

1 BEFORE THE WASHINGTON
2 UTILITIES AND TRANSPORTATION COMMISSION

3)
4	QWEST CORPORATION,)Docket UT-063038
5	Complainant,)Volume V
6)Pages 559-806
7	vs.)
8)
9	LEVEL 3 COMMUNICATIONS, LLC;)
10	PAC-WEST TELECOMM, INC.; NORTHWEST)
11	TELEPHONE, INC.; TCG SEATTLE;)
12	ELECTRIC LIGHTWAVE, INC.; ADVANCED)
13	TELCOM, INC., d/b/a ESCHELON)
14	TELECOM, INC.; FOCAL COMMUNICATIONS)
15	CORPORATION; GLOBAL CROSSING LOCAL)
16	SERVICES, INC.; and MCI WORLDCOM)
17	COMMUNICATIONS, INC.,)
18	Respondents.)
19)

12 An evidentiary hearing in the
13 above-entitled matter was held at 8:58 a.m. on
14 Wednesday, April 25, 2007, at 1300 South Evergreen
15 Park Drive, S.W., Olympia, Washington, before
16 Administrative Law Judge THEODORA MACE.

17 The parties present were as follows:

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Court Reporter

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1 JUDGE MACE: Let's be on the record in
2 Docket UT-063068. We are continuing the
3 cross-examination of Mr. Greene for Level 3, but my
4 understanding is he needs to adopt a testimony of
5 another Level 3 witness, Mr. Kell, and we'll do that
6 this morning first thing; is that right?

7 MR. ROGERS: Yes, Your Honor. I can just go
8 through a couple questions --

9 JUDGE MACE: If you would.

10 MR. ROGERS: -- and ask him then to -- and
11 ask that he be allowed to adopt Mr. Kell's testimony.
12 Whereupon,

13 MACK D. GREENE,
14 having been previously duly sworn, was called as a
15 witness herein and was examined and testified as
16 follows:

17

18 R E D I R E C T E X A M I N A T I O N
19 BY MR. ROGERS:

20 Q. Good morning, Mr. Greene.

21 A. Good morning, Mr. Rogers.

22 Q. Can you briefly explain the relationship
23 between Level 3 Communications and Broadwing
24 Communications at this point in time?

25 A. Yes, Broadwing Communications is a

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1 wholly-owned subsidiary of Level 3. We completed an
2 acquisition of Broadwing in January 2007. They
3 previously were two independent and publicly-traded
4 companies, but now have been joined together through
5 that acquisition.

6 Q. In your role as director of interconnection
7 services, have you become familiar with the Broadwing
8 network?

9 A. Yes, I have. I'm part of a committee inside
10 of Level 3 that's working through the various
11 integrations. Broadwing is one of a number of
12 acquisitions we've made over the last 18 months. And
13 the committee is charged with evaluating which
14 network topologies and technologies to move forward
15 with and also project managing the implementation of
16 those changes.

17 Q. You're aware of the fact Mr. Scott Kell
18 filed pre-filed testimony in this case separately as
19 a Broadwing representative, separately from Level 3?

20 A. Yes, I am aware.

21 Q. Have you familiarized yourself with his
22 testimony that was filed?

23 A. I have.

24 Q. And are you prepared to answer questions on
25 cross-examination with respect to his testimony and

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1 questions about the Broadwing network, generally
2 speaking?

3 A. Yes, I am.

4 MR. ROGERS: Your Honor, at this time, we
5 would ask that Mr. Greene be allowed to adopt Mr.
6 Kell's testimony.

7 JUDGE MACE: Any objection to that?

8 MR. SMITH: No objection.

9 JUDGE MACE: All right. So do you offer,
10 then, Mr. Kell's direct testimony and -- well, I
11 guess he filed only direct testimony; is that
12 correct?

13 MR. ROGERS: Yes, that is correct.

14 JUDGE MACE: And you offer that at this
15 time?

16 MR. ROGERS: And we would offer that at this
17 time.

18 JUDGE MACE: Any objection to the admission
19 of that exhibit, which I believe was marked 351-T?

20 MR. ROGERS: Thank you, Your Honor.

21 JUDGE MACE: Hearing no objection, I'll
22 admit that. This does not affect the testimony of
23 the other two witnesses who I have marked down as
24 appearing also on behalf of Broadwing, Mr. Meldazis
25 and Ms. McNeil?

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1 MR. ROGERS: That is correct.

2 JUDGE MACE: They will still appear.

3 MR. ROGERS: They will still be here and be
4 available for cross.

5 JUDGE MACE: Thank you. Then it looks like
6 we're ready to continue, Mr. Smith, with your
7 cross-examination.

8 MR. SMITH: Thank you, Your Honor.

9

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

11 BY MR. SMITH:

12 Q. Mr. Greene, you're probably happy to know I
13 probably won't ask you any questions about Mr. Kell's
14 testimony, so your memorization of it probably may go
15 for naught. But you indicated that Level 3's made a
16 number of other acquisitions. Are any of those
17 acquisitions related to the state of Washington?

18 A. I believe one of them is, WilTel
19 Communications, which was predominantly a long
20 distance provider, offered nationwide services and
21 offered services in the state of Washington.

22 Q. The other acquisitions, are they just simply
23 in other parts of the country? Is that --

24 A. Correct. They were largely -- with one
25 exception in the video services space or content

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1 services space, I should say, they were regional
2 CLECs, either in the Southeast, Eastern or Midwest
3 parts of the country.

4 Q. And had similar business plans to Level 3's,
5 serving ISPs, for example?

6 A. In some cases, yes. For the most part,
7 though, they were regional CLECs focused on acquiring
8 business customers, as well as supporting the
9 wholesale carrier space.

10 Q. Okay. Let's turn now, Mr. Greene, if you
11 would, to -- it's Exhibit 453, which is actually --
12 is also marked as MDG-2 to your testimony.

13 A. I have it in front of me.

14 Q. And this is sort of a busy chart and not
15 very good for people like me with bifocals, but maybe
16 we can -- and let me just tell you my understanding
17 of this. My understanding of this is that this is
18 your representation of not how the entire Qwest
19 network interconnects with Level 3 in Washington, but
20 at least some examples of different areas, Qwest
21 areas, if you will, in Washington and how they
22 interconnect with the Level 3 network in Washington?

23 A. That's correct.

24 Q. Okay. Now, I'd like to concentrate for just
25 a minute on the box that's in the center -- upper

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1 left center, shall we say. It's below the two items
2 marked Qwest STP and Level 3 STP. And if you read
3 the very small print at the bottom of the box, it
4 reads Level 3 Seattle Facility.

5 MR. ROGERS: Your Honor, can I just offer up
6 a new version of that diagram that might be useful
7 for everybody? We have a color copy that we can
8 distribute.

9 JUDGE MACE: Is it larger print?

10 MR. ROGERS: Little bit.

11 JUDGE MACE: That would be helpful.

12 MR. SMITH: Wouldn't hurt my feelings. A
13 little bit.

14 MR. FINNIGAN: Marginally.

15 MR. SMITH: Okay. Thank you, Mr. Rogers.

16 Q. And looking at the updated version of 453, I
17 think actually it doesn't really change any of the
18 substance. It's just slightly larger; is that
19 correct?

20 A. Yeah, it appears that it is the exact
21 diagram, just a little bit larger and in color.

22 Q. Okay. And I'd like to, as I indicated,
23 focus on that center box that's entitled Seattle
24 Facility. First question is, as I understand, that
25 the only switch that Level 3 has -- and again, let's

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1 exclude Broadwing here -- that Level 3 has in the
2 state of Washington -- I'll get the state straight
3 here -- state of Washington is the soft switch that's
4 shown there in that box; is that correct?

5 A. That's correct. That switch serves the
6 state of Washington, the state of Oregon, Idaho and
7 Montana.

8 Q. So it serves not just Washington, but it's a
9 regional switch that serves your operation in several
10 states?

11 A. Correct.

12 Q. And there's also an item below that entitled
13 Level 3 Media Gateway. Does it similarly serve the
14 same kind of broad geographical area that the soft
15 switch serves?

16 A. Yes, it does.

17 Q. Okay. Now, if we could look over to the
18 left side of the sheet, on the upper one, you show
19 some Seattle examples, the middle block is Spokane, I
20 believe, and then down below is Yakima.

21 If I look at this, it appears to me that in
22 each of these three examples I just noted -- well, in
23 fact, the first two examples, the Seattle and the
24 Spokane, the only piece of Level 3 equipment that's
25 so identified is what's identified as a MUX, or

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1 multiplexer; is that correct?

2 A. That's correct.

3 Q. Now, typically, would that be something
4 owned by Level 3 or would that be owned by Qwest and
5 leased from Qwest?

6 A. In the Seattle example, because we have
7 secured a collocation cage from Qwest in their
8 central office, we would more than likely own the
9 MUXing equipment. And that's a device that allows
10 you to aggregate lower-speed services into a
11 higher-speed service. In Spokane, where we have not
12 acquired a collocation space, we more than likely
13 have leased the MUX from Qwest.

14 Q. Okay. And then, down in Yakima, Level 3
15 hasn't even leased a MUX. The only MUX there would
16 be the Qwest MUX; is that correct?

17 A. Correct.

18 Q. Okay. Would it be fair to say, based on
19 that, that the -- and this is not a real technical
20 term, and maybe you can -- the real intelligence in
21 the Level 3 network resides more in the Seattle area,
22 where your soft switch is and your media gateway, and
23 it looks like you also have routers there, as well?

24 A. Yes, that intelligence resides -- or I
25 should say a piece of the intelligence of the network

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1 resides there in Seattle with the media gateway and
2 the soft switch, but there are other crucial
3 components that either enable Internet services or
4 enable VoIP services that are located in other parts
5 of the country.

6 Q. So -- and that would be devices that are
7 further to the right?

8 A. Correct.

9 Q. Okay. Let's talk for a few minutes about
10 the provision of service -- service to ISPs, and I'd
11 like to just talk for a few minutes about a few of
12 the pieces of equipment. The first is the media
13 gateway that sits in that Seattle box and that serves
14 several states.

15 It's true, isn't it, Mr. Greene, that that
16 is the device that performs what is commonly known as
17 the TDM-to-IP or IP-to-TDM conversion function that
18 allows a dial-up subscriber to communicate with
19 wherever he or she wants to go on the Internet?

20 A. Correct. The PSTN, or public switched
21 telephone network, operates using a set of protocols
22 that are founded on time division multiplexing, which
23 is the long form of the acronym TDM, whereas the
24 Internet as we know it operates primarily on a
25 protocol called IP, or Internet protocol.

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1 Q. Okay. And maybe let's just hypothesize a
2 call from an ISP served by Level 3 has a customer in
3 Spokane, and he or she dials the local access number
4 and -- to get on the Internet through the ISP that's
5 serving -- let's assume it's Earthlink now for ease
6 of discussion.

7 Describe what happens when that call reaches
8 the media gateway. What does the media gateway do
9 with it?

10 A. The media gateway is doing a couple of
11 things. First off, when that customer goes what we
12 call off hook with their modem, meaning their modem
13 picks up their phone line or seizes their phone line,
14 it causes the Qwest switch to look up the number that
15 they're trying to dial and the Qwest switch will try
16 and determine a route to pass that number. That
17 switch would communicate with the Qwest STP, or
18 signal transfer point.

19 Up at the top there, if you look on the
20 diagram, there are smaller arrows labeled to SS7, and
21 that's just to denote that there's a communication
22 going on on the SS7 level, and we didn't put the
23 lines on there, because it would have been more busy
24 than it currently is.

25 The Qwest STP talks to, literally, the Level

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1 3 STP, and the two networks determine a path for that
2 call. A simultaneous communication goes back down on
3 the Qwest side that says put the call, let's say, on
4 channel one, and at the same time that communication
5 goes down the Level 3 side to the media gateway says
6 there's a call coming in on channel one. The call is
7 then physically routed between all the devices.

8 The media gateway also provides a modem
9 functionality, which is basically taking the signal
10 from the end user's computer modem and taking it --
11 well, it started in a native format of an IP packet,
12 and that IP packet is then converted into sound
13 frequencies that can travel over a phone line. When
14 those sound frequencies are heard or listened to by
15 the modem on the Level 3 side, it is then converted
16 back into an IP packet to be sent across the
17 Internet.

18 So the modem is necessary because the PSTN
19 can't natively handle an IP packet. It has to be
20 turned into a sound frequency. Just as my voice is a
21 sound frequency being picked up by the microphone,
22 the modem is putting frequencies out onto the line
23 that are listened to and deciphered by the modem on
24 the foreign end.

25 Q. Okay. So maybe, just to make this a little

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1 more real, let's assume I'm the customer in Spokane
2 and my first item I want to do when I get on the
3 Internet is to check eBay, because I've got either
4 something I'm trying to buy or I'm trying to sell.

5 If I understand what you've said, I will
6 enter some instructions, I'll click on my computer
7 and hit probably my favorites list and it will say
8 eBay, and so an instruction will go that essentially
9 says, Take me to eBay. That will travel -- well,
10 first of all, it will be in IP on your modem on your
11 computer, then it's translated by that modem into
12 TDM, then it routes however it routes and eventually
13 ends up at the media gateway, at which point the
14 media gateway, performing the modem functionality
15 that you just described, will take that instruction
16 and turn it into Internet protocol so that it can
17 then be routed to wherever the eBay Web site is
18 hosted. Is that a fair description?

19 A. Yeah, that would be a fair description. If
20 you were to follow along on the diagram for the
21 second part of the path, from the media gateway, you
22 can see a dotted blue line off to a Level 3 router.
23 That router then connects to another router. There
24 could be multiple routers. And routers are like the
25 traffic cops on the Internet. They determine how to

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1 direct traffic. One of the beauties of the Internet
2 is not every packet destined for a particular
3 location has to follow the same path. There are
4 usually multiple alternatives that are out there, but
5 in this case, it bounces from the router that is on
6 the top, hops to the router that is at the highest
7 point of the diagram, and then would go to a router
8 here that's inside of a bubble labeled the Internet,
9 and then off to a file server, a web server out on
10 the Internet somewhere.

11 Q. And then when it finds eBay, eBay is then --
12 some information's going to come back the other
13 direction in IP, it will hit the media gateway,
14 probably be the first -- the initial page or whatever
15 the main web page for eBay and information will then
16 come back over the phone line in TDM and the modem in
17 the customer's computer will translate that back into
18 IP and, all of a sudden, he'll be looking at the eBay
19 Web site and can then do whatever he or she needs to
20 do with regard to looking up their potential purchase
21 or sale on eBay?

22 A. Correct, and that's certainly how Level 3
23 views it, is that it's a two-way communication
24 between the web server and the customer's computer,
25 and requires all these components in between, the

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1 STPs, the Qwest switches, the media gateway, the soft
2 switch, and then there's one other device that
3 actually is involved in the initial setup of the call
4 that we did not talk about, it is the Level 3 radius
5 proxy server, and that works with our ISP's
6 customers' network to validate the user name and
7 password so that somebody is properly authenticated
8 before they're allowed to sign on to the Internet.

9 Q. So if I haven't paid my bill to Earthlink
10 and the requisite time has passed before they lose
11 their patience and eventually they say, Well, we're
12 not going to provide you service anymore, they would
13 put something in on their system that would
14 communicate with the radius server of Level 3 that
15 says don't let this person on anymore, essentially?

16 A. Exactly.

17 Q. Okay. Now, for the duration, let's say this
18 hypothetical ISP user is on the Internet for an hour
19 or so and they're on eBay and then they want to buy a
20 book on Amazon.com and then they want to check their
21 bank balance and, you know, whatever the myriad of
22 things that we can do on the Internet, it's my
23 understanding that that media gateway, there is a
24 small piece of it, a channel port or something of
25 that nature that remains in operation throughout the

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1 duration of that call to continue to serve as the
2 intermediary to continue to convert signals from TDM
3 to IP and from IP back to TDM, as necessary, in order
4 for that Internet session to continue to go forward
5 and take the customer where they really want to be on
6 the Internet. Is that a fair statement?

