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

2 JUDGE MACE: Let's be back on the record in  
3 Docket UT-063038. This is the complaint of Qwest  
4 against various CLECs. Regarding VNXX and I believe we  
5 left off last night with Mr. Kopta cross-examining  
6 Mr. Brotherson and we need to resume with Mr. Kopta this  
7 morning.

8 MR. KOPTA: Thank you, Your Honor.

9  
10 Whereupon,

11 LARRY B. BROTHERSON,  
12 having been previously duly sworn, was called as a  
13 witness herein and was examined and testified as  
14 follows:

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

16 BY MR. KOPTA:

17 Q. Good morning, Mr. Brotherson.

18 A. Good morning, Mr. Kopta.

19 Q. If you would please turn in your rebuttal  
20 testimony, which is Exhibit 24T, to page 50.

21 A. I'm there.

22 Q. Okay, and at this point you are discussing  
23 the settlement agreement between Qwest and MCI, and I'm  
24 drawing your attention specifically to the sentence that  
25 begins on line 11, which states:

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1 Under the agreement, MCI will be allowed  
2 to use VNXX routing, but all VNXX  
3 minutes are effectively subject to a  
4 bill and keep compensation regime.

5 And we're missing a period, but did I read  
6 that correctly?

7 A. You did.

8 Q. And the question that I have is, is it  
9 Qwest's position in this docket that VNXX is unlawful  
10 under Washington law?

11 A. I don't know as the Washington Commission has  
12 ruled on the lawfulness. It is Qwest's position that it  
13 is not local because it does not comply with the local  
14 boundary regulations or Commission rules and should not  
15 be treated as local. I think the next question is --

16 JUDGE MACE: And you have said a couple times  
17 it should not be treated as local, or are you meaning  
18 lawful?

19 A. Local traffic, it is not local traffic and  
20 should not be treated as local traffic. And that then  
21 raises the issue which was the basis of this complaint  
22 and the basis for which the Washington Commission opened  
23 the docket, which is to say how should it be classified  
24 and how should it be treated or permitted.

25 Q. Okay. So would it be fair to characterize

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1 Qwest's complaint in this docket as really more for  
2 determining how compensation should be, intercarrier  
3 compensation should be determined for VNXX as opposed to  
4 the lawfulness of a carrier that chooses to provide  
5 service via VNXX as Qwest has defined it?

6 A. Well, I think the first question would be,  
7 should a carrier be permitted to terminate traffic to a  
8 Qwest end user, or conversely should Qwest be able to  
9 terminate, were we to do VNXX, to another telephone  
10 company. And the second question would be, and if so,  
11 how would that traffic be treated. And I think the  
12 settlement proposes to, with Verizon or MCI, proposes  
13 that the traffic be permitted to be terminated but  
14 treated in a specific manner.

15 Q. So in terms of the relief that Qwest is  
16 seeking in this proceeding against parties that have not  
17 settled with Qwest, would it be your position that those  
18 parties should not be permitted to provide service via  
19 VNXX as Qwest has provided it unless they were to agree  
20 to do so on a bill and keep basis in terms of  
21 intercarrier compensation?

22 A. If the parties sought to use Qwest's network  
23 to terminate this type of traffic, there's a couple of  
24 ways I guess they could do it. One of course is if they  
25 reach a settlement and Qwest has granted permission,

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1 then, as was the case with MCI, then I think the parties  
2 have reached a solution. Absent that kind of a  
3 settlement, I guess if the Washington Commission orders  
4 some sort of a or comes out with some sort of an order  
5 on how VNXX would be treated, all parties of course  
6 would abide by the law I'm sure. But absent that, yes,  
7 I think without some sort of a settlement, there is no  
8 permission given by Qwest or agreement by Qwest to  
9 terminate that kind of traffic. It should either be  
10 routed to an IXC or structured in some manner that  
11 complies with existing rules.

12 Q. Now if you would, please, still in Exhibit  
13 24T, your rebuttal testimony, turn to page 53, and at  
14 this point in your testimony you are discussing the  
15 counterclaim that Global Crossing has made against  
16 Qwest. Do you have a copy of Ms. Peters' exhibit to her  
17 testimony, which is marked as Exhibit 442?

18 A. Not up here at the desk, I received a copy,  
19 if someone can give it to me.

20 JUDGE MACE: My notes show this is a  
21 confidential exhibit.

22 MR. KOPTA: It is, and I do not intend to  
23 discuss any confidential information on it but  
24 appreciate the caution.

25 MR. SMITH: Is it the single page

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1 spreadsheet?

2 MR. KOPTA: Yes, it is.

3 BY MR. KOPTA:

4 Q. Mr. Brotherson, have you reviewed this  
5 exhibit before filing your testimony?

6 A. I went over it. I'm not sure the date I  
7 received this exhibit in relationship to the three  
8 series of testimony that I filed, but I certainly  
9 received and reviewed the exhibit.

10 Q. Prior to filing your rebuttal testimony?

11 A. I'm trying to find the date I received it to  
12 tell you if I had received it. Yeah, I believe so.

13 Q. Well, to help you --

14 A. Yes, I got it, I received it in February, and  
15 I filed my testimony in March, so I would have reviewed  
16 it prior to filing the rebuttal testimony.

17 Q. Okay. In the column along the left there are  
18 invoice numbers, did you review the invoices that are  
19 represented by those numbers?

20 A. The individual invoices?

21 Q. Yes.

22 A. No.

23 Q. So you have no basis on which to claim or  
24 otherwise know whether the information contained on this  
25 sheet is accurately transcribed from the invoices that

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1 are listed here?

2 A. No, I wouldn't have any independent knowledge  
3 if the exhibit matches the actual invoices.

4 Q. Okay. And have you addressed with anyone  
5 else at Qwest the extent to which they believe that the  
6 information contained on this exhibit is accurate in  
7 terms of what Global Crossing has billed Qwest?

8 A. I'm hesitating because I know that we have,  
9 obviously our numbers disagree, but we have looked at  
10 the amounts that Global Crossing has billed us, and I'm  
11 comfortable that at least some of the documents that we  
12 have reviewed match what Global Crossing has billed us.  
13 But if your question is, have I compared to make sure  
14 these specific numbers match the specific bills of  
15 Global Crossing, I did not compare this exhibit to those  
16 bills.

17 Q. Okay. So you have no reason to believe that  
18 the amounts listed under the disputes column third from  
19 the right on this exhibit represent the amount that's in  
20 dispute between Qwest and Global Crossing?

21 A. Could you repeat that, I have no reason to  
22 believe.

23 Q. That the amounts listed under the disputes  
24 column, which starts the third one from the right.

25 A. I see it.

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1 Q. That those numbers accurately represent the  
2 amount that's in dispute between Qwest and Global  
3 Crossing?

4 A. I know the amounts that Qwest has disputed,  
5 and I guess I can not say that I have compared these to  
6 what Global Crossing states is Qwest's disputed amount  
7 matches what Qwest says is Qwest's disputed amount as  
8 far as that column, I did not do a comparison.

9 Q. Right, but as you sit here today, you have no  
10 reason to believe that this is not accurate?

11 A. No, no reason to believe accurate or  
12 inaccurate, either way.

13 Q. And if you would please turn to Exhibit 61,  
14 which is another cross-exhibit that we have designated  
15 in this case, it's Qwest's response to Global Crossing's  
16 Data Request Number 3.

17 MR. SMITH: Just a moment here, that's under  
18 Global?

19 MR. KOPTA: Well, it would have been under  
20 the --

21 MR. SMITH: Pac-West?

22 MR. KOPTA: Yes.

23 MR. SMITH: And which one specifically?

24 MR. KOPTA: It's Request Number GC01-003, so  
25 it would be the final one in the list of exhibits that

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1 we designated for Mr. Brotherson.

2 MR. SMITH: GC01-003?

3 MR. KOPTA: Yes.

4 MR. SMITH: Okay, we have it.

5 BY MR. KOPTA:

6 Q. And am I correct, Mr. Brotherson, that  
7 Qwest's response to this data request indicates that the  
8 only basis on which Qwest has disputed amounts that  
9 Global Crossing has billed with respect to compensation  
10 have to do with what Qwest has determined to be VNXX  
11 traffic?

12 A. For the traffic bound for Internet service  
13 providers, I believe that's correct.

14 Q. Well, let's take a look at the request,  
15 doesn't it say Global Crossing's bills or invoices for  
16 reciprocal compensation or compensation for traffic  
17 bound for Internet service providers in the question?

18 A. Yes, yes, for reciprocal compensation or ISP  
19 traffic, which would be local traffic, I think the  
20 dispute is the VNXX.

21 Q. Okay. So the amounts listed in dispute in  
22 Exhibit 442 then represent the dispute between Qwest and  
23 Global Crossing, and that dispute has only to do with  
24 whether or not that compensation represents VNXX  
25 traffic; is that correct?

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1           A.     I believe that's correct.  I believe that the  
2     disputed amounts are the amounts that are deemed VNXX  
3     and whether or not that's compensable under local either  
4     at the ISP rate or the recip comp rate, if that's your  
5     question.  I'm not sure, as I said earlier, about these  
6     numbers and what Qwest is disputing as VNXX, those  
7     numbers, but assuming that those numbers are in sync,  
8     that would be the nature of the local dispute.

9           Q.     Okay.  And you're not aware that Qwest has  
10    provided any evidence in this docket with respect to any  
11    different amounts that Qwest believes are in dispute?

12          A.     Different than?

13          Q.     Than the numbers in Exhibit 442 that we were  
14    just discussing.

15          A.     I'm trying to recall if I identified specific  
16    numbers in my response testimony, but -- I'm not trying  
17    to dispute the numbers, I'm just saying that I'm not  
18    sure they're going to match but I'm assuming that they  
19    do.  It's essentially the VNXX minutes that are in  
20    dispute, and I don't think we've got a big dispute over  
21    what those numbers are.

22          Q.     Okay.  And just so we're not hiding the ball  
23    here, at this point in your testimony you're addressing  
24    the extent to which Global Crossing has provided  
25    sufficient information to the Commission to determine

0332

1 the dispute, and I'm simply trying to determine at this  
2 point whether there is any dispute other than VNXX  
3 between Global Crossing and Qwest.

4 A. I believe there's a small amount of access  
5 dispute, but it's negligible I think, you know,  
6 relatively speaking. I think essentially the bulk of  
7 the money in dispute between the two companies is VNXX  
8 minutes. There is some issue around transit traffic as  
9 well that may be billed at access, but this is  
10 essentially a VNXX dispute.

11 Q. So stated differently, if the Commission were  
12 to deny Qwest's complaint and say that VNXX routing is  
13 appropriate, then Qwest agrees that it would pay Global  
14 Crossing the amounts that are in dispute as represented  
15 on Exhibit 442?

16 A. Qwest would pay on all of the local minutes,  
17 and I'm -- my only hesitation was do those represent --  
18 does Qwest's local minutes agree with those, and I guess  
19 to the extent that -- there's two pieces. Qwest can,  
20 you know, the Commission can say you owe on VNXX, and  
21 then the next question is, and if you guys have two  
22 different numbers, then I'm choosing Global's VNXX  
23 minutes versus Qwest's. But at this point I don't have  
24 any reason to believe that those numbers wouldn't match.  
25 So essentially yes, but we would pay on the VNXX minutes

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1 if they ruled such. What those numbers are I'm hesitant  
2 to commit to.

3 MR. KOPTA: I understand, and with that I  
4 have no more questions, thank you, Mr. Brotherson.

5 JUDGE MACE: Thank you.

6 MR. KOPTA: At this point I would move  
7 admission of Exhibits 45 through 61.

8 JUDGE MACE: Any objection to the admission  
9 of those exhibits?

10 MS. ANDERL: No, Your Honor, we don't have  
11 any objection. I just would like to note, Mr. Kopta and  
12 I discussed this, Exhibits 54 and 60 reference  
13 attachments, those were intentionally not provided by  
14 Pac-West, and Qwest does not have any problem with that,  
15 with those attachments being omitted from those  
16 responses. Just in case Your Honor is reviewing these  
17 documents at a later date and wonders whether the  
18 exhibits were incomplete.

19 JUDGE MACE: Thank you.

20 Thank you, Mr. Kopta.

21 MR. KOPTA: So those are admitted, Your  
22 Honor?

23 JUDGE MACE: Oh, sorry, those exhibits are  
24 admitted.

25 MR. KOPTA: Thank you.

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1                   JUDGE MACE: I have left for  
2 cross-examination Mr. Best, Mr. Castle or Mr. Wiley, and  
3 Mr. Finnigan.

4                   MR. AHLERS: I'm on the list also.

5                   JUDGE MACE: Yes, you are, Mr. Ahlers, would  
6 you like to go first, or have you agreed on an order?

7                   MR. AHLERS: It would make sense for me to  
8 defer. The way things are going, my questions are all  
9 being asked, so.

10                  JUDGE MACE: Okay.

11                  Well, Mr. Finnigan.

12

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

14 BY MR. FINNIGAN:

15                  Q.     Mr. Brotherson, as you know, I'm Rick  
16 Finnigan, I'm representing the Washington Independent  
17 Telephone Association in this matter.

18                  Do you understand that under the access  
19 scheme in the state of Washington there is a universal  
20 service access element of .00152 per access minute that  
21 is collected and remitted to the Washington Exchange  
22 Carrier Association?

23                  A.     I'm generally aware of universal service  
24 funds. I'm not sure of their number here in Washington,  
25 but I would accept that subject to check.

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1 Q. Okay, thank you. Under your settlement with  
2 Verizon, to the extent that access minutes are no longer  
3 treated as access minutes, does Qwest intend to still  
4 collect and remit the .00152 per access minute?

5 A. The short answer is no. In your question you  
6 asked, if access minutes are no longer treated as access  
7 minutes, and I guess that's one of the questions before  
8 the Commission is what is the nature of this traffic and  
9 how will it be treated. And I'm not necessarily  
10 agreeing with that piece of your question, but no, there  
11 will be no treating this as access under the settlement.

12 Q. Were you in the room yesterday when I asked  
13 Mr. Linse a series of questions concerning the transport  
14 of traffic where a VNXX number has been assigned to the  
15 Tenino exchange?

16 A. I was.

17 Q. Okay. And I'm just trying to shorten this up  
18 a little bit.

19 A. Sure.

20 Q. With those questions in mind, what is Qwest's  
21 position on who should pay for the cost of transport of  
22 VNXX traffic between Tenino and Qwest?

23 A. As between the two companies within the same  
24 EAS or local calling area, that's under historical  
25 agreements where it's been bill and keep between the two

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1 parties, each party provides a portion of the transport  
2 and does not bill the other party for their respective  
3 portion.

4 Q. And is that what Qwest's position is,  
5 assuming that the called party is in Seattle but the  
6 VNXX number is assigned to Tenino?

7 A. Yes.

8 Q. And then once the traffic reaches Qwest's  
9 switch in Olympia, what is Qwest's position on who  
10 should pay for the transport of traffic from Olympia to  
11 Seattle?

12 A. As between the CLEC who has assigned the VNXX  
13 number out of their switch and Qwest, that transport  
14 would not be included in the RUF and therefore would be  
15 paid by the CLECs in effect through the RUF formula.

16 JUDGE MACE: What is the RUF formula?

17 THE WITNESS: Excuse me, relative use factor.

18 JUDGE MACE: Thank you.

19 BY MR. FINNIGAN:

20 Q. Just for the record, could you describe in  
21 brief terms what the relative use factor is?

22 A. A CLEC would purchase a trunk, a local  
23 interconnection service trunk or commonly referred to as  
24 a LIS trunk, and we'll use Olympia as our example here  
25 today, from Seattle down to Olympia. This would be the

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1 connection between their switch and our switch. Qwest  
2 has an obligation to deliver its local calls to the CLEC  
3 switch, and when we agreed to a single point of  
4 interconnection in the LATA, we in effect agreed that  
5 even if we have to haul the traffic all the way to  
6 Seattle that that would be our responsibility to deliver  
7 it there. When these trunks are put in as two-way  
8 trunks, then since we are using a portion or we are  
9 using those trunks also to deliver our local calls to  
10 the CLEC, a credit is issued to the CLEC, a credit  
11 against the bill for their trunk, and that credit is  
12 based on the relative use factor of local calls. And  
13 the VNXX traffic in the MCI settlement excludes the VNXX  
14 minutes from any local treatment and therefore excludes  
15 them from the relative use factor.

16 MR. FINNIGAN: Thank you, that completes my  
17 cross.

18 JUDGE MACE: Mr. Finnigan.

19 Mr. Best.

20 MR. BEST: Thank you, Your Honor.

21

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

23 BY MR. BEST:

24 Q. Good morning, Mr. Brotherson.

25 A. Good morning, Mr. Best.

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1 Q. I would like to refer you to page 14 of your  
2 direct testimony, that's --

3 JUDGE MACE: Again, Mr. Best, you really need  
4 to speak into the microphone. The reporter is not going  
5 to be able to hear you.

6 MR. BEST: Thank you, Your Honor, I  
7 appreciate the reminder.

8 JUDGE MACE: I'm sure you want your  
9 cross-examination on the record.

10 MR. BEST: Yes, thank you for the reminder.

11 A. Direct did you say?

12 BY MR. BEST:

13 Q. Direct, right, LBB-1T. At lines, well, it's  
14 essentially the question on line 10 and answer on lines  
15 20 through 22, you basically state that:

16 The proper test for rating or  
17 classifying calls in Washington is  
18 determined by where the calling and  
19 called parties are physically located.

20 A. Yes.

21 MR. BEST: Your Honor, if I could approach  
22 the diagram.

23 JUDGE MACE: You know, that's fine, you can  
24 approach the diagram. One of the problems we had  
25 yesterday was when you were standing and talking by the

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1 diagram, it was really hard to hear what you were  
2 saying. I don't know the solution for this.

3 MR. BEST: Well, Your Honor, let me try to do  
4 it from here. It's not quite as easy for me, but I will  
5 try to just describe it.

6 BY MR. BEST:

7 Q. Mr. Brotherson, you can see what's been  
8 labeled as BR-1?

9 A. Yes.

10 Q. And on the left-hand side of the diagram, you  
11 will notice and I think you can accept that we have sort  
12 of depicted a very simple drawing of Qwest's foreign  
13 exchange service?

14 A. Well, we have had this -- I had this  
15 discussion with Mr. Kopta as well, I don't think it  
16 accurately depicts the FX if it's routing the traffic  
17 through the Seattle switch as switched traffic. But to  
18 the extent that it is trying to indicate there is a loop  
19 going up to the FX customer in the Seattle area, yes.

20 Q. Would you agree based on your definition that  
21 both the calling and called parties are in different  
22 exchanges, different local calling areas?

23 A. Yes.

24 Q. Okay. So I guess if the proper test for  
25 rating classifying calls is determined by where the

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1 calling and called parties are, why aren't the case of  
2 FX and VNXX both toll calls?

3 A. The FX product is a product permitted under  
4 the tariffs as a local connection combined with a  
5 private line transport loop dedicated to the end user as  
6 a loop if you will and has been recognized as an  
7 exception to the traditional numbering rules. The  
8 diagram on the right would show a trunk group going to  
9 the ELI switch. ELI in that depiction is a common  
10 carrier and transporting traffic on common carrier  
11 trunks to a switch and switching the traffic to an end  
12 user in another location, which would fall under the  
13 classification of a toll call.

14 Q. And the tariff you're referring to I assume  
15 is a Qwest tariff?

16 A. Yes.

17 Q. Do you know whether or not ELI has filed a  
18 tariff or price list in Washington for its foreign  
19 exchange type service?

20 A. If, in fact, ELI has and offers foreign  
21 exchange, then I'm not aware of it. But I would not  
22 agree that the VNXX service is FX service, if that was  
23 your question.

24 Q. Well, let me ask you this, I assume that the  
25 distinction you're drawing is that Qwest requires the

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1 customer to use a dedicated facility, is that correct,  
2 or it -- and that's what gives it its presence in the  
3 foreign exchange?

4 A. Well, it pays an originating compensation in  
5 the, in this example, the Olympia local calling area,  
6 and it pays for an interexchange transport as an end  
7 user, so it would be the combination of the two pieces  
8 comprised of the FX product.

9 Q. Well, I understand what the FX product is,  
10 I'm trying to understand the distinction you're drawing  
11 between VNXX that ELI provides as you say and the  
12 foreign exchange that you provide, and my understanding  
13 is that you claim that your customer has a presence, in  
14 this example in the Olympia exchange, even though he or  
15 she is physically located in Seattle.

16 A. That's correct, because the traffic is placed  
17 on the end user's loop, if you will, in the Olympia  
18 exchange, and the customer then pays the interexchange  
19 transport price out of the private line tariff.

20 Q. Now if Electric Lightwave from this day  
21 forward said that for every customer that buys Electric  
22 Lightwave's foreign exchange like product, which we will  
23 just call VNXX --

24 JUDGE MACE: Mr. Best, you really need to  
25 slow down.

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1 MR. BEST: Thank you, Your Honor.

2 BY MR. BEST:

3 Q. If Electric Lightwave from this day forward  
4 basically indicates --

5 JUDGE MACE: Let's try that again, start  
6 again.

7 MR. BEST: Thank you.

8 BY MR. BEST:

9 Q. If Electric Lightwave from this day forward  
10 basically indicates to its customer that they must now  
11 purchase a collocation type product in its collocation  
12 in Qwest's central office in Olympia, wouldn't that give  
13 the same kind of physical presence that Qwest has?

14 A. I'm not sure if we've got a complete  
15 description in your question of what it would take. If  
16 your customer picked up traffic in Olympia and the  
17 customer then on an interexchange product either offered  
18 by Qwest or anyone else transported that traffic out of  
19 the exchange on its own private line, that would be very  
20 similar to an FX product offered by Qwest and I suspect  
21 would be permissible. But I don't know if I had enough  
22 information in your question to say yes, it's  
23 permissible.

24 Q. But you would agree in that scenario that the  
25 customer would have a physical presence in Olympia,

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1 would you not?

2 A. They would not -- well, if the customer is in  
3 Olympia, yes, I would agree they have a physical  
4 presence in Olympia. I'm not sure that -- I mean if  
5 you, for example, if you're bringing the traffic back to  
6 the customer in Olympia on a loop, that's not FX, that  
7 would just be local. I need to know more about the  
8 traffic flow in addition to where the customer is  
9 located to know if it's an FX call or a local call or  
10 some other type of VNXX call.

11 Q. Let's assume that the ELI customer is in the  
12 Seattle local calling area. ELI requires them to  
13 purchase a piece of collocation, if you will, in the  
14 Olympia collocation in Qwest's central office in  
15 Olympia, wouldn't that give them the physical presence  
16 you think that is necessary?

17 A. No. Well, that's two different questions,  
18 I'm answering the wrong question. If the customer  
19 actually has equipment in Olympia, let's start with  
20 that, and uses that equipment to actually receive the  
21 traffic and transport the traffic on its facility back  
22 to Olympia, and those two pieces were missing from your  
23 question, then I would say that they probably are  
24 looking like an FX product. But just buying collocation  
25 or saying they're designated as collocation but not

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1 touching the traffic or having anything to do with the  
2 traffic would not make the traffic FX.

3 Q. And why is that?

4 A. Because in the -- because the customer has  
5 picked up traffic within the local calling area and on  
6 their dedicated facility, and private line has been a  
7 dedicated facility that IXCs, that PBX companies, that a  
8 lot of people have purchased over the years to transport  
9 traffic between one exchange and another to a dedicated  
10 location, is a distinct difference from a common carrier  
11 hauling traffic over common trunk groups to a switch and  
12 switching that traffic for delivery to a customer in  
13 another exchange, which is interexchange traffic as has  
14 been recognized by both state and FCC regulators as  
15 interexchange traffic. But I mean you're asking me why  
16 are those two the -- why are those two distinctions  
17 there, and I would say that's the rules that we all  
18 operate under when we become telephone companies.

19 Q. Well, I guess isn't that sort of the point of  
20 this though, Mr. Brotherson, you really can't point to  
21 any rules that require this physical presence, can you?

22 A. I can point to the rule that says if you put  
23 the traffic -- that if a customer is in one location and  
24 the call is delivered to a customer in another location  
25 and it's delivered over common trunk groups by a common

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1 carrier, maybe rule is the wrong term, that is  
2 interexchange traffic.

3 Q. Toll?

4 A. Toll.

5 Q. Okay. And you would agree that the reason  
6 that a customer buys foreign exchange from you is to  
7 avoid toll; isn't that right?

8 A. I'm not sure they avoid toll, they pay a flat  
9 rate interexchange transport for their -- dedicated to  
10 their service.

11 Q. And it's true --

12 A. Or they could buy a switched common transport  
13 which would be normally a measured type toll.

14 Q. And it's true, isn't it, that the way Qwest's  
15 network is configured that to sell foreign exchange you  
16 have to use a private line to get to the customer in the  
17 other exchange, correct?

18 A. I'm not sure it's because of the way Qwest's  
19 network is configured. It's the product that gets you  
20 between two exchanges would be either a common trunk  
21 group or a private line.

22 Q. Well, let's take the example on BR-1, would  
23 you agree that when a Qwest Olympia customer tries to  
24 call your foreign exchange customer in Seattle that the  
25 Olympia customer dials an Olympia number, and the

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1 Olympia switch looks for it in Olympia, it doesn't look  
2 for it anywhere else, does it?

3 A. Yes.

4 Q. And it's true then the only way really to get  
5 around the switch is to build this facility?

6 A. I'm not sure what you mean by get around the  
7 switch. The switch would put the Olympia dialed call on  
8 a private line going to Seattle in order to get to the  
9 customer who has purchased private line to Seattle.

10 Q. Right, but you have to use the private line  
11 to tell the switch. The switch is looking for the  
12 number in Olympia, correct, isn't that really what  
13 happens?

14 A. Yes.

15 Q. And then so the switch doesn't get confused,  
16 you have to hard wire, literally hard wire something, a  
17 connection that now will take that basically fooling the  
18 switch and sending it to Seattle; isn't that right?

19 A. Well, it's not fooling the switch, the  
20 customer has purchased local service in Olympia, and the  
21 traffic is routed to the port assigned to that telephone  
22 number. And yes, from there that port is then hard  
23 wired to a private line, which will carry the traffic to  
24 Olympia on that interexchange service.

25 Q. And there's nothing stopping Qwest from

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1 routing traffic the way ELI and the other CLECs do it,  
2 is there?

3 A. Well, I think you and Mr. Linse talked about  
4 that, if the question is could Qwest put some VNXX codes  
5 in the Seattle switch and carry them over common trunk  
6 groups and then switch them to the customer in Seattle,  
7 that's technically feasible but I believe does not  
8 comply with the rules and regulations of the Commission.

9 Q. Of the Washington Commission?

10 A. Yes, it would be completing a call  
11 originating in one local calling area and terminating to  
12 another by a common carrier over its common trunk groups  
13 and through a switch, which is toll.

14 Q. Well, I understand that you think that that's  
15 a toll call, but you have also referred to Commission  
16 rules and regulations that would prohibit us from doing  
17 what we're doing and yet accept foreign exchange; can  
18 you point me to those rules?

19 A. Well, I guess I would start with the  
20 numbering guidelines in COCAG that would be the  
21 exception to taking a number outside of a local calling  
22 area, and, you know, the historical guidelines of the  
23 Commission rules of where a call originates and  
24 terminates would recognize that FX treatment. The  
25 exception was based with the interexchange transport,

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1 the private line transport is part of that product in  
2 its description. The tariff product exists and was  
3 approved and follows the guidelines, and the VNXX  
4 product doesn't. Beyond that, I'm, you know, I guess I  
5 would defer to the Commission and the attorneys to look  
6 at additional rules, I'm not thinking of any off the top  
7 of my head.

8 Q. Okay, well, this is a complaint case, is it  
9 not, Mr. Brotherson?

10 A. It is.

11 Q. All right, let's move to another topic. I  
12 would like to move to line 23, the question on line 23,  
13 same page.

14 A. Of my direct?

15 Q. Correct.

16 JUDGE MACE: I'm sorry, what's the page  
17 again?

18 MR. BEST: Page 14, I'm sorry, line 23.

19 A. I have it.

20 BY MR. BEST:

21 Q. And you have read this Qwest/AT&T arbitration  
22 order?

23 A. Yes.

24 Q. And isn't it true that the Commission, this  
25 Commission, expressed some concern about AT&T being able

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1 to offer a functionally equivalent service to foreign  
2 exchange?

3 A. I don't recall the specific language, but I  
4 -- I guess I would just say I would have to reread the  
5 order to recall that specific --

6 Q. Would you accept subject to check that on  
7 page 8 the Commission states:

8 We note, however, the arbitrator's  
9 discussion of his concerns that adopting  
10 Qwest's alternative leaves open the door  
11 to disputes if Qwest tries to use this  
12 definition to frustrate an effort by  
13 AT&T to offer services that are  
14 functionally equivalent from a customer  
15 perspective to Qwest FX service and  
16 local number present service for  
17 ISP-bound traffic.

18 A. I will accept it subject to check. It says  
19 what it says, Mr. Best.

20 Q. Thank you.

21 I would like to turn now to page 17 of your  
22 direct, lines 11 through 23, your discussion, as I  
23 understand it, involves that VNXX undercuts the "network  
24 architecture".

25 A. Yes.

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1 Q. Isn't that the incumbent's network  
2 architecture you're speaking of?

3 A. Well, it affects the architectures between  
4 the companies as well if we're talking about the  
5 transport between the two companies. The assignment of  
6 NNX codes associated with particular central office  
7 customers are not located in that local calling area if  
8 it is traveling on facilities that were purchased for  
9 local traffic as between the two companies, I think it  
10 impacts that as well, but.

11 Q. Well, isn't it true, Mr. Brotherson, that the  
12 impact you're talking about is really financial, there's  
13 really no impact that ELI has on Qwest's network  
14 architecture, is there?

15 A. No, I believe to the extent -- and when you  
16 say ELI, as we mentioned earlier, each company has  
17 various levels of VNXX traffic, but to the extent that  
18 traffic is being transported to another exchange and  
19 that Qwest is providing -- is being asked to provide  
20 some or all of that transport to that other exchange as  
21 if it were a local call and it's not, then I think it  
22 impacts Qwest's network to that extent.

23 Q. Do you know of any situation in Washington  
24 state where Qwest transports traffic for Electric  
25 Lightwave that Electric Lightwave either doesn't provide

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1 for itself or buy from Qwest?

2 A. It either buys from Qwest or does itself?

3 Q. Yes.

4 A. No, I'm not aware if they're using anyone  
5 else.

6 Q. On page 25, lines 4 through 6, again your  
7 direct testimony page 25, you state:

8 Although both VNXX and toll traffic may  
9 originate --

10 JUDGE MACE: What line are you on?

11 MR. BEST: Sorry, I'm on line 4.

12 JUDGE MACE: Thank you.

13 BY MR. BEST:

14 Q. (Reading.)

15 Although both VNXX and toll traffic may  
16 originate in Washington and terminate to  
17 locations across the country, only VNXX  
18 avoids carrier access charges and end  
19 user toll charges.

20 Do you see that?

21 A. I do.

22 Q. That would also be true of foreign exchange,  
23 would it not?

24 A. No, that would not necessarily be -- that  
25 would not be true. As I understand this answer, I'm

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1 trying to reread it, it's talking about calls that  
2 originate in Washington and terminate to locations  
3 across the country. To the extent it's talking about  
4 terminating outside of Washington, that would not be  
5 true for an FX product.

6 Q. To the extent that the calls terminate within  
7 Washington, it would be true that foreign exchange  
8 avoids both access and toll, would it not?

9 A. If it terminated within the LATA, you can  
10 have an intraLATA FX that's a flat rated private line.  
11 If you buy an interstate private line, the open end is  
12 going to pay switched access.

