in Qwest territory, but you get a rebate,  
3 and then in Verizon, you get a lower price to start  
4 with. That's a marketing problem that you are imposing  
5 on CLECs but not on ILECs.

6 Another problem, and I don't know if this  
7 falls in the category of practical problems or not, but  
8 another issue is that in this scenario, you are going  
9 to have to impose something like your imputation rule,  
10 and I see imputation in this circumstance. I expect  
11 prices to be falling over the next several years. I  
12 regard an imputation rule as a big problem and a source  
13 of anticompetitive behavior on the ILEC's part, and  
14 when I went on and on a while ago, I mentioned that,  
15 and I could talk about it more but I won't. I feel  
16 like I've gone on a good bit, but I think those are the  
17 main things. At best, if it's working right and  
18 consumers understand everything and everything is  
19 working, it accomplishes the zero price. But there is  
20 a bunch of potential things that can interfere in  
21 there.

22 Q. So bottom line is you are saying a zero price  
23 doesn't really harm anybody and is the quickest way to  
24 get competition.

25 A. That's exactly what I'm saying.

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1 CHAIRWOMAN SHOWALTER: Thanks.

2 COMMISSIONER HEMSTAD: I don't have any  
3 additional questions.

4 JUDGE BERG: Ms. McClellan?

5 MS. McCLELLAN: No questions.

6 MS. ANDERL: No, Your Honor.

7 MR. DEANHARDT: No questions.

8 JUDGE BERG: Dr. Cabe, thank you for being  
9 here this afternoon. You are excused from the Bench.

10 COMMISSIONER HEMSTAD: If we are done for the  
11 day, I just wanted to make a general comment, and it's  
12 following up on a reference that Chairwoman Showalter  
13 made, an aside I wanted to make directly that goes to  
14 the legal standard that the Commission ultimately will  
15 have to decide is appropriate for the cost.

16 In the context of the decision of the Eighth  
17 Circuit, speaking for myself, I read the comments of  
18 the parties and the general reading with regard to the  
19 implications of that decision, and also I'm concerned  
20 about the references to it in the testimony, and  
21 possibly it has come up in the cross-examination also.  
22 There is the question of what is that standard, and I'm  
23 sure the parties will disagree as to what the Eighth  
24 Circuit standard applied to the facts in front of us  
25 may be, but there is a threshold question of whatever



01207

1 that standard is and do we have a duty to follow that  
2 standard.

3 I want to make it clear that at least this  
4 Commission has made no decision as to whether we are  
5 required to follow that standard. That is an issue in  
6 front of us, and some of the testimony would seem to  
7 start from the premise that that is a standard to be  
8 applied, and it seems to me that is a question for us  
9 to decide. Again, speaking for myself, my initial  
10 reading of it is that we are not required to follow  
11 that standard. I think the duty we have in front of us  
12 is to determine what is the correct standard to apply  
13 and then to apply it to this case.

14 JUDGE BERG: Along those lines, it may be  
15 appropriate for counsel to begin talking about an  
16 outline for briefs in this case. During the following  
17 week, it would be helpful if we can begin to work that  
18 out. Counsel, I believe, have had experience of doing  
19 that in the prior phases of the proceeding, and if they  
20 can initiate that process in discussions among  
21 themselves, then I'll be able to work with counsel off  
22 the record this next week, and hopefully by the  
23 conclusion of Week 2, we will have an outline of the  
24 issues for briefing. It will be very necessary in  
25 order for the Commission to be able to compare fruit to

01208

1 fruit and vegetables to vegetables.

2 MR. BUTLER: Your Honor, in some prior cases,  
3 the Bench has given the parties a list of specific  
4 topics that it wants to make sure the parties address.  
5 If you have such a list, we would appreciate getting  
6 that as soon as possible so we can incorporate that in  
7 our suggestions for an outline.

8 JUDGE BERG: I will consult with the  
9 Commission and Dr. Gabel. Anything else on the record,  
10 Commissioners? We are off the record.

11 (Hearing adjourned at 5:40 p.m.)

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