7 A. That's correct. There is effectively a
8 modem port on the media gateway, there's also -- we
9 talked about channel one, this sort of, at this
10 point, hypothetical channel, but there's literally a
11 -- you could trace out a phone circuit from that
12 customer's house, the copper wire coming out of their
13 house, the switch ports on the Qwest switches that
14 are involved, the ports on the MUX and channels on
15 the private lines that are all dedicated to that
16 communication, that Internet communication, for the
17 duration of that user's sign-on.

18 Q. Okay. Now, let me just briefly ask, what
19 does the soft switch do -- I think we understand what
20 the media gateway does. It's primarily a device that
21 keeps the call up and running and converts the
22 signals as necessary. What is the soft switch doing
23 during that period of time?

24 A. The soft switch is monitoring the
25 communication between or helping to monitor the

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1 communication between the IP portions of the network,
2 which are operated by Level 3, and in this case, the
3 PSTN portions of the network that are operated by
4 Qwest.

5 So as an example, if the user were to turn
6 the power off on his or her modem, that would cause
7 his phone line to hang up. That would cause the
8 switches to send an SS7 message across the network to
9 say the call has been disconnected, and our soft
10 switch would then signal to the media gateway that
11 the call has been disconnected. So it's an integral
12 part of the actual functioning of the call.

13 The IP world is a little bit different than
14 the circuit-switched world, where you would
15 traditionally have all of these functions inside of
16 one box. In the IP world, because of efficiencies in
17 processing, memory, and other things, we're able to
18 segregate them to sort of specialized tasks in
19 performing different things, and it saves on power,
20 it saves on space. It also allows us to have
21 equipment that can serve, in this case, a multi-state
22 area without having to disperse it throughout the
23 area and incur that additional cost.

24 Q. Now, just one other question about the media
25 gateway. As I recall, from some of our earlier

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1 hearings in other states, the media gateway also does
2 the IP-TDM conversion for a voice over Internet
3 protocol call. Say you -- Level 3 serves Vonage or
4 Skype or any one of a number of VoIP providers, that
5 they have a customer on their computer or their
6 computer phone dials someone on the PSTN in Spokane,
7 for example, that -- that communication likewise
8 requires the same kind of ongoing IP-TDM conversion,
9 does it not?

10 A. That's correct.

11 Q. And the media gateway that Level 3 has here
12 doesn't just handle ISP traffic; it also handles VoIP
13 traffic?

14 A. It does.

15 Q. Okay. Let me ask you this. There was some
16 discussion probably before you arrived on the scene
17 here about -- we were talking about a Level -- or an
18 ELI switch up in Seattle that has numbers loaded in
19 it, and I just -- I'm trying to see if there's an
20 analogy or whether it's similar.

21 Is it the soft switch in the Seattle area
22 that has the numbers that Level 3 has in that
23 four-state area loaded in it so that it knows who's
24 calling and where the calls should be sent?

25 A. Yes, for modem calls, that is the case.

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1 It's really provisioned/loaded into the Level 3 soft
2 switch, but from a VoIP arena, there are other
3 devices that support that call that also have
4 customer phone numbers provisioned into them, as
5 well.

6 Q. Would they be further to the right, if you
7 will, on the --

8 A. Correct. If you look on the diagram,
9 there's somewhat of a round icon with arrows on the
10 top. There's a Level 3 edge proxy server, and that
11 device demarks the edge of Level 3's network versus
12 the edge of our customer's network, and they are
13 distributed throughout the U.S. Then there's also
14 the Level 3 core proxy server. That server is
15 responsible for determining the optimal path for the
16 voice packets to take across the network, where, in
17 the case that we talked about a little bit earlier,
18 about multiple paths for a packet to travel over IP
19 to get to a web server, that normally doesn't present
20 a problem in data communications, because if
21 something is a few milliseconds later than the packet
22 that went before it, there's no perceived difference
23 from a user interface perspective. The web page
24 still loads, maybe the last part takes another second
25 to load, but we don't perceive any quality problems.

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1 In the voice world, if the same thing were
2 to happen, we would get clipping, you'd get echo
3 sound, static, other nuisance things that occur, even
4 something as drastic as the call dropping. So it's
5 important to make sure that the performance
6 parameters are monitored and managed, such as
7 latency, the amount of time it takes a packet to go
8 from one place to the other. Another variable that's
9 looked at is called jitter, and that's just the
10 difference between Packet A takes ten seconds, Packet
11 B takes 10.1 seconds, and you want to manage that to
12 a very low level and, as much as you can, use the
13 same path to voice.

14 JUDGE MACE: These proxy servers help you do
15 that?

16 THE WITNESS: Yes, they sort of put up a
17 logical path across an IP network to make all that
18 work. And again, they're located throughout the
19 country.

20 Q. Okay. Mr. Greene, thank you very much for
21 that. I'd like to turn to another area that -- we
22 talked a little bit yesterday about a point of
23 interconnection, and I think you indicated there are
24 eight or nine or ten, at least between Level 3 and
25 Qwest in Washington, excluding Broadwing.

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1 It's true, isn't it, that a point of
2 interconnection is the physical location where, in
3 the case of our two companies, Level 3's network and
4 Qwest's network are connected for the exchange of
5 traffic?

6 A. That's correct.

7 Q. And this is the point where traffic flows
8 from Qwest's network to Level 3's network on a VoIP
9 call, or traffic might flow from Level 3's network
10 back to Qwest's network?

11 A. Correct. It also, with the exception of the
12 relative use factor, denotes the financial
13 demarcation between networks, where Qwest stops
14 having the responsibility for transport and Level 3
15 picks up the responsibility for transport of that
16 traffic.

17 Q. Now, you do acknowledge that there are
18 differences of opinion on the -- between the two
19 companies on whether that is truly the financial
20 demarcation point for at least ISP traffic?

21 A. Correct. We have, yes, an open arbitration
22 on the relative use factor and how that should be
23 applied for Internet or ISP-bound traffic.

24 Q. And that's an issue we've been litigating in
25 a number of states; correct?

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1 A. It is.

2 Q. Okay. Let me talk now a little about Level
3 3's role as a CLEC. It's true, isn't it, as a CLEC,
4 certified local -- or competitive local exchange
5 carrier, Level 3 has the right to obtain telephone
6 numbers from what's called NANPA, N-A-N-P-A, North
7 American Numbering Plan Administrator?

8 A. Correct.

9 Q. Okay. And pursuant to that right, Level 3
10 obtains telephone numbers in Washington that it
11 assigns to some of these ISPs we've talked about who
12 wish to serve dial-up customers in Washington?

13 A. Correct.

14 Q. Now, Level 3 does this, does it not, knowing
15 that the location of the calling party, the ISP's end
16 user customer, may be located in a different local
17 calling area than the local calling area in which the
18 ISP that's serving them may actually be located?

19 A. Correct. We're following -- and what this
20 map details is the architecture in which really the
21 Internet was built upon. If you go back in time and
22 look at the first real provider of remote computer
23 services, CompuServe, they had a business plan that
24 had mainframe computers located in Columbus, Ohio,
25 and then would take private lines from those

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1 mainframe computers and connect end users throughout
2 the country. That service came about in the 1970s.
3 It evolved into CompuServe's Internet service. It
4 was actually nicknamed CompuSpend, because they
5 charged about five or \$6 per hour for a user to get
6 onto the network. And they got to get onto bulletin
7 boards, they got to get into the Worldwide web when
8 it first came about in the 1980s.

9 And CompuServe was forced to change its
10 business plan largely because of America Online.
11 America Online came out with a flat-rated plan that
12 pretty much undercut their price, and America Online
13 also had the same architecture that both Level 3,
14 Qwest, and at the time UUNet supported, which was to
15 aggregate traffic back to central locations following
16 the CompuServe model. It was the only
17 economically-effective way to serve multiple users on
18 a nationwide basis.

19 Q. The bottom line, I take it from that, was
20 that the answer was yes, that Level 3 does provide
21 phone numbers to ISPs knowing that the end user who
22 will be initiating that call and the ISP to whom they
23 are -- who they're trying to reach are in different
24 local calling areas?

25 A. Yeah, and I guess I was saying yes, because

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1 that was the only way it's ever been done.

2 Q. Now, let's assume, for just hypothetical
3 purposes, that the Commission were to determine that
4 the media gateway in Seattle is to be treated as the
5 location of the ISP.

6 It's true, isn't it, that all traffic
7 originated in Washington in local calling areas other
8 than the Seattle local calling area, that that would
9 be interLCA traffic?

10 A. I'm not familiar with the term interLCA, but
11 the call would be --

12 Q. Well, let me -- that it is traffic.

13 JUDGE MACE: Please try not to talk over
14 each other.

15 Q. Let me try again. It is -- you would agree
16 that it is traffic that originates in one LCA, a
17 non-Seattle LCA, and again, with the assumption I
18 made, is delivered to an ISP that is physically
19 located in Seattle?

20 A. If the determination was made that the media
21 gateway was the location of the ISP and not where the
22 ISP had its servers or its other infrastructure, like
23 in the case of AOL, Herndon, Virginia, or Earthlink
24 in Atlanta, then the answer would be yes. That call
25 would go from, let's say, Yakima to Seattle, and

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1 those are two different local calling areas.

2 Q. Okay. And if the Commission were to
3 determine that it's the actual physical location of
4 the ISP itself, Herndon or Atlanta, in that case, not
5 only would it be different local calling areas, it
6 would be different local calling areas in completely
7 different states?

8 A. Correct.

9 Q. Okay.

10 A. But then, you know, you also have to look at
11 the alternative of it could be where the
12 communications are physically going from that user's
13 computer to that web page or to their next-door
14 neighbor when they're chatting. I mean, that's the
15 Internet. It is not location-specific.

16 Q. Let's assume that Seattle is the ISP
17 location, just for ease of the hypothetical, and that
18 Level 3 provides a local number to Earthlink to use
19 in Olympia for Olympia Earthlink end users, dial-up
20 end users. It's true, isn't it, that Level 3 is
21 acquiring a telephone number that's associated with
22 the Olympia local calling area that is actually being
23 used by an Internet service provider located in
24 Seattle?

25 A. Yes, or Atlanta, in the case of Earthlink,

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1 depending upon where you wanted to try and say the
2 ISP was.

3 Q. Right, okay. My hypothetical was Seattle.

4 A. Yeah.

5 Q. It's also true that that call to the
6 Earthlink end user, at least for purposes of dialing,
7 appears to be a local call?

8 A. It does.

9 Q. And I think this is -- the term that you use
10 in your testimony is that this is a locally-dialed
11 call?

12 A. Correct.

13 Q. Now, it's true, isn't it, Mr. Greene, that
14 Level 3 does not currently provide any retail
15 services as an interexchange carrier in Washington?

16 A. I wouldn't say that's true, because of the
17 acquisitions that we have performed acquiring WilTel
18 Communications, who did provide interexchange
19 services.

20 Q. Well, let me, if I could -- this is in Cross
21 Exhibit 469. Do you have the cross exhibits there,
22 the Qwest cross exhibits?

23 A. Oh, here we are.

24 Q. This is the second, I think, of the group.
25 It shows received September 18, 2006, up in the

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1 right-hand corner, and I'm looking at the response to
2 number five, which would be the -- nope, that's not
3 the right one. Let me perhaps -- may I approach,
4 Your Honor?

5 JUDGE MACE: Yes.

6 Q. Well, if I could just stand here and ask the
7 question. It's Exhibit 469, and it's a response that
8 Level 3 made to Data Request Number Five in the first
9 set of data requests. In the data request I
10 indicated, Is Level 3 an interexchange carrier
11 providing intra and interLATA interexchange services
12 for Washington end user customers. I believe this
13 was September of '06, and you indicate that while
14 Level 3 holds a certificate, Level 3 does not
15 currently provide retail IXC services in Washington.
16 Now, that was after the WilTel acquisition, was it
17 not, September of '06?

18 A. That's correct. That response was intended
19 to describe, and I apologize for not doing a good job
20 of this, the function of Level Communications,
21 L.L.C., which is our CLEC entity, our competitive
22 local exchange carrier, and that entity does not
23 perform interexchange functions. However, WilTel
24 Communications, which is now a wholly-owned
25 subsidiary of Level 3, does.

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1 Q. Thanks for clarifying that for me. What
2 about Broadwing?

3 A. Broadwing would fall into the same category
4 as Level 3, in that it has both an interexchange
5 component as well as a local exchange component.

6 Q. So is Broadwing providing retail
7 interexchange service -- services in the state of
8 Washington?

9 A. Yes, they do.

10 Q. Okay. If you could look, and now I think
11 you do have one, this is Exhibit 475, which is the
12 information on managed modem service. Do you have
13 that there?

14 A. Yes, I do.

15 Q. It's a four-page exhibit, which has been
16 marked, I believe, as 475. I'd like to ask you a few
17 questions about that. You're familiar with this Web
18 site material, are you not?

19 A. Yes, I am.

20 Q. And would it be fair to say that this is the
21 flagship Internet service provided to Internet
22 service providers by Level 3?

23 A. I wouldn't use the term flagship. Most --
24 or the largest component that we provide is transport
25 and backbone services for the Internet. As other

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1 ISPs need to connect with one another, the backbone
2 network that facilitates those communications is
3 probably the largest component that Level 3 provides
4 in facilitating Internet communications. This
5 particular service allows for various ISPs that are
6 interested in providing dial-up access to allow their
7 end users to reach the Internet.

8 Q. And then maybe the best way -- this is your
9 primary service to Internet service providers who
10 wish to provide dial-up service?

11 A. That would be correct.

12 Q. Okay. Thank you. And Level 3 does provide
13 this service in Washington, does it not?

14 A. Yes, we do.

15 Q. I'd like you to look at the Web site
16 material, see if I can find the right spot here.
17 Just one moment. If you'll look in the -- it's page
18 one, it's the second full paragraph. You state, in
19 the second to the last sentence, it says, We help
20 eliminate these obstacles -- and you refer to
21 obstacles related to capital investment and network
22 and staffing costs and managing traffic and growth
23 and that sort of thing. You say, We help eliminate
24 these obstacles with a fully outsourced dial network
25 platform; correct?

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1 A. That's correct.

2 Q. Now, if I understand that, what that means
3 is that Level 3 will come in for an Internet service
4 provider from the top ten down to smaller Internet
5 service providers and really provide much --
6 everything from almost all functionality to large
7 portions of the functionality that it takes for them
8 to really be an ISP. In other words, the network
9 kind of functionality for --

10 A. Correct. Many ISPs don't have the
11 engineering or the network expertise in-house to
12 perform a lot of these functions, and they look to
13 Level 3 to outsource it. So the ISP would
14 effectively manage the billing relationship with the
15 customer, they would maintain the server for the user
16 names and passwords, and they may or may not have
17 their own content that they bring users to, say, a
18 home page or other things, such as music or video or
19 research items.

20 So Level 3 provides the dial-up
21 functionality, the transport throughout the U.S., we
22 also, in many cases, directly connect the users to
23 the Internet. It doesn't go through an ISP's
24 network, because the ISP is somewhat of a virtual
25 entity, again, that manages user names and passwords,

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1 the billing and customer service relationships and
2 all of the network components, not just the dial
3 piece, but the Internet access and backbone piece of
4 it is outsourced to Level 3, as well.

5 Q. So would it be fair to say that some ISPs
6 really can almost completely avoid the technical
7 network side of providing ISP service by buying this
8 package service that Level 3 provides?

9 A. Correct. A perfect example of that is
10 America Online, where they've decided to concentrate
11 their resources on the content and the experience
12 that you get at the AOL.com site, being able to get
13 to radio stations, music files, news reports, areas
14 for kids, sports, and the like. And all the network
15 functionality, the backbone components, again, the
16 dial, the transport, is all outsourced to Level 3.
17 In some cases, also Qwest and Verizon are the other
18 two major providers for the big ISP companies.

19 Q. Now, for a small ISP, could they get by with
20 essentially just owning a radius server to
21 communicate with your radius server just so you make
22 sure you're properly authenticating and getting the
23 right people on?

24 A. They need a little bit more than that. In
25 addition to the radius server, people typically

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1 expect to have an e-mail account that that ISP would
2 manage. They would also expect some degree of
3 customer service if they were to have a billing
4 problem or connectivity problem. The first calls go
5 to the ISP, and if it requires further research, then
6 the ISP would work with Level 3 to resolve it.

7 Q. So other than perhaps some equipment related
8 to e-mail and the radius server for authentication,
9 an ISP could really get in business with very little
10 in the way of technical equipment that they would
11 need to own?