13 Q. I would like to now turn to page 33 of your  
14 direct, specifically lines 12 through 14.

15 A. Excuse me, Mr. Best, the page again?

16 Q. It's 33 in your direct, lines 12 through 13,  
17 you state, a POI, and I assume that stands for point of  
18 interconnection?

19 A. Yes.

20 Q. (Reading.)

21 Is not and never has been a relevant  
22 location for determining the proper  
23 rating of calls in Washington or to the  
24 best of my knowledge anywhere else in  
25 the country.

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1                   Now can I have -- you see, that's a correct  
2 reading of your testimony?

3           A.       That's a correct reading of my testimony.

4           Q.       I would like to direct your attention, I  
5 apologize, I need to find my exhibit here, it looks like  
6 the exhibit is actually an exhibit to your rebuttal  
7 testimony, I apologize for making you switch back and  
8 forth, I would like you to look at Exhibit Number  
9 LBB-29, which is an exhibit to your rebuttal testimony,  
10 and it has to do with Qwest OneFlex routing.

11          A.       29?

12                   JUDGE MACE:   And that is Exhibit 29.

13          A.       Yes, sir, I have it open.

14          Q.       Now I assume that what OneFlex routing does  
15 according to this diagram is that a customer in the  
16 example here in Dallas I assume it's Texas gets assigned  
17 a Seattle number; is that correct?

18          A.       The Seattle purchaser of local service would  
19 be assigned the Seattle number, that would normally be a  
20 VoIP provider like a Vonage or a Skype, they in turn  
21 would give that number, or Qwest QCC's OneFlex, they in  
22 turn would hand out a number to equate that with an IP  
23 address in Dallas, yes.

24          Q.       And I assume in the example here you will  
25 notice in the areas labeled Seattle local calling area

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1 it shows the Qwest switch and it shows QCC Seattle?

2 A. Yes.

3 Q. What is QCC?

4 A. QCC is an enhanced service provider that  
5 offers a VoIP product called OneFlex.

6 Q. And that is in fact a sister company of  
7 Qwest; is that right?

8 A. Right.

9 Q. And in this example, QCC is given a Seattle  
10 number, and any call that's coming from Seattle end user  
11 A in your example goes to the Qwest switch and  
12 terminates at what I guess that's a POP, does that stand  
13 for point of presence?

14 A. Correct.

15 Q. And Qwest deems that to be a local call; is  
16 that correct?

17 A. Yes.

18 Q. And wouldn't you agree that this customer is  
19 really only there via the POP?

20 A. Well, the customer is purchasing local  
21 service in Seattle, that's the requirement. In order to  
22 get a connection to the public telephone network in  
23 Seattle, you will buy some local product, a trunk or a  
24 loop to your location.

25 Q. Well, you stated in your direct testimony

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1 back on page 33 that a POI, which is similar to a POP,  
2 is never a relevant location for determining the proper  
3 rating of calls, correct?

4 A. I didn't say a POI is similar to a POP. A  
5 point of interconnection is where two telephone  
6 companies interconnect their network or where you  
7 connect between two parties, the network connects  
8 between two parties. The presence or point of presence  
9 of this entity would be referred to as a POP, the person  
10 that's purchasing the local service.

11 Q. Well, what's the difference, there's really  
12 no difference between a POP and a POI, is there?

13 A. Well, the POP description here depicts where  
14 the customer is located and where they're purchasing the  
15 product, and interconnection is an interconnection -- a  
16 point of interconnection is traditionally referred to as  
17 the point where two networks interconnect.

18 Q. But it's true, is it not --

19 A. I --

20 Q. I'm sorry, go ahead.

21 A. I was going to say this is not a network  
22 connecting, a telephone company network connecting to  
23 the Qwest switch. It's a customer purchasing a local  
24 product to their location.

25 Q. Okay, well, the customer is QCC, correct?

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1 A. Correct.

2 Q. And QCC is going to carry this call to  
3 Dallas, isn't that right?

4 A. QCC is going to, yes, QCC is going to put it  
5 on the Internet and route it over the Internet.

6 Q. And you would agree that there is no switch  
7 here apparently at the POP?

8 A. Well, it's the -- I'm not sure you would call  
9 it a switch. They're not a telephone company, so it  
10 would be converting it into some sort of an IP product,  
11 not too unlike my own computer where it converts it into  
12 IP to send it out over the Internet, but --

13 Q. Doesn't that have a --

14 A. -- it's not a switch if you're talking in  
15 terms of a telephone company, a traditional public  
16 telephone company switch.

17 Q. And there's no private line between Seattle  
18 and Dallas, is there?

19 A. No, that's the -- it's left the public  
20 telephone network once it's delivered to the customer  
21 and they send it out over the Internet.

22 Q. Now page 37 of your testimony, you state that  
23 -- excuse me, I want to give you a chance to get there.

24 A. Of my direct?

25 Q. Of your direct, I'm sorry, I'm back to your

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1 direct, I apologize for pushing you back and forth.

2 A. And the lines were, or did you give me those?

3 JUDGE MACE: Sorry?

4 A. And did you give me the lines and I missed it

5 or --

6 Q. Sorry, page 37, lines 12 through 24, question

7 on line 12.

8 A. All right.

9 Q. You're making the point here that CLECs  
10 purchase what's called SPOP, single point of presence?

11 A. They do.

12 Q. To your knowledge, has Electric Lightwave  
13 ever purchased that from Qwest in Washington?

14 A. No, not to my knowledge.

15 Q. Okay. You imply here that all the CLECs do  
16 though, do you not?

17 A. If that was the implication, I would withdraw  
18 it.

19 Q. And on page 39, if you want to look at the  
20 question on the bottom of page 38, that would probably  
21 be helpful as a reference.

22 A. All right.

23 Q. Specifically now I'm going to move you over  
24 to page 39, lines 2 through 8.

25 A. All right.

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1 Q. Aren't you basically saying here that all  
2 CLECs disclaim responsibility for transport? I can read  
3 you the lines, actually --

4 A. No, I've got the line. I'm just wanting --  
5 you're asking me again is it generic to all CLECs, and  
6 I'm going back to read the preceding questions to see if  
7 there's any -- yeah, it's a generic comment, a generic  
8 reference to CLECs.

9 Q. To your knowledge, is that true of Electric  
10 Lightwave anywhere in Washington?

11 A. Could you repeat the question.

12 Q. Well, the question is you basically  
13 generically said that all CLECs disclaim responsibility  
14 for transport.

15 A. Right.

16 Q. The question is, are you aware of anywhere in  
17 Washington state, or any state actually, where ELI  
18 either doesn't purchase transport from Qwest and pay for  
19 it or provide its own?

20 A. To the way you have rephrased the question,  
21 no, I'm not aware of any such situation. I don't think  
22 ELI has ever disclaimed nor claimed they do have  
23 responsibility for transport for VNXX, either.

24 Q. Well, this is your testimony, right?

25 A. Oh, yes, and to the extent that it was too

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1 broad in the generic CLEC, then -- but VNXX is, or  
2 excuse me, ELI has not claimed they have responsibility  
3 for transport, nor have they said they have no  
4 responsibility for transport. I was just qualifying my  
5 answer.

6 Q. I would like to go to page 42 of your direct,  
7 now this is where I think starting on line 9 you start  
8 to, well, actually it's before that, lines 6 and 7, you  
9 state --

10 MR. SMITH: Which number again, Mr. Best?

11 MR. BEST: Sorry, page 42, his direct.

12 BY MR. BEST:

13 Q. You state:

14 Qwest uses Qwest's local/EAS originating  
15 and terminating minutes of use by trunk  
16 group from the traffic routing reports  
17 in its VNXX analysis.

18 Can I assume, Mr. Brotherson, what you're  
19 saying, and we can go through all this about how you do  
20 it, but what you're really saying here is that you  
21 looked at a balance of minutes and used that to  
22 determine whether or not VNXX was being provided; is  
23 that right?

24 A. That was one of the indicators, yes.

25 Q. Okay. And the way that indicator was done as

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1 I understand it is that you would look at the point of  
2 origin from Qwest, look at where the CLEC switch was,  
3 and then to the degree you saw any traffic between  
4 calling areas, you would start to question that; is that  
5 right?

6 A. I think it would be the opposite. To the  
7 extent that we're seeing traffic flowing back and forth  
8 between the calling areas, that would probably be more  
9 of an indicator that it was not VNXX. To the extent  
10 that, well, that would be the fact that the switches or  
11 that the calling party and the switches are in two  
12 different locales would be a first indicator of the  
13 traffic is leaving the exchange, and the question is, is  
14 it coming back to the exchange in some format. But the  
15 balance of traffic would tend to indicate a different  
16 kind of customer than an ISP, which is traditionally  
17 one-way traffic. And since historically ISPs do not  
18 make calls back into a local calling area, the first  
19 flag would be to look at the balance of traffic to give  
20 us an indication of whether this might be VNXX heading  
21 for an ISP.

22 Q. Okay, well, you stated just now that that  
23 would be the first flag you would look at. Obviously  
24 apparently that isn't enough to be certain; is that  
25 correct?

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1 A. Correct.

2 Q. Okay. Well, what other flags did you look  
3 at?

4 A. Well, I would -- I guess I would say that if  
5 a customer is billing us ISP minutes as part of the  
6 recip comp plan, that would be an indicator that there  
7 are ISPs on the network, and depending -- and in cases  
8 where we've got 99% one-way traffic and billing at the  
9 ISP rate, that's an indication of calls going in one  
10 direction. And then the next step would be to look at  
11 the locations of the originating switch or local calling  
12 area and the terminating or switch location of the CLEC  
13 to see if those are between two exchanges.

14 Q. All right, well, so based on that analysis,  
15 that's the same analysis Qwest used to file this  
16 complaint; isn't that right?

17 A. Yes.

18 Q. And isn't it the same analysis that Qwest  
19 also used to withhold reciprocal compensation payments?

20 A. Correct.

21 Q. Now I would like to refer you again to BR-1,  
22 and let's assume Electric Lightwave -- well, let me ask  
23 you this, do you know how many customers in Olympia  
24 Electric Lightwave has?

25 A. Me, no.

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1 Q. Do you know how many ISPs in Olympia Electric  
2 Lightwave has?

3 A. No.

4 Q. Let me ask you if Electric Lightwave had both  
5 a significant number of ISPs and customers in Olympia,  
6 and Qwest customers called pursuant to diagram BR-1 ELI  
7 customers who are local in Olympia, that call routes up  
8 to Seattle, does it not, then comes all the way back and  
9 is delivered properly as a local call; isn't that right?

10 A. In answer to your question, yes. I don't  
11 think we have that diagrammed on BR-1. But if the call  
12 originates in Olympia from a Qwest customer and goes up  
13 to Seattle where ELI switches it and returns it on a  
14 loop to their customer in Olympia, yes, that is a local  
15 call compensable under the agreements.

16 Q. Okay. Now in your examination of minutes of  
17 use, wouldn't that legitimate local traffic all be  
18 captured in the way you measure the traffic?

19 A. Yes, the -- well, it could, yes, under your  
20 hypothetical, if it came back, it could be captured.

21 Q. So I guess what do these minutes of use  
22 actually show then?

23 Well, let me ask you a different question.  
24 Isn't it true that the minutes of use only show minutes  
25 of use; it doesn't show anything about the direction of

0363

1 the traffic?

2 A. Well, it shows the minutes of use, and it  
3 shows the location of the two parties. It will not  
4 unequivocally eliminate the possibility that the CLEC  
5 has brought the traffic back in to Olympia for example  
6 in your example. However, it is a strong indicator  
7 based on our experience that it's VNXX traffic, and we  
8 have offered to sit down with CLECs and say any of these  
9 minutes that are going back to Olympia would be treated  
10 as local.

11 Q. But, Mr. Brotherson, isn't it true you have  
12 used a measurement that isn't accurate and then put the  
13 burden of proof on the CLECs to dispute it?

14 MR. SMITH: I object to that question, he's  
15 asking a legal question.

16 MR. BEST: I'm sorry, I'm asking a legal  
17 question?

18 MR. SMITH: Well, you have asked him if Qwest  
19 has placed the burden of proof on ELI, that's --

20 MR. BEST: Oh, I'm sorry, I apologize, Your  
21 Honor. My intent in the question was, and,  
22 Mr. Brotherson, let me qualify it, is the burden of  
23 proof in the dispute over the traffic, not in this case.

24 MR. SMITH: Well, I still object.

25 JUDGE MACE: I think you can phrase that

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1 question differently and still get the information you  
2 need.

3 BY MR. BEST:

4 Q. Mr. Brotherson, it's true, is it not, that  
5 given the fact that this really only measures minutes  
6 that your offer to sit down with the CLECs really makes  
7 it their responsibility to come to you because of a  
8 presumption you have made on the traffic, the minutes of  
9 traffic; isn't that right?

10 A. It is not just a presumption. In fact, in  
11 sitting down with the CLECs we have identified that in  
12 fact the ISPs for example are located in Seattle, we  
13 have not found the ISPs, and I shouldn't say never, to  
14 have been located in all of these small towns where the  
15 NNX codes are associated, and we have not seen that in  
16 fact the traffic was brought back and that the ISPs have  
17 in fact located in those towns but rather that the  
18 traffic mass been aggregated through the use of VNXX and  
19 delivered across the interexchange boundaries to a  
20 centralized location for termination to an ISP normally  
21 adjacent to the switch. That's been the basis on which  
22 we have flagged the traffic, and that's been the basis  
23 where we have sat down though and said, but if we're  
24 wrong, we're happy to sit down and work through it.

25 Q. Other than the minutes of use you have

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1 calculated for Electric Lightwave, do you have any  
2 evidence at all that Electric Lightwave is routing that  
3 traffic via VNXX to Seattle or anywhere else?

4 A. I personally don't, no.

5 Q. Well, this is your --

6 A. I would have to go back and we're -- if we're  
7 compensating -- no, specific information of the exact  
8 location of ELI's end user customers, we do not, but we  
9 are asking Level 3 to, or excuse me, ELI to represent,  
10 to confirm based on our experience that this appears to  
11 be VNXX that they are not in fact misrepresenting the  
12 bills to Qwest and --

13 Q. Well, isn't it true, Mr. Brotherson, your way  
14 of doing that was to stop paying reciprocal comp?

15 A. For the VNXX?

16 Q. Well, based on minutes, wasn't it?

17 A. Yes.

18 Q. And isn't it true that the other way you  
19 handled it was that you filed a complaint against  
20 Electric Lightwave and all the other CLECs?

21 A. Yes.

22 Q. Okay.

23 I would like to refer you now to exhibit --

24 MR. BEST: It's a confidential exhibit, Your  
25 Honor, but I'm not going to go into the confidential

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1 information.

2 BY MR. BEST:

3 Q. It's Exhibit LB-7, Confidential Exhibit LB-7,  
4 I believe that's to your direct testimony,  
5 Mr. Brotherson, LB-7, LBB-7.

6 A. All right.

7 Q. About halfway down the page starts with you  
8 will notice, let's use town, starting with Tacoma.

9 MR. BEST: And again for the record, Your  
10 Honor, I will just describe the exhibit since not  
11 everyone may have it.

12 BY MR. BEST:

13 Q. This exhibit I think shows the, quote,  
14 imbalance of minutes in ELI offices, or maybe they're  
15 Qwest offices, but anyway it's the imbalance of minutes,  
16 and I want to go through these with you, Mr. Brotherson,  
17 and ask you some questions about this. You believe, as  
18 I understand it, that this imbalance of minutes shows  
19 one-way traffic; is that right?

20 I mean all of it, I'm not talking about one  
21 specifically but all of them.

22 A. Well, it's not all one-way traffic. I  
23 believe it shows ELI to Qwest local MOUs and Qwest to  
24 ELI originating MOUs on the chart.

25 Q. Okay. Did you ever look at what are called

0367

1 Peg counts?

2 A. No.

3 JUDGE MACE: Could you tell us what is a --

4 Q. I'm going to ask the witness, do you know  
5 what a Peg count is?

6 A. No.

7 Q. Did you ever look at the number of calls that  
8 were actually exchanged rather than the number of  
9 minutes?

10 A. I can't answer that on -- I did not, no.

11 Q. Okay, but you made an assumption based on  
12 minutes that the number of calls they're either -- they  
13 were one-way, correct, or very few?

14 A. Correct.

15 Q. All right.

16 Now specifically I would like to refer you  
17 now back to Exhibit LBB-7 with respect to Tacoma, you  
18 see the first Tacoma entry going down by town in the  
19 town column?

20 A. I do. Well, yes, I do.

21 Q. Okay. Would you accept subject to check,  
22 Mr. Brotherson, that if you actually counted the number  
23 of calls that went back and forth that in fact ELI  
24 originated 73% of the calls, ELI customers to Qwest  
25 customers?

0368

1           A.     Subject to check.  I guess I don't know how I  
2 would check it, but.

3           MR. SMITH:  Well, I guess I object to the  
4 question, because there's no indication that  
5 Mr. Brotherson has the means of actually making the  
6 check that Mr. Best is asking him to do.

7           MR. BEST:  Actually, Your Honor, I believe  
8 Qwest does have that capability.  What they didn't do --  
9 here's the problem that I'm faced with, Qwest has made  
10 an allegation that this traffic is one-way, and we're  
11 trying to establish that in fact it's two-way.  I can  
12 hand him the exhibit, I believe Qwest's switch will  
13 produce the same report that ours does that will say --

14           JUDGE MACE:  Do you have a witness that's  
15 going to come and talk about this?

16           MR. BEST:  I actually do if -- I was going to  
17 do this subject to check, I'm happy to call the witness.

18           MR. SMITH:  But Mr. Robins filed testimony  
19 after this testimony was filed and did not include the  
20 exhibit that Mr. Best has, so it's an attempt now to put  
21 an exhibit into evidence that was fully available to  
22 them at the time their witness had to testify, and I  
23 think it's improper.

24           MR. BEST:  Well, Your Honor, I'm not --

25           JUDGE MACE:  Well, we're not to Mr. Robins'

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1 testimony yet, and I think that that would be a time  
2 when you might want to have him discuss that. If  
3 there's no way or this witness claims that there's no  
4 way that he can verify this, then you need to present a  
5 witness that will present your point of view --

6 MR. BEST: I can do that, Your Honor.

7 JUDGE MACE: -- and you can then argue it in  
8 brief, that would be my suggestion.

9 MR. BEST: I can do that, I guess my point  
10 would be that I believe Qwest actually can produce these  
11 very same records.

12 JUDGE MACE: Well, if you ask the witness  
13 that question, he will answer it, and you will have to  
14 take the answer as is it, he is under oath.

15 BY MR. BEST:

16 Q. Mr. Brotherson, it's true, is it not, that  
17 your switch can measure the number of calls between  
18 companies?

19 A. You know, I don't know that for a fact,  
20 Mr. Best. I'm not trying to be evasive, I had not heard  
21 of Peg count when you asked me the question.

22 MR. BEST: Your Honor, actually what I would  
23 like to do just in case, I would like to make an offer  
24 of proof; is that possible?

25 JUDGE MACE: Go ahead.

0370

1 BY MR. BEST:

2 Q. Mr. Brotherson, again I'm going to go down  
3 the various columns by --

4 JUDGE MACE: Please remember this is a  
5 confidential exhibit.

6 MR. BEST: No, all I'm going to do, I  
7 apologize, let me tell you, Your Honor, what I'm going  
8 to do. It's our exhibit, it's our confidential  
9 information, so if I goof up, it's our problem, not  
10 anyone else's.

11 JUDGE MACE: Let me just ask you this, I  
12 recognize that counsel for Qwest has an objection to  
13 your bringing that exhibit in through Mr. Robins, would  
14 you intend to try to offer it through Mr. Robins?

15 MR. BEST: It was not my intent to do so, but  
16 I can do that, I can make that attempt if you would  
17 prefer, but that's why I'm making my offer of proof  
18 here, because if you rule against me when he testifies,  
19 I have no option to get it into the record if this has  
20 already gone past.

21 JUDGE MACE: Why don't you go ahead with your  
22 offer of proof.

23 MR. SMITH: Well, I would object to the offer  
24 of proof for the very same reasons. This is even less  
25 probative than if he attempted to get it through his own

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1 witness, who as I noted had every opportunity to respond  
2 to Mr. Brotherson's testimony and did not do so.

3 JUDGE MACE: I certainly understand your  
4 position. I also, thinking of the Commission itself and  
5 its desire to have as much information as it needs to  
6 make a decision in this case, this is the type of  
7 information the Commission may ultimately be interested  
8 in. I recognize there's a problem, because you may not  
9 have had enough time to examine this document or be able  
10 to refute it, but it may be valuable for the Commission,  
11 and so we have to provide a way for this information to  
12 come in and to also protect you. I'm going to allow him  
13 to make an offer of proof and then give you an  
14 opportunity to examine the document, and if there is  
15 some additional information that you need about it or  
16 some way that you want to question someone about it, you  
17 will have, maybe you will have an opportunity through  
18 Mr. Robins. But at this point I do want to have this  
19 information come in in terms of his offer, and I am  
20 going to allow it.

21 MR. SMITH: If I could just, I understand  
22 Your Honor's ruling, it may not be that Qwest can  
23 examine or otherwise provide any information with regard  
24 to it at this point, and we may need to request the  
25 opportunity to file something late filed in order to

0372

1 respond.

2 JUDGE MACE: And you must do what you need to  
3 do.

4 MR. SMITH: Okay.

5 JUDGE MACE: But I just feel that I need to  
6 have this information at least in terms of the offer on  
7 the record right now.

8 MR. BEST: And, Your Honor, I'm happy to work  
9 this out with Qwest if they need additional time. I  
10 apologize for the surprise, we tumbled to this a little  
11 late in the going, and I apologize but that, but I guess  
12 the point is I think the facts are what the facts are,  
13 and I would be surprised if Qwest can't produce the very  
14 same information and come up with the same results,  
15 because it should be able to do that if we can do it.

16 JUDGE MACE: Why don't you go ahead with your  
17 offer of proof.

18 MR. BEST: Thank you.

19 BY MR. BEST:

20 Q. Mr. Brotherson, again back to Exhibit LBB-7,  
21 we talked about the first Tacoma office, do you see the  
22 second Tacoma office?

23 JUDGE MACE: And I need to have you go more  
24 slowly.

25 MR. BEST: Thank you.

0373

1 BY MR. BEST:

2 Q. Do you see the second Tacoma office right  
3 below it?

4 A. I do.

5 Q. You have a zero there, what does that mean?

6 JUDGE MACE: Well, now again, this is  
7 confidential, and I'm not sure where you're referring.

8 MR. BEST: I apologize, I'm now on presume  
9 VNXX, my mistake.

10 MR. FINNIGAN: Your Honor, could we be sure  
11 that we understand where the offer of proof stops,  
12 because right now we're in an offer of proof, which has  
13 its own set of circumstances, and I don't want the  
14 record to be in a situation where I don't understand  
15 where the offer of proof stops.

16 JUDGE MACE: Right, well, I'm going to look  
17 to you, Mr. Best, to let us know when you're finished  
18 making your offer of proof.

19 MR. BEST: I will be happy that this will all  
20 be included in the offer of proof. I assume based on  
21 the objection and the offer of proof that everything  
22 relating now to Exhibit LBB-7 is going to be part of the  
23 offer of proof. My only reason for using it is in fact  
24 to point out the balance of traffic is very different  
25 than the balance of minutes, so everything I'm asking on

0374

1 this I would expect to be included in the offer of  
2 proof, and when I move off of it, then I believe that  
3 the offer will stop.

4 JUDGE MACE: Very well.

5 BY MR. BEST:

6 Q. Again, Mr. Brotherson, I apologize, back to  
7 LBB-7, you see the second line for Tacoma there, and  
8 under presume VNXX there's a zero?

9 A. Yes.

10 Q. What does that mean?

11 A. That because of the balance of traffic, it  
12 was presumed that it was not traffic that was leaving  
13 the exchange and not coming back to the exchange.

14 Q. Okay, moving down to the next city, which is  
15 Sumner.

16 A. I have it.

17 Q. And you say the presumed balance of traffic  
18 it looks like it's 70% presumed VNXX?

19 A. I see that.

20 Q. Would it surprise you and would you accept  
21 subject to check I guess is a better way to put it that  
22 in fact ELI customers originated approximately 17% --  
23 I'm sorry, strike that.

24 Would you accept subject to check that ELI  
25 customers originated 84% of the traffic to Qwest?

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1                   MR. SMITH: I object, Your Honor, if he's  
2 appropriately making an offer of proof, I think he can  
3 state what he thinks the facts may be. But to ask the  
4 witness to accept it subject to check is inappropriate.

5                   JUDGE MACE: Actually, this is a little  
6 different than I thought it was going to be. Usually  
7 when I have had the experience of an offer of proof,  
8 counsel indicates what he thinks his document or his  
9 evidence would show.

10                  MR. BEST: Okay, I can do that.

11                  JUDGE MACE: You don't need to cross-examine  
12 the witness to do that, I would just like to have you  
13 tell us what you --

14                  MR. BEST: Make the statement?

15                  JUDGE MACE: Yes.

16                  MR. BEST: I apologize, that's a little  
17 different than I have done in the past. All right, then  
18 I will just quickly go down the cities --

19                  JUDGE MACE: I have another concern here to,  
20 and that is I don't know who has asked that this  
21 document be made confidential. Typically when a  
22 document is confidential, we don't really refer to parts  
23 of it in the record unless the party that wants it to be  
24 confidential says it's okay, and I don't know where we  
25 stand on that, and you are referring to numbers that are

0376

1 actually on this exhibit, and I'm just concerned that  
2 they may be your numbers, but maybe Qwest has some  
3 interest here as well, and I don't want to get into  
4 trouble since we're on an open record revealing  
5 confidential information.

6 MR. SMITH: Maybe I can jump in. I believe  
7 Qwest's primary motivation in designating these as  
8 confidential is because it contained specific traffic  
9 data related to a specific CLEC, in this case ELI, and  
10 there are other exhibits related to it. I guess from my  
11 perspective, random references to some numbers here  
12 probably is not going to cause any major problem in  
13 terms of confidentiality. Qwest may also have an  
14 interest in keeping it confidential, and I would need to  
15 speak to them about that, but I think the primary reason  
16 it was designated was to protect ELI's information.

17 JUDGE MACE: Very well then.

18 MR. BEST: That's what I understand, Your  
19 Honor, I believe the information is ours, I don't  
20 believe Qwest claims any confidentiality to it, although  
21 I would defer obviously to Qwest.

22 MR. SMITH: I haven't asked that question. I  
23 guess the point I'm making, a few references to random  
24 numbers I don't believe will disclose any great  
25 confidential information that would be usable by

0377

1 somebody else out in the market.

2 JUDGE MACE: Very well, I just wanted to make  
3 sure everything was being handled properly.

4 Go ahead.

5 MR. BEST: Thank you, Your Honor.

6 Again referring now to the Sumner exhibit,  
7 and I apologize, I'm going to reverse this, I'm having  
8 to do the math in my head and that isn't working for me,  
9 so I'm going to change the way I guess I'm referring it,  
10 and I would suggest that the actual numbers for Sumner,  
11 not the numbers but the percentage of calls for Sumner,  
12 Qwest only originated 16.88%. With respect to the next  
13 Tacoma exchange --

14 JUDGE MACE: Now is that 16.8% something that  
15 is supposed to substitute for a number on this chart?

16 MR. BEST: Correct, Your Honor. What this  
17 means is that Qwest is arguing, as I understand it, that  
18 the balance of minutes shows that the traffic all is  
19 one-way from Qwest to ELI, i.e., it's going to an ISP.  
20 What this document actually shows is that the traffic  
21 flow, the number of calls being made is the exact  
22 opposite, that more calls are coming from ELI customers  
23 to Qwest customers.

24 JUDGE MACE: Correct, I understand that, but  
25 you're giving me a number that you apparently are taking

0378

1 as a result of your computation on this document that  
2 you have before you.

3 MR. BEST: Correct.

4 JUDGE MACE: And I'm asking you, is that  
5 number a number that you are proposing we should then  
6 insert onto this document?

7 MR. BEST: Well, no, I'm not, because this  
8 document measures -- Mr. Brotherson's document measures  
9 minutes, this is measuring calls, this is a different  
10 document.

11 JUDGE MACE: All right, go ahead then.

12 MR. BEST: I'm sorry, I think we left off  
13 with the next Tacoma, which is the fifth line down, our  
14 offer --

15 JUDGE MACE: You're at Sumner I think.

16 MR. SMITH: And I have to admit I'm lost on  
17 what your earlier numbers were, so if you --

18 MR. BEST: I can go all the way back, okay,  
19 and let's do it like -- I'm just going to read the  
20 percentages so I don't have to do the math in my head.  
21 These are calls originated by Qwest customers, and  
22 looking at the total of number of calls they're  
23 expressed as a percentage. The very first Tacoma that  
24 we discussed is 26.62%, the second Tacoma is 6.65%,  
25 Sumner is 16.88%, Graham is 19.29%, the next Tacoma is

0379

1 20.62%, the Tacoma below that is 22.29%, the Tacoma  
2 below that is 24.93%, the Tacoma below that is 31.25%,  
3 the Tacoma below that is 28.84%, Puyallup is 17.70%,  
4 Tacoma below Puyallup is 28.64%, the next Tacoma is  
5 22.20%, and the Tacoma below that is 24.13%, Enumclaw is  
6 96.65%, you got us on that one, and Bonney Lake is  
7 53.32%, and we have a total if you average all of these,  
8 the average number for those local calling areas is  
9 24.84%.

10 And that would end my offer of proof.

11 JUDGE MACE: Thank you.

12 MR. SMITH: I would like, if I could just  
13 inquire, so the numbers Mr. Best was just reading us are  
14 based on ELI information, and they indicate the percent  
15 of calls that were originated by Qwest customers to --

16 MR. BEST: ELI customers.

17 MR. SMITH: -- to ELI customers in these  
18 particular --

19 MR. BEST: Correct.

20 MR. SMITH: -- wire centers?

21 MR. BEST: Correct.

22 BY MR. BEST:

23 Q. All right, Mr. Brotherson, let's move to your  
24 rebuttal testimony.

25 MR. BEST: I'm going to take just a second,

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1 Your Honor, I may be able to shorten --

2 JUDGE MACE: I'm mindful that you signed up  
3 for 60 minutes.

4 MR. BEST: How far over am I?

5 JUDGE MACE: I don't know.

6 (Discussion off the record.)

7 (Recess taken.)

8 BY MR. BEST:

9 Q. Mr. Brotherson, I want to go to your rebuttal  
10 now for a minute, I would like you to go to page 7,  
11 again that's LBB-24T, in the preceding pages and on page  
12 7 you have been discussing the fact that the CLEC  
13 networks do not look like the incumbent network. At  
14 line 2 you make the statement I believe starting with  
15 line 2:

16 But with the significant benefit to  
17 CLECs, there is also created some  
18 potential negatives for the CLEC, one of  
19 which is that the CLEC does not have  
20 widely disbursed switches and  
21 interoffice facilities between LCAs and  
22 thus lacks the capability within each  
23 LCA that makes it impossible to provide  
24 certain services, FX being one of them.  
25 I'm curious, Mr. Brotherson, what other

0381

1 services can CLECs not provide?

2 A. If a customer wished to buy let's say private  
3 line from two specific towns in Eastern Washington, a  
4 CLEC that had no switches or outside plant in Eastern  
5 Washington would have limitations in their ability to  
6 offer those services without the facilities there,  
7 although they could resell I guess, they could buy a  
8 Qwest facility and resell under their resale portion of  
9 the agreement. That's one that comes to mind.

10 Q. Well, I guess my question really,  
11 Mr. Brotherson, is that what Qwest is saying in this  
12 case is that because the CLECs don't provide the service  
13 as Qwest does that it doesn't meet the definition of the  
14 service, right?