12 A. From a technical perspective, yes, there's
13 certainly, in today's competitive market, a certain
14 marketing prowess that they would have to have to
15 have any hope of being successful. We don't give the
16 services away for free, neither does Qwest or
17 Verizon, so they have to have a way to recover their
18 costs.

19 Q. Now, yesterday we talked about a statement
20 that you had made that Level 3 has somewhere between
21 50 and 60 percent of the market. Is this the market
22 we're talking about, this market to provide these
23 outsourced services to dial-up ISPs?

24 A. Correct. Our market statistics show that
25 approximately 90 percent of the dial access in the

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1 U.S. is provided by managed network providers, such
2 as ourselves, Qwest and Verizon. There are still
3 some smaller regional ISPs out there that have their
4 own network infrastructure, and even some of the
5 major ones -- AT&T at one time had its own
6 infrastructure before swinging that network over to,
7 again, Qwest, Verizon or Level 3, and Earthlink is in
8 the process of migrating away from its own
9 infrastructure to a managed solution.

10 Q. Mr. Greene, one other question here. You
11 indicate that -- now, this is in the first paragraph,
12 that your service provides dial-up connections to 90
13 percent of the United States. Does that mean that
14 you have gone into all the various states and you are
15 able to provide local numbers for ISPs to give to
16 their customers to call in 90 percent of the United
17 States? Is that what that means?

18 A. Ninety percent of the population can reach
19 the Level 3 network by locally dialing a phone
20 number.

21 Q. Is that -- are there some states missing in
22 there that cause that 90 percent to not be 100
23 percent, or is it that there's specific areas within
24 states that you don't go?

25 A. It's specific areas within states. We, back

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1 in 2000 and into 2001, made an attempt to contact a
2 number of the rural providers throughout the U.S. to
3 support an expansion. By and large, with very few
4 exceptions, i.e., I think it was two out of 200
5 rejected our request for interconnection, and so we
6 did not provide service in those areas.

7 One of the conditions that we failed to talk
8 about a little bit earlier in being able to secure
9 phone numbers from NANPA is the ability to
10 demonstrate that you have a working business plan or
11 interconnection agreement with the incumbent provider
12 in that area, and absent a willingness to
13 interconnect with us, we were unable to move into
14 those areas.

15 Q. Okay. Let me -- if you'll turn to the third
16 page of that exhibit, which is document -- it says
17 Level 3 Managed Modem Service, and then it's got a
18 diagram down at the bottom.

19 JUDGE MACE: Sorry. Where are you, Counsel?

20 Q. It would be the third page of Exhibit 475.
21 Make sure I'm using the right one. I'd like to ask
22 you one question about, in the middle of the page,
23 there's a heading, improve your cost position. Down
24 near the bottom, the last clause of that said that --
25 says that one of the benefits is a 40 to 60 percent

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1 lower cost advantage you'll experience with our soft
2 switched network. The 40 to 60 percent cost
3 advantage you're talking about there, to who are you
4 comparing to?

5 A. We're comparing it to the minority of ISPs
6 that attempted to build out their own local
7 infrastructure and, to the large part, as they tried
8 to move out into a national basis, failed. We look
9 at the cost of putting modems out at the edge of the
10 network, the training, the spare parts, the
11 technicians, the space and power and all those needs,
12 plus the transport and the central infrastructure
13 that you need to provide. Our math basically says
14 that it's a 40 to 60 percent differential in cost.

15 Q. One of the key elements of the service you
16 provide are the actual phone numbers; correct?

17 A. Correct.

18 Q. We talked about you obtain -- you, meaning
19 Level 3 communications -- obtain those through NANPA
20 because you're a CLEC; is that correct?

21 A. Because we're a CLEC and we have, again, a
22 business plan or an agreement with the incumbent
23 provider to provide service in that particular area.

24 Q. Okay. Let me ask you. As I recall from
25 some earlier discussions we've had in other states,

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1 it's my understanding that Level 3 will not just
2 provide a service of providing local phone numbers to
3 ISPs, but that, instead, you require that they buy
4 some version of this packaged managed modem service;
5 is that correct?

6 A. That's correct. It's a bundled service that
7 includes the phone number, the transport, the
8 administration, the modem functionality, the security
9 services via the radius server and actual access to
10 the Internet backbone.

11 Q. Let me -- one final question on managed
12 modem. Would it be a fair way to characterize it is
13 that managed modem service -- that through managed
14 modem service, Level 3 is a wholesale provider of
15 basic functions that ISPs then do not need to perform
16 for themselves?

17 A. Correct.

18 Q. Okay. Now, I'd like you -- and again, I
19 need you, if you would, to -- let me get this
20 straight. I'm not sure you've been given all of the
21 cross exhibits. There's one cross exhibit, 474, that
22 includes some information from your -- when I say
23 you, Level 3's price list in the state of Washington.
24 Do you have that?

25 A. It's labeled Competitive Telecommunications

0599

1 Service Tariff Schedule?

2 Q. Right. And this is the one that yesterday I
3 indicated that a few pages had been left out.

4 A. Correct.

5 Q. And we added to that. Do you have both
6 pieces?

7 A. I did.

8 Q. Well, if I can approach, I have the part
9 that was left out here.

10 A. Thank you.

11 Q. Are you familiar, Mr. Greene, with this
12 document?

13 A. Yes, it appears to be our tariff to provide
14 local services here in the state of Washington.

15 Q. And who is William P. Hunt?

16 A. He's, as it lists here, our vice president
17 of public policy and government affairs.

18 Q. Excuse me. First of all, I'd like to turn
19 you, if you would, to page 46, it will be original
20 page 46, it's in the first portion. It says,
21 Descriptions of services and rates and charges. And
22 it says, in terms of services offered -- oh, I'm
23 sorry.

24 A. One moment. If I could catch up to you.

25 Q. Yeah, it will be a number right up in here.

0600

1 It will say original page number 46.

2 A. It appears mine goes from original page
3 number seven to 64. I apologize. I don't seem to
4 have page 46.

5 MS. ANDERL: Let me see if I can get it.

6 Q. Give us just a moment, Mr. Greene. I think
7 we can --

8 MS. ANDERL: Your Honor, I have another
9 copy.

10 THE WITNESS: Thank you. Okay. I'm there
11 now.

12 Q. Are you on page 46?

13 A. Correct, original page number 46.

14 Q. Right. And it indicate the services
15 offered. It says, The following local exchange
16 services are offered in this tariff, and it lists two
17 services, direct inward dial, DID service, and direct
18 inward dial and direct outward dial, DID/DOD service.
19 Are those the only local exchange services that
20 you're aware of that Level 3 Communications provides
21 in Washington?

22 A. I would also consider what we call metro
23 private line services, a local exchange service where
24 somebody could purchase a private line, say, across
25 the city of Seattle, but --

0601

1 Q. But it isn't in this price list, is it?

2 A. It is not in this one.

3 Q. Okay. I notice that you don't provide a
4 service called FX service; is that true?

5 A. We do provide an FX-like service as part of
6 our managed modem product, but we did not tariff an
7 FX service.

8 Q. Okay. Now, I'd like you now to turn to the
9 second part, the part that was not given to you
10 initially, and look at page 64, if you would. It's
11 the first page of that additional item. And here it
12 indicates, it says, Local services are provided
13 pursuant to Section 9.2, which I believe refers back
14 to the DID/DOD services, in the following geographic
15 areas, and it indicates two columns worth of cities
16 in the state of Washington. Is that your
17 understanding what that means?

18 A. Yes.

19 Q. Now, at the bottom it says, The company will
20 match local calling areas for the above exchanges as
21 defined in Qwest Corporation's network service and
22 exchange service -- services tariff, WNU-40, Section
23 Five, and Verizon Northwest, Inc.'s tariff WNU-7. Is
24 that your understanding, that --

25 A. Yes, it is.

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1 Q. -- Level 3 matches Qwest's local calling
2 areas?

3 A. That's correct.

4 Q. Now, if you go to the next page, original
5 page 65, it begins with this phrase. It says,
6 Geographically defined local calling areas are
7 associated with each local service provided under
8 Section 9.2, which is DID and DOD; correct?

9 A. Correct.

10 Q. Local services shall have the following
11 local calling areas. And then, if I understand the
12 next four pages, on the left will be an exchange and
13 on the right it will indicate any other local
14 exchanges to which residents in the first exchange
15 can call toll-free or as part of their local service.
16 Is that the way you would understand this?

17 A. That's the way I would interpret it.

18 Q. Okay. And as we go down through this, if I
19 understand correctly, your switch is in Seattle;
20 correct?

21 A. Our soft switch is in Seattle, our STPs that
22 support the call I believe are in San Diego and
23 Denver, but we have equipment throughout the United
24 States that supports the calls.

25 Q. Okay. But the soft switch that Level 3 uses

0603

1 to serve Washington is located in Seattle?

2 A. That's correct.

3 Q. Would you turn to the original page 67? And
4 I'm looking -- are you there?

5 A. I am.

6 Q. If you look down the left side, there is
7 indication of Seattle on the left side, and then
8 there are a list of eight or ten other areas that are
9 part of the Seattle local calling area. Do you
10 understand that?

11 A. Correct. I do understand it.

12 Q. Now, would you interpret this -- would you
13 agree with me that if a call is initiated in a local
14 calling area, or from an exchange or an area other
15 than those listed to the right of Seattle, that is
16 then delivered to a customer in Seattle, that that
17 call is between customers in different local calling
18 areas?

19 A. The way you say the question, I would agree
20 with that statement.

21 Q. And you would agree that that's the way the
22 calls would be defined by your price list in the
23 state of Washington?

24 A. For DID and DOD services, yes.

25 Q. Okay. Mr. Greene, just a few more

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1 questions. And now I actually would like to turn, if
2 we could, to your testimony in a couple of spots. If
3 you would turn to page eight of your direct
4 testimony?

5 A. I'm there.

6 Q. And if you'll go over to the prior page,
7 you're talking about what the fundamental dispute is
8 in this case. And then, at the bottom of page seven,
9 you state, Qwest effectively seeks to re-litigate
10 these issues using a novel approach. I understand
11 that the Commission has determined that the FCC has
12 implemented a solution for how carriers ought to
13 compensate one another for terminating all -- and all
14 is in italics -- ISP-bound traffic, making ISP-bound
15 traffic that terminates to a modem that is not
16 located in the local calling area of the calling
17 party. Is that -- did I correctly read that?

18 A. Yeah, that is my testimony.

19 Q. Right. And then you refer down to a Level 3
20 order that I believe is from a recent complaint case?

21 A. I believe so, too, a core complaint case
22 brought by Level 3.

23 Q. Right. Are you aware -- has anyone at Level
24 3 made you aware that that order was appealed by
25 Qwest to a federal district court in Seattle and that

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1 the court recently reversed and remanded that
2 decision to the Washington Commission?

3 A. Yes. As I understood it, that the court
4 stated that the basis in which the judge made her
5 decision, which was largely federal law, was not
6 valid, but the Commission was free to determine,
7 under its own rules and regulations, how to decide
8 upon the compensation for this traffic.

9 Q. Right. But do you understand that the court
10 very specifically ruled that the ISP Remand Order
11 does not -- the scope of the ISP Remand Order is
12 confined to local ISP traffic as defined by the local
13 commission?

14 A. The ISP Remand Order, yes, but, again, I
15 understood it to give the direction to the PUC to
16 look to its own orders and rules to support the
17 compensation regime that it wanted to impose.

18 Q. And that's the remand portion of the
19 decision; correct?

20 A. As I understand it, yes.

21 Q. Correct. Look on page nine, line 17. You
22 say each party pays for its network on its respective
23 side of the POI, and you make that as kind of a
24 declarative statement that that's the truth; correct?

25 A. I do, because that's been our experience in

0606

1 the majority of the United States. Qwest has adopted
2 a position that hasn't been adopted by anybody else
3 that we should, in addition to paying to the POI, we
4 should pay for their network all the way to the end
5 office, even though end users pay for local service
6 that covers that same network.

7 JUDGE MACE: I just want to make sure for
8 the reporter that POI is P-O-I. I can't remember if
9 we've already addressed that.

10 MR. SMITH: Point of interconnection. Thank
11 you, Your Honor.

12 Q. Now, as a matter of fact, in recent round of
13 arbitrations that Level 3 and Qwest have been engaged
14 in, it's true, isn't it, that the states of Arizona,
15 Iowa -- that commissions in the states of Arizona and
16 Iowa, Colorado, Oregon and Wyoming have ruled that
17 Level 3, in fact, is responsible for ISP traffic on
18 Qwest's side of the point of interconnection?

19 A. In those four or five states, yes. In the
20 37 other states that are outside of the Qwest
21 territory, that's not the rule that we follow.

22 Q. But in the 37 other states, the business
23 arrangement that was made there was the function of a
24 settlement between Level 3 and the ILECs in those
25 areas. That issue wasn't litigated in every one of

0607

1 those jurisdictions, was it?

2 A. No, the other RBOCs did not make it an
3 issue. They believe that the parties were
4 responsible for their costs up to the POI.

5 Q. Well, Qwest has been able to convince at
6 least five commissions in the Qwest territory that
7 Qwest's position on that issue is the correct result;
8 true?

9 A. It appears to be the case.

10 Q. Okay. Mr. Greene, would you accept, subject
11 to check, maybe even know, that Level 3 receives more
12 minutes of use from Qwest in the state of Colorado
13 than in any other state in the Qwest region?

14 A. In the Qwest region, yes, that is correct.
15 Colorado has the majority of minutes of use.

16 Q. Okay. And it's true, isn't it, that the
17 Colorado Public Utilities Commission ruled several
18 years ago that ISP traffic was subject to a
19 bill-and-keep compensation regime?

20 A. That's correct.

21 Q. And so, for several years, Level 3 has been
22 operating in the state of Colorado, providing similar
23 services to those provided in Washington, and has not
24 received terminating compensation for ISP traffic?

25 A. That is correct.

0608

1 Q. And that includes VNXX traffic?

2 A. That's correct.

3 Q. Okay. It's also true, isn't it, the issue
4 we were just talking about, about responsibility for
5 transport on Qwest's side of the point of
6 interconnection, that the Colorado Commission, in at
7 least two arbitrations involving Level 3, has
8 accepted Qwest's relative use factor language, which
9 obligates Level 3 to pay transport for ISP traffic
10 that originates on Qwest's side of the point of
11 interconnection?

12 A. It decided in two arbitrations? I'm not
13 sure I've seen a final order in the second one, but I
14 do know of at least one case in this case.

15 Q. Let me rephrase that. In one in
16 approximately 2002, 2003, the Colorado Commission
17 accepted Qwest's RUF language, Level 3 appealed that
18 issue, and a federal district court affirmed the
19 Colorado Commission; correct?

20 A. That is my understanding.

21 Q. And recently, the -- an ALJ -- well, no,
22 recently, the Colorado Commission issued an order
23 essentially reaffirming that position and accepting
24 Qwest's language and Level 3 has filed a petition for
25 reconsideration?

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1 A. I haven't seen the Commission order. I know
2 there was a Commission Staff member that read through
3 a list of recommendations in a hearing. The ALJ was
4 not present, I never saw an order from the ALJ in
5 that proceeding, but I'd have to accept --

6 Q. Would you accept, subject to check --

7 A. Sure, subject to check.

8 Q. -- there is a real order that really rules
9 that Qwest's RUF language has been accepted?

10 A. I'll accept, subject to check.

11 Q. I said RUF. R-U-F is relative use factor.

12 JUDGE MACE: I would have asked you, but I
13 think that's -- I don't know if you have -- because
14 we have a new reporter today.

15 MR. SMITH: That was my primary concern.

16 Q. So just to finish up on that issue, for
17 several years in Colorado, Level 3 has been paying
18 for transport for ISP traffic on Qwest's side of the
19 network?

20 A. We have.

21 Q. And continues to do business in Colorado?

22 A. We continue to do business in Colorado, but
23 the traffic that is on the Internet from a dollar
24 perspective is in decline, and companies such as
25 Qwest, Level 3 and Verizon continually have to

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1 evaluate whether or not it makes economic sense to
2 serve a particular area given the regulations and
3 other economies that are out there.

4 Q. Are you suggesting that Level 3 is intending
5 to discontinue service in the state of Colorado?

6 A. We're evaluating the state of Colorado, Iowa
7 and Minnesota at this time because of the recent
8 rulings.

9 JUDGE MACE: Mr. Smith, I'd like to take a
10 recess, but if you only have a few more questions --

11 MR. SMITH: I actually -- I'm down to maybe
12 four or five questions, so --

13 JUDGE MACE: Okay. Go ahead.

14 Q. The last item I'd like to turn to, Mr.
15 Greene, is the Exhibit 477 are a couple of -- are
16 some excerpts from the current interconnection
17 agreement in Washington between Qwest and Level 3.
18 Do you have that one?

19 A. Is it labeled Agreement for Terms and
20 Conditions for Interconnection?

21 Q. Yes.

22 A. Unbundled Network Elements?

23 Q. Right, right. And I'd like you to turn to
24 -- make sure I've got this -- page eight, it's
25 Section 4.24, and let me read. This is a definition

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1 of exchange service or extended area service
2 (EAS)/local traffic. Then it goes on to say that
3 type of traffic means traffic that is originated and
4 terminated within the same local calling area
5 determined by the Commission.

6 JUDGE MACE: No, it doesn't say same.

7 Q. Oh, I'm sorry. Within -- you're correct.
8 Let me read that again. Exchange service or extended
9 area service, (EAS)/local traffic --

10 MS. ANDERL: Slow down.

11 Q. -- means traffic that is originated and
12 terminated within the local calling area determined
13 by the Commission.

14 Is that -- if you'll accept, subject to
15 check, that this is the interconnection agreement, is
16 that -- is that a correct reading of one of the terms
17 that define local traffic?

18 A. Yes, it is.

19 Q. Okay. And if you would turn over to page
20 11, and I think this will be the last question,
21 there's two definitions, rate center, but I'd like to
22 focus on a Section 4.57. Rate center area is the
23 geographic area within which basic exchange services
24 are provided for the NPA-NXX designations associated
25 with a particular rate center.

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1 Did I correctly read that term of the
2 agreement between Qwest and Level 3?

3 A. Yes, you did.

4 MR. SMITH: I think that concludes my
5 cross-examination. We would like to offer -- there's
6 some of the designated exhibits that we've looked
7 through and decided probably need not be offered, but
8 we would offer Exhibits 468, 469, 470, 473, 474, 475
9 and 477, which were designated as cross exhibits for
10 Mr. Greene. And then, for Mr. Kell, we would offer
11 Exhibits --

12 JUDGE MACE: Just a minute. Let me turn my
13 page to Mr. Kell. Go ahead.

14 MR. SMITH: I'm sorry. Offer 352, 353, we
15 would exclude 354, and offer 355.

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

18 MR. ROGERS: No objection, Your Honor.

19 JUDGE MACE: Allright. I'll admit them.
20 Thank you. We will have cross-examination next by
21 either Mr. Finnigan or Mr. Thompson. Which of you
22 will be going first?

23 MR. THOMPSON: I'm happy to go or defer.

24 JUDGE MACE: We're going to take a
25 ten-minute recess first. So let's take ten minutes,

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1 and Mr. Thompson will be the person.

2 (Recess taken.)

3 JUDGE MACE: Let's be back on the record,
4 then. And Mr. Thompson, why don't you go ahead.

5

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

7 BY MR. THOMPSON:

8 Q. Good morning, Mr. Greene.

9 A. Good morning.

10 Q. You talked already some with Mr. Smith about
11 the Commission decisions in the Pac-West and Level 3
12 complaint cases that preceded this case and also
13 about how that was appealed to the federal district
14 court and reversed.

15 Am I right -- am I right now that it's Level
16 3's position -- or that it's no longer Level 3's
17 position at this point that Qwest owes it
18 compensation under the ISP Remand Order for all
19 ISP-bound traffic without regard to whether it's
20 local or between local calling areas?

21 A. I wouldn't say that exactly. We certainly
22 have the opinion of a judge that the ISP -- at least,
23 my understanding, the Tenth Circuit that the ISP
24 Remand Order is not a valid vehicle to determine
25 compensation, but there are other orders that my

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1 lawyers have talked to me about. As an example, in
2 the Second Circuit, VNXX was defined as where a CLEC
3 does not provide transport, which materially would
4 change the definition of Qwest's proposed language on
5 VNXX.

6 So there are a number of conflicting things
7 that are out there, both at a federal and state
8 level. We still feel that the ISP Remand Order does
9 apply for local traffic, because if you look at all
10 the information the FCC had coming up in making that
11 decision back in 2001, was the architectures of the
12 day, which were centralized infrastructure was the
13 mechanism to provide the majority of traffic.

14 I would argue that if they just made a
15 simple typo in one sentence in an order, and instead
16 of saying the modems are typically in a local calling
17 area, they should have said that the modem's phone
18 numbers are typically in a local calling area,
19 because that was how things were provided.

20 Q. But under the judge's ruling in the federal
21 district court here in Washington, he took a
22 different interpretation, I guess, of the ISP Remand
23 Order; isn't that right?

24 A. He did take a different interpretation, but,
25 again, he said it's -- he didn't say the conclusion

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1 was an invalid one; he just said that the vehicle in
2 which the conclusion was based was an invalid one and
3 gave it back to the Commission to determine within
4 its own own rules and regulations, and certainly said
5 the Commission has the jurisdiction to determine
6 this, it certainly could be a probable outcome that
7 all traffic would be rated at the .0007, as described
8 at least partially in the ISP Remand Order, but,
9 again, said the ISP Remand Order was not the right
10 vehicle to base the decision, as my lawyers explained
11 to me. I'm not a lawyer, so I really defer to them
12 in the briefs to answer that more thoroughly.

13 Q. Okay. So at this point, is it fair to say
14 that the -- that your chief argument is that VNXX is
15 permissible because it would be or should be
16 permitted by this Commission because it would be
17 discriminatory for the Commission to, on the one
18 hand, prohibit VNXX, and on the other hand, to allow
19 Qwest to provide FX services?

20 MR. ROGERS: Your Honor, if I may. I'm just
21 going to voice an objection. I know we'd had some
22 back and forth already, but the last answer from Mr.
23 Greene was that it seems that the briefs are probably
24 the most appropriate place to settle this line of
25 questioning and I -- effectively, that's my

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1 objection, is that this is a legal argument, line of
2 argument, and so the briefing would be more
3 appropriate.

4 MR. THOMPSON: Well, and I guess we had this
5 same discussion with Staff's witness, as well, but
6 it's inevitable that the witnesses get into, you
7 know, the legal framework, and I'm just trying to
8 sort out what -- given that there has been this
9 district court decision since Mr. Greene's testimony
10 was filed, you know, if the Company's position, as
11 articulated in his testimony, has changed.

12 JUDGE MACE: Yes, I'm going to allow the
13 answer. And do you remember the question?

14 THE WITNESS: I believe it had to do with
15 Level 3's position and our concern about the
16 potential discriminatory treatment between us and
17 Qwest. If you actually go to my testimony, and I'm
18 struggling to find the exhibit, but I believe it's
19 MDG-3.

20 JUDGE MACE: Your testimony or the exhibit?

21 THE WITNESS: The exhibits to my testimony.

22 JUDGE MACE: MDG-3 is that QCC Wholesale
23 Dial Level 3 Managed Modem Comparison. Is that the
24 one?

25 THE WITNESS: That is the one I'm referring

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1 to.

2 JUDGE MACE: And that's 454, by our
3 numbering.

4 THE WITNESS: Yes, in that exhibit, which
5 was borne out of a technical conference we had with
6 Qwest, where we had our technical folks each describe
7 its network in a way it's provided. Across the top
8 is the way that Qwest provides its network, and if I
9 were to summarize it, it is a private line that
10 backhauls the traffic out of the local calling area,
11 and the signaling to manage the calls is carried
12 inside of that private line, whereas the Level 3
13 architecture has the calls backhauled in a private
14 line out of a local calling area, except for the
15 signaling is carried on a separate path, but there's
16 no other real technical distinction between the two
17 ways that the companies provide the service.

18 Now, there's a bunch of legal arguments that
19 fall around that, whether or not an ESP is buying it,
20 is a PRI a valid local service, but Level 3's DID
21 service isn't. As a business person and as a policy
22 owner inside of Level 3, it rings hollow to me. We
23 filed a tariff for our DID services, we've gone
24 through the expense of interconnecting in numerous
25 locations throughout the state of Washington in

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1 building out a network, as have some of the other
2 CLECs that have been joined in this case, and we
3 provide services in almost the identical manner that
4 Qwest does, but according to Qwest's complaint, it's
5 okay to do it their way, but not to do it ours.

6 And again, I struggle with that and I would
7 struggle certainly if the Commission were to decide
8 that, again, Qwest is able to pursue markets, but we
9 can't, unless we go through and rebuild their
10 infrastructure the same way they built it, which,
11 given today's technology, is an inefficient way to do
12 things.

13 Q. Okay. And I think that's been -- that the
14 technical aspects of it have been hashed out in, I
15 think, probably the direct testimony. I'm just
16 trying to get at, you know, given that the -- it
17 would appear to me that the ISP Remand Order argument
18 that you make in your testimony is now precluded by
19 that federal district court case, and so really all I
20 was getting at is now it seems that the argument is
21 based on the comparison -- primarily based on the
22 comparison between Qwest -- the Qwest Company's
23 dial-up ISP access service compared with the one that
24 you offer, and I guess your answer is that is where
25 the argument is now?

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1 A. It would be that, but also, I think there's
2 -- you know, as I look at Washington, I look at our
3 relationship with Qwest, I think there's precedent
4 value. Prior to the ISP Remand Order, we had
5 ISP-bound traffic. Qwest paid us at the local rate
6 for that traffic, which I believe was .001 and some
7 -- another number behind it, I forget the exact
8 number, and when I look back at our records in 1999
9 and in 2000 combined, they paid us over \$4 million in
10 reciprocal compensation for traffic that we were
11 exchanging.

12 So there is a long history between our
13 companies and between the Commission's orders of
14 reciprocal compensation applying to this traffic
15 without regard to arbitrary locations of certain
16 pieces of equipment.

17 Q. When Level 3 entered into the Washington
18 market, wasn't that prior to the Core Forbearance
19 Order?

20 A. It was prior to the Core Forbearance Order.
21 It was also prior to the ISP Remand Order.

22 Q. Okay.

23 A. We entered the Washington market in 1999.

24 Q. Okay. And so at the point prior to the Core
25 Forbearance Order, the new market restriction was

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1 still in place under the ISP Remand Order; correct?

2 A. That is correct. So we had a body of
3 traffic that we exchanged in '99, 2000 and 2001. As
4 I understand the ISP Remand Order, the parties were
5 to use the traffic that was exchanged in the first
6 quarter of 2001 as the model to establish a cap on
7 the maximum amount of minutes that were exchanged
8 that were eligible for compensation. It also reset
9 the rate from, in the case here in Washington,
10 .001-something to .0007.

11 You know, our understanding of that was to
12 deal with the one-way nature of the traffic and the
13 assumed lower cost to terminate on the CLEC side of
14 the POI.

15 Q. Am I wrong, then, that the -- it was my
16 understanding that the compensation rate for exchange
17 of this traffic was under bill and keep at some point
18 in the past between Qwest and Level 3?

19 A. When I looked at our records, I show that
20 Qwest paid our invoices for traffic exchanged in the
21 state of Washington to the tune of about \$4 million
22 in '99 and 2000. I didn't look up 2001.

23 Q. Okay. I want to turn to page 11 of your
24 testimony, and specifically to about lines 13 through
25 21. And you're talking there about whether calls

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1 between two local numbers are treated as local calls.

2 Specifically, on line 17, you say, The
3 designation local simply reflects a retail marketing
4 decision by the originating carrier. Do you see
5 that?

6 A. I do.

7 Q. And then, similarly, over on page 13, on the
8 last line, line 24, in response to a question asking
9 about whether, from a technical perspective, there's
10 any limitation on the distance that a local, in
11 quotes, call can travel, you say, similarly, These
12 are retail marketing questions, not technical
13 questions.

14 I wanted to explore with you kind of what
15 you meant by that just by asking you a few questions
16 to try to scope that out. You do agree, I gather,
17 that phone service has been and continues to be
18 offered in local and in long distance categories,
19 don't you?

20 A. That's certainly out there, but you will
21 probably find, when you look at recent market
22 statistics, customers are doing two things. One is
23 they're migrating to cellular packages, where you get
24 unlimited nationwide calling. The distinction of a
25 local calling area has definitely been blurred. You

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1 also have these local companies having moved into the
2 long distance marketplaces, primarily marketing
3 bundles to their customer, where for \$50 you get
4 local calls, long distance calls with no measurement,
5 you know, unlimited plans. So those distinctions
6 have definitely been blurred away by the companies
7 out there marketing services today.

8 Q. Well, I should have perhaps limited my
9 question to, I guess, from a wireline perspective,
10 but you say that when, you know, historical incumbent
11 local exchange companies offer a package that
12 includes local along with long distance service,
13 they're doing so, aren't they, as both a local
14 exchange company and as an interexchange company?

15 A. I believe so, but, you know, as I follow the
16 stock market and I look at Qwest, who's under the
17 symbol Q on the New York Stock Exchange, I believe in
18 one of their recent releases they touted the number
19 of customers that are buying services through them
20 via bundles. It wasn't about how many local
21 customers they had, how many long distance customers
22 they had; it was here's the number of people buying
23 bundles of services from us.

24 So I certainly feel, you know, watching the
25 market both as a consumer and as a participant in it,

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1 that that's not how companies are approaching their
2 customers or they're approaching Wall Street.

3 Q. Well, it seems to me you're answering this
4 from sort of a public perception or marketing
5 standpoint, whereas I guess I'm asking, from a
6 regulatory perspective, there's still a distinction
7 between interexchange carriers and local exchange
8 carriers?

9 A. There is still that distinction, yes.

10 Q. And you do agree, I take it, that as a
11 general matter, what distinguishes local calling from
12 long distance calling is whether the call is within a
13 local calling area or between local calling areas;
14 right?

15 A. I would guess I would ask for the type of
16 traffic, again, because, you know, we talked about
17 wireless just a moment ago, different set of rules.
18 I believe a majority of the state of Washington is
19 one entire local calling area, it's referred to as an
20 MTA.

21 With ISP-bound traffic, as I understand it,
22 the FCC has determined that the endpoint of the call
23 is indeterminate. You don't know where that call
24 finally ends, because that customer's going to a web
25 page, so it's difficult for me to say that ISP-bound

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1 traffic goes from one local calling area to another,
2 because the FCC said it doesn't. So I struggle in
3 answering the question as it was posed.

4 Q. Okay. What if I limit it to plain old
5 telephone service, you know, PSTN-to-PSTN telephone
6 calls? Isn't that generally the case that what
7 distinguishes a local call from a toll call is
8 whether it's within the local calling area or between
9 local calling areas?

10 A. That would be correct.

11 Q. Okay. And I guess you would also agree that
12 local service has traditionally been offered at flat
13 local -- or flat monthly rates, a fixed monthly rate,
14 whereas long distance tends to be offered -- again, I
15 suppose you've mentioned the bundles, bundles and so
16 forth, but has traditionally been offered on a
17 per-minute basis?

18 A. Traditionally meaning that if you were to go
19 back in time and look over, you know, the last
20 hundred years, yes, that is the case, but, again,
21 there are different market phenomena that are
22 happening now.

23 Q. Okay. And generally, access charges apply
24 to -- in the wireline environment, to calls that are
25 between local calling areas, whereas reciprocal

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1 compensation applies to calls that are within local
2 calling areas; correct?

3 A. That is correct.

4 Q. Okay. And I think you did talk about this a
5 little bit in your testimony. You agree that states
6 can and do set rules regarding local calling areas or
7 that's an area they can regulate?