15 A. No, that's not what I'm saying. In that  
16 sentence, or are you asking in general?

17 Q. In general in this case.

18 A. No, I would say that offering local service  
19 out of a single switch is not only permissible, it's  
20 something that companies can and in fact do offer. But  
21 switching traffic in Olympia onto an interexchange  
22 trunk, or excuse me, an interexchange private line is  
23 very difficult to do if you don't have a switch in  
24 Olympia to route the traffic onto an interexchange  
25 facility.

0382

1 Q. And my question here really is that I'm just  
2 trying to verify that when you say it makes it  
3 impossible to provide certain services that there aren't  
4 other services that the Commission is going to  
5 inadvertently impact here when it makes the decision in  
6 this case?

7 A. I can't think of anything off hand, but.

8 Q. Okay.

9 Now on page 8 of your rebuttal, you state I  
10 believe lines 4 through 7:

11 Based on their testimony, ELI, Global  
12 Crossing, Pac-West, and Level 3 each  
13 have only one switch in Washington, each  
14 of them apparently located somewhere in  
15 Seattle.

16 Mr. Brotherson, do you know how many switches  
17 Electric Lightwave has in Washington?

18 A. I don't know if they have any down along the  
19 Portland border, my understanding was one. Let's go  
20 back to Exhibit 7. I don't show their switches on that.

21 JUDGE MACE: Well, perhaps you could ask him  
22 subject to check if there's more than one if that's your  
23 point.

24 MR. BEST: Thank you, Your Honor.

25 BY MR. BEST:

0383

1 Q. Subject to check, Mr. Brotherson, would you  
2 accept there are three switches?

3 A. I'm looking at the ZZ column on your exhibit,  
4 it looks like Portland, Tukwila, and Vancouver.

5 Q. Okay, that's our exhibit or your exhibit  
6 you're looking at?

7 A. Mine.

8 Q. I'm just curious why you would say that ELI  
9 had one switch when in fact your own documents say we  
10 have three?

11 A. I misspoke.

12 Q. Okay.

13 A. The other companies have one, Level 3, or  
14 excuse me, ELI has three.

15 MR. SMITH: I would be interested just to  
16 correct the record where the three are.

17 JUDGE MACE: He said Portland, now Portland  
18 is to my knowledge not in Washington.

19 MR. BEST: I would have to defer to  
20 Mr. Robins unfortunately, Your Honor, I don't actually  
21 know.

22 MR. ROBINS: Portland serves Southern  
23 Washington, the Portland switch serves Southern  
24 Washington, there's a switch in Spokane, a switch in  
25 Tukwila, and a retired switch in Seattle.

0384

1 JUDGE MACE: Thank you.

2 MR. BEST: Thank you.

3 BY MR. BEST:

4 Q. I would like to now direct you, same page,  
5 that's page 8, down to the Q&A down on 16 and 17, you  
6 also state on line 18, the fact that none of these  
7 companies has significant local facilities, any  
8 interexchange facilities, and I want to focus on  
9 interexchange facilities, what do you mean by  
10 interexchange facilities?

11 A. That would be facilities between two local  
12 exchanges. I don't normally use interexchange to refer  
13 to, well, between two local exchanges.

14 Q. Do you know the extent to which Electric  
15 Lightwave might have interexchange facilities?

16 A. No.

17 Q. But you felt comfortable making a statement  
18 lumping it with all the others saying it has none?

19 MR. SMITH: I don't think the sentence says  
20 none.

21 MR. BEST: I'm sorry, it says, the fact that  
22 none of these companies has significant local  
23 facilities, any interexchange facilities.

24 JUDGE MACE: In the interests of time,  
25 certainly your witness can tell us what interexchange

0385

1 facilities ELI might have just so that we can keep  
2 things moving.

3 MR. BEST: Yes, Your Honor, I apologize,  
4 maybe we can go off the record for a moment, because I  
5 have a different expectation I guess of what's going to  
6 happen during Mr. Robins' testimony.

7 JUDGE MACE: Let's be off the record.

8 (Discussion off the record.)

9 BY MR. BEST:

10 Q. Mr. Brotherson, I assume that you did not  
11 investigate what kind of interexchange facilities  
12 Electric Lightwave might have?

13 A. No, I'm not familiar with their entire  
14 network.

15 Q. Okay. And would you accept subject to check  
16 that ELI is built out in a manner which I believe is  
17 reflected in Mr. Robins' exhibit, and I actually don't  
18 know the number of it, have you seen Mr. Robins'  
19 testimony?

20 A. I was just going to look at that.

21 Q. Okay, well, I'm not sure it matters, would  
22 you accept subject to check that the diagram that he  
23 provides that shows Electric Lightwave's network is  
24 correct?

25 MR. SMITH: I guess the question is whether

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1 you can check it and determine it, I don't know that  
2 that's the case, so.

3 JUDGE MACE: I don't know how familiar  
4 Mr. Brotherson is with ELI's network, it's a little bit  
5 of a foundational question.

6 MR. BEST: Right, well, I guess the point is,  
7 Your Honor, he said we have no facilities, and maybe I  
8 have already made the point, I'm not quite sure how to  
9 deal with it other than to point out that he apparently  
10 doesn't know.

11 JUDGE MACE: Well, if he doesn't know, he can  
12 say that.

13 MR. BEST: I think he said it.

14 THE WITNESS: I did.

15 MR. BEST: Thank you.

16 BY MR. BEST:

17 Q. Mr. Brotherson, I want you to assume the  
18 following scenario, let's assume that the Commission  
19 adopts Qwest's position in this case and requires CLECs  
20 essentially to put a switch and use private line  
21 transport in local calling areas in which they want to  
22 provide foreign exchange service.

23 A. That's the assumption?

24 Q. Yes, that's the assumption. And let's assume  
25 that the ten companies that are here all do that. From

0387

1 a numbering resource perspective, wouldn't each company  
2 have to have an LRN for each local calling area?

3 JUDGE MACE: What's an LRN?

4 MR. BEST: Local routing number.

5 JUDGE MACE: Thank you.

6 A. I'm not the technical witness, but I believe  
7 that would only apply for the NNXs used for FX service,  
8 not for other customers that are only buying local  
9 service.

10 BY MR. BEST:

11 Q. Correct, that's what I meant by foreign  
12 exchange, to provide foreign exchange they would have to  
13 have an LRN for every local calling area in which they  
14 offered it, correct?

15 A. Correct.

16 Q. And isn't it true that when you get a LRN,  
17 you actually have to get a 10,000 block of numbers, it's  
18 not just one number, it's 10,000; isn't that right?

19 A. I'm not sure that's the rule any more, but  
20 that's properly -- I mean I think Mr. Linse could better  
21 answer questions on numbering block assignments.

22 MR. BEST: Okay, that's all I have, Your  
23 Honor.

24 JUDGE MACE: Thank you.

25 Mr. Castle or Mr. Wiley? Mr. Castle.

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1 MR. CASTLE: Thank you, Your Honor.

2

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

4 BY MR. CASTLE:

5 Q. Good morning, Mr. Brotherson, my name is Greg  
6 Castle, I'm representing TCG Seattle, and hopefully I  
7 will just have a few questions here for you today.

8 A. Okay.

9 Q. Now if you would refer to page 26 of your  
10 rebuttal testimony, that's Exhibit 24T; do you have that  
11 in front of you?

12 A. I apologize, could you -- Exhibit 26?

13 Q. No, it was Exhibit 24T, your rebuttal  
14 testimony.

15 A. Okay, I'm sorry.

16 Q. And it's on page 26.

17 A. All right.

18 Q. And it starts I guess at line 24, excuse me,  
19 on line 25 and then goes on to lines 1 through 4 on 26;  
20 do you have that?

21 A. I'm going to apologize, Mr. Castle, page 26  
22 starting on?

23 MR. SMITH: Page 25.

24 Q. Yeah, it actually starts on the last line of  
25 page 25 and goes on to page 26.

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1 A. All right, I have that then.

2 Q. Thank you, very much. And there you  
3 characterize Mr. Neinast's proposal in this proceeding;  
4 is that correct?

5 A. Yes, I do.

6 Q. Okay. And I take it that to do that you read  
7 his full testimony and his proposal; is that correct?

8 A. Well, I read his full testimony, yes.

9 Q. Thank you. Isn't it true that Mr. Neinast's  
10 bill and keep proposal is consistent with the settlement  
11 proposal that's been proposed by Qwest and Verizon  
12 Access in this proceeding?

13 A. You know, on a very high level perhaps. I'm  
14 reluctant to go beyond that because, as you know, that  
15 settlement was a detailed document, and we have a few  
16 lines in the testimony, and I don't want to say that  
17 that would equate. But I would say at least in  
18 principle they seem to be proposing something very  
19 similar.

20 Q. Okay, that's fine, and in fact I guess the  
21 proper place if I wanted to ask more questions about the  
22 settlement would be later at the conclusion of this  
23 hearing.

24 JUDGE MACE: That would be helpful, we're  
25 reserving panel or witnesses to discuss the settlement

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1 at the end of the evidentiary.

2 MR. CASTLE: Right, so I would reserve the  
3 right to question Mr. Brotherson in that regard then,  
4 thank you.

5 JUDGE MACE: Fine.

6 BY MR. CASTLE:

7 Q. Then if you wouldn't mind turning to page 52  
8 in your rebuttal testimony.

9 A. 52?

10 Q. Yes, and it's lines 2 through 15, question  
11 and answer.

12 A. Yes.

13 Q. Okay. And you state there that the FCC has  
14 not preempted the issue of VNXX; is that correct?

15 A. That's correct.

16 Q. Okay. Now you are aware I assume that there  
17 is an ongoing proceeding at the FCC that is addressing  
18 the issue of VNXX; is that correct?

19 A. That's my understanding, yes.

20 Q. Okay. And you're not contending here, are  
21 you, that the FCC couldn't in that proceeding issue a  
22 decision on VNXX that would preempt the states on that  
23 issue?

24 A. Well, I'm certainly not suggesting that. You  
25 know, when you get into, I have been asked this question

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1 from state commissions before, well, wouldn't the FCC  
2 trump them, and I'm always reluctant to state that. I  
3 think how the FCC and the state commissions resolve  
4 their disputes is between them.

5 Q. I understand that. Again, just you're not  
6 saying that the FCC could not preempt states on this  
7 issue and --

8 A. No, I'm certainly not saying that. And as  
9 you know, they're looking in that docket at some unified  
10 rate between access and local and VNXX and what have  
11 you, and how that eventually comes out I don't know.

12 MR. CASTLE: Yes, I do. Thank you very much,  
13 that's all I have.

14 JUDGE MACE: Thank you, Mr. Castle.

15 Mr. Ahlers.

16 MR. AHLERS: Thank you, Your Honor.

17

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

19 BY MR. AHLERS:

20 Q. Good morning, Mr. Brotherson.

21 A. Good morning, Mr. Ahlers.

22 Q. I have just a couple of questions. You went  
23 through a fairly long discussion with Mr. Best about how  
24 you determined whether a call was VNXX.

25 A. Yes, I did.

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1 Q. And it was a series of steps or really two  
2 steps, one where the switch was located and where the  
3 caller was located, and two, the minutes of use; is that  
4 right?

5 A. Those were two, yes, that we discussed in the  
6 cross.

7 Q. And then you said that from that you would  
8 come to a presumption about whether or not traffic was  
9 VNXX; is that right?

10 A. Yes.

11 Q. And you said that the CLECs could then  
12 respond; in what way would the CLECs respond?

13 A. If, in fact, their customer was located in  
14 the same geographically defined local calling area as  
15 the originator of the call, then I think those calls  
16 would meet the Commission's definition of a local call  
17 originating and terminating to two customers in the same  
18 local calling area. If they originate in one local  
19 calling area and terminate in another local calling  
20 area, then that would be the kind of, but carry an NNX  
21 code from the first, that would be what would be the  
22 VNXX calls that would be in dispute.

23 Q. And so would a CLEC have to do that on a  
24 customer-by-customer basis?

25 A. Yes, to the extent that the parties only have

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1 a few telephone numbers or customers that seem to be  
2 originating in one location and terminating in another,  
3 it would be only those specific calls to those specific  
4 customers that would be called into question, but for  
5 those, yes.

6 Q. And what proof would Qwest require to show  
7 that that call was originating and terminating in the  
8 same local calling area?

9 A. Well, at first blush my comment would be if  
10 the CLEC represents to us that in fact their customer  
11 does reside in Olympia, that probably at least for the  
12 first go around is sufficient. We're not going to  
13 assume they're lying to us. But if in fact there is  
14 some cause for us to believe that that's not the case  
15 and we investigate further and there's no loop plant or  
16 any facilities either owned by them or being purchased  
17 as unbundled elements from us that seems to indicate  
18 there isn't any way for any traffic to get back down to  
19 Olympia, to use that example, it may cause us to  
20 investigate further.

21 Q. And when you say investigate further, what  
22 would that consist of?

23 A. It's hard for me to say at this point based  
24 on what the facts would be that would give rise to a  
25 suspicion, but I would suspect some sort of a complaint

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1 case that says we don't believe you have a customer in  
2 Olympia, and their witness or their other side would  
3 disprove our complaint if, in fact, the facts are  
4 otherwise.

5 Q. And so the CLEC's response would have to be  
6 essentially I think you said on a customer-by-customer  
7 basis?

8 A. Yes.

9 Q. In the MCI settlement, you have to determine  
10 the amount of VNXX traffic; isn't that correct?

11 A. Correct.

12 Q. How do you determine it under that  
13 settlement?

14 JUDGE MACE: Well, without wanting to  
15 foreclose your cross-examination, I'm wondering if that  
16 would be something that would be better reserved to the  
17 time we're going to devote to the settlement agreement  
18 itself.

19 MR. AHLERS: That's fine, Your Honor, I'm not  
20 sure given the timing if I will be here or not, that's  
21 the only issue I had, that's the only question I have.

22 JUDGE MACE: All right, I will allow the  
23 answer, if you know.

24 A. You know, I would have to go back and reread,  
25 I know the formula and the process, I would have to go

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1 back and reread the document I guess to be sure, but the  
2 VNXX minutes are excluded and I would have to go back  
3 and reread how they identify those.

4 Q. You don't know if it's the same method?

5 A. I believe it is, but I'm reluctant to say  
6 that without going back and reading the document again.

7 MR. AHLERS: Thank you. Your Honor, I would  
8 move for admission of Exhibits 30 through 35, and I  
9 should note that I believe it's 31 --

10 MS. ANDERL: I think it's actually 35.

11 MR. AHLERS: Oh, 35 has been amended.

12 MS. ANDERL: And I will distribute that now.

13 JUDGE MACE: Very well.

14 Is there any objection to the admission of  
15 Exhibits 30 through 35?

16 MS. ANDERL: There's not, Your Honor, with  
17 the addition of this one document to the packet that is  
18 Exhibit 35.

19 JUDGE MACE: Thank you. I will admit  
20 Exhibits 30 through 35 including the part of Exhibit 35  
21 that was just distributed.

22 MR. AHLERS: Thank you, Your Honor.

23 JUDGE MACE: Thank you, Mr. Ahlers.

24 Mr. Smith, do you have any redirect?

25 MR. SMITH: Yes, I do, Your Honor, a few

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1 questions.

2

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

4 BY MR. SMITH:

5 Q. Mr. Brotherson, I would like to turn first  
6 for a few questions related to the OneFlex service, and  
7 I believe both Mr. Kopta and Mr. Best asked you some  
8 questions, if it wasn't those two, then someone else, or  
9 no, Mr. Rogers, I'm sorry, and I believe Mr. Kopta, but  
10 they asked you about the virtual numbers, and at one  
11 point you were discussing how the virtual numbers work  
12 and your view of how they relate to local calling areas,  
13 and I'm not sure you were able to completely explain  
14 that, I would ask you to do so at this time.

15 A. In order for any enhanced service provider to  
16 obtain telephone numbers, they have to buy local service  
17 from a local exchange carrier, either Qwest or an  
18 independent or a CLEC. And when they purchase those,  
19 purchase local service, they then are permitted to  
20 obtain telephone numbers. If the party they purchase  
21 local service from is honoring local calling area  
22 boundaries, then the only telephone numbers that the  
23 customer would be able to obtain would be telephone  
24 numbers in the local calling area where they're  
25 purchasing local service. In other words, someone can't

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1 come to us in Olympia and say, I would like to buy local  
2 service, and I would like to have Denver telephone  
3 numbers. A telephone company, a local telephone  
4 company, will only assign telephone numbers to its  
5 customers consistent with the numbers available  
6 associated with that local calling area.

7 Q. So if I understand correctly, QCC's policy on  
8 the provision of telephone numbers to its VoIP customers  
9 is that it will provide let's say an Olympia telephone  
10 number to a customer only if QCC purchases local service  
11 in Olympia; am I correct?

12 A. No, QC, the telephone company, will only  
13 assign telephone numbers associated with where you buy  
14 your local service. The VoIP provider once they have  
15 their telephone numbers can translate those or QCC can  
16 translate those into IP addresses if they're sending --  
17 if they're routing traffic on the Internet or if  
18 Internet traffic is coming back to them to their  
19 equipment. But the only place they can connect to the  
20 public network, the only place those -- the way calls  
21 can enter the public network is where they purchase  
22 their local service.

23 Q. So in your view, is that an alignment of the  
24 telephone numbers with the local calling areas with  
25 which they are associated?

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1 A. Yes.

2 Q. Okay. Would you turn to it's Exhibit 29,  
3 it's the last exhibit in your rebuttal testimony, it's  
4 the OneFlex exhibit Mr. Best was asking you some  
5 questions about the QCC Seattle VoIP POP, and as I  
6 recall he was comparing that to a POI, point of  
7 interconnection, arrangement with another carrier. And  
8 my question to you, is a POI arrangement, a POI  
9 connection between two carriers the same as the QCC  
10 Seattle VoIP POP that's represented here, and if not,  
11 what are the differences?

12 A. The depiction of the QCC Seattle VoIP POP  
13 that I believe it was Mr. Best asked me about is the  
14 location of our end user.

15 JUDGE MACE: Mr. Brotherson, can you speak  
16 into the microphone, you're dropping some of your words,  
17 I'm not hearing everything, thank you.

18 A. The QCC Seattle VoIP POP on that exhibit is  
19 the location of the end user customer that has purchased  
20 local service in the Seattle LCA, in this case PRI  
21 trunks with local Seattle telephone numbers associated  
22 with them, and that represents the end user customer  
23 location. It's not a carrier. A carrier could assign  
24 their own telephone numbers, end users must obtain their  
25 telephone numbers from a telephone company. They

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1 don't --

2 Q. If I could interrupt, so in this case QCC's  
3 relationship, if I understand what you're saying, QCC's  
4 relationship with QC is not carrier to carrier, it's  
5 carrier, QC, to end user customer QCC?

6 A. That's correct.

7 Q. Now how is that different than from a POI  
8 arrangement?

9 A. Well, as we indicated, the POI arrangement is  
10 the interconnection of two telephone companies, two  
11 carriers, with compensation arrangements, with  
12 interconnection agreements, with obligations that don't  
13 arise with a customer, an end user customer.

14 Q. Okay. Anything else on this that you believe  
15 you left unexplained?

16 A. No.

17 Q. Okay.

18 A. Just that everything from the customer on out  
19 is on the Internet, and it does not involve the public  
20 telephone network.

21 Q. Let me turn to one issue, and maybe we can  
22 use BR-1 as an example. There's been a lot of  
23 discussion between Mr. Linse and Mr. Best and then you  
24 and Mr. Best with regard to BR-1 and the FX type  
25 service, the FX service that Qwest provides. Now there

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1 was also some discussion of the chart on page 26 or  
2 maybe it was 36 of your direct testimony where you  
3 listed origination costs, transport costs, and  
4 termination costs, and I don't believe there has been a  
5 lot of discussion of the origination cost aspect of  
6 this, and I'm wondering if you could explain what those  
7 costs are and why you believe the Qwest FX service  
8 contemplates and compensates Qwest for those costs?

9 MR. BEST: Your Honor, I'm going to object, I  
10 believe this is beyond the scope of my  
11 cross-examination.

12 MR. SMITH: May I respond?

13 I don't remember which counsel, maybe it was  
14 Mr. Rogers, took Mr. Brotherson through the chart on  
15 page 36 in which this very issue is addressed, and I  
16 think it's fair redirect to have him explain.  
17 Mr. Rogers was trying to get him to change the labels on  
18 it, and I believe it's fair to allow him to explain what  
19 he meant by the column origination cost.

20 JUDGE MACE: I'm going to allow the answer.

21 A. Well, it was simply --

22 JUDGE MACE: I'm sorry, tell me again, it's  
23 the chart on page 36?

24 MR. ROGERS: I think it's 38 actually is the  
25 page number.

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1                   MR. SMITH: It is page 38, I apologize, I  
2 gave two incorrect numbers.

3                   JUDGE MACE: All right, thank you.

4                   MR. BEST: Of direct or response?

5                   MR. SMITH: Direct.

6                   JUDGE MACE: And, please, would you repeat  
7 your question.

8                   MR. SMITH: I'm not sure what it was, but I  
9 will ask a question.

10 BY MR. SMITH:

11            Q.     I'm really asking, Mr. Brotherson, if you  
12 would explain the concept of the local origination costs  
13 and how VNXX and Qwest FX differ with regard to their  
14 approach to those costs?

15            A.     I think the difference would be that if what  
16 we have is a local call, then there's no origination  
17 charges that are posed upon the terminating carrier. If  
18 it is an interexchange call, normally there's some form  
19 of origination charge associated with an interexchange  
20 call. By designating VNXX as local, Qwest receives no  
21 compensation, and for a local call would not, but by  
22 designating VNXX as a local call, Qwest receives no  
23 compensation for the origination expense of a call that  
24 is interexchange in nature. The payment of the local  
25 service in that exchange is a form of recovering an

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1 origination cost for the call as it is put on the  
2 private line to transfer or to transit to another  
3 exchange.

4 Q. So are you --

5 JUDGE MACE: As I recall your testimony  
6 earlier, and you were talking about this chart, I can't  
7 remember, maybe it was Mr. Rogers, but these are not  
8 costs, these are revenues that you're talking about  
9 here?

10 THE WITNESS: The question was, would the  
11 term revenue also apply, and I agreed that you could  
12 talk about it in terms of Qwest is receiving revenues,  
13 so receiving originating revenues, it's receiving  
14 transport revenues. And the termination I think is more  
15 of a cost than a revenue, but I can't recall my exact  
16 answer.

17 JUDGE MACE: Yes, thank you.

18 THE WITNESS: But that was the discussion.

19 BY MR. SMITH:

20 Q. Let me just go back maybe, and I can clarify  
21 that. If you look at Qwest's switch there in Olympia,  
22 and then there's at least two telephones down by that,  
23 the reality is that there are probably thousands of  
24 telephones, telephone lines, coming out of the Olympia  
25 switch, correct?

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1 A. Yes.

2 Q. And Qwest has built a network that's  
3 relatively ubiquitous to serve those lines, in fact  
4 those lines, perhaps not all, but the bulk of them would  
5 probably be Qwest lines, correct?

6 A. Correct.

7 Q. And Qwest has a switch there, right?

8 A. Correct.

9 Q. And in order to provide FX service in that  
10 exchange, isn't it necessary for all of those various  
11 lines in that switch to be used in order to in effect  
12 gather the traffic so that it can be sent up to Seattle?

13 MR. BEST: Your Honor, I'm going to object  
14 that the form of the question is leading, and number  
15 two, I do believe this is beyond the scope of  
16 cross-examination, I don't remember this discussion  
17 anywhere in any of the cross.

18 JUDGE MACE: Well, it certainly seems  
19 somewhat repetitive of what we have already gone over,  
20 I'm going to sustain the objection.

21 MR. SMITH: Okay, we'll move on.

22 BY MR. SMITH:

23 Q. Let me ask you two more questions, there was  
24 some discussion, well, three more questions, I don't  
25 want to lie here, I just can't read my writing, I'm

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1 sorry.

2 A. I will hold you to three.

3 Q. Mr. Best talked to you about ELI specifically  
4 and the interexchange facilities it provides. If, and  
5 I'm stating this as a hypothetical right now because I  
6 don't know the answer, if, for example, ELI were to  
7 purchase, rather than private line service from Qwest,  
8 were to purchase local interconnection service  
9 transport, direct trunk transport or DTT, under  
10 Washington rules related to RUF, relative use factor,  
11 what is your understanding of who bears the cost of  
12 those facilities for ISP traffic specifically?

13 MR. BEST: Your Honor, again I'm not sure  
14 where in my cross we discussed this, but I guess I would  
15 object based on the fact I believe it is beyond the  
16 scope of cross, and the question is again leading.

17 JUDGE MACE: Well, I'm going to allow the  
18 answer. These are difficult areas, and I'm going to  
19 allow the answer, but I would like to have you repeat  
20 the question so that I can understand it better.

21 BY MR. SMITH:

22 Q. All right, let me start off with the premise  
23 that there was some discussion between Mr. Best and  
24 yourself about the extent to which ELI has interexchange  
25 facilities in this state, transport facilities in the

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1 state.

2 A. There were two discussions. One was for do  
3 they purchase transport, and the other was do they have  
4 interexchange facilities, so I'm not sure which --

5 Q. Okay, and I'm going to talk now assuming  
6 Level 3 doesn't have transport facilities.

7 JUDGE MACE: Level 3 or ELI?

8 MR. SMITH: I'm sorry, ELI.

9 BY MR. SMITH:

10 Q. ELI does not have transport facilities  
11 ubiquitously, and it chooses to pursuant to its  
12 interconnection agreement purchase some local  
13 interconnection service transport that's provided  
14 pursuant to that interconnection agreement. With me so  
15 far?

16 A. Yes.

17 Q. What is your understanding of the current  
18 state of Washington Commission decisions on who bears  
19 the financial responsibility for that transport  
20 specifically for ISP traffic?

21 A. In Washington I believe today ISP traffic is  
22 included in the RUF, which is to say that the calls to  
23 the ISP throughout the state are treated as local calls,  
24 and Qwest would bear the expense of that transport even  
25 if it were a VNXX call.

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1 Q. Okay. Next question, Mr. Best in the issue  
2 we discussed about his offer of proof where he provided  
3 a percent of called numbers for a variety of the wire  
4 centers in Washington to compare to the numbers that  
5 Qwest provided which were minutes of use, do you recall  
6 that?

7 A. I do recall that.

8 Q. I have just one question, is intercarrier  
9 compensation measured by number of calls or by minutes  
10 of use?

11 A. Compensation is based on minutes of use.

12 Q. Thank you.

13 And then finally I believe Mr. Best asked  
14 some questions about your testimony and your reference  
15 to a variety of rules and tariffs and statutes, and the  
16 question I have is did you purport in putting your  
17 testimony together to be providing a complete laundry  
18 list of all rules, tariffs, statutes upon which Qwest  
19 alleges that VNXX is in violation of state law?

20 A. No, I believe -- I mean the petition talks  
21 about those things, but my testimony did not purport to  
22 address all of the matters raised in the petition.

23 Q. So the specific grounds upon which Qwest's  
24 complaint is made would be better found in the complaint  
25 as opposed to your testimony in terms of completeness?

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1           A.     In terms of the rules and regulations and the  
2 like, yes.

3           MR. SMITH: Thank you, that's all I have.

4           JUDGE MACE: Mr. Rogers.

5           MR. ROGERS: Yes.

6

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

8 BY MR. ROGERS:

9           Q.     Mr. Brotherson, you started your redirect  
10 with some questions and answers about Qwest's OneFlex  
11 service and the virtual number capability that Qwest  
12 offers with that service; do you recall?

13          A.     I do.

14          Q.     And in your response, you effectively  
15 described what's known as the ESP exemption; would you  
16 agree with that?

17          A.     I don't know if I raised the term ESP  
18 exemption, but I certainly used the term ESP or enhanced  
19 service provider to describe QCC, the customer.

20          Q.     You have described QCC as an enhanced service  
21 provider, and you said that as an enhanced service  
22 provider it's allowed to purchase local services from  
23 QC; is that correct?

24          A.     That's correct.

25          Q.     Is that how the relationship works?

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1 A. That's correct.

2 JUDGE MACE: I'm sorry, I didn't hear your  
3 response.

4 THE WITNESS: That is correct.

5 JUDGE MACE: Thank you.

6 BY MR. ROGERS:

7 Q. And you said that an ESP is able to do that,  
8 buy local service from a local exchange carrier, as long  
9 as the local exchange carrier honors local service  
10 boundaries; is that accurate?

11 A. I thought I said that the local exchange  
12 carrier as long as they're honoring local exchange  
13 boundaries would only assign a telephone number to any  
14 of their customers if they were purchasing the local  
15 service from that exchange.

16 Q. And you're saying that in order to establish  
17 that it's the carrier as opposed to the ESP that  
18 qualifies for numbering resources; is that accurate?

19 A. Right. NANPA, North American Numbering,  
20 well, the organization that assigns telephone numbers to  
21 local telephone companies will only provide local  
22 telephone companies with the numbering resources that we  
23 have been talking about here for these last few days.  
24 So if an IXC said I would like an NPA and an NNX code  
25 and a block of numbers to hand out, they would be told

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1 by the numbering resources organization that they are  
2 not a local telephone company and are not entitled to  
3 obtain local telephone numbers. So a CLEC, an  
4 independent telephone company, an incumbent telephone  
5 company, they all are able to obtain blocks of numbers  
6 to assign to customers.

7 Q. Right, there are two basic things that a  
8 carrier must demonstrate in order to get telephone  
9 numbers, which are that it is in fact a certificated  
10 carrier and that it has the capability to use the  
11 telephone numbers that it's requesting; do you agree  
12 with that?

13 A. I believe that's right. When you say  
14 certificated carrier, I think a certificated local  
15 exchange carrier.

16 Q. Okay, I can accept that clarification.  
17 So if Level 3 also has an ESP entity and its  
18 ESP entity buys local services from its CLEC, then it  
19 would qualify under the same model that Qwest is  
20 establishing here as its interpretation and application  
21 of the ESP exemption?

22 A. That's correct, Level 3 is a telephone  
23 company, is entitled to sell services to its customers,  
24 and that could include an ESP owned or operated by Level  
25 3. I think both Level 3 as a telephone company and

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1 Qwest as a telephone company that if they're certified  
2 in the state of Washington have to comply with the  
3 Washington rules around the assignment of those numbers,  
4 but we're both free to serve those customers.

5 Q. Now in the diagram that is Exhibit Number 29  
6 I think to your rebuttal testimony that you went through  
7 with Mr. Best, in that diagram you talked about a voice  
8 over IP call that could originate in Washington, be  
9 transported and terminated in Dallas, but the  
10 termination in Dallas is to a Washington telephone  
11 number; is that an accurate summary of that diagram?

12 A. The diagram shows a call that is taking place  
13 on the Internet, that's why the depiction there is of a  
14 customer. There's no telephone company switch or  
15 traditional telephone depicted in the Dallas area. So  
16 it's a call that someone makes over a broadband  
17 connection that travels over the Internet, and the first  
18 point where it attempts to connect to the public network  
19 is when it reaches the VoIP provider wherever they have  
20 purchased connection to the local network. And in this  
21 example, that's Seattle where QCC has purchased local  
22 service. So from Dallas to the QCC Seattle VoIP POP  
23 would be Internet traffic, and then from the VoIP  
24 provider who has purchased some sort of a trunk  
25 connection to the public network local service, those

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1 calls would then travel over the public network through  
2 a switch, whoever they have connected, bought their  
3 service from, to end users in Seattle.

4 JUDGE MACE: End users in Seattle or end  
5 users in Dallas?

6 THE WITNESS: Well, in the example I just  
7 walked through, the call was originating in Dallas.

8 JUDGE MACE: Oh, sorry.

9 THE WITNESS: And terminating to an end user  
10 in Seattle.

11 MR. SMITH: I think the arrows are pointing  
12 the other way, but I think Mr. Brotherson was describing  
13 the call coming back the other way, right?

14 THE WITNESS: I was, I apologize, I was  
15 describing a call without looking at my arrows in the  
16 diagram.

17 BY MR. ROGERS:

18 Q. Does QCC, well, excuse me, never mind.

19 Based on Qwest's definition of what an FX  
20 service is and what qualifies as an FX service, does  
21 this service that you have just described constitute an  
22 FX service?

23 A. No, the Dallas to Seattle takes place over  
24 the Internet, and I think the only point at which the  
25 public network looks at the call is where it is

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1 converted into TDM and enters the public switched  
2 telephone network.

3 Q. And yet QC is assigning telephone numbers in  
4 this manner in a non-geographic manner, and it's not an  
5 FX service, correct?

6 A. QC is assigning telephone numbers, Seattle  
7 telephone numbers, to a customer who purchases a trunk  
8 and gets and purchases DID or a block of numbers in  
9 Seattle, and the only numbers they would be able to  
10 purchase there are Seattle numbers. The VoIP provider  
11 can then associate those Seattle telephone numbers with  
12 IP addresses and route traffic on the Internet to IP  
13 telephones.

14 Q. So your position is that because QC has given  
15 the number to QCC, irrespective of the fact that the  
16 call and the communication is occurring between end  
17 users in Dallas and Seattle, that that is a local  
18 assignment of a telephone number; is that right?

19 A. Right, the purchaser of the service is the  
20 customer located in Seattle. The Internet -- telephone  
21 numbers are actually not used on the Internet, IP  
22 addresses are used on the Internet, the customer in  
23 Seattle associates numbers with IP addresses and then  
24 routes the Internet traffic based on Internet addresses  
25 once it leaves the public network.

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1 Q. But the person, whoever it may be, that's in  
2 Dallas has a telephone number, correct?

3 A. They may or may not, it's a broadband  
4 connection to, you know, a computer. And if they only  
5 want to dial out, for example, or they don't want a  
6 publicly available number, then it only has to route to  
7 an IP address. If they want to give out a telephone  
8 number to their friends in order to have people be able  
9 to reach them, yes, they would say dial this telephone  
10 number, it's a number that has been assigned to my VoIP  
11 provider in Seattle, they will translate that into an IP  
12 address and send to out over the Internet, and my  
13 Internet phone, my IP phone, will ring, I will be able  
14 to talk on the Internet and converse with you.

15 Q. If somebody wants to be able to receive phone  
16 calls, voice communications from people who are  
17 connected to the PSTN, they have to have a telephone  
18 number, correct?

19 A. Yeah, if they want people who are on the  
20 public switched telephone network to be able to dial to  
21 connect to them, those people have to dial a telephone  
22 number to their IP provider, VoIP provider, excuse me.

23 Q. Now I would like to turn to the questions  
24 that you answered on redirect on page 38 regarding the  
25 chart and the comparison between virtual NXX service and

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1 Qwest FX service. Are you there?

2 A. I am.

3 Q. Okay. In that table in the column on the  
4 left you're providing local origination costs, transport  
5 costs, and termination costs, correct?

6 A. Correct.

7 Q. And so is it fair to say that those, what you  
8 have described here is what's required by law, that  
9 getting local calling arrangement is Qwest's legal  
10 responsibility to carry traffic that its end users  
11 originate to a point of interconnection and it not be  
12 allowed to charge for carrying that originating traffic  
13 to the point of interconnection?

14 MR. SMITH: I object, Your Honor, that  
15 clearly called for a legal conclusion, required by law.  
16 Plus, as I recall, I was not allowed to do any  
17 significant discussion of this particular exhibit on my  
18 redirect.

19 MR. ROGERS: I think you have some short-term  
20 memory issues, I think there was sufficient --

21 JUDGE MACE: Now that's --

22 MR. ROGERS: I apologize, but there was  
23 sufficient questions and answers on this that I would  
24 like to explore the diagram.

25 JUDGE MACE: I'm concerned about the legally

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1 required or by law.

2 MR. ROGERS: Okay.

3 JUDGE MACE: I know this witness may have the  
4 credential of a lawyer, but I would like to have you  
5 rephrase that question.

6 BY MR. ROGERS:

7 Q. Is it your understanding, Mr. Brotherson,  
8 that any local call, as Qwest would define a local call,  
9 that it would be Qwest's responsibility to do these  
10 things that you have identified?

11 MR. SMITH: I object, same objection, he's  
12 turned legal obligation to responsibility, which I think  
13 is the same thing.

14 MR. ROGERS: Well, Your Honor, I think this  
15 is something that is fundamental to the interconnection  
16 arrangements between any two local exchange carriers,  
17 and it may be that an interconnection agreement is  
18 driven by the law, but Mr. Brotherson should be able to  
19 address a general description of what is the ILEC's  
20 obligation.

21 JUDGE MACE: Yes, I will allow this answer.

22 A. Yes, under the interconnection agreements if  
23 it is a local call, there are no, and I think I said  
24 this earlier, if it is a local call, there are no  
25 origination costs, and VNXX because of its use of local

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1 numbering avoids the local origination costs. If it is  
2 a local call, it is Qwest's responsibility to deliver  
3 the local calls of its customers to the CLEC and vice  
4 versa, and VNXX also seeks to have calls delivered at  
5 the expense of Qwest. And if it is a local call,  
6 termination charges are payable to the terminating  
7 company, and of course if it's not a local call, they're  
8 not, and VNXX through its designation as or through its  
9 use of localling numbers pays no origination, transport,  
10 or terminating cost, which is the issues that we're  
11 arguing about here.

12 BY MR. ROGERS:

13 Q. Would you agree that the column on the right  
14 where you describe what an FX service is and what an FX  
15 customers buys that those revenues cover any costs that  
16 Qwest may incur in delivering originated traffic from  
17 its end users in an FX service arrangement?

18 A. Could you repeat that, I'm not sure I  
19 understand the question.

20 Q. Would you agree that the retail sale of FX  
21 service which includes the transport component covers  
22 any costs that Qwest incurs in carrying its originated  
23 traffic to the FX customer?

24 A. We receive an origination -- we receive  
25 originating compensation through the payment of local

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1 service, and then the transport we receive compensation  
2 through the payment of private line charges. When you  
3 get into covering costs, recovering costs versus  
4 receiving the compensation maybe, I'm less reluctant to  
5 say local covers costs or private line covers costs.  
6 But we certainly receive originating compensation and we  
7 receive -- for the local, and we receive transport  
8 compensation through the private line revenues.

9 Q. Well, the FX service is a retail offering,  
10 right?

11 A. Correct.

12 Q. And so you're trying to make money on a  
13 retail sale, correct?

14 A. Correct.

15 Q. Do you think it would be reasonable for a  
16 competitor to try to compete with Qwest by buying retail  
17 services and then reselling them if it was going to be  
18 competitive, do you think that would be a reasonable  
19 business plan?

20 MR. SMITH: Your Honor, I am going to  
21 interpose an objection that this goes well beyond the  
22 scope of the redirect examination. I was able to ask a  
23 very few questions about these and then was not allowed  
24 to go further, and this has gone far beyond anywhere I  
25 was attempting to go.

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1 JUDGE MACE: I'm going to sustain the  
2 objection, let's go on to something else.

3 MR. ROGERS: I think I can be done, Your  
4 Honor, I'm done.

5 JUDGE MACE: All right, thank you.  
6 And then I think, Mr. Kopta, you were next.

7 MR. KOPTA: Yes, thank you, Your Honor.

8

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

10 BY MR. KOPTA:

11 Q. I just have a couple of questions,  
12 Mr. Brotherson, and this has to do with your discussion  
13 both with Mr. Smith on redirect and Mr. Rogers on  
14 Exhibit 29, which is the OneFlex routing diagram which  
15 you have attached to your testimony, and I'm actually  
16 going to ask you to take a look at BR-1, and my  
17 apologies to Mr. Best, I want you to assume that ELI has  
18 a VoIP provider entity, is it your view that given the  
19 circumstances that are depicted in BR-1, could ELI  
20 assign Olympia telephone numbers to its VoIP provider  
21 entity?

22 A. Certainly, if their VoIP provider is in  
23 Olympia and is buying local Olympia service, they could  
24 assign their customer an Olympia telephone number. If  
25 their VoIP provider is in some other city in the state

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1 and they assign them an Olympia telephone number, that  
2 becomes a VNXX issue. They are related but not  
3 interdependent. So you can give any customer including  
4 a VoIP provider a VNXX number, which in Qwest's view is  
5 improper if there's nothing to prohibit them from being  
6 treated like any other customer.

7 Q. And is it your understanding that a company  
8 would necessarily, registered telephone company in  
9 Washington who is a local exchange provider, would  
10 necessarily have to have a separate entity then as a  
11 VoIP provider, could that company provide VoIP service  
12 without a separate entity?

13 A. I don't know if I have an opinion on that or  
14 how that would work. I know you're a certified  
15 telephone company certified by the Washington Commission  
16 to offer local service if you're local. If you also  
17 offer another non-regulated service, how the two would  
18 interrelate, I'm not sure I can answer that just off the  
19 top of my head in terms of corporate structure.

20 Q. Right, I guess let me ask it this way, Qwest,  
21 QC does not itself offer VoIP service; is that correct?

22 A. QC, yes, I think that's correct, yes, that's  
23 correct.

24 Q. But you're not aware of any reason why QC  
25 couldn't if it so chose?

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1           A.     That would make it a customer of itself, I'm  
2 not sure how that would work, but again, I don't really  
3 have an opinion on how that would be structured.

4           Q.     Okay, well, let's just assume for purposes of  
5 my question that again using ELI, with apologies to  
6 Mr. Best, as an example, that ELI provides not only  
7 local exchange service as regulated by this Commission  
8 but also provides VoIP service. Do you have that  
9 assumption in mind?

10          A.     I do.

11          Q.     Under those circumstances, would ELI be able  
12 to assign Olympia telephone numbers to its VoIP end user  
13 customers?

14          A.     Yes, but then that -- but the customer that  
15 is being assigned the telephone number would not be the  
16 telephone company, it would be the customer obtaining  
17 the telephone number from ELI, the customer obtaining  
18 the telephone number from ELI the telephone company.  
19 But in that scenario, yes, they could perform I guess  
20 two functions. Again, I'm not sure how the structure  
21 would work, but.

22          Q.     I guess the question is, is that also VNXX  
23 because ELI's switch is in Seattle as opposed to in  
24 Olympia?

25          A.     If ELI is the customer, the customer is --

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1 and the customer is in Seattle, and the calls are being  
2 delivered to the Seattle customer, it's still VNXX.

3 Q. So it isn't enough that ELI has a dedicated  
4 facility down into Olympia to be able to assign --

5 A. No, because Qwest would not interconnect with  
6 the customer, so the only way they're getting dedicated  
7 facilities to connect to the Qwest switch in Olympia is  
8 because they have represented they are a telephone  
9 company entitled under The Act to interconnect. So they  
10 couldn't at the same time say that that's not really a  
11 telephone company interconnecting, that's a customer  
12 interconnecting. I mean this wearing two hats is  
13 becoming a little confusing in our hypothetical here,  
14 but no, they could not connect to our switch as a  
15 customer. But if they did, they would not be entitled  
16 to reciprocal compensation because they're not a  
17 telephone company.

18 Q. At this point I'm just talking about the  
19 assignment of telephone numbers, because that was the  
20 limitation of the discussion that you had with  
21 Mr. Smith.

22 A. Then I am confused, so who is connecting to  
23 us in Olympia?

24 Q. ELI again in our scenario that we have  
25 established in BR-1 has dedicated facilities from its

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1 switch to the Qwest serving wire center in Olympia.

2 A. That would be a telephone company connection  
3 or a connection between two telephone companies.

4 Q. So if I understand your prior answer, are you  
5 saying that ELI if it were also acting as a VoIP  
6 provider would be in effect a customer of ELI as opposed  
7 to ELI the carrier?

8 A. Yes, that was my answer, that we would not  
9 interconnect with a VoIP provider in Olympia plugging  
10 into our switch unless they were buying local service of  
11 some form from us.

12 Q. So then ELI the VoIP provider customer does  
13 not have a point of presence as you define that term in  
14 Exhibit 29 in Olympia; is that what I'm hearing you say?

15 A. Right, correct, yes.

16 MR. KOPTA: All right, thank you, that's all  
17 I have.

18 JUDGE MACE: Okay, I think Mr. Finnigan.

19 MR. FINNIGAN: I have nothing.

20 JUDGE MACE: Mr. Best.

21 MR. BEST: No questions.

22 JUDGE MACE: Mr. Castle.

23 MR. CASTLE: Nothing, Your Honor.

24 JUDGE MACE: And Mr. Ahlers.

25 MR. AHLERS: Nothing further.

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1                   JUDGE MACE:  Are there any exhibits  
2 outstanding?  I can't recall whether Level 3 had any  
3 exhibits that needed to be offered.

4                   MR. ROGERS:  No, I think we did that at the  
5 end of the day yesterday, and we haven't done anything  
6 new today, so.

7                   JUDGE MACE:  All right, thank you very much,  
8 Mr. Brotherson, you're excused at long last.

9                   THE WITNESS:  Thank you.

10                  MR. SMITH:  Your Honor, could I handle just  
11 one item on an exhibit that will be relevant this  
12 afternoon.

13                  JUDGE MACE:  Surely.

14                  MR. SMITH:  I handed out earlier, and this  
15 relates to Exhibit 474, which is an exhibit Qwest  
16 designated as -- and it's excerpts from the Level 3  
17 price list here in Washington.  As I was reviewing it  
18 last night, there were five pages that we had intended  
19 to attach that were not attached at least to my copy.  I  
20 have handed those out to everyone I believe.  The page  
21 numbers on those are page numbers, and it's up in the  
22 right-hand corner, original page number 64 through 68.  
23 I spoke with Mr. Rogers about just adding that to what  
24 has already been submitted as Exhibit 474, and I believe  
25 he was agreeable to that.

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1                   MR. ROGERS: That's right, Level 3 has no  
2 objection to that.

3                   JUDGE MACE: Very well. Well, we haven't  
4 gotten to the point of addressing this particular  
5 exhibit I suppose, but that's fine.

6                   MR. SMITH: I just wanted it to be on the  
7 record so that they have it and I can proceed with  
8 questions.

9                   JUDGE MACE: Thank you, I appreciate it.  
10                   I believe that completes the examination of  
11 the Qwest witnesses, and we're ready for Staff according  
12 to my order of cross.

13                   MR. BEST: Your Honor, Chuck Best, I  
14 apologize, I have a matter for the Court. We would  
15 actually at this point move to have the complaint  
16 against Electric Lightwave dismissed. I found  
17 Mr. Brotherson's testimony kind of interesting because  
18 he implied that this was a policy case, when in fact I  
19 believe it is a complaint case. Qwest has made some  
20 very specific allegations against all the companies, and  
21 I'm not going to speak on their behalf, but with respect  
22 to Electric Lightwave it's my view that there is  
23 absolutely no evidence we have violated any state laws,  
24 rules, or statutes or any federal laws, rules, or  
25 statutes, and a lot of the allegations we have

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1 discovered through cross-examination frankly don't prove  
2 anything. So with respect to that, I would at this  
3 point move to have the complaint against ELI dismissed.  
4 To the degree the case proceeds on a policy basis, we  
5 would love to continue to participate, but I don't  
6 believe there's really sufficient evidence to find we  
7 are guilty of anything.

8 JUDGE MACE: Ms. Anderl.

9 MS. ANDERL: Thank you, Your Honor. We  
10 oppose the motion to dismiss. Clearly Qwest's come  
11 forward with a prima facie case establishing through its  
12 testimony and evidence facts from which a reasonable  
13 person could conclude that Level 3, well, Level 3 for  
14 sure but ELI as well is engaged in VNXX, and we have no  
15 evidence from the ELI witness at this point, the  
16 documents and testimony have not been admitted, I do not  
17 believe Mr. Best's motion has any basis whatsoever.  
18 Qwest has presented a prima facie case, and if ELI is  
19 able to prove on the merits or ELI's evidence  
20 establishes on the merits a rebuttal to Qwest's prima  
21 facie case indeed that they are not doing VNXX or in  
22 fact that they are doing VNXX and the Commission  
23 determines it to be not unlawful or lawful under certain  
24 circumstances, it's appropriate for those carriers who  
25 are at least presumptively engaged in those practices to

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1 remain parties to this docket.

2 JUDGE MACE: Thank you.

3 Well, I'm not going to grant your motion,  
4 certainly you can renew it in brief. I would have to  
5 spend some time thinking about things before I would  
6 grant such a motion, reviewing testimony, et cetera. As  
7 I said, you can renew your motion in brief, but I won't  
8 grant it at this time.

9 All right, Mr. Williamson.

10 (Discussion off the record.)

11 JUDGE MACE: Go ahead, Mr. Thompson.

12

13 Whereupon,

14 ROBERT T. WILLIAMSON,

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

17

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

19 BY MR. THOMPSON:

20 Q. Mr. Williamson, would you please state your  
21 full name and give your business address.

22 A. Yes, Robert T. Williamson, 1300 South  
23 Evergreen Park Drive Southwest, Post Office Box 47250,  
24 Olympia, Washington 98504-7250.

25 Q. And did you cause to be prepared and filed

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1 direct testimony in a separate exhibit listing your  
2 relevant background that are marked as Exhibit 201T and  
3 202 as well as rebuttal testimony that has been marked  
4 as Exhibit 203T?

5 A. Yes, I did.

6 Q. And if I were to ask you the questions set  
7 forth in those documents today, would your answers be  
8 the same?

9 A. Yes, they would.

10 Q. And is the information set forth therein true  
11 and correct to the best of your knowledge?

12 A. Yes, it is.

13 MR. THOMPSON: With that, Your Honor, I would  
14 offer the exhibits for admission in the record and  
15 tender the witness for cross.

16 JUDGE MACE: Is there any objection to the  
17 admission of the exhibits?

18 MR. BEST: Your Honor, Chuck Best on behalf  
19 of Electric Lightwave, I would just like to renew my  
20 objection again, I know you have denied it already, but  
21 to the portion of the testimony that does address the  
22 settlement, we believe it is not appropriate rebuttal.  
23 Again, just making my record, I understand you're likely  
24 going to deny it, but I just want to make sure I make  
25 the objection.

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1 JUDGE MACE: Yes, I will deny it on the same  
2 grounds as when you made it originally.

3 And the first cross-examiner will be  
4 Mr. Kopta.

5 MR. KOPTA: That's correct.

6 JUDGE MACE: Well, we have 15 minutes before  
7 noon. I did talk about us adjourning for lunch at this  
8 point, but we can begin it you want to or we can just  
9 resume after lunch earlier, what is your pleasure,  
10 Mr. Kopta?

11 MR. KOPTA: Oh, might as well break for lunch  
12 now and just have everything after lunch, I think it  
13 might make it easier.

14 JUDGE MACE: Is that acceptable?

15 All right, then we will resume at quarter  
16 after 1:00.

17 (Luncheon recess taken at 11:45 a.m.)

18

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

20 (1:15 p.m.)

21 JUDGE MACE: Go ahead.

22 MS. ANDERL: Thank you, Your Honor. Just a  
23 moment ago I had a conversation with Mr. Kopta, we  
24 neglected to ask Mr. Brotherson one question on  
25 redirect, and it was a topic that Mr. Kopta had touched

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1 on. I asked him if he would object to us recalling  
2 Mr. Brotherson to straighten this factual matter out,  
3 and he said that he would actually in fact accept a  
4 representation from Qwest as to the matter in dispute,  
5 and I wondered if we could do that.

6           It has to do with the number of FX lines that  
7 Qwest has in the state of Washington. Mr. Kopta  
8 yesterday asked Mr. Brotherson about whether it was  
9 lines or customers. Mr. Brotherson had in his testimony  
10 that it was lines, expressed that he wasn't sure after  
11 some questioning by Mr. Kopta whether it was customers  
12 or lines, and would now testify that it is in fact  
13 lines.

14           JUDGE MACE: So that number that's in the  
15 testimony is lines, not customers?

16           MS. ANDERL: It is.

17           MR. KOPTA: And just as a further  
18 clarification, is that DS0 or analog equivalent lines?

19           MS. ANDERL: Mr. Brotherson checked that, and  
20 yes, that would be the answer.

21           MR. KOPTA: And that's what he said in the  
22 testimony, so I have no problem with it remaining.

23           MS. ANDERL: There was some question about  
24 it, as I said we meant to address it on redirect, so I  
25 appreciate the courtesy.

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1                   JUDGE MACE:  Actually, I think there is  
2 something I need to address, and that is with respect to  
3 the exhibits of Mr. Williamson, they were offered and  
4 then I think I got distracted before I actually  
5 indicated they were admitted, so to the extent I didn't  
6 address this, Exhibits 201 to 203 are admitted.

7                   And, Mr. Kopta, are you ready to begin?

8                   MR. KOPTA:  I am, thank you, Your Honor.

9

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

11 BY MR. KOPTA:

12           Q.     And I hope Mr. Williamson is ready to begin  
13 as well.

14           A.     Good afternoon.

15           Q.     It's a very strange position for each of us  
16 to be in I think.

17           A.     Yes, it is.

18           Q.     Mr. Williamson, will you turn first to  
19 Exhibit 212, which is the first of the cross-examination  
20 exhibits that we have designated for you, and it is  
21 specifically Staff's response to Pac-West Data Request  
22 Number 5.

23           A.     I have it.

24           Q.     And I will start with an obvious question,  
25 which is it's my understanding that what you define as

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1 VNXX service, you do not consider to be foreign exchange  
2 service; is that correct?

3 A. That's correct.

4 Q. Okay. And as this response indicates, part  
5 of your explanation for that you adopt or at least agree  
6 with a portion of Mr. Brotherson's testimony that's  
7 cited in this response; is that correct?

8 A. Right.

9 Q. Okay. So it's your view then that foreign  
10 exchange requires a combination of local exchange  
11 service in the local calling area plus a private line to  
12 the customer premises in the foreign exchange?

13 A. That's correct.

14 Q. Do you also agree that a CLEC with a single  
15 switch -- or let me ask that a different way.

16 Let's turn to Exhibit 213, which is the next  
17 cross-exhibit, Staff's response to Pac-West Data Request  
18 Number 6.

19 A. I have it.

20 Q. And I take it from your response here that  
21 Staff does not take the position that ILECs, incumbent  
22 local exchange carriers, are the only local exchange  
23 carriers that can provide foreign exchange service; is  
24 that correct?

25 A. That's correct.

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1 Q. I would like you to take a look at BR-1,  
2 that's becoming the poster child for this proceeding,  
3 and I want to ask you the same question that either  
4 Mr. Best or I have asked Mr. Linse and Mr. Brotherson,  
5 have you been in the room while this scenario has  
6 been --

7 A. I believe I was here for most of it.

8 Q. Okay. And while you were with TCG, does this  
9 look something similar to the way that TCG would have  
10 interconnected its switch between Qwest's switch in  
11 Olympia, assuming that there was such an  
12 interconnection?

13 A. I would agree that that looks like a  
14 representation of how we would have connected our switch  
15 to Qwest, but I disagree with the Qwest witnesses that  
16 said it would require a switch in the local calling area  
17 to be able to do FX.

18 Q. Okay, and that was sort of -- you anticipated  
19 my question, which is --

20 A. We have worked together before.

21 Q. Well, it has its advantages.

22 So I guess the question is, as so depicted  
23 with ELI providing the transport from its switch to the  
24 Qwest wire center in Olympia, would you agree that that  
25 is a proper way for ELI to provide foreign exchange

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1 service?

2 A. I'm not sure that I would agree, and if I  
3 could maybe by answering your question a little deeper  
4 and see if that gets to where you want to go.

5 Q. Surely.

6 A. At TCG, and I believe that this is possible  
7 through some of the other CLECs that are sitting in the  
8 room that either have or could, and I know we did in the  
9 years '95 and '96, and the way we -- first, the way we  
10 served a local customer in Olympia would be to take a,  
11 we usually would build our own, but a private line of  
12 some type, a T1 that we bought or leased or built  
13 ourselves from a power switch in Seattle to the Olympia  
14 area and probably collocate in the Qwest site and  
15 install there a channel bank or a subscriber loop  
16 carrier of some kind. And then we would actually  
17 connect to our local customer by either building again  
18 ourselves or what you can do today lease a UNE-L to get  
19 to the customer location.

20 So if I might, the dial tone from our Seattle  
21 switch would be on the T1 that connects to the channel  
22 bank at the Qwest collocation site and would ride the  
23 cable pair from the particular channel that we built  
24 that customer on to the customer's location. So when  
25 they pick up their phone, it would actually get dial

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1 tone from the TCG switch, in this picture would be the  
2 ELI switch.

3 So now if I was going to do an FX service --

4 JUDGE MACE: And that's a local call where?

5 A. That would be a local dial tone in Olympia,  
6 so if that customer, that TCG or ELI customer picked  
7 their phone up and made a call in Olympia, it would be a  
8 local call. If they dialed a Seattle number, it would  
9 be a long distance call. It would just be like any  
10 other Olympia customer.

11 Can I finish?

12 Q. Please do, I was waiting for you to finish.

13 A. If I wanted to build an FX off of that, I now  
14 have my switch basically in Olympia at least 24  
15 channels, voice channels, off of my switch. So if it  
16 was a tire company that wanted to receive Olympia calls  
17 in Chehalis, then we would get a private line from  
18 another channel on that channel bank, lease it from  
19 Qwest or build it ourselves or from ELI or some other  
20 carrier, and take that to the customer in Chehalis. So  
21 now the Olympia dial tone that TCG or ELI provided is at  
22 the location of the customer in Chehalis.

23 Did that make sense or was I --

24 Q. I'm supposed to ask the questions, let's not  
25 get too informal.

0435

1                   Well, let me see if I understand, you're the  
2 engineer and I'm not, and probably the best the way it  
3 is, but let's say that a Qwest local exchange customer  
4 in Olympia calls the TCG foreign exchange customer that  
5 you were just talking about; can you describe to me --

6           A.     Sure.

7           Q.     -- where the electrons go from the minute  
8 that the customer picks up the phone until it rings in  
9 the TCG customer's premises?

10          A.     Sure. Of course some of the lines are  
11 missing here, but I think I can do it verbally. The  
12 Qwest customer in the bottom left corner --

13                   JUDGE MACE: In Olympia.

14          A.     -- in Olympia dials the TCG customer who has  
15 Olympia service but is physically in Chehalis. The call  
16 would go from the Qwest switch either directly to the  
17 ELI/TCG switch or to Seattle and then across but would  
18 be routed over trunking to the TCG or ELI switch. That  
19 switch would recognize the telephone number when it  
20 looks it up in its routing tables as an Olympia  
21 telephone number, it would also recognize it as one of  
22 its customers, and it would connect it to a particular  
23 piece of line equipment, either digital or analog line  
24 equipment, in the TCG switch. That would be  
25 crossconnected to a channel bank, most likely it would

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1 be a digital T1 connection with 24 on it, but for our  
2 purposes it would connect it to one piece of line  
3 equipment that has been brought down to Olympia to the  
4 channel bank. If it was the local Olympia customer, it  
5 would just be crossconnected to the Olympia customer,  
6 but since we were talking about the Chehalis customer,  
7 it would then go from the channel bank across the  
8 private line to the customer in Chehalis would receive a  
9 call from Olympia as if it were local, when he or she  
10 dialed the call, it would be as if it were local.

11 Q. So instead of the Chehalis customer, let's  
12 stick with the diagram here and say that it's a customer  
13 who's physically located in Seattle, and further assume  
14 that you have a private line as was discussed yesterday  
15 that goes from the collocation that TCG has in the Qwest  
16 switch up to Seattle. And would it be most likely  
17 routed through the TCG switch location, not switched,  
18 but routed through so it would stay on TCG's network?

19 A. Well, let me walk through it and see where we  
20 end up.

21 Q. Fine.

22 A. It should be the same when we get to the end.

23 Q. Okay.

24 A. The Olympia Qwest customer dials the TCG or  
25 ELI customer number, gets routed to the TCG or ELI

0437

1 switch who recognizes it as one of its customers. And  
2 now I'm lost, did you say that customer was going to be  
3 in Seattle?

4 Q. Yes.

5 A. Okay.

6 Q. Physical location is in Seattle, as depicted  
7 on --

8 A. Then the TCG or ELI would get a private line  
9 to that customer location, I'm going to say this and  
10 make sure I say it correctly, giving Olympia dial tone  
11 to the Seattle customer to route through both.

12 JUDGE MACE: And this assumes that that  
13 switch is -- that the ELI/TCG switch is in Seattle?

14 A. Yes, and actually I said that's wrong because  
15 I just -- that's why he smiled.

16 To be a real classic FX, that's a VNXX  
17 scenario, to be a classic FX it's a little more  
18 complicated, because the call would go to the TCG/ELI  
19 switch, put on a channel bank down in Olympia, and just  
20 as in Chehalis a private line this time would go back to  
21 Seattle with the Olympia dial tone. So the extra step  
22 is what I left out.

23 Q. Right, so --

24 A. So the, I'm sorry, it would be exactly the  
25 same as the Chehalis, but it would go back to Seattle.

0438

1           Q.     Okay, so what I'm hearing you describe is  
2 something, to use my non-technical language, a zigzag,  
3 the call would go from the Qwest wire center up to the  
4 ELI or TCG switch, back down to the Qwest wire center,  
5 back up to, if not routed through, but I mean not  
6 switched but through the TCG switch location out over  
7 TCG's network to the customer?

8           A.     I'm not sure I would call it a zigzag, but it  
9 is a little more complex. But what it does accomplish  
10 is a physical location in Olympia for Olympia dial tone  
11 just like an Olympia customer that's then brought back  
12 to Seattle that's a classic FX case, as if the switch  
13 was in Olympia and it's really not. If you had a switch  
14 in Olympia, that's the way you would have to build it.

15          Q.     Okay. And but for the regulatory  
16 requirements, assuming that there is such a requirement,  
17 that the switching be out of Olympia, is that the way  
18 you as an engineer would design that call path to that  
19 customer?

20          A.     But for the regulatory, which I'm also a  
21 regulator, and I don't get to choose the regulations I  
22 like or don't like, from an engineering standpoint, it  
23 maybe makes sense to not have to do the extra zig or  
24 zag. But again, that's my understanding of the  
25 regulations, and so that's, at the Commission, that's

0439

1 what I'm held to.

2 Q. Right, and I understand that, I was just  
3 asking for your opinion as an engineer divorced from the  
4 regulatory complications that you interpret.

5 A. Let's hope that doesn't happen after my  
6 testimony.

7 Q. Well, me too.

8 In your testimony, and I'm sorry, I don't  
9 have the reference with me right here, I believe it's in  
10 your direct testimony, you discuss having reviewed what  
11 some other states have done with respect to what you  
12 refer to as VNXX; do you recall that discussion?

13 A. Yes, I do, I don't remember the exact place,  
14 but yes, I do.

15 Q. And I believe one of them is in California.

16 A. Yes.

17 Q. Do you recall that? What is your  
18 understanding of what the California Commission decided  
19 with respect to intercarrier compensation for "VNXX"  
20 traffic?

21 A. And I don't have it in front of me, but this  
22 is my understanding, that in California after many  
23 different decisions the PUC decided that the IXC would  
24 have to pay access charges to the CLEC that the call  
25 terminated to, but that ILEC would also receive an

0440

1 originating charge originating to it to make up for the  
2 costs that it incurred. I don't remember if California  
3 also said they had to -- that the CLEC had to pay  
4 private line charges to carry the traffic.