8 A. Absolutely.

9 Q. Okay. Such as how large or small they are;
10 right?

11 A. Correct.

12 Q. And whether they're defined according to
13 geographic location or based on NPA-NXX alone?

14 A. Yeah, as I understand it, some of these
15 things were, you know, sort of historically been
16 there for some time, but various parties would
17 establish a community of interest. Let's say a new
18 factory gets built outside of the traditional town
19 boundaries in an area that would traditionally be a
20 toll call. The community may petition the Commission
21 to say, Hey, I'd like to be able to -- you know, the
22 wife would like to be able to call her husband at
23 work or vice versa, and so they petition the
24 Commission to change the boundaries. So there is,
25 you know, some movement. They don't change a lot,

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1 they have been largely set, but they were based upon
2 those communities of interest.

3 They weren't based upon, you know, what the
4 incumbent's costs are or what have you. Those costs
5 have been typically folded in. So if it was, you
6 know, usually a hundred minutes at three cents a
7 minute being called to the factory, they would take
8 that \$3 and divide that against the rate base and
9 sort of amortize it out, as I understand the process
10 works. But it was looking at, you know, protecting
11 the revenues, not necessarily the cost to serve.

12 I mean, because one could argue, when you
13 look just down here, down the Sound, you've got
14 Seattle, Tacoma, and Olympia. Tacoma's halfway
15 between Olympia and Seattle. It's local to Seattle,
16 but not to Olympia. The distances are the same. So
17 it doesn't seem that there's a real cost argument. I
18 doubt that 30 miles of fiber on Qwest's network costs
19 more on one route versus the next. The network is
20 the network. It's just that, again, these
21 traditional boundaries that have been out there.

22 Q. Right. And this Commission has a rule that
23 provides for changing or amending local service area
24 boundaries based on community of interest
25 considerations like you're talking about; right?

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1 A. As I understand it, yes.

2 Q. With that in mind, I want to go back to the
3 statements I pointed out to you earlier in your
4 testimony. Might as well look at page 11 again,
5 where you state that the designation -- at line 17,
6 The designation local simply reflects a retail
7 marketing decision.

8 In light of what we've talked about, I guess
9 you're not suggesting that it's completely at a
10 carrier's discretion how they assign telephone
11 numbers to their customers, are you?

12 A. No, I wouldn't use the adjective completely,
13 but carriers have a large discretion in how they
14 assign telephone numbers to their end users. I was
15 in the room yesterday where I think there was some
16 questions of Mr. Brotherson of how end users in one
17 state could get a phone number for their friends and
18 family to dial in another state, and that's -- we
19 certainly see that as being, you know, inside the
20 discretion of Qwest to do that. They advertise it on
21 their web page as a virtual numbering service, and
22 let your long distance relatives call you locally,
23 and that's how they market it.

24 So a lot of that goes to my statements here
25 that it's a retail marketing distinction, where you

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1 have the incumbent provider, you know, specifically
2 marketing to customers to use numbers that belong to
3 a different state.

4 Q. I don't know if you were here. You didn't
5 hear Mr. Brotherson's testimony?

6 A. I did not hear it at all on Monday, but I
7 did hear parts of it on Tuesday.

8 Q. Okay. Or Mr. Linse?

9 A. I did not hear Mr. Linse's testimony.

10 Q. Okay. There was some discussion there about
11 -- Qwest was talking about the need to honor local
12 exchange boundaries in those -- offering those types
13 of services. Would you agree that that's important
14 to do?

15 A. I guess it would depend upon the context. I
16 don't have a problem with Qwest using its resources
17 as it has to assign virtual numbers to its customers
18 in different areas. I don't have a problem when
19 Qwest out of region buys services from CLECs that
20 provide architectures exactly like mine to compete
21 against me. It's just how the industry works.

22 Q. But these kinds of decisions are certainly
23 subject to state commission regulation?

24 A. Absolutely, they are. I believe the
25 commissions have the jurisdiction and an obligation

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1 to look into these things and ensure that regulations
2 are followed, nobody's discriminated against, and
3 that there's, as much as there can be, a fair and
4 equitable solution.

5 Q. Okay. Are you familiar with the decision
6 this Commission made in arbitration of a
7 interconnection agreement between AT&T and Qwest
8 about -- in 2004?

9 A. I'm not, on the surface, familiar with that
10 one. I'm sorry.

11 Q. Well, maybe if I ask you a little more about
12 it, it might sound familiar. In that decision, AT&T
13 had proposed a definition of local that would have
14 defined it solely on the basis of NPA-NXX. Does that
15 sound familiar?

16 A. I do recall some discussions with my lawyers
17 about that one. I believe that language was rejected
18 by the Commission.

19 Q. Correct. So -- well, I don't know. It
20 sounds like you're not exactly intimately familiar
21 with it, but if you would assume that the Commission
22 in that decision had stated that it was concerned
23 that the -- that defining local calls in that manner
24 was -- what are the words they used -- was, well,
25 overly broad and it was concerned about the

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1 implications of doing that from an access charge
2 perspective, is there -- what comfort could you give
3 to a regulator concerned that, you know, finding that
4 the companies can assign NPA-NXXs, you know, any way
5 they wish isn't sort of just anarchy from an access
6 charge perspective?

7 A. I don't see it that way. One, you have to
8 just look at the practical use of phone numbers. You
9 know, people don't switch phone numbers between
10 calls, as an example. You know, my phone number is
11 my phone number and it stays consistent with me. So
12 it, to me, provides a valid mechanism to rate and
13 route calls. I mean, you look at access charges
14 today and you look at the billing systems, they're
15 using a phone number or a phone number substitute,
16 referred to as a charge number, to rate and to route
17 those calls. That's just fundamental to the way that
18 it works. There's no separate database out there
19 that somebody goes to and says, Well, what does this
20 phone number really mean or where is this person
21 truly located in a wireline world.

22 It is the phone number that determines the
23 jurisdiction of the phone call, because that's the
24 only thing that's available to the network and to the
25 billing systems to manage it. And that's how it's

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1 been done since divestiture. It hasn't been done any
2 other way.

3 So I would take comfort in the fact that
4 it's worked for over 20 years using that method and
5 that no other method has been proffered that would
6 replace it.

7 Q. But doesn't -- I mean, if customers are
8 essentially allowed to choose the local calling area
9 that they -- or areas that they sort of belong to,
10 doesn't community of interest and geographic local
11 calling area sort of go out the window?

12 A. To the extent that you felt that a majority
13 of customers would no longer want to belong to the
14 community of interest or inside the community in
15 which they live, that, all of a sudden, you know, the
16 majority of Seattle customers decided they wanted 312
17 Chicago phone numbers because they thought Chicago
18 was cool, I don't really see that happening.

19 There are some folks out there that would
20 like to have a number that -- you know, let's say I'm
21 a law firm and I want to seem as though I'm big and
22 prestigious. I may want a Washington, D.C. phone
23 number for some of my clients. But the reality of it
24 is is that I want to describe to the majority of my
25 clients that I'm here locally in Seattle and can

0632

1 serve their needs here. And that's the type of phone
2 number that I'm going to put out there.

3 So I don't see this as a world of anarchy
4 and other things run about. And we, at Level 3, have
5 had that validated. As we support our VoIP services,
6 one of the requirements that's come down from the FCC
7 is that we allow E911, or location-specific 911, so
8 if somebody were to be severely hurt, let's say, and
9 were only able to dial 911, but couldn't speak, we at
10 least have some sense of where that call is coming
11 from.

12 There was a big concern with VoIP, because
13 the boxes and other things can move around. But we
14 were able to build a database where customers had to
15 go in and register their address. Less than one
16 percent of them gave us addresses that weren't
17 geographically relevant to their phone number. That
18 doesn't mean they can't pick up their device and move
19 it. They can. That's one of the attributes of VoIP,
20 but they would have to go back and redo it. But I
21 would hardly call one percent of users creating an
22 anarchal state out there.

23 You know, compare that with -- I'm sure my
24 good friends from the rural companies can attest to
25 the percent of traffic that falls into a phantom

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1 category, where, you know, they're given the phone
2 number, but they don't know who to bill. Again, the
3 phone numbers are the basis of how the billing and
4 routing of phone networks work.

5 Q. Okay. Thank you. That's all the questions
6 I have.

7 JUDGE MACE: Mr. Finnigan.

8 MR. FINNIGAN: Thank you.

9

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

11 BY MR. FINNIGAN:

12 Q. Mr. Greene, for the record, I'm Rick
13 Finnigan, and I'm representing the Washington
14 Independent Telephone Association, those rural
15 companies that you just referred to.

16 I'd like to start by having you take a look
17 at Exhibit 474, which is the Qwest cross exhibit that
18 lists the excerpts from your price list, from Level
19 3's price list?

20 A. And if I could trouble Ms. Anderl to help me
21 out.

22 MS. ANDERL: I was going to say, I think you
23 gave it back to me already, so -- there you go.

24 THE WITNESS: Thank you so much.

25 Q. And if you'd look at what's marked at the

0634

1 top as original page number 66, it has some local
2 service areas defined. Do you see that?

3 A. Yes, I do.

4 Q. Okay. If you'll go down the page, you'll
5 see that there's an entry for Olympia, and it has an
6 Olympia local calling area of Olympia, Rochester and
7 Shelton. Do you see that?

8 A. I do.

9 Q. Do you understand that, for a Qwest customer
10 that's in Olympia, the Qwest customer's local calling
11 area is Olympia, Rochester, Shelton, Tenino and Yelm?

12 A. I would accept that, subject to check.

13 Q. Okay. Why would you have Level 3's
14 customers pay a toll call to call Tenino and Yelm?

15 A. I believe that if you go back to page number
16 64 and look at the bottom part of that, it says that
17 the company will match the local calling areas, the
18 above exchanges, as defined by Qwest in its tariff.
19 So the fact that Olympia's listed on page 64, I will
20 say it would supersede the local calling areas that
21 are described on 66 in the case of Yelm and the other
22 rate center.

23 Q. Okay. So the definitions that you have on
24 pages 65 and 66 are not meant to be definitive?

25 A. No, it is a combination of 64 and the

0635

1 following pages.

2 Q. Do you have the WITA cross exhibits?

3 A. I do. If you could just give me one moment
4 to dig those out.

5 Q. Do you need a hand?

6 A. Do you have that? I apologize for being
7 disorganized. I kind of shuffled my papers here, but
8 it appears I have everything but.

9 JUDGE MACE: Our numbers are 456 through
10 467.

11 MR. FINNIGAN: The set I have to offer him
12 aren't marked, but it is a complete set.

13 JUDGE MACE: We can just follow along using
14 descriptions and identifying the data request
15 numbers.

16 MR. FINNIGAN: Does Counsel have a copy?

17 MR. ROGERS: I may.

18 JUDGE MACE: Let's take a moment.

19 MR. FINNIGAN: I noticed a moment of -- look
20 of confusion on his face, so --

21 Q. Are you ready, Mr. Greene?

22 A. I believe I am, yes.

23 Q. Before I get actually into the exhibits
24 themselves, I've got a question for you. Do you
25 remember that in the fall, this past fall or early

0636

1 winter, Level 3 sent out a handful -- or sent out
2 interconnection requests to a handful of customers --
3 rural companies in Washington and Oregon?

4 A. Correct. I was responsible for that.

5 Q. Okay. And as it worked out, those requests
6 for interconnection agreements were generated because
7 of a lack of complete knowledge about those
8 companies' local calling areas; is that correct?

9 A. It was not so much the local calling areas.
10 We use an industry database referred to as the LERG,
11 which is the Local Exchange Routing Guide. It's
12 administered by Telcordia. And when we did a query
13 against that database in looking at the service
14 territory that Level 3 covered, it showed that there
15 were about 40 independent telephone companies also
16 operating in those same exchanges or rate centers.

17 So we initiated a process of sending out a
18 bona fide request to all 40 of those companies on a
19 nationwide basis requesting interconnection because
20 it appeared as though our service territories
21 overlapped.

22 What we found out, through various
23 discussions, was that those companies either had
24 received a code block in that particular area, but
25 weren't offering service, so it may have been their

0637

1 CLEC entity that was thinking about moving into an
2 adjacent exchange and had required the numbering
3 resources, but wasn't, in fact, using them. In other
4 cases, we actually found out the Local Exchange
5 Routing Guide was wrong, that the rate center had
6 been split or some other change was there, that there
7 wasn't, in effect, an overlap in our service
8 territory.

9 And I believe in the companies mentioned in
10 Washington, we rescinded that bona fide request to
11 interconnect, because we weren't looking to expand
12 outside the service territory that we currently
13 cover.

14 Q. And because of the rescission of the bona
15 fide request, you would not consider that a refusal
16 to negotiate, would you?

17 A. No, I would not, but we did not have the
18 same experience in 2000 and 2001, when we attempted
19 to negotiate interconnection agreements.

20 Q. I'd like you to now take a look at what
21 should be the top data request, which is data request
22 two in your package?

23 A. Correct.

24 Q. Okay. Would you go to the second page of
25 data request two? And in this data request, Level 3

0638

1 is describing how it views the traffic to flow, and
2 I'd like you to look at the last sentence. It says,
3 Level 3 compensates Qwest for any transit services
4 Qwest provides Level 3.

5 A. That's correct. That is contingent upon the
6 direction of the call.

7 Q. And so what you're saying is that if a call
8 came from a customer of Level 3 that was headed to a
9 rural company's rate center and that call was carried
10 by Qwest, Level 3 would route -- would compensate
11 Qwest for that transit service?

12 A. That's correct.

13 Q. Okay. I want to explore traffic going in
14 the reverse direction.

15 A. Okay.

16 Q. I had mentioned to you that Tenino -- which
17 is served by Tenino Telephone Company. Will you
18 accept that, subject to check?

19 A. Yes, I will.

20 Q. -- has local calling area extended area
21 service with Olympia?

22 A. Okay.

23 Q. Okay. And we've got our infamous BR-1 over
24 here to the right. So let's assume that a Tenino
25 customer calls a Level 3 customer that's in -- that

0639

1 has a number that's assigned to the Olympia rate
2 center, but the customer's actually in Seattle.

3 A. Okay.

4 Q. Do you have that in mind?

5 A. I'm following you, yes.

6 Q. Okay. From Level 3's perspective, how do
7 they view the traffic from the Tenino customer should
8 get to Level 3?

9 A. From my experience, the Tenino customer
10 would dial the telephone and the same sort of
11 signaling and other routing mechanisms would take
12 place from the Tenino network signaling to Qwest's
13 network that I have a call to give you. The Tenino
14 switch would look it up and see that it's not a
15 number served by any of its switches and it would
16 look to pass the call on to Qwest. I should say not
17 served by any of its switches or any direct
18 connections it may have to other carriers from its
19 switches.

20 It would then look to pass that call to
21 Qwest. My experience has been is that would happen
22 in one of two manners. One is that they would pass
23 the call to Qwest on a tandem trunk group, meaning
24 that it would go from an end office switch, which
25 serves just a particular geography, to a tandem

0640

1 switch, and those switches serve multiple switches,
2 they sort of act as the central hubs to move traffic
3 between different parts of the network, and then that
4 tandem switch would then pass the call to a Level 3
5 trunk group in Olympia.

6 The other mechanism is, in some exchanges,
7 the rural phone companies actually have end
8 office-to-end office connectivity, meaning one of the
9 rural end offices has direct trunks to one of the
10 Qwest end offices, and we do see traffic flowing
11 today that originates from a rural carrier, goes to a
12 Qwest end office, and then from that Qwest end office
13 to a Level 3 trunk, or DEOT, as we talked about late
14 yesterday.

15 Q. And in that second scenario, it would be
16 necessary for Level 3 to have that trunk connected to
17 the same Qwest end office?

18 A. Correct.

19 Q. Under either of those scenarios, with the
20 Level 3 customer number being in Olympia and the
21 Tenino number being within the same local calling
22 area, would it be Level 3's expectation to assess
23 Qwest's reciprocal compensation on that call?

24 A. No.

25 Q. Would it be Level 3's expectation to assess

0641

1 Tenino reciprocal compensation on that call?

2 A. No, we look for an interconnection agreement
3 to be the basis in which we would assess reciprocal
4 compensation, and since we don't have an
5 interconnection agreement with Tenino, there would be
6 no reciprocal compensation bill. Our billing systems
7 are intelligent enough that when they see the traffic
8 come over from Qwest, there's a field called the
9 jurisdictional indicator parameter, and what Qwest
10 does is insert the originating carrier number, OCN of
11 the rural phone company in that field. When we see
12 that field doesn't match with the OCN of the trunk
13 group, we know that the call doesn't belong to Qwest
14 and Qwest shouldn't be billed.