5 Q. Okay, well, let me ask you some more specific  
6 questions and see if this is consistent with your  
7 recollection. Is it your understanding that the  
8 California Commission has permitted the provisioning of  
9 "VNXX" service?

10 A. That's my remembrance, I have it here if we  
11 would like to reference it.

12 Q. We can read it together. And actually  
13 without stepping through each one, because obviously the  
14 order speaks for itself and we can discuss that on  
15 brief, did Staff consider that option of requiring  
16 compensation and allowing VNXX but also allowing the  
17 ILEC to impose a certain charge if it had to provide  
18 some extra transport?

19 A. It was one of the options that we considered,  
20 and after looking at a number of states the complexity  
21 is what kind of threw us off, and that was why in the  
22 end we decided that allowing VNXX for ISP traffic on a  
23 bill and keep was a simpler way to handle the problem.  
24 It's something that maybe all the companies could meet.  
25 Some of the other states had some very complex decisions

0441

1 that would be very difficult to meet at the end, and we  
2 thought that maybe this would be a better way, but we  
3 did consider that.

4 Q. If you would please turn to Exhibit 219,  
5 which is Staff's response to Pac-West Data Request  
6 Number 16?

7 A. I'm there.

8 Q. And am I correct that in response to this  
9 data request that you state that in Staff's view FX is  
10 not the same or does not represent toll bypass?

11 A. That's true.

12 Q. But would you agree that FX is interexchange  
13 service?

14 A. No, I don't believe it is. It's the customer  
15 has remoted himself over a private line, but if an  
16 Olympia customer calls an Olympia FX customer who  
17 happens to be in Chehalis, that's a local call, and I  
18 don't believe it's interexchange.

19 Q. Well, how does Staff define when a call is  
20 interexchange or local?

21 A. Well, with the exception of FX, as our rules  
22 state, a call that originates and terminates within the  
23 same local calling area is a local call, and a call that  
24 originates and terminates in different local calling  
25 areas would be interexchange, and the one example of

0442

1 course is the one you picked on of FX, and that's, you  
2 know, been confusing for everyone in this hearing.

3 Q. Okay, well, and you say originates and  
4 terminates, can you be more descriptive in terms of how  
5 that happens, is it -- let me ask more specifically, is  
6 it based on the customer's physical location?

7 A. Yes, and I should have said that, it's the  
8 customer's physical location in both ends of the call  
9 that makes it either a local call or an interexchange  
10 call, with the exception of FX.

11 Q. But at least according to that definition, FX  
12 is an interexchange service?

13 A. It's an exception to that definition, yes.

14 Q. Okay. And if there were a call between those  
15 same two parties that was not provisioned over an FX, it  
16 would be an interexchange call, wouldn't it?

17 A. Yes, it would be.

18 Q. Okay. And each carrier, each local carrier  
19 serving the calling and called parties would be entitled  
20 to access charges, correct?

21 A. If there was no FX involved and the call  
22 originated in Olympia, a customer physically in Olympia,  
23 and terminated to a customer physically in Chehalis,  
24 that would be a long distance call, and access charges  
25 and all appropriate billing would apply.

0443

1 Q. So, for example, if a CLEC end user customer  
2 calls a Qwest end user customer and the CLEC customer is  
3 located in Olympia and the Qwest customer is located in  
4 Seattle and uses an 800 service, then the CLEC would be  
5 entitled to originating access charges?

6 A. I believe that's the case.

7 Q. Okay. But if we're talking about the same  
8 customers except that the Qwest customer gets FX  
9 service, then the CLEC would pay reciprocal compensation  
10 to Qwest?

11 A. Yes, I believe that's true.

12 Q. And if you would please turn to Exhibit 221,  
13 which is Staff's response to Pac-West's Data Request  
14 Number 15.

15 A. I'm there.

16 Q. And I believe in this data request you are  
17 discussing whether or not the tariffed monthly  
18 facilities fee that an FX customer pays is equivalent to  
19 the compensation that the ILEC would receive to  
20 transport calls in the same manner as a toll call; is  
21 that correct?

22 A. That's correct.

23 Q. Now the rates that the Qwest customer pays  
24 for FX service compensate Qwest for the costs that it  
25 incurs to transport that call; is that correct?

0444

1 A. That's correct.

2 Q. But they don't compensate the CLEC for the  
3 costs that it incurs to originate the call from its  
4 customer to the FX customer, correct?

5 A. Well, let's go back and make sure, I'm not  
6 sure I understood the -- can you do the call flow and  
7 then we'll --

8 Q. Sure. A CLEC end user customer in Olympia  
9 calls a Qwest FX customer who is physically located in  
10 Seattle but has an Olympia telephone number.

11 A. Okay.

12 Q. So the rates or the charges that the  
13 customer, that the Qwest FX customer pays to Qwest do  
14 not compensate the CLEC for the originating cost, the  
15 cost that it incurs to originate the call?

16 A. No, it doesn't.

17 Q. If you would turn to Exhibit 222, which is  
18 Staff's response to Pac-West Data Request Number 19.

19 A. I'm there.

20 Q. And in this data request we had asked for the  
21 factual basis for the statement in your testimony that  
22 permitting VNXX as you define it would make the rate  
23 payers of Washington state who do not use dial-up  
24 Internet access subsidize the low cost service for those  
25 that do; is that correct?

0445

1 A. That's true.

2 Q. And you agreed with and incorporated a  
3 portion of Dr. Fitzsimmons' testimony on behalf of Qwest  
4 in response to this, correct?

5 A. I did.

6 Q. Did you review Dr. Fitzsimmons' testimony  
7 before it was filed?

8 A. Not before it was filed.

9 Q. Okay. Did you consult with Dr. Fitzsimmons  
10 in preparing your testimony?

11 A. No, I did not.

12 Q. Then what was your basis in your testimony  
13 for that statement at the time you wrote it?

14 A. At the time I wrote my testimony, I had  
15 looked at a lot of FCC decisions and other state  
16 decisions, and I had seen that the FCC at times -- in  
17 fact there's a quote from Dr. Fitzsimmons, from the FCC,  
18 that a number of states had thought that the low cost  
19 service that the CLECs were providing was allowed  
20 because they were receiving reciprocal compensation  
21 instead, and so that allowed them to charge a very small  
22 rate for ISP service to their ISP customer. And because  
23 of such a low rate, they were able to have a lot of ISP  
24 customers. And that traffic then, the rest of the  
25 citizens in this state who are paying the higher rate

0446

1 because they aren't with a CLEC or have broadband and  
2 don't use dial-up at all, their rates would reflect that  
3 difference. If you agree, which you probably don't, but  
4 if you agree that reciprocal compensation is incorrect  
5 for VNXX, then it's basically subsidizing that service  
6 and that someone has to pay for it, and that would be  
7 the rest of the citizens here.

8 Q. Let me clarify that then, because I'm not  
9 sure I understand. Are you saying that Qwest customers  
10 who do not use dial-up ISP would subsidize other Qwest  
11 customers who do?

12 A. Would subsidize the part of the network that  
13 connects to the CLECs, added trunking, added traffic  
14 that wouldn't be there if the call was local.

15 Q. So I guess my focus is on where the subsidy  
16 is going, is it going from customer to customer? If I,  
17 for example, don't use dial-up and I pay my \$12.50 plus  
18 everything else to Qwest for my local service, and my  
19 neighbor uses dial-up and they're paying \$12.50 plus  
20 subscriber line charge and everything else for their  
21 local service, are you saying that I am subsidizing my  
22 neighbor because I am not using ISP dial-up but he is?

23 A. I guess what I'm trying to say is that at  
24 some point the rates will have to reflect that  
25 difference where the cost goes. And as, I'm not an

0447

1 economist, but as Dr. Fitzgerald said, you know, he  
2 believes the cost causer is the one making the call.  
3 What I'm trying to say I guess is at some point the  
4 rates will have to rise to cover that cost, but the  
5 price that the Qwest customer who is using a CLEC ISP,  
6 the rate to that ISP will still remain low. So even  
7 though their telephone service will rise, their rate  
8 will remain below cost.

9 Q. Are you expressing the concern on behalf of  
10 Staff that Qwest will raise its residential rates?

11 A. I'm only saying that if the cost of ISP  
12 service is kept low as if the FCC stated in a number of  
13 their orders, cost below what it could be if reciprocal  
14 compensation wasn't being paid, then at some point that  
15 money will come from someplace, most likely it will have  
16 to be a part of some rate change.

17 Q. Okay, well, there are a couple of things to  
18 follow up on there. One is do you know when the  
19 current, when Qwest's current residential basic local  
20 exchange rates were established?

21 A. I think I heard earlier in the hearing 1998,  
22 but I'm not sure if that's the case.

23 Q. Will you accept that subject to check?

24 A. Subject to check.

25 Q. Have you been involved in a Qwest alternative

0448

1 form of regulation or AFOR proceeding?

2 A. I have not been a party to it, although I sit  
3 next to someone who is.

4 Q. Are you aware of the settlement between  
5 Commission Staff and Qwest in that docket?

6 A. Only in general, I know nothing of the  
7 details.

8 Q. Okay. Would you accept subject to check that  
9 Staff and Qwest agreed that for the next four years if  
10 the AFOR plan is approved that Qwest would not raise its  
11 residential monthly exchange rates by more than \$1?

12 A. I would accept that subject to change, not  
13 subject to change, subject to check.

14 Q. Hopefully not change.

15 And are you aware that or would you also  
16 accept subject to check that Qwest represented in its  
17 brief and in the testimony of Dr. Taylor that an  
18 increase of \$2 over that same time period would not keep  
19 pace with inflation?

20 A. Subject to check, I have no knowledge of it.

21 Q. Are you aware whether or not that AFOR is at  
22 all conditioned on whether or not the Commission allows  
23 VNXX or prohibits VNXX?

24 A. I don't know, but I would suspect if it was,  
25 someone would have asked me about it.

0449

1 Q. So it's not likely?

2 A. Not likely.

3 Q. Okay.

4 A. Subject to check.

5 Q. So at least for the next four years, would  
6 you agree that Qwest will not be raising its rates  
7 because of whether or not there's VNXX or not?

8 MR. THOMPSON: I think I'm going to object to  
9 this because I think probably the outcome of the AFOR  
10 proceeding would speak for itself on this point.

11 MR. KOPTA: As long as we are free to refer  
12 to the AFOR proceeding in our brief, I'm fine with that.

13 JUDGE MACE: Sure, and you can ask him to  
14 assume that as well.

15 BY MR. KOPTA:

16 Q. The other thing I wanted to follow up on your  
17 prior response is to make sure that I understand, are  
18 you saying that the other possible form of subsidy is  
19 the rate payers of Qwest subsidizing the ISP's low rates  
20 that they get from CLECs?

21 A. In an awful long chain, if the CLECs  
22 receiving reciprocal compensation on a call that would  
23 normally have been a long distance call or interexchange  
24 subsidize the low price, then in that long chain the  
25 payment that Qwest would make for reciprocal

0450

1 compensation I suppose you could see that way. I  
2 wouldn't normally.

3 Q. That's my question is was that what you  
4 intended in your testimony when you were talking about  
5 rate payers subsidizing the low cost of other rate  
6 payers, whether that -- was that your intention?

7 A. Yes, I'm sorry, I misunderstood your  
8 question, I believe I understand what you're saying.  
9 The reason that or the fact that Qwest is paying  
10 reciprocal compensation on calls that would be  
11 considered long distance, interexchange instead of  
12 local, means that that extra cost is a subsidization of  
13 ISP service.

14 Q. Okay. And so assuming that that is in fact  
15 what keeps rates for ISPs served by CLECs lower, take  
16 that assumption without any demonstration one way or the  
17 other since there's no evidence, unless you have some  
18 evidence; is that the case?

19 A. We'll just make the assumption.

20 Q. We'll make the assumption. Are you in effect  
21 advocating that the rates that ISPs in Washington pay  
22 for local exchange service should be higher than they  
23 are now?

24 A. I don't believe as a Commission employee that  
25 I could advocate for any price for ISP. It's not

0451

1 something that we deal with at the Commission. But I  
2 would say that they should reflect either a business  
3 decision or a business plan that reflects the costs that  
4 they incur. And if you can assume that these calls  
5 should not have reciprocal compensation but actually had  
6 to pay access charge or spend the money to build the  
7 modems in the local calling area, that added cost would  
8 have to come from the customer, not from Qwest or  
9 another company.

10 Q. And the customer, you mean the customer of  
11 the ISP?

12 A. Yes, I'm sorry.

13 Q. Who also happens to be a customer of in most  
14 cases Qwest?

15 A. Apparently here, yes.

16 Q. But at least as far as the payment of  
17 reciprocal or compensation, let's take a step back,  
18 compensation for ISP traffic is less than for reciprocal  
19 compensation, at least as those rates have been  
20 established by the Commission and the FCC; is that  
21 correct?

22 A. I'm sorry, say that again, I missed your  
23 first portion.

24 Q. Sure. There's a difference between the  
25 compensation rate for non-ISP traffic and for ISP

0452

1 traffic; is that correct?

2 A. That's correct.

3 Q. And the compensation for ISP-bound traffic is  
4 significantly lower than it is for other, for  
5 non-ISP-bound traffic; is that correct?

6 A. Yes, it is.

7 Q. Do you know whether that rate covers the cost  
8 that the local exchange carrier who serves the ISP  
9 incurs for switching?

10 A. I don't know that, and the FCC order, that  
11 said that. I have never seen a study, so I don't know.

12 Q. Okay. Well, the Commission established rates  
13 based on costs for Qwest for example for reciprocal  
14 compensation, did it not?

15 A. Yes, it did.

16 Q. And those rates apply both to Qwest and to  
17 all of the CLECs that interconnect with Qwest; is that  
18 correct?

19 A. This is for non-ISP traffic?

20 Q. For non-ISP traffic.

21 A. Yes, it does.

22 Q. And I believe in your rebuttal testimony,  
23 it's under heading 3, and I apologize, I don't know, I  
24 never got a copy of your testimony that was paginated,  
25 so it's under heading 3, and this is your rebuttal

0453

1 testimony, which is Exhibit 203T.

2 A. It looks like mine is not paginated either.

3 JUDGE MACE: It's odd that page 1 appears on  
4 page 1, but after that there are no pagination marks.

5 Q. So I'm not exactly sure how to you tell you  
6 where that is. It's under Roman III, and it's probably  
7 about --

8 A. You could probably just tell me where to go.

9 Q. About the eighth page from the end.

10 MR. THOMPSON: I'm sorry, are we on the  
11 direct testimony?

12 Q. Rebuttal, but it's the testimony under the  
13 header Roman Numeral III, if VNXX is allowed for  
14 ISP-bound traffic, et cetera.

15 A. I'm there.

16 Q. Okay. And at that point in your testimony I  
17 believe you agree that Qwest's costs for delivering the  
18 traffic to the CLECs are not any different regardless of  
19 whether the ISP is located in Seattle, to use our BR-1  
20 example, or in Olympia; is that correct?

21 A. I did say that.

22 Q. Okay. So if the ISP were located in Olympia,  
23 then Qwest would be paying the same amount in  
24 compensation, I won't say reciprocal compensation just  
25 to avoid the ISP compensation issue, but Qwest would be

0454

1 paying the same amount of compensation to the CLEC?

2 A. That's true.

3 Q. As it does presumably today assuming that  
4 there is VNXX, that the current service is provided via  
5 VNXX?

6 A. If the call was a local call between a Qwest  
7 customer in Olympia to an ISP modem that was physically  
8 located in Olympia, then it would be true that the  
9 compensation would be local compensation.

10 Q. And that would not be a subsidy between Qwest  
11 customers?

12 A. No, it wouldn't be.

13 Q. If you would please turn to Exhibit 223,  
14 which is Staff's response to Pac-West Data Request  
15 Number 20, and I believe in this data request you have  
16 stated that Staff has conducted no analysis of the  
17 impact on consumers if VNXX as you have prohibited it or  
18 as you have defined it would be prohibited; is that  
19 correct?

20 A. I'm sorry, is that the Pac-West Data Request  
21 Number 20?

22 Q. Yes.

23 A. Okay, I had it mismarked, sorry.

24 Q. Oh, that's okay.

25 A. That's true, Staff did not do any research

0455

1 studies or analysis.

2 Q. Okay. Did you do any research studies or  
3 analysis on the impact on consumers if the Commission  
4 were to adopt your alternative proposal of allowing VNXX  
5 but only for ISPs?

6 A. No, I did not.

7 Q. Have you done any research or analysis on the  
8 impact on consumers if the Commission were to permit  
9 VNXX for all customers and continue to have reciprocal  
10 compensation paid for that?

11 A. I did not myself do any research.

12 Q. You're not aware that Staff has done any?

13 A. No.

14 Q. If you would please turn to Exhibit 224,  
15 which is Staff's response to Pac-West Data Request  
16 Number 21.

17 A. I'm there.

18 Q. And in this request you are discussing the  
19 basis for your testimony that because of the way FX  
20 service is provisioned by the ILECs, FX service is  
21 expensive for subscribers and often proves less cost  
22 effective than 800 service; is that correct?

23 A. That's true.

24 Q. Okay. 800 service is, the rates for 800  
25 service are on a per minute basis primarily, are they

0456

1 not?

2 A. Yes, they are.

3 Q. And the rates for FX service are primarily,  
4 if not exclusively, flat?

5 A. That's true.

6 Q. So would it be your expectation that it would  
7 make sense for a customer to obtain FX service only if  
8 the flat rate would be lower than the rate that it would  
9 pay if it depended on a minute of use basis under 800  
10 service?

11 A. It would be a decision the customer would  
12 have to make over a number of reasons. One would be the  
13 number of local calling areas they wanted to be able to  
14 receive calls from say within the state, whether the  
15 calls were short in nature or long, and whether the FX  
16 charge would, you know, where the break even point would  
17 be, so yes, that's true.

18 Q. But in general, would you expect that  
19 customers who purchase FX service would be those that  
20 would expect to receive a high volume of calls or at  
21 least a high number of minutes if not a high number of  
22 calls?

23 A. That could be one of the reasons. It also  
24 could be dependent on the physical location of where  
25 they're at. The example I used of an FX in Chehalis

0457

1 with Olympia dial tone wouldn't make much sense to do  
2 800 service. There are a number of reasons, the one you  
3 gave is one of them.

4 Q. So even though it would be more expensive to  
5 have FX service than to have 800 service because you  
6 have low call volumes, a customer would nevertheless  
7 take FX service?

8 A. That definitely would be a large one of the  
9 decisions they would have to make, but there could be a  
10 number of decisions. Obviously price would be one of  
11 the larger.

12 Q. From a business perspective, would you expect  
13 that a business would more likely than not choose the  
14 option that would be most cost effective or least  
15 expensive?

16 A. Well, I think it depends on the business. I  
17 note that we just bought a Wii game machine, and when I  
18 had trouble on Sunday setting it up, I had to call  
19 Nintendo on an 800 number. Obviously their calls use a  
20 lot of minutes, but they chose 800 service because it  
21 meets their needs better than doing FX from a number of  
22 locations.

23 Q. Okay. But that was probably because it was  
24 cheaper to do it that way, wouldn't you expect?

25 A. I'm sure that was one of their decisions.

0458

1 Q. Okay. But would you agree that in general a  
2 customer, a business customer, would choose FX because  
3 they would expect to have a high number of calls and it  
4 would be cheaper to pay a flat rate than a per minute of  
5 use rate?

6 A. I could agree to that.

7 Q. Okay. Did you review Mr. Linse's testimony?

8 A. Yes, I did.

9 Q. And are you aware that in his testimony he  
10 was discussing customers with FX service, and the  
11 example that he gave was customer service centers?

12 A. I don't remember that in particular, but I'm  
13 sure that that could be.

14 Q. Okay. Would that comport with your  
15 experience with TCG that that would be a type of  
16 customer that would obtain FX service?

17 A. Some yes, some no. As the example I gave  
18 with Nintendo, that's a call-in service and they chose  
19 800 for their reasons for their business plan, but one  
20 of the customers that might choose that would be a  
21 call-in service. Most likely I find the FX service to  
22 be expensive for someone who wants to get an FX from a  
23 number of local calling areas. If you're located in  
24 Redmond at Microsoft, to bring an FX from every local  
25 calling area in the state of Washington to receive your

0459

1 calls would be very expensive. So even though you might  
2 have to buy the minutes for 800 service, you might  
3 choose the 800 service instead.

4 Q. Okay. Well, I'm really focusing more on the  
5 customers that have already decided to choose the FX  
6 service as opposed to those that are debating between FX  
7 and 800 for example and just trying to establish or  
8 determine from your experience whether the customers  
9 that choose FX would be customers like customer call  
10 centers as Mr. Linse stated in his testimony?

11 MR. THOMPSON: I think it's been asked and  
12 answered.

13 JUDGE MACE: And so --

14 MR. THOMPSON: Well --

15 MR. KOPTA: All I'm trying to establish is  
16 the nature of the customers that obtain FX service,  
17 which is slightly different than as I understood  
18 Mr. Williamson testifying of a business that's trying to  
19 decide between FX and 800 service.

20 JUDGE MACE: I will allow the answer.

21 A. In my experience, most of the customers,  
22 there aren't a lot, but most of the customers who bought  
23 FX service were usually a small business who wanted  
24 their tire store in Olympia to receive calls from their  
25 customers in Chehalis and Shelton and, you know, any of

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1 the close local calling areas, so they maybe only have  
2 an FX to one area for those customers who call. I  
3 honestly don't remember in my experience, doesn't mean  
4 it didn't happen, but I don't remember call centers that  
5 built a large number of FXs to receive calls from.  
6 Maybe a county call center for some reason, but not --  
7 not when I was at TCG, the customers we did were  
8 smaller.

9 BY MR. KOPTA:

10 Q. Okay. Are you aware that Qwest does not  
11 measure the number of calls or the number of minutes to  
12 and from its FX customers?

13 A. I am aware of that. I think that came up  
14 earlier in the hearings. And since they consider that a  
15 local call, to my knowledge they don't record minutes of  
16 use for local calls.

17 Q. Okay. And has Staff done any analysis in  
18 terms of the number of calls, the number of minutes that  
19 are delivered to FX customers in Washington?

20 A. No, we have not.

21 Q. Okay. If an FX line were used for high  
22 volume calls, based on your experience, do you have any  
23 estimate of the number of minutes per day that could be  
24 carried over an FX line?

25 A. The maximum 36 CCS, which is 60 minutes to

0461

1 the hour, 24 hours a day, is the maximum that any  
2 telephone line could provide.

3 Q. Although that seems unlikely?

4 A. Yes, it does.

5 Q. Well, but what about 8 hours a day?

6 A. The maximum is the maximum, I'm not sure  
7 that's the question you're really asking me.

8 Q. No, I'm asking you for a reasonable  
9 assumption of the number of minutes that an FX  
10 customer --

11 A. Oh. A normal, if I remember my engineering  
12 correctly, a normal residential customer call was about  
13 a 3 minute call, and a business call if I remember  
14 correctly is 5 to 6 minutes. Of course, it depends on  
15 the business, but the business line obviously gets more  
16 use. So if we assume that it's a business line that  
17 you're talking about that has FX service, it depends on  
18 their business, you know, how many calls they could  
19 receive, if they were 5 or 6 minute calls an hour, 10,  
20 12 calls an hour, I'm not sure if that's what you're  
21 looking for.

22 Q. No, I'm really actually looking for the total  
23 of minutes, so would it be unreasonable to say that a  
24 calling center or a customer service center or some  
25 other type of customer like that with FX service could

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1 receive say 400 minutes a day of calls?

2 A. Over an 8 hour period?

3 Q. Well, however long that they're in business,  
4 that would actually be less than 8 hours, but if you  
5 assume a business is going to be open for 9 or 10 hours  
6 a day?

7 A. If it's a call center, and most of the call  
8 centers that I have dealt with would want to build their  
9 lines out to get the most usage they can, so they would  
10 probably build it so people would get a few busys so  
11 that they would keep their lines busy if possible 100%  
12 of the time, so a lot of usage.

13 Q. So 400 minutes a day would be a conservative  
14 estimate?

15 A. That's an assumption, yes.

16 Q. Okay. And which translates into even if it's  
17 just a 5 day work week of 2000 minutes a week, correct?

18 A. The math is correct.

19 Q. Lawyers doing math is very dangerous, that's  
20 why I'm keeping this very simple.

21 MR. THOMPSON: I'm going to object at this  
22 point, it seems like this is not related to the  
23 witness's testimony but that the questioning is trying  
24 to establish something perhaps unrelated.

25 MR. KOPTA: I would ask the Commission's

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1 indulgence, this does relate to one of the responses to  
2 our data request.

3 JUDGE MACE: Well, it does seem pretty  
4 speculative, but I will let you go ahead, you're still  
5 within your 2 hour time period. However, at 120 minutes  
6 things might change.

7 MR. KOPTA: Okay.

8 BY MR. KOPTA:

9 Q. And then to continue our math, there are 52  
10 weeks in a year but just to keep it simple let's say 50  
11 weeks, so that would be 100,000 minutes?

12 A. It's your math.

13 Q. Okay. And if we take Qwest's 4,000 access  
14 lines times 100,000 minutes, that's 400 million minutes,  
15 correct?

16 A. Subject to check.

17 Q. Okay. If you would look at Exhibit 225.

18 A. I'm there.

19 Q. And in this we had asked you to provide any  
20 support for your statement that FX service as provided  
21 by the ILECs is not a significant loophole in the access  
22 charge system; do you see that?

23 A. I do.

24 Q. And so my question is, since we just did our  
25 little math exercise, do you consider 400 million

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1 minutes to be a significant amount?

2 A. I have no basis to judge that. What I said  
3 was that Qwest said out of a total of 1,800,000 of their  
4 lines, 4,047 are FX lines, and if those 4,047 do what  
5 number minutes did you say?

6 Q. 400 million.

7 A. 400 million, is that .22% of, I think that's  
8 the case, yes, less than a quarter percent of the lines  
9 in this state are FX lines, even if you -- it doesn't  
10 say here how many of the 1,800,000 are business lines,  
11 but I would have to have some other number to compare it  
12 to. If it's 800,000 business lines or 1,000,000  
13 business lines, they're all going to want to use their  
14 lines at a heavy rate, so I mean the number sounds  
15 large, but I have no comparison to make.

16 Q. So you're saying that 400 million minutes may  
17 not be significant depending on what you're comparing it  
18 to; is that what I'm hearing?

19 A. That's true. If I knew the total of minutes  
20 for all of Qwest's lines for the year and I knew what  
21 percentage of that total were business lines, then I  
22 could make a comparison, and I have no idea.

23 Q. Well, comparing minutes to minutes, wouldn't  
24 you want to compare the total number of minutes on other  
25 Qwest lines than FX to the number on FX lines?

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1           A.     If asked to do this in real life, I would  
2     want to compare the number of usage minutes for FX lines  
3     to the number of usage minutes for business lines or  
4     possibly something that's a little closer, Centrex lines  
5     or businesses that receive calls heavily like you're  
6     talking about a call center, and I don't have any basis  
7     to make a comparison.

8           Q.     Well, in this case actually the comparison  
9     that I would suggest is this number of minutes to the  
10    total number of access minutes that Qwest provides in  
11    Washington; do you know that number?

12          A.     No, I don't, but I bet you're going to tell  
13    me.

14          Q.     You would lose that bet.

15          A.     No, I don't know that.

16          Q.     Okay.  So even if it were 400 million minutes  
17    to Qwest's 4,000 FX lines, in your view that may not be  
18    a significant number that --

19          A.     Well, based on the fact that we made some  
20    pretty strong assumptions about usage for each of the FX  
21    lines, the type of service they provide and then the  
22    total number of usage minutes, I can't say whether  
23    that's a large number in comparison or not.  It's a  
24    large number.

25          Q.     Okay.

0466

1           A.     Whether it's a large percentage of total  
2 access minutes, I can't really say.

3           Q.     Okay.  And just to put it in a different  
4 context, if a particular CLEC exchanged traffic with  
5 Qwest over a 1 or 2 year period that represented 400  
6 million minutes, would you consider that to be a  
7 significant number if it was provided as "VNXX"?

8           A.     Again, I have nothing to compare it to.  I  
9 don't know how many customers you're talking about or  
10 how many VNXX lines.  It's a large number, but I can't  
11 make a comparison, or I'm misunderstanding your  
12 question.

13          Q.     Well, I think the question is we're talking  
14 about a significant loophole in the access charge  
15 system, so I'm assuming that access is charged on a per  
16 minute of use basis, is it not?

17          A.     Yes, it is.

18          Q.     Okay.  So then we're dealing with the number  
19 of minutes that would be subject to an access charge,  
20 correct?

21          A.     Right.

22          Q.     So if a CLEC were terminating 400 million  
23 minutes of "VNXX" service instead of access, instead of  
24 paying access charges on those minutes as Qwest has  
25 proposed, would you consider that to be a significant

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1 number?

2 A. It's certainly a significant number, and I  
3 don't mean to be being difficult, I just have no idea  
4 what the total number of access minutes in the state is,  
5 so how significant it is. I think what maybe you're  
6 trying to get to is it would be as significant as the  
7 4,014 FX lines that we assumed so many minutes of usage,  
8 which was a big assumption, but if that's where you're  
9 at, it would be about the same as the 4,047.

10 Q. Okay.

11 If you would please turn to Exhibit 227,  
12 which is Staff response to Pac-West Data Request Number  
13 25, and in this request you are discussing whether LECs  
14 other than CLECs have no alternative but to continue to  
15 provide FX service in the same manner that they have  
16 traditionally done, the statement in your testimony to  
17 that affect; is that correct?

18 A. That's true.

19 Q. Okay. And would you agree with Mr. Linse  
20 that it is possible that ILECs could provision VNXX  
21 service from a technical perspective?

22 A. From a technical perspective, I suppose  
23 that's possible. More likely would be a location  
24 portability, which we don't have but is technically  
25 possible, so you could port numbers between local

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1 calling areas.

2 Q. Well, but Qwest for example if they wanted to  
3 could get a 10,000 or 1,000 in some cases number block  
4 of Olympia telephone numbers loaded onto one of their  
5 switches in the Seattle main switch and provide the same  
6 type of "VNXX" service as some CLECs are alleged to have  
7 been providing?

8 A. Sorry, I'm thinking, I'm trying to engineer  
9 it as you ask me the question. I suppose you could  
10 assume that it's technically possible. There are ways  
11 of -- I believe there are ways that you could do that.

12 Q. Okay. And would it require a tariff change  
13 for Qwest to provide service along those lines?

14 A. Well, they would certainly have to explain to  
15 us somehow. The tariff rules are changing as to what  
16 they have to give us tariffs for, and I'm definitely not  
17 an expert on that, but I would assume that if they were  
18 going to do the same thing that that would have to be in  
19 the tariff.

20 Q. Okay. To the extent that foreign exchange  
21 service is currently tariffed, then they would need to  
22 revise their tariff to be able to do that. To the  
23 extent that one or more portions of foreign exchange  
24 service are no longer tariffed, then they wouldn't have  
25 to. Is that fair?

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1 A. I think that's fair.

2 Q. If you would please turn to Exhibit 228, and  
3 this is Staff's response to Pac-West's Data Request  
4 Number 27 and refers to the Central Office Code  
5 Assignment Guidelines or COCAG; is that correct?

6 A. That's correct.

7 Q. And as I understand it, Staff's position is  
8 that any exceptions to the geographic limitation on  
9 numbers must be listed in the COCAG or expressly  
10 authorized by state law; is that correct?

11 A. That's correct.

12 Q. Were you present when we were discussing with  
13 Mr. Brotherson how VoIP, voice over Internet protocol,  
14 calling is accomplished?

15 A. I believe I was.

16 Q. Okay. Do you agree with Qwest that the  
17 location of the customer for purposes of determining  
18 whether how to rate the call is based on the point of  
19 presence or POP of the VoIP provider and the calling  
20 party or called party?

21 A. I know that this has been discussed with the  
22 FCC, I have seen a number of comments and seen both  
23 sides of the issue. I have not and I don't believe  
24 Staff has come to a position on that yet.

25 Q. Well, you may have to I guess.

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1 A. Yes, I think we will.

2 Q. I mean the concern that I have, and I will be  
3 perfectly frank, is if the Commission were to prohibit  
4 VNXX as you have described it, then the location of the  
5 VoIP provider or how you determine how to rate calls for  
6 VoIP certainly becomes more pressing for VoIP providers  
7 that obtain their local service from someone other than  
8 the incumbent, correct?

9 A. Yes, it does. Of course VoIP is a little  
10 different animal. To look at it and not consider the  
11 VoIP piece, it walks, talks, looks a lot like VNXX. A  
12 customer originates from one local calling area, and the  
13 call on the PSTN terminates in a different calling area,  
14 so from that point of view it would appear that it would  
15 be VNXX. But the FCC has also taken VoIP, if not taken  
16 it away from states at least limited very strongly what  
17 a state can or how a state can regulate voice over the  
18 Internet, so it may be that that would be separated out  
19 on its own. It's not ISP traffic. It's not pure voice  
20 traffic, although it would appear to be from the ends of  
21 PSTN. So I share your concern, I just don't know the  
22 answer to that yet.

23 Q. Okay, well, let me flesh it out just a little  
24 bit.

25 JUDGE MACE: Mr. Kopta, I would like to take

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1 a 10 minute recess right now, thank you.

2 (Recess taken.)

3 BY MR. KOPTA:

4 Q. Mr. Williamson, before we took our break we  
5 were discussing termination of VoIP services, and I  
6 would like to put it in the context of Staff's  
7 recommendation or at least its -- well, let me clarify  
8 it first.

9 Is it Staff's recommendation that VNXX be  
10 permitted but only for ISP-bound traffic, or is that a  
11 conditional recommendation if the Commission were to  
12 decide that VNXX traffic were permissible?

13 Let me ask it another way, I can tell by the  
14 look on your face.

15 Is Staff's position in this docket, its  
16 primary position in this docket that VNXX as you have  
17 defined it should be prohibited?

18 A. It should be prohibited with the use of it  
19 for ISP-bound traffic allowed is what I stated in my  
20 testimony, that was my position.

21 Q. Okay. Well, in your direct testimony you  
22 stated one position, in your rebuttal testimony you  
23 stated a slightly different, and I was just trying to  
24 explore what is Staff's recommendation in the docket,  
25 and that is represented by what you propose in your

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1 rebuttal testimony?

2 A. Yes, it is.

3 Q. Going back to BR-1, is it your understanding  
4 based on the conversation several of us had with  
5 Mr. Brotherson that Qwest considers the POP or point of  
6 presence of a VoIP provider to be its physical location  
7 for the purposes of call rating?

8 A. My remembrance was that the point where the  
9 PSTN call is converted to IP, and I assume that's the  
10 POP, would be the point they consider the call to be  
11 terminated.

12 Q. Okay, and do you concur in that?

13 A. From an engineering point of view, yes,  
14 technically that is where the call originates or  
15 terminates on the PSTN. I know there are some  
16 extenuating circumstances with VoIP, and I had not  
17 studied that issue when I wrote my testimony, so I'm not  
18 sure that I have made a decision on that, and I don't  
19 believe the Commission has or the Commission Staff has  
20 yet.

21 Q. Okay. But at least there is a possibility  
22 that, again using our BR-1 diagram, if ELI for example  
23 were providing local exchange service to Vonage,  
24 assuming it's still in business, and Vonage doesn't have  
25 a POP in the Olympia local calling area, does Staff have

0473

1 a position on whether under Staff's proposal if adopted  
2 by the Commission ELI could provide Olympia telephone  
3 numbers to Vonage?

4 A. I wish I could answer otherwise, but I don't  
5 believe we have a position on that. Even though I  
6 stated strongly in my testimony what I was asking the  
7 Commission to consider, that VNXX be prohibited except  
8 for ISP traffic, ISP-bound traffic, I did not include in  
9 that voice over IP traffic. Sitting here today, I'm not  
10 sure how that will come out, and honestly I can see from  
11 both sides, it could go either way. I believe in some  
12 other cases in other commissions that arbitrators have  
13 decided that voice over IP traffic would be at bill and  
14 keep, which would take some of the pain out of VNXX, but  
15 I don't know that that would be the position we would  
16 take.

17 Q. But you definitely would exclude VNXX to be  
18 used to provide voice services; is that correct?

19 A. Yes, based on what information I have seen  
20 from other commissions and in particular New Hampshire.

21 Is this on by the way? Now it is, sorry, so  
22 you missed the rest of that.

23 Q. Darn.

24 A. Based on what the New Hampshire Staff's  
25 report showed when they reported back to their utility

0474

1 commission, there are the possibility of some dodgy  
2 service that could be provided for voice, not all but  
3 some that could be used for toll bypass for a number of  
4 reasons. And so I believe it's important that the  
5 Commission look at that and do as Oregon has done and  
6 decide that it's for ISP-bound traffic only.

7 Q. And that would bring us to Exhibit 229, which  
8 is Staff's response to Pac-West Data Request Number 28  
9 in which we're discussing that very testimony.

10 A. I'm there.

11 Q. And Staff has not conducted the same type of  
12 investigation that the New Hampshire staff did, has it?

13 A. No, it has not.

14 Q. Are you aware of whether the New Hampshire  
15 Commission has adopted the staff's recommendations?

16 A. I am not aware.

17 Q. Okay. And your concern is that VNXX when  
18 used for voice could be abused, is that --

19 A. Yes.

20 Q. Okay. And at least with respect to using it  
21 to access, well, the example that you gave, to access  
22 long distance carriers, correct?

23 A. Correct.

24 Q. You don't need VNXX to be able to do that  
25 though, do you?

0475

1 A. No, but it certainly makes it easier.

2 Q. I see. But you're not -- just because a  
3 service can be abused, is that in your view a good  
4 enough justification to ban the provisioning of that  
5 service all together?

6 A. Well, my position is that VNXX is not FX, and  
7 a service that's provided via VNXX for voice when we  
8 originally started this was only an ISP or my  
9 understanding was that most of the CLECs have said that  
10 the vast majority of the traffic over VNXX is ISP  
11 traffic. A service that's not ISP traffic that looks  
12 similar to what the people in New Hampshire have seen,  
13 it seems to open the door to toll bypass. I mean it  
14 violates, even by allowing VNXX even for a narrow  
15 purpose, violates what my testimony had stated during  
16 the beginning, that by doing so it violates the local  
17 calling areas as set up by this state and what I believe  
18 the rules of this state and the standards of the  
19 industry are. And we said we were willing to waive  
20 those, and we believe the Commission can rule on that,  
21 based on ISP traffic being good for the citizens of the  
22 state of Washington and VNXX allowing that to cover the  
23 state well. We are not willing to waive the rules of  
24 the state and the standards of the industry for voice  
25 traffic. We believe voice traffic could be handled in

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1 some normal manner.

2 Q. So you don't believe that it would be in the  
3 best interests of the rate payers in the state of  
4 Washington for CLECs to be able to provide American  
5 Airlines with a call center that has different numbers  
6 from different local calling areas to compete with  
7 Qwest's FX service provision using what you refer to as  
8 VNXX?

9 A. I believe they could do that today and do or  
10 did when I was working for a CLEC without using VNXX and  
11 by meeting the rules and standards.

12 Q. Okay. If you would please turn to Exhibit  
13 220, which is Staff's response to Pac-West Data Request  
14 Number 17, and in this data request the discussion has  
15 to do with call forwarding as a means of providing  
16 service to a customer who's physically located in one  
17 local calling area that wants to have a presence in  
18 another local calling area, correct?

19 A. That's correct.

20 Q. And is it your understanding that a CLEC can  
21 provide a call forwarding service like Qwest's Market  
22 Expansion Line or MEL?

23 A. I believe so.

24 Q. And that's true even though a CLEC may only  
25 have a single switch in the state of Washington?

0477

1           A.     Well, I heard ELI say they had at least  
2 three, I don't know what the other CLECs have, I haven't  
3 thought through a single switch, multiple switches they  
4 obviously could. If they call forward between local  
5 calling areas that are virtually translated within their  
6 one switch and the rules for what is an interexchange  
7 call and a local call still apply, then I don't see any  
8 reason why they couldn't technically.

9           Q.     Okay, well, again we're going back to our  
10 diagram, BR-1, just as an illustrative example. If the  
11 customer in the upper right hand off of the ELI switch  
12 labeled VNXX is actually a call forwarding customer,  
13 they have a Seattle telephone number, and they come to  
14 ELI and they say we want a local presence in Olympia,  
15 and ELI says, okay, we'll give you an Olympia telephone  
16 number along with your Seattle number so that a Qwest  
17 customer down in Olympia calls the Olympia telephone  
18 number that's been assigned to the ELI customer, that's  
19 then forwarded to the ELI customer's Seattle telephone  
20 number and then delivered to the customer. Is that an  
21 appropriate service?

22          A.     Let me walk through this to make sure I  
23 understood it. An ELI customer has obtained a call  
24 forwarding feature from ELI that remotely call forwards  
25 a call from a portion of the Olympia or the switch

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1 that's built for Olympia, the local calling area for  
2 Olympia, to Seattle. So let me go through the call flow  
3 to make sure I understand, because I don't know in my  
4 head. So an Olympia Qwest customer calls the call  
5 forwarded ELI number.

6 Q. Correct.

7 A. That's a local call. The call is transported  
8 over regular trunking to the ELI switch in Seattle,  
9 which then looks at the telephone number and says, this  
10 is call forwarded to one of my Seattle numbers, it then  
11 completes the call within its own switch at this point  
12 to the Seattle telephone number. That's a long distance  
13 call, and so ELI would somehow need to resolve that in  
14 their switch to pay whatever appropriate charges would  
15 be. But, you know, from a technical standpoint that's  
16 possible to do.

17 Q. Okay. And from a regulatory standpoint, do  
18 you see any issues with that?

19 A. Those are always harder to answer.

20 Q. I save the hard ones for last.

21 A. Yes, you do.

22 I believe as long as all the appropriate  
23 charges are accounted for that it's not a regulatory  
24 issue. I have not studied that, and I'm looking at a  
25 drawing on a piece of paper, but as long as the call

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1 that should be rated as a long distance call is rated  
2 appropriately and access charges are paid appropriately,  
3 then I don't see that that's a regulatory issue. I  
4 don't know how they would do that, but.

5 Q. Okay. And --

6 A. I'm sorry, I might add that, maybe it would  
7 simplify it in our minds a little bit, if the call  
8 forwarded call, the call from the Olympia number that's  
9 call forwarded to a Seattle number, it's possible that  
10 ELI would put that on a trunk group to an IXC to  
11 complete it as a local -- as a normal long distance  
12 call, and that would simplify in our minds at least  
13 where the charges apply, and then there's no question  
14 that that's okay regulatorywise.

15 Q. Okay, but I was focusing more on what you  
16 initially assumed, which was that ELI would carry the  
17 call from the Qwest central office in Olympia all the  
18 way to the customer itself over its own network.

19 A. The call forward function is not an issue as  
20 long as the correct charges are made appropriately.

21 Q. And in that scenario, then Qwest would owe  
22 ELI reciprocal compensation on the call from the Qwest  
23 customer to the Olympia forwarded number?

24 A. It would be a local call, so that would be  
25 appropriate.

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1 Q. Okay. So haven't what we just described,  
2 doesn't that also describe VNXX except it uses two  
3 telephone numbers instead of one telephone number?

4 A. Well, not really, because there's a long  
5 distance call involved also with appropriate charges,  
6 and, of course, it works quite a bit differently, not  
7 just with the two telephone numbers. But if the end is  
8 that the call goes to a Seattle customer who to the  
9 originator is a local call and free, then it resembles a  
10 VNXX, but it's not VNXX. It's the acceptable practice,  
11 and there's an interexchange call made in the middle  
12 that charges apply to that do not apply in a VNXX call.

13 Q. Okay. And again, I'm going to ask you as an  
14 engineer, would that be the way that you would design  
15 that call flow if you were looking at the most efficient  
16 way to design it from a technical perspective?

17 A. You should never ask an engineer if you want  
18 a lie. I would have to say that no, as an engineer that  
19 of course would not be the way I would want to design  
20 it. But as a regulatory engineer, I would have to say  
21 again that we don't get to choose the regulations we  
22 like, only the ones that are the rule of the state that  
23 we're in. So in this case, it makes us maybe engineer  
24 it in a different way, and if that's inappropriate, if  
25 technology has changed, moved forward, then those rules

0481

1 need to be changed, not bypassed, to be changed in the  
2 correct regulatory way.

3 Q. Okay. And if the Commission were to  
4 determine that VNXX as you have defined it is a  
5 legitimate exception to the guidelines, the COCAG  
6 guidelines that we discussed earlier, is it Staff's view  
7 that there's any other constraints on the Commission's  
8 ability to authorize VNXX service based on your analysis  
9 of the guidelines or the rules that are currently  
10 applicable in Washington?

11 MR. THOMPSON: I would object to that to the  
12 extent that it calls for a legal conclusion.

13 MR. KOPTA: Well, Mr. Williamson is talking  
14 about whether or not VNXX is a violation of guidelines  
15 and Commission rules, I'm simply asking him in the same  
16 capacity.

17 JUDGE MACE: He has been talking about the  
18 regulatory arena versus the engineering arena, I will  
19 allow the answer.

20 A. Would you say it again so I answer it  
21 correctly?

22 BY MR. KOPTA:

23 Q. Sure, let me break it down a little bit. I  
24 believe we discussed earlier that your position is that  
25 calls are determined based on the physical location of

0482

1 the calling and called parties unless there is an  
2 exception that's expressly listed in the COCAG  
3 guidelines or the Commission approves an exception; is  
4 that a fair characterization?

5 A. Yes, I believe it is.

6 Q. So I'm merely asking if the Commission were  
7 to determine that VNXX is an appropriate exception to  
8 the COCAG guidelines, are you aware of any other  
9 constraints on the Commission's ability to authorize  
10 carriers to provision service using "VNXX" type service?

11 A. I'm not aware of anything that would  
12 constrain this Commission's ability to allow VNXX.

13 Q. Okay, thank you.

14 A. Oh, I would, if I could finish a little bit  
15 of that question.

16 Q. Okay.

17 A. If that were the case, I would strongly ask,  
18 and I have said it in my testimony, that this Commission  
19 ask those carriers who do that to go to ATIS the  
20 appropriate standards organization, and strongly push  
21 that that be put in the document so that it reflects  
22 that that's okay to use.

23 JUDGE MACE: And what is ATIS?

24 THE WITNESS: I'm sorry, oh, now I'm going to  
25 have to remember, it American -- it's in my testimony.

0483

1                   JUDGE MACE:  If it's explained in your  
2 testimony, that's all right, we have to refer to that.

3                   THE WITNESS:  It's in there.

4                   MR. SMITH:  I think it's also in Mr. Linse's  
5 if I remember.

6                   JUDGE MACE:  Very well.

7 BY MR. KOPTA:

8           Q.       And are any commissions or commission staffs  
9 members of that body?

10          A.       When I looked there, it wasn't reflected,  
11 although we have talked at this Commission to begin to  
12 hopefully send someone to some of those meetings.

13          Q.       Okay.  And I assume that it would carry a  
14 little bit more weight to have the Commission come in  
15 advocating for something like that than CLECs, wouldn't  
16 you?

17          A.       More than CLECs?

18          Q.       Could you imagine?

19          A.       If the standards of the industry are going to  
20 be what I have testified to and what I'm sitting here  
21 taking the heat for, I would hope that this Commission  
22 would lend weight to that also, yes.

23                   MR. KOPTA:  Thank you, those are all my  
24 questions.

25                   JUDGE MACE:  And how about your exhibits.

0484

1 MR. KOPTA: I was just going to move  
2 admission of Exhibits 212 through 229.

3 JUDGE MACE: Is there any objection to the  
4 admission of those exhibits?

5 MR. THOMPSON: No objection.

6 JUDGE MACE: Then I will admit them.

7 MR. KOPTA: Thank you, Your Honor.

8 JUDGE MACE: All right, well, there's still  
9 several parties to cross-examine this witness, have you  
10 discussed an order for that?

11 Yes, Mr. Finnigan.

12 MR. FINNIGAN: Yes, I requested that I be  
13 allowed to go next.

14 JUDGE MACE: Go ahead if that's acceptable.

15 MR. ROGERS: That's fine with Level 3, we  
16 talked about that.

17 JUDGE MACE: Very well, go ahead.

18 MR. FINNIGAN: Thank you.

19

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

21 BY MR. FINNIGAN:

22 Q. Good afternoon, Mr. Williamson.

23 A. Good afternoon.

24 Q. It's true, isn't it, that the Commission has  
25 taken a strong position on the classification of the use

0485

1 of what's called voice over Internet protocol in the  
2 middle?

3 A. Yes, they have.

4 Q. And they did that in the Local Dial case; is  
5 that correct?

6 A. Yes, we did.

7 Q. You have mentioned holding times for  
8 residential calls and business calls, voice calls, do  
9 you know what an average holding time is for an Internet  
10 call, a call to an ISP?

11 A. I don't have the exact number, but the  
12 business is such that they want modems busy at all  
13 times, so during the heavier busy times of the day  
14 usually a modem will be used close to 60 minutes to the  
15 hour.

16 Q. So the record is clear, when we use the term  
17 holding time, what does that refer to?

18 A. It's the amount of time that a telephone line  
19 is in use through an hour.

20 Q. And it's true then that the holding time for,  
21 the average holding time for calls to ISPs are  
22 significantly longer than the holding times for a call  
23 to another business?

24 A. That's very true.

25 Q. Mr. Williamson, do you have Exhibit 230?

0486

1 A. I'm not sure I marked it, is that UT-971140?

2 Q. Yes, the Ninth Supplemental Order.

3 A. Yes, I have it.

4 Q. Do you recognize that document?

5 A. Yes, I do.

6 Q. Would you agree that that document created a  
7 substantial change in the access regimen for independent  
8 telephone companies in the state of Washington,  
9 incumbent independent telephone companies in the state  
10 of Washington?

11 A. It's not my area of expertise, but that's my  
12 understanding of what it did.

13 Q. Okay. And what's the date of the  
14 Commission's order?

15 A. It's here.

16 Q. I would refer you to the upper right-hand  
17 corner.

18 A. Mine apparently is cut off.

19 JUDGE MACE: That would be June 28, 2000, I  
20 think.

21 THE WITNESS: It's not on this copy.

22 BY MR. FINNIGAN:

23 Q. Would you accept subject to check that the  
24 Commission issued its order that's evidenced by Exhibit  
25 30 on June 28th, 2000?

0487

1 A. Yes, I would.

2 Q. Okay. In June of 2000, was dial-up access to  
3 Internet widely available?

4 A. Yes, it was.

5 Q. Was it being widely used?

6 A. I believe so.

7 Q. Mr. Williamson, it's true, is it not, that  
8 the national policy seems to be to encourage broadband  
9 access to Internet?

10 A. I believe that's true.

11 Q. And that would be broadband access to  
12 Internet as opposed to dial-up access to Internet; is  
13 that true?

14 A. Yes.

15 Q. Would you also agree that it's the policy of  
16 the state of Washington at least as expressed by the  
17 Governor's Office that it's the policy to encourage the  
18 deployment of broadband access to Internet?

19 A. Yes, I believe that's true.

20 MR. FINNIGAN: Thank you, that completes my  
21 cross, and I would ask Exhibit 230 be admitted.

22 JUDGE MACE: Is there any objection to the  
23 admission of Exhibit 230?

24 MR. THOMPSON: No objection.

25 JUDGE MACE: Hearing no objection, I will

0488

1 admit it.

2 Mr. Rogers.

3 MR. ROGERS: Yes.

4 JUDGE MACE: Go ahead.

5

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

7 BY MR. ROGERS:

8 Q. Good afternoon, Mr. Williamson.

9 A. Good afternoon.

10 Q. I don't know if you took the time to number  
11 the pages on your rebuttal testimony, but I thought that  
12 might be useful if you wanted to take the time now so  
13 that I can then go through and refer to page numbers  
14 with you.

15 A. Sure. Did you start with the cover page as  
16 1?

17 Q. No, I followed your initial page number 1 and  
18 went from there.

19 A. Okay, give me a minute and I will do that.

20 Did you end up at 25?

21 Q. I think we ended up at 24.

22 JUDGE MACE: I ended up with 24 too.

23 THE WITNESS: Well, then I must have two  
24 pages of something.

25 I was hoping you didn't ask any questions on

0489

1 page 17, I didn't number that one.

2 MR. ROGERS: I can promise not to ask any  
3 questions about page 25.

4 JUDGE MACE: Are you ready?

5 THE WITNESS: I am ready.

6 MR. ROGERS: Okay, thank you.

7 BY MR. ROGERS:

8 Q. Having done that, I would like to direct you  
9 to page number 2 at the beginning of your rebuttal  
10 testimony and just ask that you look at that question  
11 and answer beginning at line 7. And is that accurate  
12 that at that point in your testimony you're sort of  
13 going through the history of the virtual NXX cases  
14 development before the Commission?

15 A. Yes, as I know them.

16 Q. And then over on page 3 at line 6 you have a  
17 statement that says or is a quote, the Commission  
18 believes that these issues are more appropriately  
19 pursued in fact specific disputes, and you provide a  
20 quote to the investigation that was done, the  
21 declaratory ruling case I believe, that that was the  
22 conclusion, that the Commission concluded that virtual  
23 NXX would be more appropriately addressed in fact  
24 specific disputes on a going forward basis?

25 A. Yes, and that was actually the workshop that

0490

1 the Commission put on for a policy statement.

2 Q. Okay, thank you. And so then you follow that  
3 up with a statement, you know, at the end of that, such  
4 as the complaint in this docket as an example of  
5 following up on a more fact specific basis?

6 A. Yes.

7 Q. But there have been a number of other  
8 disputes where the Commission has looked at virtual NXX  
9 on a fact specific basis as well, correct?

10 A. That's true.

11 Q. And you walked through some of those in this  
12 section of your testimony citing to the Century Tel case  
13 that Level 3 had, the arbitration between Level 3 and  
14 Century Tel?

15 A. Yes.

16 Q. And as you went through that, you state that,  
17 you know, in the course of this that the finding in the  
18 arbitration was that ISP virtual NXX traffic would be  
19 allowed; would you agree with that?

20 JUDGE MACE: Where are you, counsel?

21 MR. ROGERS: It's now following the Century  
22 Tel discussion which starts at line 13 on page 3 and  
23 then continues over onto the top of page 4.

24 A. So are you at page 4 now with your question?

25 BY MR. ROGERS:

0491

1 Q. Well, I'm just asking generally is that your  
2 understanding of the Century Tel arbitration, and what  
3 you have said here is that virtual NXX was an issue and  
4 the finding was that virtual NXX for ISP-bound traffic  
5 would be allowed?

6 A. Yes, I believe that's the case.

7 Q. Okay. And then at the top of page 4 at line  
8 2, you state, also at that time the compensation rate  
9 between the two affected carriers was zero, i.e., bill  
10 and keep?

11 A. Yes.

12 Q. Do you see where I am?

13 A. Yes, I see where you are.

14 Q. And so you're stating that that was the  
15 compensation that the Commission established in the  
16 arbitration decision between Century Tel and Level 3; is  
17 that right?

18 A. Yes, that's what I understand, yes, that's  
19 what I wrote.

20 Q. Now so on its face it's not entirely clear  
21 why they came to that conclusion. Do you have an  
22 understanding as to why that might have been determined  
23 to be the proper terminating compensation rate between  
24 those two carriers?

25 A. No, I don't.

0492

1 Q. Are you familiar with the restriction that  
2 was in the ISP Remand Order called a new market  
3 restriction?

4 A. Somewhat.

5 Q. Would you have any reason to dispute if I  
6 represented to you that Level 3 entering into Century  
7 Tel territories at this time would have been a new  
8 market entry for ISP services?

9 A. I believe that's before the Core order, so I  
10 think I agree with you, yes, that would be new.

11 Q. Okay. And so you go into the Core cases that  
12 came before the Commission, the compliance or petitions  
13 that Level 3 and Pac-West brought against Qwest to try  
14 to enforce the FCC's Core Forebearance Order, correct?

15 A. Yes.

16 Q. Do you understand the Core Forebearance Order  
17 to have lifted the new market restrictions?

18 A. That's my understanding.

19 Q. And so arguably Level 3 could also have  
20 brought a Core forbearance enforcement action seeking  
21 terminating compensation for ISP-bound traffic with  
22 Century Tel if it had any, could it not?

23 A. I believe so.

24 Q. Assuming the basis of the bill and keep rate  
25 was in fact a new market restriction?

0493

1 A. Right.

2 JUDGE MACE: Try not to talk over each other  
3 if you can, it makes it harder for the court reporter.

4 MR. ROGERS: Should we go through that  
5 question and answer again?

6 JUDGE MACE: I think yes, if you would do  
7 that.

8 MR. ROGERS: Okay.

9 BY MR. ROGERS:

10 Q. The question is assuming that the reason that  
11 the terminating ISP compensation rate was set at bill  
12 and keep was because of the new market restriction that  
13 existed at the time the order came down from the  
14 Commission, couldn't Level 3 now go back and seek the  
15 lifting of that new market restriction after the Core  
16 Forebearance Order?

17 A. I don't know the reason why it was set at  
18 zero, but if I use your assumption that it was because  
19 of the new market rule, it's my belief that Level 3  
20 could come back and seek to have that changed.

21 Q. Okay.

22 A. But I don't know that.

23 Q. You're familiar with how the cases that  
24 Pac-West and Level 3 brought have worked their way  
25 through the Commission and then on appeal and now back,

0494

1 they're coming back to the Commission on remand, are you  
2 familiar with all of that?

3 A. Yes, I am.

4 Q. Okay. And is it your understanding that now  
5 that the Washington Commission will have the opportunity  
6 to determine what the proper treatment is for virtual  
7 NXX after it's remanded back in those cases, that that's  
8 the effect of the remand I guess is what I'm asking?

9 A. And I'm not an attorney, but my understanding  
10 of the remand was that the Court in Seattle believed  
11 that this Commission was not held by the FCC to not be  
12 able to consider VNXX, that all ISP traffic was not to  
13 be considered together, but it could look at it  
14 separately as local or toll. And so yes, I guess that  
15 means that they can decide now that it's remanded back  
16 what they consider VNXX to be.

17 Q. Okay, and it's the last part of your answer I  
18 guess that I was asking a question about is it was  
19 really just procedurally rather than an interpretation  
20 of what the order says or means except to say that it's  
21 now back before the Washington Commission for  
22 determination of its own accord of how to treat virtual  
23 NXX?

24 A. I can accept that. I don't have that in  
25 front of me, but I can accept that it's coming back to

0495

1 be relooked at by this Commission.

2 Q. Okay. And you have said in this case I  
3 believe on cross-examination with Mr. Kopta that you're  
4 now recommending that virtual NXX ISP-bound traffic as  
5 you have described it in your determining, you know,  
6 what that is in your testimony should be subjected to a  
7 bill and keep terminating compensation structure; is  
8 that right?

9 A. Yes, that's right.

10 Q. Are you aware of any other instances where  
11 the WUTC has ordered interconnecting carriers to  
12 exchange traffic with no compensation?

13 A. I don't know.

14 Q. In recommending a bill and keep rate  
15 structure for virtual NXX ISP-bound traffic, is it your  
16 understanding or assumption that the traffic between the  
17 two carriers would be in balance?

18 A. No, just the opposite.

19 Q. Do you believe that the traffic that is  
20 generally speaking I guess one-way, it's one  
21 directional, right, is what you mean by just the  
22 opposite?

23 A. Yes, it's one direction.

24 Q. Is it your position that that does not have  
25 any costs associated with it for transport and

0496

1 termination?

2 A. No, that's not what I had in mind. The  
3 reason that Staff discussed and decided that bill and  
4 keep would be the best method is that it follows what  
5 the FCC set out to do, or at least I understand what  
6 they set out to do in the ISP Remand Order when they  
7 began to step down reciprocal compensation in 3 steps to  
8 .007. But they stated in that order that they thought  
9 bill and keep was the best method, and that's what they  
10 were headed for.

11 Q. Were you here during my cross-examination of  
12 Mr. Brotherson yesterday?

13 A. Most of it.

14 Q. Do you remember the back and forth that we  
15 had a little bit about the state of the ISP Remand  
16 Order?

17 A. Oh, that it's in flux?

18 Q. Do you recall that is my first question?

19 A. I remember you talked about it.

20 JUDGE MACE: Again, please try not to talk  
21 over each other. You don't have to repeat this  
22 exchange, but please try to avoid it.

23 MR. ROGERS: Okay.

24 BY MR. ROGERS:

25 Q. My question is, as the ISP Remand Order rate

0497

1 structure currently stands, what is the rate that it  
2 represents?

3 A. I believe the last of the 3 steps that they  
4 stepped down to keep from having rate shock was .007  
5 cents per minute.

6 Q. And so what you're recommending is a further  
7 step down from that point, and on what basis? I'm not  
8 sure I understand.

9 A. On the basis of what the FCC said in their  
10 ISP Remand Order, that to stop the arbitration of the  
11 asymmetrical traffic that bill and keep was more  
12 appropriate, and the carriers involved would need to  
13 collect from their customers to cover their costs  
14 instead of collecting from other carriers to cover their  
15 costs. I hope I said that correctly.

16 Q. During your cross-examination question and  
17 answer with Mr. Kopta, you both made reference to the  
18 California case, and I'm going to call that the Peevey  
19 decision. Is that the same decision that you had in  
20 mind when you were having that back and forth? You  
21 provide a citation in your rebuttal testimony.

22 A. I believe the Peevey case was the court  
23 decision that followed the decision in California, is  
24 that correct?

25 Q. Well, let me, rather than guess, let me just

0498

1 point you to Footnote 2 on page 3 of your rebuttal  
2 testimony.

3 A. Yes, Ninth Circuit decision.

4 Q. The Ninth Circuit decision. As I listened to  
5 that, that was the case I believed you were talking  
6 about or referring to, was that --

7 A. Yes, I believe that's the case.

8 Q. -- what you had in mind too?

9 A. Yes.

10 Q. Now during that back and forth, I understood  
11 you to say that you thought a bill and keep terminating  
12 rate represented a compromise between what this case  
13 said with respect to originating charges being imposed  
14 on virtual NXX traffic while still allowing for  
15 terminating charges to be imposed as well.

16 JUDGE MACE: And the this case is the Peevey  
17 case?

18 MR. ROGERS: The Peevey case.

19 A. I believe that's what our discussion was.

20 BY MR. ROGERS:

21 Q. And so was that how you arrived at your  
22 recommendation for a bill and keep rate is that rather  
23 than having originating charges and terminating charges,  
24 you would just call it even and have a rate of zero?

25 A. Well, I don't believe that I decided to just

0499

1 call it even. We not only looked at California, but we  
2 looked at a number of other states including Oregon,  
3 which just decided here not too long ago, and a number  
4 of those states decided also to do bill and keep. Some  
5 added another item like transport cost to be paid for by  
6 the CLEC, some were much more complex like California,  
7 and our discussions at Staff was that we would be better  
8 to keep to a simpler compensation rate that appeared to  
9 be fair to both parties, but one that could be kept and  
10 not argued for the foreseeable future.