15 Q. Thank you. You anticipated my next
16 question, so I appreciate that. If that call that
17 I've described, that originates with the Tenino
18 customer and is headed for the Level 3 customer with
19 a number in Olympia and at physical location in
20 Seattle, for the trunk that runs through from Qwest's
21 office, whether it's an end office or a tandem to the
22 Level 3 switch, isn't that -- the sharing of the cost
23 for that under the residual use factor?

24 A. Relative use factor.

25 Q. Sorry, relative use factor?

0642

1 A. Yes, that particular cost would be shared,
2 but it depends upon the particular local calling
3 areas. Again, in some local calling areas, Level 3
4 only has these direct end office trunks that are
5 governed by the relative use factors, and other local
6 calling areas, and actually, local calling areas that
7 represent about 80 percent of the traffic we exchange
8 with Qwest, we've built our own facilities out to
9 those local calling areas and we pay a hundred
10 percent of costs of those facilities.

11 Q. So focusing on a trunk group where the
12 relative use factor is applied, if you will, for a
13 moment, am I correct in my understanding of the
14 calculation under the relative use factor is that a
15 call that originated from Tenino that Qwest would
16 carry to terminate to Level 3 would be on Qwest's
17 side of the ledger as to who pays for what portion of
18 the trunk?

19 A. As I understand the language to be written,
20 it does not exclude what we will refer to in the
21 interconnection agreement as third party traffic.

22 Q. So the answer would be yes?

23 A. Yes. I mean, I'd have to go back and read
24 it. It may actually say Qwest-originated traffic.
25 And in that case, it would be excluded. We would

0643

1 only use traffic coming from Qwest end users to
2 calculate the relative use factor.

3 Q. And the way we could check that language
4 would be either to check the language as it's
5 contained in Qwest's SGAT or, specifically for Level
6 3, in the Level 3 agreement?

7 A. Yes, in the Level 3 agreement; correct.

8 Q. Would you take a look at what's exhibit --
9 or excuse me, Data Request 14, which is a couple more
10 pages in?

11 A. I have it in front of me.

12 Q. Okay. Thank you.

13 JUDGE MACE: Can I just interrupt for one
14 moment? Let's be off the record.

15 (Discussion off the record.)

16 JUDGE MACE: Back on the record.

17 Q. Now, do you have exhibit -- or Data Request
18 14 in front of you?

19 A. I do.

20 Q. Okay. And just for the record, that's been
21 marked as Exhibit 458. In this data request, you're
22 asked a question about the establishment of a point
23 of interconnection, or POI; is that correct?

24 A. Yes, that appears to be the nature of the
25 question.

0644

1 Q. And as I understand Level 3's response,
2 Level 3 actually didn't identify whether it had or
3 had not established a point of interconnection for
4 Whidbey Telephone Company; is that correct?

5 A. I do know that we do not have a POI with
6 Whidley -- or Whidbey Telephone.

7 Q. Okay. And generally, would it be true that,
8 except for companies that you have entered into
9 interconnection agreements with, you have not yet
10 established a point of interconnection?

11 A. That is correct, but I would point out that
12 many of our agreements that we enter into do not call
13 for us to establish a point of interconnection.
14 They're governed by a section that describes what we
15 refer to as indirect traffic, meaning that we'll use
16 a third party carrier or tandem provider, such as
17 Qwest, to exchange traffic.

18 Q. And in those cases where there's an indirect
19 interconnection and the agreement contemplates use of
20 a tandem provider, what is Level 3's position on the
21 responsibility for payment of transit charges?

22 A. Our position is that the originating carrier
23 would be responsible for the payment of transit
24 charges.

25 MR. FINNIGAN: Thank you. I'll offer

0645

1 Exhibits 456 through 467. I do want to note for the
2 record that, for 456, I did not include the
3 attachment, but the attachment is a Washington
4 Commission order that everybody has access to.

5 JUDGE MACE: Okay. Is there any objection
6 to the admission of Proposed Exhibits 456 to 467?

7 MR. ROGERS: No objection, Your Honor.

8 JUDGE MACE: Thank you. I'll admit them.

9 MR. FINNIGAN: Thank you, Mr. Greene.

10 THE WITNESS: Thank you.

11 JUDGE MACE: Again, let's be off the record.

12 (Discussion off the record.)

13 JUDGE MACE: Let's be back on the record.

14 But before we go to redirect, Mr. Smith has asked if
15 he could simply ask a couple of follow-up questions
16 based on what Mr. Thompson asked Mr. Greene. Do you
17 have any problem with that?

18 MR. ROGERS: No, that's fine, Your Honor.

19 JUDGE MACE: Go ahead.

20

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

22 BY MR. SMITH:

23 Q. Okay. And I -- it's actually three.

24 JUDGE MACE: Oh, okay.

25 Q. The first one is, Mr. Greene, when you

0646

1 mentioned earlier that Tacoma and Seattle are in the
2 same local calling area, I noticed a rustling, and
3 the two people on the right and left of me, who know
4 far better than me, indicated that Tacoma is not in
5 the same local calling area as Seattle. Would you
6 accept, subject to check, that Tacoma is not?

7 A. Yeah, I think -- and I apologize, as I guess
8 we both struggle with our geography, that the point I
9 was trying to make, I believe there's a town called
10 Federal Way that is local to Seattle, and it is
11 approximately equidistant between Olympia and
12 Seattle. And the point I was simply trying to make
13 is that, when you look at a map and look at mileage,
14 you don't see that there is rhyme or reason to the
15 establishment of some of these boundaries. It's
16 really around, again, the community of interest and
17 things that were built out.

18 And again, largely, carriers today, as they
19 market those services, are going with, you know,
20 nationwide bundles and attracting and retaining
21 customers that way.

22 Q. And which leads to my second question.
23 You'd talked about bundles, about how companies are
24 putting a variety of services into a bundle. It's
25 true, however, isn't it, that if interexchange toll

0647

1 is part of the bundle, that even though it's in a
2 bundle, it would still be subject to the appropriate
3 access charge regime, whether state or federal?

4 A. Correct. The bundle that the consumer buys
5 would be independent of the intercarrier compensation
6 that is exchanged.

7 Q. And then the final question. You had
8 indicated, in response to Mr. Thompson, I think you
9 talked about, Well, there was some precedent in the
10 past that Qwest paid compensation on ISP traffic of
11 \$4 million or so back in 1999 and 2000?

12 A. Correct.

13 Q. Do you recall that? Have you read the ISP
14 Remand Order?

15 A. I've read excerpts of it, as provided by my
16 lawyers, but not the entire order.

17 MR. SMITH: Could I approach the witness?

18 JUDGE MACE: Yes.

19 Q. I think I have a copy and he doesn't. It's
20 Exhibit 208, and I'm going to refer you, Mr. Greene
21 to Paragraph 84, if people want to take a moment to
22 get there. Tell me when you're through.

23 A. I'm through.

24 Q. Okay. Excuse me, I'm dropping my cell phone
25 on the floor. What I would like to refer you to, Mr.

0648

1 Greene, is the last sentence. Now, of course, this
2 is an order that was issued in April of 2001. Do you
3 recall that being the time frame for the order?

4 A. Yes, I do.

5 Q. And as I -- the FCC talks about a number of
6 things, but in the end, it says, in the last
7 sentence, Finally, CLECs have been on notice since
8 1990 -- since the 1999 declaratory ruling that it
9 might be unwise to rely on the continued receipt of
10 reciprocal compensation for ISP-bound traffic, thus
11 many have begun the process of weaning themselves
12 from these revenues. Did I appear to read that
13 correctly?

14 A. Yes, that's an accurate reading.

15 Q. And I guess the question I would ask you is
16 -- maybe I should return to my seat. I will let you
17 keep that. Is that not, in your view, an indication
18 from the FCC that, just because payments to CLECs for
19 ISP traffic had been made in the past, that there was
20 a new regime in town and things were going to change?
21 In fact, the ISP Remand Order, while it didn't go all
22 the way, indicated that its ultimate goal was to go
23 to a bill and keep regime?

24 A. Correct, it didn't. And I also understand,
25 I think it was in October 2004, Core Communications

0649

1 filed a forbearance petition with the FCC and asked
2 that some of the things contained in this order get
3 removed, specifically the new market exemptions and
4 the MOU caps, so the FCC affirmed, you know, some
5 time later, that there weren't or didn't appear to be
6 these market distortions and other things that it
7 references in this Paragraph 84.

8 Q. Are you saying that the Core Order
9 represents the FCC's decision that all market
10 distortions and arbitrage opportunities related to
11 ISP traffic had ceased to exist?

12 A. It represented that the concerns that it
13 had, as I understand it, at the time had ceased to
14 exist and that the caps on MOUs and new market
15 exemptions were no longer appropriate and --

16 Q. Is there anything in the Core Order that
17 you're aware of that indicates that the FCC has
18 changed its statement in the ISP Remand Order, which,
19 but for Core, remains fully in effect of perhaps
20 ultimately moving to a bill and keep regime?

21 A. It -- I believe the Core Order specifically
22 referenced the rates that were in the ISP Remand
23 Order of .0007.

24 Q. But my question was are you aware of
25 anything in that order that indicates that the FCC

0650

1 has stated that moving to a bill and keep regime is
2 now completely off the table?

3 A. No, it's not anything that I've seen in that
4 order.

5 Q. I guess, finally, has Level 3 begun the
6 process of weaning itself off of terminating
7 compensation for ISP traffic relative to 1999 and
8 2000?

9 A. Yes, there's been a significant change in
10 the rates. You know, prior to the ISP Remand Order,
11 the rates were, again, .01 in many states, even
12 higher in other states. You know, we adjusted all of
13 our budgets to take into account the new rate. We
14 have rates that are lower than a .007 with some of
15 the carriers that we currently interconnect with, and
16 we have adjusted all of our budgets to reflect those
17 rates.

18 MR. SMITH: That's all.

19 JUDGE MACE: Redirect.

20

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

22 BY MR. ROGERS:

23 Q. Mr. Greene, do you still have a copy of the
24 ISP Remand Order in front of you?

25 A. I do not.

0651

1 MR. SMITH: He does now. If I could just --
2 since I -- if I could just lurk here for a moment.

3 Q. I just wanted to keep your attention on that
4 very same page, if I could, and the next paragraph to
5 which you were just asked about, which is Paragraph
6 85?

7 A. I'm there.

8 Q. So you were asked questions about whether
9 Level 3 had begun efforts to wean itself off of
10 reciprocal compensation for ISP-bound traffic;
11 correct?

12 A. That's correct.

13 Q. And if you can take a moment to look at
14 Paragraph 85, and then I'll ask you some questions
15 about it.

16 A. I've read the paragraph.

17 Q. Isn't it true that the FCC, in this
18 particular paragraph of the ISP Remand Order, pointed
19 to Level 3 as the example of a carrier starting the
20 process of coming to more reasonable reciprocal
21 compensation or terminating compensation rates?

22 A. I'm sure there would be many parties out
23 there that would argue the adjective reasonable, but
24 certainly Level 3 was a leader in this space in
25 looking at what the true costs to terminate the

0652

1 traffic was and making the adjustments to our
2 agreements.

3 Q. Can you look at Footnote 158 on that page,
4 in particular? What is Footnote 158 a citation to?

5 A. Footnote 158 appears to be a citation to a
6 number of interconnection agreements, the first of
7 which is listed as the Level 3 communications and SBC
8 Communications agreement effective through May 2003.

9 Q. And are there other citations to other Level
10 3 interconnection agreements within that footnote
11 that you see?

12 A. Yes, there are. At Item Number Four, it
13 also references the Level 3 Communications and
14 Verizon, formerly Bell Atlantic, agreement that was
15 effective October 14th, 1999.

16 Q. In that footnote, is there any reference to
17 an interconnection agreement with Qwest, as an
18 example, of moving in the direction of lower rates
19 that this paragraph speaks to?

20 A. There's none that I see here.

21 Q. So what is your impression of why that would
22 be? Why would there be no references to any Qwest
23 agreements in that footnote?

24 MR. SMITH: I object to that. That's purely
25 speculative.

0653

1 MR. ROGERS: I can ask it in a different
2 manner. I think the information and being able to
3 inquire into this particular part of the ISP Remand
4 Order is certainly appropriate.

5 JUDGE MACE: I don't think he knows what the
6 FCC was thinking about that, so I'm going to sustain
7 the objection.

8 Q. Mr. Greene, are you aware of any Qwest
9 agreements that could have been used as examples of
10 having settled the reciprocal compensation debate at
11 this point in time that the FCC could have used as an
12 example in this footnote if it desired to?

13 MR. SMITH: I will object again. Unless Mr.
14 Greene can tell us he's familiar with all of the
15 interconnection agreements of Qwest with CLECs, I
16 don't think he's capable of answering the question.

17 JUDGE MACE: Well, he has to let us know if
18 he is.

19 MR. ROGERS: Well, if he's aware, I don't
20 see anything unfair about that question, Your Honor.

21 JUDGE MACE: If he's aware, he can answer
22 the question.

23 THE WITNESS: I'm not aware of any such
24 agreement.

25 MR. ROGERS: Thank you.

0654

1 MR. SMITH: Are we done with the agreement,
2 Greg?

3 MR. ROGERS: Yes, I am.

4 Q. Going back to some of the questions that Mr.
5 Thompson asked, and turning to page 11 of your
6 testimony, in particular, do you have it in front of
7 you?

8 A. I'm sure I do. Just give me a minute.

9 Q. You were asked a series of questions about
10 local calling areas and how they are established and
11 questions about whether you felt it was appropriate
12 to continue to be held to traditional local calling
13 areas. That's a paraphrase of a series of questions.
14 Do you recall that series of questions?

15 A. I do.

16 Q. And you were asked about, you know, in your
17 testimony, you say, from a technical perspective,
18 those lines are starting to be blurred. And you said
19 in response to questions that those lines are
20 starting to be blurred. You talked about bundles of
21 services and you talked about wireless services.
22 Later you made reference to voice over IP services.
23 In speaking about voice over IP services, you
24 effectively assume that the use of virtual numbers is
25 an acceptable practice. Why would you make that kind

0655

1 of an assumption with voice over IP?

2 A. I don't know if I would, you know,
3 necessarily limit it to voice over IP. I think there
4 are a number of cases, when you consider information
5 services, where virtual numbers, you know, are
6 appropriate. I'll go back, I guess first, to my
7 CompuServe example from the 1970s and '80s, that, you
8 know, one of the key players in this industry that,
9 as I understand it, was the form -- one of the
10 reasons the ESP exemption was formed was to free
11 information services from certain regulatory burdens,
12 one of which was access charges.

13 And so there's a number of examples from an
14 architectural perspective, when I look at it, where
15 the service that the end user was connecting with,
16 even though they dialed a local phone number, was
17 nowhere near the local calling area in which that
18 user originated the call. That doesn't mean that
19 commissions don't have the authority to set
20 boundaries and that type of thing. I think that's
21 appropriate.

22 What I think is at issue here is not so much
23 the boundaries; it's the type of traffic and what
24 rates or compensation applies to them. And I don't
25 see the world as a very black and white -- it's

0656

1 either local or it's toll. I see there are multiple
2 types of traffic flows in the industry today. There
3 is local and there are toll, there's interMTA,
4 there's intraMTA, there's ISP-bound, and all these
5 types of traffic have different regimes or regulatory
6 mechanisms for settlement concerning them. It's not
7 just the simple it's got to be in the local bucket or
8 it has to be in the toll bucket.

9 I think the Commission has the power to set
10 the boundaries, but also the power to determine that
11 there are different types of traffic in today's
12 world, perhaps using different and newer
13 technologies, and they should perhaps be treated
14 somewhat differently than some of the traditional
15 traffic flows that are out there today and still
16 remain.

17 Q. From a technical perspective, what is it
18 about an IP network that allows a carrier like Level
19 3 to not be as concerned about the costs it may bear
20 for carrying traffic long distances?

21 A. So let's take -- let's take a Seattle
22 example, and somebody dialing up to AOL. They make a
23 local phone call from their Seattle home to a Level 3
24 phone number. It happens to connect to a set of
25 media gateways that are in Seattle, but then Level 3

0657

1 is responsible to carry that traffic from Seattle all
2 the way to Herndon, Virginia, which is a suburb of
3 Washington, D.C.