11 Q. If I can direct your attention now to your  
12 direct testimony, and specifically to page 8 of your  
13 direct testimony.

14 A. I'm there.

15 Q. Okay. Line 1 at the very top, you state:  
16 There are two distinct types of access  
17 charges, switched access and special  
18 access. Only switched access charges  
19 are at issue in this case.

20 A. That's what it says.

21 Q. Is that still your position in this case?

22 A. I believe so.

23 Q. We have talked a lot about whether a CLEC  
24 could have transport to a local calling area in a  
25 virtual NXX arrangement and, you know, specifically the

0500

1 ELI diagram. Isn't that essentially a special access  
2 arrangement as opposed to a switched access arrangement  
3 that we have been referring to in that diagram?

4 A. It's a private line arrangement. A special  
5 access I believe is a little different in, but it's not  
6 my expertise, for connecting to IXCs on a direct  
7 connection.

8 Q. So let me just be clear I understand what  
9 you're saying here on page 8. Is it your position that  
10 you could not come to an originating compensation  
11 arrangement that was a dedicated facility as opposed to  
12 paying on a per minute of use basis if originating  
13 compensation were in fact required?

14 A. We decided on bill and keep, that's all I can  
15 tell you. I don't know where you're headed. What do  
16 you need me to answer?

17 Q. Well, the question is, you know, in Peevey  
18 there was a recognition that there could possibly be  
19 originating compensation, and my question is, couldn't  
20 that originating compensation come in the form of  
21 transport between the CLEC switch or point of  
22 interconnection and the local calling area?

23 A. I suppose it could. My remembrance of Peevey  
24 was that along with the originating charge and the  
25 reciprocal compensation charge, there was also a need

0501

1 for the CLECs to pay for transport. In Oregon, who  
2 chose bill and keep, they also said that the CLEC had to  
3 pay for transport, and here we chose not to add that  
4 burden to the CLECs.

5 Q. But what you're proposing would be a mandated  
6 compromise for the parties, would it not?

7 A. Oh, I believe that the parties could have  
8 negotiated this themselves, and in this case we're  
9 saying that if VNXX is going to be allowed in this state  
10 that it should be at bill and keep. So if that's a  
11 mandated compromise, then yes.

12 Q. If I can turn your attention to the top of  
13 page 6 of your rebuttal testimony now.

14 A. I'm there.

15 Q. And the question and answer here has to do  
16 with the Central Office Code Assignment Guidelines?

17 A. Yes.

18 Q. And how you have interpreted those guidelines  
19 versus how other witnesses in this case have interpreted  
20 those guidelines or would recommend interpreting them?

21 A. I guess I could agree to that.

22 Q. You state or the question is, both ELI  
23 witness Mr. Robins and Level 3 witness Dr. Blackmon  
24 testified that Staff makes too much of the rules found  
25 in the COCAG, and then you answer, no, I don't agree

0502

1 that I'm making too much of the rules.

2 A. Correct.

3 Q. But isn't your testimony and your position  
4 fundamentally that the rules are the rules, and the  
5 rules don't allow for any flexibility, we have no choice  
6 but to follow the rules, isn't that fundamentally what  
7 your conclusion is in this case?

8 A. Well, I don't see much purpose for rules if  
9 they're not to be applied equally to everybody. Since I  
10 am an engineer, I feel the importance of standards and  
11 rules, and from a technical point of view if you -- if a  
12 carrier chooses not to follow a standard, it means their  
13 network may not be able to talk together. But in this  
14 case it's more of a regulatory rule, and if it's not  
15 followed by all carriers, then it allows for arbitrage,  
16 and it could be in your favor once and against you  
17 another time. So what I testified to is that this is  
18 what I believe the rule says, this is what I believe the  
19 FCC said about it, and that it should be followed by all  
20 carriers.

21 Q. And what you believe the rule to say is that  
22 in order to obtain and use telephone numbers, you must  
23 be physically present in the local calling area that's  
24 associated with that telephone number, you the end user  
25 must be physically present, period; is that correct?

0503

1           A.     With the exception of FX service, that's  
2     quoted in the COCAG.

3           Q.     And that is the only exception that exists?

4           A.     It's the only exception listed in the COCAG.

5           Q.     And so why would it say exceptions exist for  
6     example if there were indeed only one exception?

7           A.     I don't know, but on the other hand why would  
8     it say exceptions and only list one. The standard that  
9     this is with the importance that the FCC put on it I  
10    would fully expect if there was more than one exception  
11    that those would be mentioned also, and they're not  
12    anywhere in the document.

13          Q.     And so again in the end you're saying that in  
14    effect the Washington Commission's hands are tied  
15    because the rule says that you have to be physically  
16    present or it has to be an FX service, and that's the  
17    only acceptable arrangement for use of telephone  
18    numbers?

19          A.     Without the COCAG in front of me, my  
20    understanding of the way the rules are written, that the  
21    COCAG is the rule, but state commissions can say  
22    otherwise, but you can't just because you don't like the  
23    rule not follow it. And also my understanding from  
24    earlier testimony is that VNXX has been in existence for  
25    a long time, and I think in your conversation with one

0504

1 of the other witnesses you brought that out, and if VNXX  
2 had been an important issue for the carriers that use  
3 it, I would have thought that they would have brought  
4 that issue to the organizations they belong to, ATIS,  
5 which by the way will -- and NANC and resolve that issue  
6 at the standards organization.

7 Q. You're aware that there is an intercarrier  
8 compensation docket open at the FCC?

9 A. Yes, I am.

10 Q. You have heard of the Missoula plan as one  
11 proposal for a solution to the intercarrier compensation  
12 difficulties in the industry today?

13 A. Yes, I have.

14 Q. Are you aware that the Missoula plan has  
15 advocated working with ATIS to revise the numbering  
16 assignment rules to deal with virtual NXX?

17 A. I'm not aware of that, but I hope they do,  
18 but it's not done now on my understanding.

19 Q. But you have said that you would like to see  
20 it be in the works, and do you understand that it is in  
21 the works?

22 A. I personally do not know that it's in the  
23 works, I have not seen that. I would be very happy if  
24 it had been decided and I wouldn't be standing here  
25 having the discussion with you. But I do believe that

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1 it needs to be decided and be in writing for all  
2 carriers, whatever their decision is.

3 Q. Going back to page 6 of your testimony, at  
4 the very bottom you have a citation to a Maine decision,  
5 a Maine Commission order on virtual NXX; do you see  
6 where I am?

7 A. I see where you're at.

8 Q. Footnote 10?

9 A. But that was included in an FCC notice of  
10 proposed rulemaking, the FCC 01132 I believe.

11 Q. Okay.

12 A. So they were quoting from the Maine decision,  
13 yes.

14 Q. Are you familiar with the Maine Brooks Fiber  
15 order itself?

16 A. There were a number of reasons, I don't have  
17 them all, there were a number of reasons that Brooks  
18 Fiber was having problems in Maine, one of them was the  
19 use of VNXX.

20 Q. Are you aware of the ultimate outcome of that  
21 case, what the Maine Commission put in place in its  
22 attempt to solve for the virtual NXX problem?

23 A. I don't remember, but I have the case, we can  
24 look at it, but I'm sure you will be able to tell me.

25 Q. Well, my question is first are you aware, are

0506

1 you familiar with how they decided to resolve it since  
2 you have cited it in your testimony?

3 A. They my understanding is that they asked  
4 NANPA to take away the NXXs that Brooks Fiber had in use  
5 because they didn't meet the standard. I did call the  
6 director of NANPA to find out if that had actually  
7 happened, and it's my understanding from New Star that I  
8 believe it was 50 or 55 NXXs were taken away from Brooks  
9 Fiber in that decision.

10 Q. Are you also aware that the Maine Commission  
11 prohibited FX services from being offered?

12 A. No, I'm not, but so has Oregon.

13 Q. Do you think that's a reasonable resolution  
14 to the virtual NXX issue, which is to say that all FX  
15 like services will be subjected to this same treatment,  
16 which is what happened in Maine, that the ILEC as well  
17 as CLECs were all subjected to the same FX regime; is  
18 that a fair resolution to the problem?

19 A. Well, it's oneresolution. I would note,  
20 although I don't have them with me, that a number of  
21 states have either banned or limited VNXX and didn't  
22 include FX. It is one option, I have not looked at  
23 that.

24 Q. Are you aware that in Maine the way they  
25 resolved to address the transport component of an FX

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1 service was to require that Verizon offer a PRI  
2 transport service at a steep discount to anyone who  
3 wanted to use it for FX like services?

4 A. I am not aware, but subject to check, unless  
5 you have that information, I will accept that.

6 Q. Can I turn your attention to page 9 of your  
7 rebuttal testimony.

8 A. I'm there.

9 Q. In the question and answer starting at line  
10 11 and the answer beginning on line 16, you state that  
11 voice over Internet protocol number assignment practices  
12 don't change your mind about how you interpret the COCAG  
13 rules; is that accurate?

14 A. That's true.

15 JUDGE MACE: Counsel, where are you now?

16 MR. ROGERS: Page number 9, the question and  
17 answer beginning at line 11 and the answer then  
18 beginning at line 16.

19 THE WITNESS: I think maybe the lines don't  
20 quite match.

21 JUDGE MACE: Yes, my lines don't match up  
22 with that, it looks a little different to me. Are you  
23 in the direct testimony or the rebuttal testimony?

24 MR. ROGERS: Rebuttal.

25 THE WITNESS: I think it is correctly page 9,

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1 but my question begins on line 9 and ends at 13, and the  
2 answer on my copy starts at 14.

3 MR. ROGERS: I apologize that the lines don't  
4 match up, but the section on what you're talking about,  
5 what you get into is the discussion of the Vonage order,  
6 are we in the same place?

7 THE WITNESS: Yes.

8 BY MR. ROGERS:

9 Q. Okay. Now if I understood your testimony  
10 during your cross-examination earlier, your position is  
11 that voice over IP is not part of this case, you're not  
12 talking about virtual NXX services that are voice over  
13 IP services in making your recommendation?

14 A. I'm not sure that's what I said. I believe I  
15 said that at the time I made the recommendation I had  
16 not thought of access to voice over IP using VNXX to  
17 access VoIP. And what I stated in my testimony, if I  
18 remember correctly, is that NANC, the North American  
19 Numbering Council, had been studying the issue of VoIP  
20 numbering and that the FCC's normal rule about a carrier  
21 seeking telephone numbers having to say that they will  
22 use those numbers in the area that they're receiving  
23 them for and will use them for six months, that the FCC  
24 waived the rule that they use those numbers in the same  
25 area. So my thought while I was writing the testimony

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1 was that not VNXX but the use of telephone numbers by  
2 VoIP.

3 Q. In the Vonage preemption order, the FCC  
4 asserted its jurisdiction over voice over IP services  
5 because of their inherently interstate nature; would you  
6 agree with that?

7 A. Yes, that's what they said I believe.

8 Q. The services were determined to be inherently  
9 interstate because an IP end point is capable of being  
10 anywhere on the Internet at any given point in time, is  
11 that accurate, would you agree with that description?

12 A. That's my understanding of what they said.

13 Q. And you're familiar with 911 developments and  
14 how you deal with 911 in an environment like that where  
15 an IP end point can pop up anywhere on the Internet at  
16 any time?

17 A. Yes, I am.

18 Q. You have been in the room while we talked  
19 about Qwest's voice over IP offerings and their OneFlex  
20 service?

21 A. Yes, I was.

22 Q. And have you looked at the diagrams that we  
23 referred to during their testimony while they were on  
24 the witness stand, demonstrated call originating in  
25 Seattle with an end user with an IP end point and a

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1 telephone number in Dallas?

2 A. Yes.

3 Q. So you're aware of the fact that Qwest is out  
4 offering virtual number capabilities with voice over IP  
5 services?

6 A. That's what I heard them say.

7 Q. And so how is it, I'm not sure I understand  
8 then how the Washington Commission doesn't have a role  
9 in looking at virtual NXX, recognizing that Qwest among  
10 other parties in this proceeding are actively engaged in  
11 virtual numbering practices?

12 A. Well, my understanding from that conversation  
13 and the drawings was that Qwest, or other carriers that  
14 do the same, buys connectivity to each local calling  
15 area, most often through a primary rate service, and  
16 then connects it to their location, their POP, where  
17 their customer has a gateway that then converts it to  
18 IP. So the calls that flow on the PSTN start in a local  
19 calling area and basically terminate in a local calling  
20 area because it's an FX type service that the primary  
21 rate provide. So, you know, whether we agree or don't  
22 agree on FX, the way it exists today if my understanding  
23 is correct from the drawings and conversations, the PSTN  
24 call originated in one local calling area, terminated in  
25 another local calling area, so it wasn't VNXX, that was

0511

1 my understanding.

2 Q. So are you in effect again saying that you  
3 have to do it like Qwest does it in order for it to be  
4 okay?

5 A. No, but I am again saying that it's my  
6 opinion that a local call originates from one local  
7 calling area and terminates in the same local calling  
8 area, and a call that originates in one local calling  
9 area and terminates in another local calling area is a  
10 long distance call, an interexchange call. How you  
11 design your business plan is your business plan.

12 Q. Are you familiar with the ESP exemption?

13 A. Yes.

14 Q. And Mr. Brotherson's description of the ESP  
15 exemption as an ESP as an end user that is able to buy  
16 local exchange services from a local exchange carrier?

17 A. That's my understanding.

18 Q. And by doing so is not subjected to access  
19 charges?

20 A. That's my --

21 Q. That the ESP does not have to pay access  
22 charges?

23 A. Yes, that's my understanding.

24 Q. If Level 3 formed or had an ESP entity in the  
25 same way that Qwest has an ESP entity and it put in

0512

1 place an intracompany transaction with itself where  
2 Level 3 the CLEC sold local exchange service to its ESP,  
3 would it also qualify then for virtual numbering and be  
4 able to obtain and use telephone numbers in a virtual  
5 manner?

6 A. If Level 3 had a separate entity that was ESP  
7 or ISP with an ESP exemption, it would apply as long as  
8 it routed the traffic the same way that Qwest explained  
9 they do, that it has a physical location in each local  
10 calling area that the calls originate from.

11 Q. You testified during cross-examination with  
12 Mr. Kopta and I think in your testimony, in your  
13 rebuttal testimony, that FX service is very expensive.

14 A. It's my belief that it's expensive, yes.

15 Q. And you also seem to agree that from an  
16 engineer's perspective, requiring network architecture  
17 that would require triple transport on an originating  
18 call, transport from the originating carrier to a point  
19 of interconnection that's in another local calling area  
20 and then transport back to the originating local calling  
21 area and then transport back out of that originating  
22 local calling area for termination, would be a very  
23 inefficient network architecture; would you agree with  
24 that?

25 A. Yes, but the inefficiency is a business plan

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1 that a particular carrier decided on, to either have one  
2 switch or two switches or three switches. It's  
3 inefficient, it wouldn't be the way I designed my  
4 network, but there may be other ways that I would design  
5 around that inefficiency. What is important is that the  
6 rules of the road apply to everybody fairly and are very  
7 technologically agnostic. The Commission shouldn't make  
8 its decision on the design of one network over another,  
9 the rules should apply to everyone. And if the rules  
10 have become stale and old, then the rules should be  
11 changed, and that's a way to fix the issue.

12 Q. But again, it seems to me that you're making  
13 everyone else play by Qwest's game. You have said that  
14 FX service is very expensive, but that's really the only  
15 solution available. Isn't that really where we wind up  
16 with your recommendation?

17 A. What I have said is that the rules apply to  
18 everyone equally, and if the rules are wrong, then the  
19 rules should be changed. I do not get to choose the  
20 regulatory rules that I like and those that I don't. As  
21 a regulator, we have to apply the rules that are in  
22 existence today.

23 Q. Did you take into account the consequences or  
24 the impacts that such a position has on consumers and  
25 the public interest in Washington in developing a

0514

1 recommendation?

2 A. Obviously we did, and that's why we decided  
3 bill and keep would be a fair manner instead of  
4 outlawing VNXX all together.

5 Q. But again, I'm not sure, so you're talking  
6 only about ISP-bound traffic in saying that you believe  
7 that to be the proper --

8 A. Yes.

9 Q. -- terminating compensation structure?

10 A. Yes.

11 Q. And you're not talking about what would  
12 happen with voice over IP, correct?

13 A. No, I think when we -- when Mr. Kopta and I  
14 talked about that issue, I said that I didn't believe my  
15 mind was made up on that issue yet, that it was one I  
16 had not thought through, so I don't believe the  
17 Commission has a position on that.

18 Q. And if a CLEC were to establish a dedicated  
19 special access line to the local calling area to  
20 establish a physical presence, would that constitute a  
21 local call, or is that a virtual NXX call, if they've  
22 got the transport, they're paying for the transport to  
23 the local calling area and that's where they pick it up,  
24 so my question then ultimately -- well, let me just stop  
25 there, I apologize.

0515

1           A.     Depends on what the transport is for.  If the  
2 transport is to connect to a customer physically in the  
3 area, that's one issue.  If the transport is transport  
4 that you provide to a POI in your piece of the transport  
5 for trunking, then that's a different issue.  So I'm not  
6 sure which you're talking about.

7           Q.     Well, I guess what my question is is  
8 generally speaking if a CLEC establishes and pays for  
9 transport between its switch in the local calling area  
10 where the call is originating and its terminating  
11 locally dialed ISP traffic, what rate are you  
12 recommending apply to that situation?

13          A.     I hate to do this to you, but could we go  
14 through the call flow so I make sure I understand what  
15 you're saying.

16          Q.     Sure.

17          A.     Maybe even with the drawing.

18          Q.     Okay, looking at BR-1, and if you assume a  
19 Qwest end user in the Olympia rate center is dialing an  
20 ISP and making a local call to do so, and ELI picks up  
21 the traffic at the Qwest end office and pays for the  
22 transport back to its switch in Seattle, what is the  
23 terminating compensation that ELI can charge for that  
24 ISP call if it has an ISP customer?

25          A.     If I understood you correctly, that's not a

0516

1 VNXX call, it's an FX service, the call from the Qwest  
2 customer -- I don't think I understood you correctly  
3 then. The call from the Qwest customer goes to the ELI  
4 switch in Seattle, back to an ISP in Olympia, and then  
5 back to Seattle to a -- no zigzag is --

6 Q. Well, all I'm saying is ELI then terminates  
7 it. Right, I didn't get into the zigzag back and forth.  
8 I'm just saying when ELI transports it from the Olympia  
9 rate center, has it established a physical presence in  
10 the Olympia rate center such that it's no longer virtual  
11 NXX?

12 A. Is the ELI connection at the Qwest switch, is  
13 that what you're saying?

14 Q. The Qwest circle in the lower left corner,  
15 right.

16 A. But trunks connected to the Qwest switch, are  
17 those trunks we're talking about or -- must be.

18 Q. Well, my question is what is it I guess, what  
19 would be required? I'm saying they're paying for the  
20 carrying of the traffic from the Qwest end office, and I  
21 don't care how, they pay from the Qwest circle in the  
22 lower left corner, and they take it to the ELI switch,  
23 and they terminate it, and so what is the terminating  
24 compensation that's due?

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

0517

1 to this question. Perhaps it's a little unorthodox, but  
2 I personally did not understand it, and so I guess my  
3 objection is vague, doesn't set sufficiently clear  
4 parameters to understand what's being asked. For  
5 instance, Mr. Rogers twice used the reference to they  
6 and once used the reference to terminate without being  
7 clear in terms of who they were or what terminate means  
8 or where the ISP is. And so that is the basis for my  
9 objection, the question is vague, and I would ask that  
10 it be restated.

11 MR. ROGERS: I'm happy to restate, Your  
12 Honor.

13 JUDGE MACE: Go ahead.

14 BY MR. ROGERS:

15 Q. Perhaps we can just start over, is that okay,  
16 Mr. Williamson?

17 A. Yes.

18 Q. Okay, let's assume that we have a Qwest basic  
19 local exchange end user in Olympia.

20 A. Okay.

21 Q. And they are making a local call to their  
22 ISP. Are you with me?

23 A. They're dialing another Olympia number?

24 Q. The Qwest basic local exchange end user wants  
25 to make a local call to its ISP.

0518

1                   MR. THOMPSON:  Could I just interject for  
2 clarification, maybe the confusion is over local, I mean  
3 is the --

4                   MR. ROGERS:  I'm hoping Mr. Williamson can  
5 help me.

6           A.       Well, maybe we can do it and work our way  
7 into it.  If the ISP is in Olympia and has an Olympia  
8 number and gets its service from Qwest, it's all very  
9 simple on the drawing.  The Olympia customer dials the  
10 number, the Qwest office sees that it's one of their  
11 customers, puts it on a cable pair to a modem in  
12 Olympia.  That's the simple starting point, and now of  
13 course it changes and gets more complex.  If the Olympia  
14 customer calls their ISP who gets service from ELI but  
15 physically has their modems in Olympia, the call would  
16 go from the Olympia customer to the Olympia switch to  
17 the ELI switch in Seattle back on physical dedicated  
18 connection to the modems in Olympia.  So we were okay  
19 that far?

20 BY MR. ROGERS:

21       Q.       Well, I think you're answering my original  
22 question, so you can go ahead.  I mean my question is I  
23 don't understand what you're recommending or what  
24 qualifies as a local or FX service and what doesn't  
25 qualify as a local or FX service.

0519

1           A.     Oh, I thought we had gone through that with  
2 Mr. Kopta a number of times. It requires a zigzag in my  
3 mind to be a classic FX.

4           JUDGE MACE: Hold on, I actually do think he  
5 has gone through this several times, and I don't want to  
6 have to go over it all over again if possible.

7           MR. ROGERS: I can appreciate that, Judge. I  
8 think what he just said really is what I was trying to  
9 clarify for my own benefit.

10          JUDGE MACE: Okay.

11 BY MR. ROGERS:

12          Q.     Which is it requires the zigzag?

13          A.     Yes, the physical presence in Olympia of both  
14 parties, the modem and the originator.

15          Q.     Okay, thank you.

16                 Why does it make good public policy sense to  
17 force a more expensive, less efficient network  
18 architecture into the marketplace that will ultimately  
19 affect end users and the carriers that are providing  
20 service to those end users?

21          A.     It comes back to the answer I gave you  
22 earlier about what rules or regulations we as regulators  
23 can choose to keep in place or to make all carriers  
24 follow. If the rules require it, then it is required by  
25 all carriers until those rules are changed. Any carrier

0520

1 who thinks their worth is being lessened by rules in  
2 place can seek to change those rules. The rules right  
3 now require that or my understanding require that for a  
4 local call, the originator and terminator have to be in  
5 the same local calling area. I don't get to decide  
6 because I like the way you look or I like your service  
7 that it's okay for you to do it differently but not okay  
8 for them. That's policy, that's the best policy, it  
9 needs to be changed if it's inappropriate.

10 Q. And you don't think that the Washington  
11 Commission has the ability to look at the public  
12 interest and make a public policy determination that it  
13 thinks is in the public interest even if it requires a  
14 more flexible reading of the rule than what you have  
15 provided in your testimony?

16 A. I think that what I have asked this  
17 Commission to do is just that, that I have said in my  
18 testimony that the rules say that a local call is  
19 originated and terminated in the same local calling  
20 area, and VNXX does not meet that, but that we as Staff  
21 have asked the Commission to be flexible enough to allow  
22 VNXX to be used for ISP access because it's in the  
23 interests of the public.

24 Q. I want to follow up on a couple of questions  
25 that both Mr. Kopta and Mr. Finnigan asked relating to

0521

1 the voice call that is in your estimation an access  
2 avoidance service, and the Local Dial case was the  
3 example that Mr. Finnigan gave; do you remember that  
4 line of questioning?

5 A. Yes, I do.

6 Q. And the question that Mr. Kopta asked is in  
7 effect, if I understood it correctly, why ban all  
8 services to protect against the possibility that someone  
9 could use the service inappropriately, why would the  
10 Commission take that approach as opposed to the approach  
11 it took in the Local Dial case?

12 A. Actually, I see it just in reverse. I see  
13 the Commission keeping the rules in place that exist  
14 today for that voice traffic, but allowing an exemption  
15 for ISP-bound traffic. I don't see it in the negative,  
16 I see it in more of the positive. If the Commission  
17 were to continue to keep the rules as I see them and as  
18 I have testified, then VNXX would be banned all  
19 together. But in this case, we have asked for them to  
20 allow an exemption for ISP traffic.

21 Q. And again, just so I'm clear, that does not  
22 apply to voice over IP services in your position, your  
23 recommendation?

24 A. And what I have said, sadly, is that I have  
25 not come to that decision.

0522

1 Q. Okay. So in your testimony, your rebuttal  
2 testimony, at the end you refer to the New Hampshire  
3 Commission and how it has approached virtual NXX; do you  
4 recall that?

5 A. Yes.

6 MR. SMITH: Page number?

7 MR. ROGERS: Page 24 where he has the New  
8 Hampshire discussion.

9 THE WITNESS: It actually starts on page 22  
10 through 23 and 24.

11 MR. ROGERS: Okay, I agree.

12 BY MR. ROGERS:

13 Q. Are you familiar with how long the New  
14 Hampshire Commission has wrestled with the virtual NXX  
15 issue?

16 A. A long time. I think I testified that it was  
17 that they had started stating it in October of 2000 on  
18 page 23 of my testimony. At least that's the first I  
19 saw that they began to look at it.

20 Q. And I think you have presented in your  
21 testimony that where it currently stands is that staff  
22 has written a memo with a recommendation to the New  
23 Hampshire Commission; is that your understanding?

24 A. My understanding of where it sits is that the  
25 recommendation or the rulings that the New Hampshire

0523

1 Commission originally came up with for an overlay for  
2 technical access to ISPs as well as CLEC FX services are  
3 all kind of on hold at the moment, and staff did a study  
4 and then wrote a report to the commission, and that's  
5 what I'm quoting from.

6 Q. Do you understand that the reason it's on  
7 hold is because they're considering voice over IP  
8 services and virtual NXX as it relates to voice over IP  
9 services presently?

10 A. I understand that's one of the reasons, yes.

11 Q. And do you understand that because they are  
12 undertaking an investigation and working to understand  
13 voice over IP that the New Hampshire Commission has not  
14 in fact implemented the virtual NXX solution that you're  
15 referring to here in your testimony?

16 A. I thought that I just -- are you talking  
17 about what New Hampshire did or what I have said and  
18 they are on hold for?

19 Q. What New Hampshire has done.

20 MR. THOMPSON: Could we have a reference to a  
21 page of the part of the testimony where he testifies to  
22 what New Hampshire has done.

23 MR. ROGERS: He is in this section talking  
24 about why are you recommending that virtual NXX be  
25 prohibited, and then he goes to reference the New

0524

1 Hampshire PUC's efforts with respect to virtual NXX. So  
2 I understand that to be a question about what can be  
3 done, and here's an example of what the New Hampshire  
4 Commission has done.

5 A. I didn't in my testimony state what New  
6 Hampshire did, you know, what their rulings were. All I  
7 said is that New Hampshire staff has found these  
8 particular issues that they're concerned with.

9 BY MR. ROGERS:

10 Q. Okay, and my question was, were you aware of  
11 what the New Hampshire Commission has done?

12 A. Well, I have it here. My recollection is  
13 that the New Hampshire Commission sometime closer to  
14 2000 than we are now decided to handle ISP access by  
15 creating a technical overlay, created a new NXX for all  
16 ISP-bound traffic, that all ISPs would be required to  
17 change their telephone number, and that NXX would be  
18 free calling from anywhere in New Hampshire.

19 They also decided that for every CLEC that  
20 had a physical customer in a local calling area, that  
21 CLEC would then be able to do VNXX as an FX like  
22 service, but they also required each CLEC to provide to  
23 the commission the name, address, telephone number of  
24 that one particular customer in each local calling area,  
25 and then the commission would say okay, in the Olympia

0525

1 area, now you can provide VNXX because you have a  
2 physical customer.

3 My understanding is that neither one of those  
4 even though now it's five or six years later has  
5 happened. There were technical difficulties with the  
6 overlay, the commission staff is now reconsidering  
7 whether one physical customer in each local calling area  
8 is the right number, should it be more, and so my  
9 understanding is both of those are on hold.

10 MR. ROGERS: Okay, thank you, that's all that  
11 I have at this time.

12 JUDGE MACE: Thank you.

13 I would like to take a 10 minute recess right  
14 now. And then, Mr. Best, we'll go to you next.

15 (Recess taken.)

16 JUDGE MACE: Mr. Best.

17 MR. BEST: Thank you, Your Honor.

18

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

20 BY MR. BEST:

21 Q. Good afternoon, Mr. Williamson, how are you  
22 doing?

23 A. Good. Well, I'm here still.

24 Q. Well, I got good news for you, I'm not going  
25 to take too much of your time.

0526

1 A. Good.

2 Q. I do have a question, however, and something  
3 that's been pointed out to me that I guess I didn't  
4 tumble to earlier, and that is am I understanding  
5 Staff's new proposal in its rebuttal testimony correctly  
6 when I say that it appears that Staff would only require  
7 one point of interface or interconnection per LATA for  
8 the CLECs, and that if you had established that, that  
9 under your new proposal that Qwest would haul the  
10 traffic to that location and that the compensation would  
11 be bill and keep; am I understanding that correctly?

12 A. Did I say all that? I think what I said, and  
13 we maybe should go look and make sure at this time of  
14 the day is what I said, that this Commission should  
15 allow VNXX for ISP-bound traffic only at bill and keep.  
16 I did not mention in my testimony a single POI or who  
17 transports. It would be what it is.

18 Q. Well, I assume since you didn't mention  
19 transport that you wouldn't have to provide it, is that  
20 right, the CLEC?

21 A. Whatever your arrangement is for acceptable  
22 to this Commission's transport today I assume would be  
23 the same, but the traffic would be bill and keep if it's  
24 VNXX for ISP-bound traffic.

25 Q. Well, would you agree that to the extent that

0527

1 CLECs that have not built out extensively in the state  
2 of Washington are allowed to utilize this proposal that  
3 in fact it is a disincentive for others to continue to  
4 build out their network?

5 A. A single POI?

6 Q. If the Commission allows that, would you  
7 agree that -- I guess the bottom line is looking at  
8 BR-1, why would ELI build into the local calling area?

9 A. I think they probably want to actually get  
10 local customers.

11 Q. But if I was looking for ISP traffic, I might  
12 not, correct?

13 A. That would be a business decision that you  
14 would make. My understanding from my past with ELI when  
15 I worked closely with ELI people when I was at TCG was  
16 that ELI wanted to be a local carrier and actually have  
17 local customers, and I believe you have done pretty well  
18 with that, and I don't know that you would want to stop  
19 doing that for one type of traffic, which would be the  
20 ISP-bound traffic.

21 Q. And that's a business decision I assume,  
22 correct?

23 A. Yes.

24 Q. All right.

25 Now I would like to refer you back to BR-1.

0528

1                   JUDGE MACE:  And I notice with regard to BR-1  
2   that someone has passed out what appears to be an effort  
3   to copy this.  Did somebody photograph it and then --

4                   MR. ROGERS:  That is a photograph, correct,  
5   is what we did.  We can certainly improve upon that if  
6   you would like I think, but we went ahead and took the  
7   photograph and printed it.

8                   JUDGE MACE:  Thank you, I appreciate it.  
9                   Go ahead, Mr. Best.

10  BY MR. BEST:

11                Q.    Looking at either the handout BR-1 or the  
12   diagram BR-1, Mr. Williamson, would you agree that with  
13   respect to what really appears there that for the  
14   customers who are buying either FX or VNXX or let's take  
15   VNXX, that the VNXX is essentially from the customer's  
16   perspective a functionally equivalent service?

17                A.    The customer buys the ability to get Olympia  
18   calls sent to their Seattle location.  I'm sure from a  
19   customer's point of view it's the same as FX service.

20                Q.    Okay.  Now I'm curious about the Staff's new  
21   proposal and why voice services were excluded?

22                A.    Based on a number of issues, but most  
23   strongly what the New Hampshire Commission Staff had  
24   found when they did a full investigation on the use of  
25   numbers in New Hampshire.

0529

1 Q. Well, Mr. Williamson, didn't you just testify  
2 as I understood it that if this example in BR-1, if it  
3 was the Electric Lightwave example that in fact Electric  
4 Lightwave would be allowed to provide VNXX since it has  
5 customers in Olympia?

6 A. I didn't say that was here. I think you may  
7 be talking about what I said in New Hampshire about the  
8 New Hampshire Commission.

9 Q. Correct, that's what I meant, yes.

10 A. Had looked at, yes. We have not made that  
11 decision, that was not part of my recommendation to the  
12 Commission.

13 Q. And I understand that, but you would agree  
14 that based on your testimony about what the New  
15 Hampshire Commission did, if this was occurring in New  
16 Hampshire, that commission would allow ELI to provide  
17 VNXX?

18 A. In my written testimony I didn't state what  
19 New Hampshire did, what the commission did, but during  
20 our conversation I gave my understanding what the  
21 Commission did, and if this was New Hampshire and it  
22 wasn't on hold any more, if ELI had a physical customer,  
23 some number of physical customers in Olympia, then the  
24 New Hampshire Commission would say they can provide what  
25 they call CLEC FX, which is VNXX.

0530

1 Q. Thank you. I'm going to try to keep this  
2 quite short, do you recall in your testimony talking  
3 about the concern that VNXX traffic fools the LEC  
4 billing system?

5 A. Yes.

6 Q. It's true, is it not, that foreign exchange  
7 traffic on the flip side fools the CLEC billing system  
8 into thinking it's also local traffic?

9 A. I would disagree since it is local traffic by  
10 the rules that we live under. You know, whether we  
11 disagree, whether we like the rules or not, the rule is  
12 that FX is a local call, so.

13 Q. It's an exception?

14 A. Right.

15 Q. And the only rule, you keep saying rules but  
16 I'm assuming the only real rule I keep hearing about is  
17 the COCAG?

18 A. That's a standard. The rules in the WAC  
19 without having it in front of me I believe say that a  
20 local call is a call that originates and terminates in  
21 the same local calling area. And so the exception to  
22 that would be FX, and that's allowed because of the  
23 COCAG.

24 Q. Okay. But it really all springs from the  
25 COCAG, correct?

0531

1           A.     The exception, yes, and the fact that FX has  
2     been in use for way before the COCAG came into event.

3           Q.     On page 20 of your testimony, and I don't  
4     think you're going to need to refer to it, you talked  
5     about some of the Commission rulings on foreign exchange  
6     and VNXX, and specifically you mentioned Oregon, and I  
7     think you mentioned in your cross-examination that in  
8     fact Oregon bans both FX and VNXX; isn't that right?

9           A.     Oregon banned FX some years ago, and I'm not  
10    sure exactly when, but it's not been in use in Oregon  
11    for quite a while.  And my understanding of the decision  
12    that just came out the beginning of this year was that  
13    they banned VNXX with the same exception that we're  
14    talking about, that it can be used for ISP-bound  
15    traffic.

16          Q.     And as I understand it, there was a similar  
17    decision in Maine; does that sound right?

18          A.     I honestly don't remember exactly what Maine  
19    decided to do.  Seemed like Maine originally banned VNXX  
20    all together, or was that Massachusetts, I believe it  
21    was Maine, was it Massachusetts.  I can look it up, I  
22    have it here.

23          Q.     It's all right, I guess it doesn't really  
24    matter.  I guess the point, can you understand why some  
25    CLECs might actually find a total ban on both foreign

0532

1 exchange and VNXX as a more preferable result?

2 A. Yes, I could understand that, and I would  
3 expect if that was the case that that's what they would  
4 ask for when the time comes.

5 Q. And do you think that that's necessarily good  
6 for Washington consumers?

7 A. It's a small number of customers, but it's a  
8 number of customers that have been in service with a  
9 particular service for a long time, so I'm not sure that  
10 it's good for the customers. And, of course, that's why  
11 Staff didn't ask for that.

12 Q. I would like to refer you to your rebuttal  
13 testimony if I can find it here. Hopefully mine is  
14 numbered correctly as well.

15 A. Apparently it was virtual numbering.

16 Q. Page 10 of your testimony, lines 20 through  
17 23.

18 A. I'm there.

19 Q. You state:

20 The Commission could probably endorse  
21 VNXX as an exception to the access  
22 charge system, but it has not and should  
23 not do so unless a new and narrow  
24 variant is proposed that increases or  
25 eliminates arbitrage opportunities.

0533

1                   So I'm gathering your testimony still is that  
2 there could be ways to do this so that it is acceptable  
3 to both the Commission and potentially even the  
4 incumbent telephone companies?

5           A.     There may be, and it would be nice if we  
6 would see it. I haven't seen it.

7           Q.     But we talked about New Hampshire, you don't  
8 believe that's a workable solution?

9           A.     Well, after my conversations with the NANPA  
10 people, the director of NANPA, and the difficulties that  
11 any overlay has in the state and the difficulties it had  
12 with small ISPs who would have to change their telephone  
13 numbers, there are some difficulties with that also.  
14 And then the staff in New Hampshire was concerned for  
15 the number of customers that a CLEC should prove they  
16 have in service to be able to do CLEC FX, which they  
17 consider to be VNXX. So it sounded to me like the  
18 commission staff and the commission in New Hampshire was  
19 still concerned with those issues.

20          Q.     Okay.

21                   I would like now to refer you to page 12 of  
22 your rebuttal, it's really the question that begins on  
23 line 2 and terminates at line 12. I can give you just a  
24 second to kind of review that real quickly.

25          A.     (Reading.)

0534

1                   Okay.

2           Q.       Specifically now to line 10, you say, the  
3 definition, and you're talking about the definition of  
4 local calling area, speaks to the geographic physicality  
5 of the customer. Can you point me to your quote as to  
6 where the geography of the customer is even mentioned in  
7 that definition?

8           A.       Let me read it. The section states that:

9                   A local calling area means one or more  
10                   rate centers within which a customer can  
11                   place calls without incurring long  
12                   distance charges.

13                   A local calling area is a geographic, I think  
14 we can all agree, is a geographic area. So it says  
15 that:

16                   A local calling area means one or more  
17                   rate centers within which a customer can  
18                   place calls without incurring long  
19                   distance toll charges.

20                   To me that means that the customer is in a  
21 particular geographic area.

22           Q.       But it doesn't really speak to where the  
23 customer is, would you agree, it just talks about where  
24 the customer can call?

25           A.       It's true that it's talking about calling,

0535

1 but I'm not sure what good any local calling area would  
2 be unless it actually means something, you know,  
3 physical. To me when I read this, it means a customer  
4 needs to be physically in a geographic area that's been  
5 designated as a local calling area to make a free call  
6 within that. But you see, you know, the words say what  
7 they say.

8 Q. Okay, thank you.

9 Now I think I'm understanding you correctly  
10 that you're saying you disagree with Qwest that ELI or  
11 any other carrier would necessarily need to have a  
12 switch in every local calling area; is that correct?

13 A. To be able to do FX service?

14 Q. Yes.

15 A. Yes, I disagree with the Qwest witnesses that  
16 said that they would have to have a physical switch in  
17 each location that they wanted to do FX.

18 Q. Okay.

19 And I want to go back to the diagram very  
20 briefly and talk about, and I know we have talked about  
21 this and I'm sure the ALJ is going to yell at me, but  
22 I'm still a little confused by the I think Mr. Rogers  
23 called it triple transport, which I thought was a very  
24 interesting term. Let me walk you through what I'm  
25 understanding you to say, that may be the easiest way.

0536

1                   Are you suggesting that it would be possible  
2 and the Commission would be fine with it if, and again  
3 referring to BR-1, a Qwest customer is trying to reach  
4 let's say what's currently a VNXX customer in Seattle  
5 over the ELI network, and if I understand what you're  
6 saying, the Qwest customer could pick up a call and go  
7 to the Qwest switch, who would be routed to the ELI  
8 collocation, it would go up to the ELI switch, and the  
9 ELI switch would say yes, this is one of our numbers,  
10 but it looks like an Olympia number so I'm going to send  
11 it back down to Olympia, but then you're saying what  
12 could happen is that you could put up a private line or  
13 some other sort of facility that would route it back to  
14 Seattle, and that would be okay?

15           A.     Yes.

16           Q.     Now just out of curiosity, what would be the  
17 purpose of that?

18           A.     The purpose would be for ELI to actually have  
19 a physical presence in the Olympia local calling area.  
20 It actually could actually serve real customers in  
21 Olympia as if they were local customers. With that  
22 equipment in place, you could also provide for classic  
23 FX service, that was what the question was that started  
24 it. So if you have a channel bank or some kind of  
25 subscriber carrier that you have connected your switch

0537

1 in Seattle to a collocation site at the Qwest Olympia  
2 switch, then you could crossconnect to local customers  
3 in the Olympia area. You could also take one of the  
4 channels off that channel bank and crossconnect to a  
5 private line, I think my example this morning was to a  
6 customer in Chehalis, so now that customer in Chehalis  
7 got Olympia dial tone from you, from your physical  
8 location. You could do the same thing but putting a  
9 switch in, a lot more expensive and probably even worse  
10 than the zigzag triple transport issue. And that's what  
11 we were talking about, if that customer was in Seattle  
12 instead of Chehalis, that's where the triple transport I  
13 think comes in. You would instead of taking a channel  
14 off the channel bank and running a private line to  
15 Chehalis, you would run that to Seattle to your  
16 customer.

17 Q. And the reason for doing all this would be to  
18 really meet your definition of what the COCAG requires?

19 A. I think it would meet the definition of what  
20 the COCAG is.

21 MR. BEST: Okay, that's all I have.

22 JUDGE MACE: Thank you.

23 Mr. Castle or Mr. Wiley.

24 MR. CASTLE: Your Honor, I think we're going  
25 to pass, no questions for Mr. Williamson.

0538

1 JUDGE MACE: And Mr. Ahlers.

2 MR. AHLERS: Thank you, Your Honor.

3

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

5 BY MR. AHLERS:

6 Q. Good afternoon, Mr. Williamson.

7 A. Good afternoon.

8 Q. I just have a couple of questions. This case  
9 started out as a complaint; is that correct?

10 A. Yes.

11 Q. Against specific carriers?

12 A. My understanding is that it was brought  
13 against multiple carriers.

14 Q. And your testimony really doesn't go to any  
15 of the actions of those specific carriers; is that  
16 right?

17 A. That's correct.

18 Q. And you would expect the outcome of this  
19 case, however, to apply to all carriers whether or not  
20 they're named in this complaint; is that right?

21 A. Yes.

22 Q. And that's because you think any rules or to  
23 use the term loosely should apply to all carriers  
24 equally?

25 A. That's true.

0539

1 Q. So if a carrier, well, let's take ATI, the  
2 company I work for, if ATI was dismissed out of this  
3 case, would it make any difference in terms of the  
4 outcome as to ATI?

5 A. Of course I can't speak to what the  
6 Commissioners will do or what, you know, the Judge will  
7 rule, that's beyond me, above my pay grade. If the  
8 Commission along with the ALJ rules that VNXX is  
9 prohibited in this state, then it would apply to all  
10 carriers. If ATI was not using VNXX, then it, you know,  
11 it wouldn't hurt, wouldn't hinder it any at all. But  
12 whatever decision is made, I assume the Commission will  
13 make a decision on the legality of VNXX, and if that's  
14 the case, then I have to assume that it would apply to  
15 all carriers. But again, the Commission could do any  
16 number of things.

17 MR. AHLERS: Thank you, that's all I have.

18 JUDGE MACE: Do you have redirect?

19 MR. THOMPSON: I don't.

20 JUDGE MACE: No redirect.

21 Have we dealt with all the exhibits, is there  
22 any other outstanding cross-exhibit that we need to  
23 address? We admitted, it looks like we admitted all the  
24 cross-exhibits, okay.

25 MS. ANDERL: Sorry, Your Honor, I thought

0540

1 that Level 3 had cross-exhibits identified as Exhibits  
2 204 through 207 and didn't use them.

3 JUDGE MACE: You're right, 204 through 207.

4 MS. ANDERL: But I just wanted to make sure  
5 they weren't going to offer them.

6 JUDGE MACE: It appears that we have already  
7 admitted 208 and 209 and 211, which were Level 3  
8 cross-exhibits, but I asked if Level 3 wanted any other  
9 exhibits to be addressed, and I didn't get a response,  
10 so this is your opportunity.

11 MR. ROGERS: Thanks for the opportunity, and  
12 we would ask that those cross-exhibits that have not  
13 been previously admitted except for the deposition  
14 transcript of Mr. Williamson, so Number 204 we are not  
15 moving to admit at this time, but we would move to admit  
16 the rest of them.

17 JUDGE MACE: That would be Exhibits 205, 206,  
18 207, and 210, is there any objection to the admission of  
19 those exhibits?

20 MR. KOPTA: Not an objection, Your Honor, but  
21 I would note that Exhibit 210 is largely duplicative of  
22 several other exhibits since they're responses to  
23 Pac-West data requests.

24 JUDGE MACE: Yes, well, it's not going to be  
25 a -- I wish we could be as perfect as possible, but that

0541

1 may not happen. And I think to make sure that there  
2 isn't something that falls through the cracks, I'm going  
3 to admit the exhibit.

4 MR. KOPTA: And I have no objection, I was  
5 just making a clarification for the record.

6 JUDGE MACE: So I will admit 205, 206, 207,  
7 and 210.

8 Mr. Williamson, you are excused.

9 THE WITNESS: Thank you.

10 JUDGE MACE: And I believe that brings us to  
11 Mr. Greene.

12

13 Whereupon,

14

MACK D. GREENE,

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

17

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

19 BY MR. ROGERS:

20 Q. Mr. Greene, can you please state your name  
21 and your business address for the record.

22 A. Yes, my name is Mack Greene, I am employed by  
23 Level 3 at 1025 Eldorado Boulevard in Broomfield,  
24 Colorado.

25 Q. And what is your position at Level 3?

0542

1 A. I am Director of Interconnection Services.

2 Q. What do your duties include as Director of  
3 Interconnection Services?

4 A. My duties include negotiating interconnection  
5 agreements, settling out disputes on billing with other  
6 carriers, as well as advising the company and our  
7 product managers on regulatory changes as well as  
8 helping to set the regulatory direction and lobbying of  
9 the company.

10 Q. Do you have in front of you the prefiled  
11 testimony, the direct testimony that you had filed in  
12 this case and is marked as Exhibit MDG-1 and has been  
13 designated --

14 MR. ROGERS: And I'm searching, Your Honor,  
15 so bear with me a minute, I'm not finding our number.

16 JUDGE MACE: 451T.

17 MR. ROGERS: Okay.

18 BY MR. ROGERS:

19 Q. -- designated as Exhibit 451T in front of  
20 you?

21 A. I do.

22 Q. And was that testimony prepared by you or  
23 under your direction?

24 A. Yes, it was.

25 Q. If I asked you the questions that were asked

0543

1 in your testimony today, would you answer them  
2 substantially the same?

3 A. Yes, I would.

4 Q. Do you have any questions that you need to  
5 make to the prefiled testimony that's been filed, any  
6 corrections, excuse me?

7 A. No, I do not at this time.

8 MR. ROGERS: With that, Your Honor, we would  
9 ask that Mr. Greene's testimony be admitted, and we  
10 would make him available for cross.

11 JUDGE MACE: And how about his other  
12 exhibits, do you want to address those at this point?

13 MR. ROGERS: Oh, yes.

14 BY MR. ROGERS:

15 Q. So in total, excuse me, all the attached  
16 exhibits to your testimony, do you have those in front  
17 of you as well?

18 A. I do.

19 MR. ROGERS: And those have been marked in  
20 the record as Exhibits 452C, 453, 454, and 455, and we  
21 would ask that those also be admitted at this point.

22 JUDGE MACE: Is there any objection to the  
23 admission of those exhibits?

24 Hearing no objection, I will admit them.

25 THE WITNESS: Mr. Rogers, forgive me, I may

0544

1 have one small thing that I'm not sure if it would be an  
2 errata or not, but I am willing to waive the  
3 confidentiality on Exhibit MDG-1 if it would facilitate  
4 the conversation today.

5 MR. ROGERS: We can address that now.

6 JUDGE MACE: That's fine, it really depends  
7 on how much cross-examination there would be about it.  
8 If it comes up, you can remind me.

9 MR. SMITH: Your Honor, I will be crossing on  
10 it, and it would just make it easier to do.

11 JUDGE MACE: Very well then, thank you for  
12 letting us know that.

13 MR. ROGERS: And we can make him available  
14 for cross-examination.

15 JUDGE MACE: Thank you.

16 And I would turn to Qwest first unless you  
17 all have discussed a different order of cross.

18 MR. SMITH: I'm happy to go forward. I have  
19 more than 20 minutes worth, but I can probably get some  
20 of the more preliminary questions out of the way.

21 JUDGE MACE: That would probably be a good  
22 idea, then we can plunge right into things in the  
23 morning.

24 But just to address maybe some housekeeping,  
25 I'm assuming we will start at 9:00 tomorrow morning as

0545

1 well unless you all have a different idea about that.

2 9:00 tomorrow, all right.

3 Go ahead.

4 THE WITNESS: One small matter of  
5 housekeeping, I'm just noticing that MDG-1 was a  
6 photocopy of the yellow page, and it didn't do so well  
7 through the photocopier, and I was wondering if somebody  
8 could be kind enough to pass me a better copy.

9 MR. ROGERS: We can get you one.

10 MR. SMITH: This one?

11 THE WITNESS: That's correct.

12 MR. SMITH: I don't think he would mind, but  
13 I need it to look at.

14 JUDGE MACE: Is this what you want is  
15 something like this?

16 THE WITNESS: Correct.

17 Thank you, Your Honor.

18 MR. ROGERS: Thank you, Your Honor.

19 MR. SMITH: May I proceed, Your Honor?

20 JUDGE MACE: Yes.

21

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

23 BY MR. SMITH:

24 Q. Mr. Greene, maybe I could just in the time we  
25 have left today ask you a few more general questions

0546

1 about Level 3 and Level 3's network in Washington before  
2 we get into the more thorny VNXX issues. As I recall  
3 from reviewing a transcript from one of our prior  
4 hearings, is it true that Level 3 has approximately 1  
5 billion minutes of ISP traffic per day that it processes  
6 through its network in the country?

7 A. That's correct.

8 Q. Okay. And I believe you have testified  
9 elsewhere that Level 3 controls --

10 JUDGE MACE: Maybe we need to make everybody  
11 turn their cell phones off too, if that's what that was.

12 MR. SMITH: Are you --

13 THE WITNESS: I'm all set.

14 BY MR. SMITH:

15 Q. Okay. It's my understanding that Level 3  
16 controls 50% to 60% of the dial-up marketplace in the  
17 United States; is that correct?

18 A. Yeah, our market projections show that  
19 number.

20 Q. Now if I understand it, what that means is  
21 that somewhere between 50% and perhaps up to 60% of the  
22 dial-up traffic to ISPs in the country is handled  
23 through Level 3; is that --

24 A. That would be a fair statement.

25 Q. And when you say 50% to 60%, you're talking

0547

1 about minutes of use I assume?

2 A. Yes.

3 Q. Okay. How did you determine that?

4 A. We looked at independent market statistics  
5 that have been put together by research groups such as  
6 IDC and others.

7 JUDGE MACE: Is that IDC?

8 THE WITNESS: IDC.

9 JUDGE MACE: Thank you.

10 THE WITNESS: Is the name of the company.

11 JUDGE MACE: Thank you.

12 A. As well as conversations with our customers,  
13 who are AOL, Earthlink, MSN, some of the major ISPs that  
14 are out there in the marketplace today.

15 BY MR. SMITH:

16 Q. Okay. All of which then leads me to the next  
17 question, it's my understanding that Level 3 has  
18 customer relationships with the very top ISPs in the  
19 United States, companies like AOL, MSN, and Earthlink.

20 A. That is correct.

21 Q. What are some of the others just for the  
22 record?

23 A. Some of the others would be Juno, Net Zero,  
24 AT&T, as an example round out that list.

25 Q. Okay, perhaps we could refer then to Exhibit

0548

1 452, which is the Montana map that we just talked about  
2 as I understand it.

3 MR. SMITH: Washington, what did I say,  
4 Montana, wow.

5 JUDGE MACE: We're in Washington.

6 MR. SMITH: This is Tuesday, it must be  
7 Belgium. Washington, it's pretty hard to mistake  
8 Washington and Montana.

9 BY MR. SMITH:

10 Q. The Washington map that I believe we can now  
11 talk about that's no longer classified as confidential?

12 A. Correct.

13 Q. Okay.

14 A. I have it in front of me.

15 Q. I want to go through, and hopefully everyone  
16 has a colored copy of this, it is my understanding that  
17 there are two different kinds of locations on here, the  
18 red dots indicate a point of interconnection; is that  
19 correct?

20 A. That is correct.

21 Q. And approximately how many of those points of  
22 interconnection are in Washington?

23 A. I believe this map represents the points of  
24 interconnection that Level 3 has with Qwest. We also  
25 have points of interconnection with Embark and Verizon

0549

1 in this state, which are not listed on this map.

2 Q. Approximately how many with Qwest then?

3 A. I believe it's close to 9.

4 Q. Okay. And the other dots are areas that are  
5 shown with a blue dot; is that correct?

6 A. That is correct.

7 Q. And what do they represent?

8 A. They represent locations where Qwest and  
9 Level 3 have worked together to establish a direct end  
10 office trunk or DEOT as it's referred to in the  
11 industry, and that's simply a dedicated trunk that  
12 allows traffic to be exchanged between our two networks,  
13 but Qwest is responsible for the cost of that circuit.

14 Q. Just so we can make sure we've got our  
15 terminology straight, it's my understanding that Qwest  
16 has a different name for DEOT, it's normally referred to  
17 as direct trunk transport; is that correct?

18 A. I think yes and no. When you look at  
19 establishing a DEOT or direct end office trunk, there  
20 are multiple billing components that may go along with  
21 it. One of those billing components is referred to as  
22 direct trunk transport in the Qwest SGAT or their  
23 tariff.

24 Q. So they are not identical?

25 A. I would -- direct trunk transport -- think of

0550

1 it as -- think of a DEOT or a direct end office trunk as  
2 the entirety of the circuit. Think of the direct trunk  
3 transport or DTT as one of the components that goes to  
4 make up that circuit. There's also entrance facilities  
5 and MUXing and other things that go along.

6 Q. Okay, so they --

7 A. But they are sometimes used interchangeably  
8 in conversation.

9 Q. So you may have a combination of a DTT with a  
10 MUX and an entrance facility that forms the full DEOT,  
11 would that be a good way of saying it?

12 A. Yes, it would.

13 Q. Okay. And as I understand it, the three  
14 items we talked about, when Qwest provides them pursuant  
15 to an interconnection agreement with a company like  
16 Level 3, direct trunk transport and entrance facility  
17 and a MUX, those are priced based on the TELRIC, total  
18 element long run incremental cost, TELRIC cost  
19 methodology that was mandated by the FCC; is that  
20 correct?

21 A. That is correct.

22 Q. Now let's talk for a few minutes about the  
23 points of interconnection or POIs as they're often  
24 called. On the Level 3 side of the network, how are  
25 those -- how do you connect to those POIs?

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1           A.     There would be a number of methods and  
2 actually a number of methods that exist in the state.  
3 We could and do build out our own fiber facilities to  
4 meet Qwest at one of the Qwest central offices. We  
5 would also lease circuits either from Qwest directly or  
6 perhaps another CLEC that had facilities to meet Qwest  
7 at one of their central offices.

8           Q.     So now would the self-provisioned ones be  
9 more likely to be in for example the Seattle area as  
10 opposed to Pasco and Walla Walla and Yakima and places  
11 like that?

12          A.     That would be the most likely case, yes.

13          Q.     And that's because the fiber network that  
14 Level 3 has built doesn't go to all of the different  
15 cities that are represented on Exhibit 452; is that  
16 correct?

17          A.     That is correct.

18          Q.     Okay. So on those cities, you indicated that  
19 it's likely that Level 3 would lease a facility from  
20 Qwest, in that situation would that be TELRIC rated DEOT  
21 or would that more likely be a higher priced private  
22 line facility?

23          A.     It would be a higher priced private line  
24 facility, because we are acquiring that network as our  
25 own, whereas with a DEOT we are simply using it for the

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1 exchange of traffic with Qwest.

2 Q. Okay.

3 Do you have, and I need to switch gears for a  
4 minute, do you have Mr. Brotherson's testimony?

5 A. I do not, I just have my own.

6 Q. Maybe I could -- if you would look at  
7 Mr. Brotherson's rebuttal testimony, and I'm going to  
8 have you look at Exhibit it's marked LBB-26, we have now  
9 I think marked it and it's been received into the record  
10 as Exhibit 26 in this case, do you have that in front of  
11 you, it's entitled Relative Washington Traffic  
12 Qwest/Level 3, 2005 - 2006?

13 A. Yes, I have that in front of me.

14 Q. Could you take just a moment and read it.

15 A. (Reading.)

16 I'm done reading.

17 Q. Okay. Now first of all, let me -- it's been  
18 marked confidential by Qwest because it contained  
19 information about relative traffic between Qwest and  
20 Level 3. Does Level 3 consider that to be confidential  
21 information or not?

22 A. I would not consider it confidential.

23 Q. Okay. So in that case, I don't believe Qwest  
24 does, I believe we can talk openly about it. As I read  
25 the exhibit, it indicates that for 2005 and 2006 the

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1 aggregate traffic during that period of time, 99.93% was  
2 traffic that was initiated on Qwest's side of the  
3 network, and .07% of the traffic was originated with  
4 Level 3. Did I represent it correctly?

5 A. Yes, you did.

6 Q. Do you have any reason to dispute the  
7 accuracy of those numbers?

8 A. I have no reason.

9 Q. Okay. And that is it's true, isn't it, that  
10 the reason for that is that Level 3 primarily serves  
11 Internet service providers in the state of Washington?

12 A. Primarily, yes, from a minutes of use  
13 perspective.

14 Q. And so virtually all or at least 99.93% of  
15 the traffic that's initiated and exchanged between Level  
16 3 and Qwest in the state of Washington is traffic that  
17 is destined from a Qwest area, the end user of an ISP  
18 and also a Qwest customer that is destined to an ISP  
19 served by Level 3?

20 A. That is correct.

21 Q. Okay. Now it's true also that Level 3  
22 provides little, if any, local exchange voice type  
23 services in the state of Washington?

24 A. Can you quantify little, if any?

25 Q. Well, how much do you provide?

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1           A.     I don't have that number off the top of my  
2 head.

3           Q.     Maybe I can ask it this way.  Relative to the  
4 ISP business where the traffic is primarily one-way  
5 relative to the minutes of use that is exchanged between  
6 the companies for that, the minutes of use that would be  
7 exchanged between a Level 3 voice end user customer and  
8 Qwest is minuscule, very small?

9           A.     Yes, from a ratio perspective by far and away  
10 the majority of traffic is ISP-bound traffic.

11          Q.     Well, does Level 3 actually serve what I  
12 would call a traditional end user PSTN type customer?

13          A.     Yes, we do.

14          Q.     How many different areas do you serve them in  
15 in Washington?

16          A.     We provide VoIP services throughout the state  
17 of Washington.  We may debate over whether or not that's  
18 a PSTN like service.  Level 3 with the exception of some  
19 recent acquisitions primarily deploys a soft switch  
20 architecture, which is different than a circuit switch  
21 architecture, and so the majority of our services are  
22 VoIP based, in the VoIP arena.

23          Q.     So you recently for example acquired  
24 Broadwing; is that correct?

25          A.     That is correct.

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1 Q. And does Broadwing have more traditional PSTN  
2 type end user customers?

3 A. Yes, they do. They have circuit switches  
4 that we're in the process of migrating over to our soft  
5 switch platform.

6 Q. Okay. So would it be fair to say that the  
7 traditional PSTN type customers that Level 3 serves in  
8 Washington are primarily ones that were acquired through  
9 the acquisition of Broadwing or I don't know whether you  
10 have had other acquisitions in Washington as well?

11 A. That would be a fair statement.

12 Q. Okay. Aside from facilities that may have  
13 been acquired from for example Broadwing, is it Level  
14 3's practice to build out in each of those local calling  
15 areas that it serves local exchange plant loops and  
16 distribution facilities and things of that nature?

17 A. No, because the majority of our customers are  
18 VoIP based, and we would look to other broadband  
19 providers to build out those facilities such as the  
20 cable company or even Qwest as an example, their DSL  
21 product could be used to support VoIP services that  
22 Level 3 sells.

23 Q. Okay. Do you know for example, let's take  
24 Olympia as an example, has Level 3 built out any  
25 facilities, again setting Broadwing aside, Level 3

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1 pre-Broadwing, any facilities in the Olympia area?

2 A. None that I'm aware of.

3 Q. Okay. And if we were to look at Exhibit 452,  
4 would that be true of the majority of the cities that  
5 are listed there?

6 A. If you were to count the cities, yes. If you  
7 were to count the minutes, no. We have built out and  
8 pick up the vast majority of minutes on our own network.

9 Q. Now you're talking about the ISP traffic?

10 A. ISP traffic, correct.

11 Q. I'm talking about -- the question, and maybe  
12 I didn't phrase it very clearly, was focused more on the  
13 traditional end user, TDM PSTN end user customers, and  
14 whether you -- you said you hasn't built out any of  
15 those kind of facilities in Olympia, at least that's  
16 what I intended with the question.

17 A. Okay.

18 Q. And my question was, is that -- would that --  
19 if I were to go through the list of cities that are  
20 served and identified on Exhibit 452, would your answer  
21 be the same for Level 3?

22 A. Again, for Level 3 since we are deploying a  
23 soft switch architecture, on our customer's side of the  
24 call, the call is originated in IP over a broadband  
25 connection. On Qwest's side of the call, if there was a

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1 call between a Level 3 end user and Qwest, would be  
2 terminated on the PSTN. From a geographic and  
3 population perspective, where we built out our network  
4 and where we exchange those calls, the vast majority of  
5 customers and calls take place in local calling areas  
6 where we have built out our network.

7 Q. And does that mean built out your network in  
8 the sense that it goes to a city that has a point of  
9 interconnection in it?

10 A. It would have a point of interconnection, it  
11 could also have local loops that serve large business  
12 customers that we connect directly via our own  
13 facilities to our network as well.

14 Q. Do you serve local customers in the Seattle  
15 area with voice type, well, TDM PSTN type voice  
16 services?

17 A. Yes, we do.

18 MR. SMITH: Your Honor, I'm kind of at a  
19 point where it might be a logical break point if you  
20 would like to stop now.

21 JUDGE MACE: That sounds fine, yes, let's  
22 adjourn until tomorrow morning at 9:00.

23 MS. ANDERL: Your Honor, before we go off the  
24 record, I just wanted to interject, I was going to do  
25 this through Mr. Smith but I will just jump in here, if

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1 I remember that Mr. Greene was going to adopt Mr. Kell's  
2 testimony, and I believe that that exhibit has not been  
3 identified with him, just so that we're kind of clean on  
4 the record.

5 MR. ROGERS: I appreciate the reminder.

6 JUDGE MACE: Can we do that tomorrow morning?

7 MR. ROGERS: Yes, I can start first thing  
8 tomorrow and go through that.

9 JUDGE MACE: Very good, thank you.

10 (Hearing adjourned at 5:00 p.m.)

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