4 So you have, you know, one part of the
5 network that maybe traverses ten miles. You have
6 another part of the network that traverses over 2,500
7 miles. And there's nobody here that I believe would
8 argue that those costs are the same, but it is the
9 nature of the beast. It's an ISP-bound call and we,
10 as the Internet service provider in that call flow,
11 have a certain set of responsibilities, and I also
12 view the local exchange carriers that originate the
13 call to have a certain set of responsibilities and,
14 you know, the distances involved are really
15 irrelevant because it is a different class of
16 traffic, in my opinion.

17 Q. You were asked some questions by Mr.
18 Thompson about, well, doesn't that mean that that's
19 going to break the intercarrier compensation regime
20 fundamentally, that anarchy will then ensue. Why
21 wouldn't that be the case?

22 A. Because we have literally decades of
23 experience in using a mechanism of assigning phone
24 numbers that appear to be local to distant services.
25 Again, CompuServe put a product out into the

0658

1 marketplace, IBM has put a product out in the
2 marketplace, even the Bell companies put products out
3 in the marketplace in the '70s and '80s that attached
4 phone numbers to distant services, then the phenomena
5 and growth of the Internet through the '80s, '90s,
6 has been out there.

7 That traffic, from a dial-up perspective,
8 has peaked, it is very much on the decline because of
9 broadband deployment, such as DSL and cable, where
10 users want a faster alternative to reach the
11 Internet. So we've already seen, in the case of
12 Level 3, a billion minutes a day use this
13 architecture without anarchy breaking out, and I
14 would say that the practical experience would lead us
15 to a different conclusion than the one that was
16 suggested.

17 Q. You made mention, again, of the CompuServe
18 model. And as I recall, during your
19 cross-examination, you made a statement that that was
20 the only way it's ever been done. Do you remember
21 making that statement?

22 A. I did make that statement, and I probably
23 should quantify it or clarify it. It's the only way
24 it's been done on a national level in a successful
25 manner. I think we've all read the news reports of

0659

1 the dot-com bubble busting. Part of that bubble
2 breaking was a number of ISPs, smaller ISPs that
3 attempted to build out infrastructure in a different
4 manner. And by putting modems in a local calling
5 area, they didn't offer better service to their
6 customers. The service actually was worse, because
7 it took technicians time to get out there to fix
8 problems, time that isn't spent when you're dealing
9 with centralized equipment.

10 So not only was it a cost issue, but it was
11 a service issue. They had more lines that could
12 break down, they just -- they simply had more
13 problems, along with, again, the energy spent
14 maintaining a network in an inefficient architecture
15 versus devoting those energies to other solutions to
16 meet the needs of their business.

17 So there are situations, and probably they
18 still persist today, where there are modems
19 physically located in the local calling area, but
20 when you look at the volume of traffic coming to the
21 Internet and who it comes through, it comes through
22 the major providers, the AOLs, who has been the
23 leader of providing dial access in the United States
24 since it overtook CompuServe in the early 1990s, it
25 comes to the Microsofts, the Earthlinks, the Net

0660

1 Zeroes, the Junos, and the others of the world. You
2 can still look in the phone book and probably find an
3 ISP, Acme ISP, that offers up local numbers, and your
4 intuition may be, Well, hey, that ISP's got equipment
5 located locally, and the odds are that that's not the
6 case.

7 We don't sell -- Level 3 personally doesn't
8 sell to very small ISPs, we don't have a sales force
9 that's large enough to service them, but we do sell
10 to large aggregators that have sales forces that sell
11 to small ISPs. So you have an ISP that may offer
12 service in one town, but they're using the Level 3
13 backbone. They just happen to have perhaps a
14 marketing niche or other relationships that allows
15 them to build a business and prosper. But add their
16 minutes compared to the totality of minutes coming to
17 the Internet, and it is, by far and away, the
18 minority.

19 MR. ROGERS: Okay. Thank you. That's all I
20 have on redirect.

21 JUDGE MACE: Mr. Smith, any re-cross? No.

22 MR. SMITH: No.

23 JUDGE MACE: Mr. Finnigan?

24 MR. FINNIGAN: No.

25 JUDGE MACE: Mr. Thompson?

0661

1 MR. THOMPSON: No.

2 JUDGE MACE: Okay. I think we've dealt with
3 all this witness' exhibits. Thank you, Mr. Greene.
4 You're excused.

5 THE WITNESS: Thank you.

6 JUDGE MACE: Mr. Shortley, are you ready to
7 present Ms. Peters?

8 MR. SHORTLEY: Yes, Your Honor.

9 JUDGE MACE: Ms. Peters, can I ask you to
10 stand and raise your right hand?

11 Whereupon,

12 DIANE PETERS,

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

15 JUDGE MACE: Please be seated. And before
16 you begin, it's my intention to go until noon, and I
17 will like to break until 1:30 today.

18 MR. SHORTLEY: That would be fine.

19 JUDGE MACE: Thank you.

20 MR. SHORTLEY: Sure.

21

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

23 BY MR. SHORTLEY:

24 Q. Will you state your name and business
25 address for the record, please?

0662

1 A. I'm Diane Peters.

2 JUDGE MACE: You need to make sure your
3 microphone is on.

4 THE WITNESS: I'm Diane Peters, my business
5 address is Global Crossing, 1080 Pittsford-Victor
6 Road, Pittsford, New York.

7 Q. And what is your title with Global Crossing?

8 A. I'm Director of Regulatory Affairs for North
9 America.

10 Q. Could you please briefly describe your
11 responsibilities in that role?

12 JUDGE MACE: I'm wondering, Mr. Shortley, if
13 your microphone is on.

14 MR. FINNIGAN: It is on. He just doesn't
15 have it close enough.

16 JUDGE MACE: You have to bring it really
17 close. Otherwise, it won't pick up.

18 MR. SHORTLEY: Is that better?

19 JUDGE MACE: That's better.

20 MR. SHORTLEY: Thanks.

21 Q. Could you please briefly describe your
22 responsibilities for Global Crossing?

23 A. I'm responsible for regulatory compliance
24 and reporting for Global Crossing North America.

25 Q. Could you turn to what has been marked as

0663

1 Exhibit 441-T, which is a document entitled Response
2 Testimony of Diane Peters?

3 A. I have it.

4 Q. That document consists, does it not, of one
5 cover page, plus six pages of questions and answers?

6 A. Yes.

7 Q. Is this the pre-filed testimony that you
8 filed in this proceeding?

9 A. Yes, it is.

10 Q. Were I to ask you the same questions
11 contained in the response testimony of Diane Peters,
12 would your answers be substantially the same today?

13 A. Yes, they would.

14 Q. Would you turn, please, to Exhibit 442-C,
15 which is a one-page exhibit to your testimony?

16 A. I have it.

17 Q. I'd ask if that exhibit was prepared by you
18 or under your direction?

19 A. Yes, it was.

20 Q. I note that the exhibit is marked as
21 confidential per protective order in this case. Does
22 it matter if the confidentiality for this exhibit is
23 waived?

24 A. No, it does not.

25 MR. SHORTLEY: Your Honor, I would offer

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1 Exhibits 441 and 442.

2 JUDGE MACE: Thank you. And the waiver of
3 this confidentiality for 442, Qwest, is that
4 acceptable to Qwest, as well?

5 MR. SMITH: Yes, it is.

6 JUDGE MACE: All right. Thank you. Then
7 we'll mark it not as a confidential exhibit. Is
8 there any objection to the admission of proposed 441
9 and 442? Hearing no objection, I'll admit those
10 exhibits and --

11 MR. SHORTLEY: I would offer Ms. Peters for
12 cross-examination.

13 JUDGE MACE: Thank you. Mr. Smith, are you
14 going to cross-examine?

15 MR. SMITH: Yes, I am.

16

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

18 BY MR. SMITH:

19 Q. How are you, Ms. Peters?

20 A. Very well. Thank you.

21 Q. I have a few questions. Would you first
22 turn to page two of your testimony? And I'm looking
23 at the last full question and answer between lines 12
24 and 21, and I have just a few fairly simple
25 questions. First of all, you indicate that Global

0665

1 Crossing has a DMS 500 switch that's utilized to
2 provision its services, and I'm assuming you're
3 meaning in Washington?

4 A. Correct.

5 Q. Could I ask you where that is located? Not
6 the specific street address, but what city it's
7 located in?

8 A. It's located in Seattle.

9 Q. Okay. And as I understand it, a DMS 500
10 switch would be characterized as a circuit-switched,
11 as opposed to a soft switch or IP switch; is that
12 correct?

13 A. That's correct.

14 Q. So it's, in the lingo we've been using, it
15 would be -- it's a switch that is on the
16 public-switched telephone network, as opposed to on
17 an IP network?

18 A. Correct.

19 Q. Okay. If we could now go to the next
20 question and answer, and I'd like to -- beginning on
21 line 25. Well, the question talks about how Global
22 Crossing applies reciprocal compensation, and if I
23 could just read the answer and then ask you a couple
24 of questions about that. You say the interconnection
25 agreement provides for per minute of use compensation

0666

1 for traffic that is rated as local, which Global
2 Crossing interprets as being calls between telephone
3 numbers that are rated to the same local calling
4 area. Did I correctly state that?

5 A. That's correct.

6 Q. So let me make sure I understand that.
7 Global Crossing's interpretation of the
8 interconnection agreement is that if you have an
9 Olympia end user dials a telephone number that --
10 where the NPA-NXX is associated with Olympia, even if
11 that telephone is answered in Seattle, that is a
12 local call, from Global Crossing's perspective?

13 A. That's correct.

14 Q. Do you have the cross-examination exhibits
15 that Qwest provided?

16 A. I believe I may.

17 Q. And the two that I'm most interested in are
18 the last two. One is excerpts from your -- yours,
19 meaning Global Crossing's -- Washington price list
20 and then some excerpts from the interconnection
21 agreement. Do you have those?

22 A. Which number are they?

23 Q. Well, they're 466 and 467.

24 JUDGE MACE: Actually, they're 446 and 447.

25 MR. SMITH: Oh. Well, it was late at night.

0667

1 JUDGE MACE: Close.

2 THE WITNESS: I do have them.

3 Q. Okay. I would like, if I can find my notes
4 -- let's look at 446 first, which is, as I understand
5 it, some excerpts from the price list filing that
6 your company has most -- or has made in the state of
7 Washington. Do you recognize it as such?

8 A. Yes, I do.

9 Q. Okay. I'd like you, if you would, to turn
10 to page 10. And I would refer you to the definition
11 of the term exchange. You say -- or you, meaning
12 your company, says -- defines it as an area
13 consisting of one or more central office districts
14 within which a call between any two points is a local
15 call. Is that the definition of exchange that Global
16 Crossing subscribes to?

17 A. Yes, it is.

18 Q. Now, it's true, isn't it, that the
19 definition of a local call in that definition does
20 not seem to appear to relate to the NXXs related to
21 the call, but whether the call is -- let me pick it
22 up here. Where it says within -- that it's within an
23 exchange within which a call between any two points
24 is a local call. Is not this a geographic definition
25 of a local call?

0668

1 A. It revolves around whether or not toll is
2 charged.

3 Q. But it doesn't -- this doesn't say toll,
4 does it?

5 A. It merely states that a call between any two
6 points is a local call.

7 Q. But doesn't it also state that an exchange
8 is something -- that the calls must be within any two
9 points? Isn't a point a geographical location?

10 A. It could be a geographical location.

11 Q. Okay. Turn with me, if you would, to the
12 next page. This, the very first term, is flat rate
13 service. If I could read that, this is on original
14 page 11, it says, the type of exchange service
15 provided at a monthly rate with an unlimited number
16 of calls within a specified calling area.

17 Now, my question is, as I read that, that
18 appears to be defining a local call as -- or a
19 flat-rated service as a service where there are an
20 unlimited number of calls within a specified calling
21 area. Is that not a geographic definition of a local
22 call?

23 A. I think there's a relationship between
24 numbers and geography in terms of how they are
25 defined, and the definition here does not reference

0669

1 either one.

2 Q. Well, doesn't the phrase within a specified
3 calling -- well, let me back up. The word area, at
4 least in my mind, connotes a geographic construct.
5 Do you read that differently?

6 A. It's generally how to do that, and it's
7 defined at another point in our tariff.

8 Q. Okay. Maybe we can get there in a minute.
9 But flat rate service, again, is defined as unlimited
10 number of calls within an area. And do you agree
11 that the word area is a geographic concept?

12 A. I agree that it can be.

13 Q. How can it not be?

14 A. There's an association between the numbers
15 that are used to represent the geographical area.

16 Q. And isn't it true that the numbers become a
17 proxy for the geographical area?

18 A. Yes.

19 Q. Okay. Go to the next page, local calling
20 area. It says, The area consisting of one or more
21 central office districts within which a subscriber
22 for exchange service may make telephone calls without
23 a long distance charge.

24 Again, my question is really very similar.

25 I read that as defining a local calling area and the

0670

1 calls made within it as geographically-based, as
2 opposed to being based on telephone numbers; is that
3 correct?

4 A. I think that there still is a relationship
5 between the geographical area and the numbers that
6 are the proxy for the geographical area.

7 Q. Okay. And then the final one I would refer
8 you to is just two down below that. It says local
9 service, and it defines it as telephone exchange
10 service within a local calling area. Would you agree
11 that that is a geographic definition of a call?

12 A. I would extend the same explanation, that
13 there's a relationship between the geographical area
14 and the numbers that are used as a proxy for the
15 geographical area.

16 Q. And that's because numbers are typically
17 assigned -- the NXX is typically assigned to a
18 particular rate center or central office, which is
19 then tied to a specific geographical area?

20 A. Correct. It represents a geographical area.

21 Q. Okay.

22 JUDGE MACE: Well, it looks like you're
23 moving to a different subject, and I think we'll
24 break now.

25 MR. SMITH: Okay. All right.

0671

1 JUDGE MACE: And we'll resume at 1:30.

2 Thank you.

3 (Lunch recess taken from 12:00 to 1:30 p.m.)

4 JUDGE MACE: Let's be back on the record.

5 And Mr. Smith, go ahead, finish up your

6 cross-examination.

7 Q. Okay. Ms. Peters, the last exhibit that was
8 given has been marked as 447, which I understand is
9 excerpts from the current interconnection agreement in
10 Washington between Global Crossing and Qwest. Now,
11 it does say Frontier Local Services on the front, and
12 I'm assuming that's --

13 A. We're now Global Crossing Local Services.

14 JUDGE MACE: It also says US West.

15 Q. Which may be a fairly interesting commentary
16 on the industry we're in. I'd just like to look at a
17 couple of other definitions in this one. If you'd
18 turn to page seven, the top of that page is, under
19 PP, is the definition of traffic type, and let me
20 read that. It says, Traffic type is the
21 characterization of intraLATA traffic as local (local
22 includes EAS, or "toll"), but shall be the same as
23 the characterization established by the effective
24 tariffs of the incumbent local exchange carrier as of
25 the date of this agreement.

0672

1 Now, my question is, as I read this, and I'm
2 trying to make sure we understand it the same, is
3 that what this says is that a local call under this
4 agreement is what a local call would be under the
5 effective tariffs of the incumbent local exchange
6 carrier, which was US West Communications, now Qwest,
7 as of the date of the agreement. Do you have the
8 same understanding?

9 A. It's the same as the characterization
10 established by the tariffs.

11 Q. Okay. So whatever that characterization
12 would be, whatever the tariffs were at that date as
13 Qwest's tariffs or US West's tariffs, however it
14 defined a local or a toll call would be the governing
15 definition for this agreement?

16 A. Correct.

17 Q. And then, if you could just go back one page
18 to rate center, it's kind of long, but let me just
19 quickly read it in. It's under KK.

20 JUDGE MACE: Well, don't read it too
21 quickly, because --

22 Q. I'll try to -- rate center means the
23 specific geographic point and corresponding
24 geographic area which are associated with one or more
25 particular NPA-NXX codes, which have been assigned to

0673

1 a LEC, an L-E-C, a CLEC for its provision of basic
2 exchange telecommunications services. The "rate
3 center point" is the finite geographic point
4 identified by a specific V&H coordinate which is used
5 to measure distant-sensitive end user traffic to/from
6 the particular NPA-NXX designations associated with
7 the specific rate center. The "rate center area" is
8 the exclusive geographic area identified as the area
9 in which the LEC or CLEC, end parentheses, will
10 provide basic exchange telecommunications service
11 bearing the particular NPA-NXX designations
12 associated with the specific rate center. The rate
13 center point must be located within the rate center
14 area.

15 Now, first of all, did I come close to
16 reading that correctly?

17 A. That was an accurate reading.

18 Q. Okay. Now, the question I have is I read
19 this as defining rate center, which is a concept used
20 for rating long distance traffic, as defining rate
21 center and a rate center area as a specific
22 geographical point or geographical area. Is that
23 consistent with your reading?

24 A. It's associating NPA-NXXs with a
25 geographical point.

0674

1 Q. Okay. One last area that I have, and that
2 is, if you'll turn to page five.

3 JUDGE MACE: Is this in the testimony?

4 Q. Yes, I'm sorry, page five of your testimony.
5 Okay. It's the question and answer at the top of the
6 page, and what I want to focus on is the language.
7 You say, Global Crossing has established Seattle
8 LATA-wide local calling as one of the features of its
9 retail service offering to its business customers.
10 Is that correct?

11 A. That's correct.

12 Q. So I take that to mean that if you sell
13 local service to a business customer in Seattle, that
14 customer can call any other end user customer within
15 the Seattle LATA without incurring a toll charge from
16 Global Crossing?

17 A. That's correct.

18 Q. Explain to me -- there are two things I'd
19 like to know about that. First of all, let's assume
20 you have -- Global Crossing has a business end user
21 customer located in the Seattle local calling area
22 who decides to call a Qwest end user here in Olympia,
23 and those are in different Qwest local calling areas.
24 How would that call be dialed?

25 A. It would be dialed on a seven-digit basis.

0675

1 JUDGE MACE: Ms. Peters, can you bring that
2 microphone a little closer to you and make sure that
3 it's on?

4 THE WITNESS: Is that better? That's off.
5 How's this?

6 JUDGE MACE: That's definitely better.

7 Q. So would they dial a telephone number
8 associated -- whose NXX is associated with Olympia?

9 A. To clarify, which direction is the call
10 from?

11 Q. The call is coming from the Global Crossing
12 end user in Seattle to a Qwest end user in Olympia.

13 A. And Olympia is in the same LATA as Seattle?

14 Q. I believe they're in the same LATA, but
15 different area codes and also different local calling
16 areas.

17 A. It would be the same local calling area for
18 us, and that call would be dialed on a ten-digit
19 basis.

20 Q. Would there be a one-plus?

21 A. I'm not sure.

22 Q. You don't know?

23 A. I don't know.

24 Q. The next question I have is would Global
25 Crossing pay Qwest terminating switched access

0676

1 charges on that traffic?

2 A. We would send it out over the local
3 interconnection trunks, and I think the answer to the
4 question is what would Qwest bill us.

5 Q. Well, how would -- I mean, if you send it
6 over a local interconnection trunk, I don't pretend
7 to be an expert on the Qwest billing system, but,
8 first of all, it wouldn't be sent to an interexchange
9 carrier; it would be sent directly to Qwest. How
10 could it know that that call, in reality, is an
11 interexchange call that at least I think Qwest would
12 believe would be subject to terminating access
13 charges?

14 A. That would be identified based on the
15 originating and terminating NPA-NXXs.

16 Q. And would you expect, under those
17 circumstances, that Global Crossing would have a
18 legal obligation to pay terminating switched access
19 to Qwest on that call?

20 A. We would honor that bill.

21 MR. SMITH: I think that's all I have. Oh,
22 and if I could offer -- there's one of the exhibits
23 that we won't offer, but Exhibits 444, 446 and 447.

24 JUDGE MACE: Is there any objection to the
25 admission of those exhibits?

0677

1 MR. SHORTLEY: No objection.

2 JUDGE MACE: I'll admit them.

3 MR. SMITH: That does complete my
4 cross-examination.

5 JUDGE MACE: Thank you. Mr. Finnigan.

6 MR. FINNIGAN: Thank you, Your Honor.

7

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

9 BY MR. FINNIGAN:

10 Q. Ms. Peters, I'm Rick Finnigan. I represent
11 the Washington Independent Telephone Association in
12 this proceeding. Let's start by taking a look at
13 Exhibit 446, which was one of the Qwest cross
14 exhibits. Mr. Smith asked you some questions about
15 it. It's the price list for Global Crossing.

16 And would you turn to first revised page
17 number 48? You'll see the numbering up in the upper
18 right-hand corner.

19 A. I have it.

20 Q. Thank you. If you'll go down to Item C, it
21 says, Local Calling Area. Do you see that?

22 A. Correct.

23 Q. Okay. And as I understand it, what you're
24 saying here is that a customer of Global Crossing in
25 Seattle may call all rate centers within LATA 674,

0678

1 which is the Seattle LATA?

2 A. Correct.

3 Q. Without incurring a charge, except -- and
4 you've got city of Ferndale and city of Mt. Vernon.
5 Are the rest of the exchanges listed there
6 exceptions?

7 A. These are exceptions, yes.

8 Q. Okay. And what causes them to be an
9 exception?

10 A. This was the way our local calling area was
11 originally designed. I'm not aware of the reason
12 they were made exceptions at that time.

13 Q. Okay. I note that, with one exception, they
14 are all served by local exchange companies other than
15 Qwest. Did that have something to do with the
16 creation of these exceptions?

17 A. I don't know. I was not involved in that.

18 Q. Okay. And I want to make sure I understand
19 something about -- you said -- because I think at one
20 point you said seven-digit dialing and another point
21 you said ten-digit dialing in responding to Mr.
22 Smith. If a number is within the -- that your
23 customer in Seattle wants to call is within the
24 Seattle LATA, but in a different area code than the
25 206 area code, are you saying that that would be done

0679

1 on ten-digit dialing?

2 A. I am. I'm not clear whether or not a one
3 would have to be dialed.

4 Q. Okay. Do you have WITA's cross exhibit,
5 which is Exhibit 443?

6 A. I do.

7 Q. And in that data request, Global Crossing
8 was asked if it established a point of
9 interconnection, or POI, for Mashell Telecom. Do you
10 see that?

11 A. Yes, I do.

12 Q. And the response was that Global Crossing
13 has established a single POI in Seattle; is that
14 correct?

15 A. That's correct.

16 Q. It's true, is it not, that Global Crossing
17 does not have an interconnection agreement with
18 Mashell Telecom?

19 A. That's true.

20 JUDGE MACE: Now, Mashell is M-a-s-h-e-l-l.

21 MR. FINNIGAN: Thank you. It doesn't occur
22 to me to spell that, because I use it all the time.

23 Q. So how has Global Crossing established a POI
24 as it relates to Mashell Telecom if there's no
25 interconnection agreement with Mashell Telecom?

0680

1 A. We have a single point of presence amendment
2 with Qwest and we exchange traffic through that
3 interconnection agreement for other carriers.

4 Q. Whether or not you have an agreement with
5 other carriers?

6 A. Whether or not we have an agreement.

7 Q. With the other carriers?

8 A. With the other carriers.

9 Q. Okay. Mashell Telecom, if you'll accept,
10 subject to check, is within the Seattle LATA?

11 A. Pardon me?

12 Q. Will you accept, subject to check, that
13 Mashell Telecom is within the Seattle LATA?

14 A. I will.

15 Q. For traffic that originates from a Global
16 Crossing customer that is destined for a customer in
17 Mashell Telecom's service territory, what is your
18 understanding of how that traffic would flow?

19 A. That traffic would go from our switch over
20 the local interconnection trunks to the Qwest tandem,
21 and from the Qwest tandem it would be terminated to
22 Mashell.

23 Q. So you're relying on Qwest to provide the
24 transport for that traffic?

25 A. That's my understanding.

0681

1 Q. Do you understand that, in the industry, the
2 common accepted practice for generating terminated
3 access bills is the originating carrier's generation
4 of a Category 1101 record?

5 A. I know that at times the originating carrier
6 generates the record and other times a tandem
7 provider generates the record.

8 Q. For the Global Crossing traffic that would
9 originate in Seattle and be terminated in Mashell
10 Telecom, does Global Crossing create the access
11 record, the Category 1101 record?

12 A. I'm not sure what's actually happening in
13 the Seattle LATA.

14 Q. Do you know if Global Crossing is paying
15 terminating access charges to Mashell Telecom?

16 A. I don't know.

17 Q. Have you been in the room while we've been
18 discussing the hypotheticals related to BR-1?

19 A. I heard part of the discussion, but not all
20 of it.

21 Q. Okay. Well, let me set this up for you,
22 then. We've talked about the fact that Tenino
23 Telephone Company serves the city of Tenino, which
24 has extended area service calling into Olympia. So
25 if a Global Crossing customer that's physically

0682

1 located in Seattle has an NPA-NXX that is associated
2 with the Olympia rate center assigned to it, what is
3 Global Crossing's expectation as to how the traffic
4 would get from Tenino to that Global Crossing
5 customer in Seattle?

6 MR. SHORTLEY: Your Honor, I'm going to
7 object to that question on the grounds that the facts
8 set out in the question have not been established.
9 If it's a hypothetical, that's fine, but if it's
10 assuming facts in evidence, I would -- if it's
11 assuming facts not in evidence, I will object to it
12 on that basis.

13 MR. FINNIGAN: Well, it's a hypothetical.

14 JUDGE MACE: Yeah, yes.

15 MR. SHORTLEY: That's fine.

16 THE WITNESS: Could you recap the scenario
17 for me?

18 Q. All right. How far back do I need to go?
19 I'll start over. We have a customer in Tenino.
20 Tenino has -- the Tenino Telephone Company serves the
21 city of Tenino. Tenino has extended area service
22 into Olympia. Global Crossing has a Seattle customer
23 with a number assigned to it, an NPA-NXX assigned to
24 it that's associated with the Olympia rate center.
25 Do you have all that in mind?

0683

1 A. Mm-hmm.

2 Q. We need a yes or a no.

3 A. Yes.

4 Q. Thanks. What is Global Crossing's
5 expectation as how -- as to the manner in which the
6 traffic would get from that customer in Tenino to
7 Global Crossing's customer in Seattle?

8 A. Part of the answer to the question depends
9 upon the dialing pattern that the Tenino customer
10 would use to place the call.

11 Q. It's extended area service and the number is
12 associated with the Olympia rate center.

13 A. My understanding is that Tenino Telephone
14 would deliver that call to the Qwest tandem. It's
15 not clear to me whether that would be an access call
16 or a local call at that point, as to which trunk, if
17 it would come into Global Crossing on, but it would
18 come into Global Crossing and we would send it back
19 to our customer on the special access trunks between
20 our switch and their location.

21 Q. Would it be Global Crossing's expectation
22 that the Tenino customer would reach the Global
23 Crossing customer that has a number associated with
24 the Olympia rate center on a toll-free basis or on a
25 toll basis?

0684

1 A. We would not have an expectation. That
2 would be determined at the Tenino end.

3 Q. Okay. So as I understand it, is that if
4 Tenino so determined, they could treat Global
5 Crossing NPA-NXXs in the Olympia rate center as toll
6 calls, as far as Global Crossing is concerned?

7 A. I think that arrangement is between Tenino
8 and its end user, as opposed to between Tenino and
9 Global Crossing.

10 Q. All right. Let me try it one more time. If
11 Tenino determined that its customers could access a
12 Global Crossing NPA-NXX associated with the Olympia
13 rate center only by using toll calling to do so,
14 Global Crossing would have no objection to that?

15 A. We would not object.

16 Q. Ms. Peters, just one more follow-up to a
17 question on Exhibit 443.

18 A. Yes.

19 Q. Do you recall that substantially similar
20 data requests were propounded concerning a number of
21 other independent telephone companies and, in each
22 case, Global Crossing's response was identical?

23 A. I believe so.

24 Q. Thank you. I've completed my
25 cross-examination. Thank you, Ms. Peters.

0685

1 A. Thank you.

2 MR. FINNIGAN: And would offer Exhibit 443.

3 JUDGE MACE: Any objection to the admission
4 of 443?

5 MR. SHORTLEY: No objection.

6 JUDGE MACE: Thank you. I'll admit it. And
7 do you have redirect?

8 MR. SHORTLEY: And there's no redirect.

9 JUDGE MACE: All right. Thank you. You're
10 excused.

11 THE WITNESS: Thank you.

12 JUDGE MACE: According to my list, then, Ms.
13 McNeil is the next witness.

14 Whereupon,

15 RHONDA J. EVANS McNEIL,

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

18 JUDGE MACE: Please be seated.

19

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

21 BY MR. STRUMBERGER:

22 Q Good afternoon, Ms. McNeil.

23 A. Good afternoon.

24 Q. Ms. McNeil, would you please state your full
25 name for the record, please?

0686

1 A. My name is Rhonda Evans McNeil.

2 JUDGE MACE: I'm not sure you're on.

3 THE WITNESS: Am I on? Is this better?

4 Rhonda Evans McNeil.

5 Q. And would you please state your employer and
6 your business address for the record, also, please?

7 A. My employer is Level 3, formerly Broadwing
8 Communications. Employment address is 1122 Capital
9 of Texas Highway South, Austin, Texas.

10 Q. And are you familiar with the testimony, its
11 exhibits, and rebuttal testimony that are listed as
12 Exhibits 301-T through 306-C?

13 A. Yes, I believe so.

14 Q. And is your testimony -- is this still your
15 testimony? You prepared this testimony?

16 A. Yes, sir.

17 Q. And what's the purpose of your testimony in
18 this proceeding?

19 A. The purpose of my testimony today is related
20 to reciprocal compensation billing regarding between
21 Qwest's terminating traffic on behalf of Broadwing.

22 MR. STRUMBERGER: Okay. At this time, Your
23 Honor, we would request to admit Exhibits 301-T
24 through 306-C into the record, and we tender the
25 witness for cross-examination.

0687

1 MS. ANDERL: No objection.

2 JUDGE MACE: Thank you. I'll admit 301 to
3 306. And let's see here. I guess, Ms. Anderl,
4 you're going to be crossing for Qwest?

5 MS. ANDERL: Yes, I am. Thank you, Your
6 Honor.

7 JUDGE MACE: Go ahead.

8

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

10 BY MS. ANDERL:

11 Q. Good afternoon, Ms. McNeil.

12 A. Good afternoon.

13 Q. Hi. I'm Lisa Anderl, and I represent Qwest.
14 I'll be asking you some questions. On the exhibit
15 list that the Judge prepared in this case, there are
16 cross-examination exhibits associated with Mr.
17 Meldazis, but not with you. In fact, I think most of
18 them, if not all of them, are ones that I want to ask
19 you questions about. So let me first ask if you have
20 the designated cross-examination exhibits at the
21 stand with you?

22 A. Okay. Were they --

23 Q. And just --

24 A. -- 21, 24, and 28 within the redirect or
25 response to Data Request Number Four?

0688

1 Q. There were one, two, three -- there were six
2 separate exhibits designated. The first one is
3 Broadwing's responses to Qwest's fourth set of data
4 requests Number 21 through 25 and confidential
5 attachments.

6 A. Okay.

7 Q. And that's Exhibit 245-C. Do you have that
8 one in front of you?

9 A. Yes, I do.

10 Q. All right. I'll ask you about the other
11 ones as they become relevant. In fact, reviewing
12 those four data requests, are you the right person at
13 Broadwing/Focal/Level 3 to ask about those responses?

14 A. I did prepare the ones related to amounts
15 due by billing elements. I also prepared copies of
16 the invoices that showed late payment charges, as
17 well as total minutes of use billed monthly by rate
18 elements. I believe all tariff information and rate
19 information came from Mr. Meldazis.

20 Q. Thank you. Ms. McNeil, you've worked for
21 Broadwing -- and I think I'm just going to say
22 Broadwing, because --

23 A. That's easy.

24 Q. -- that's what it was when you filed your
25 testimony -- since 2000; is that right?

0689

1 A. Yes, ma'am.

2 Q. And what is your current job title?

3 A. My current job title is senior manager,
4 margin enhancement.

5 Q. And what are the duties and responsibilities
6 associated with that job?

7 A. Completely different than reciprocal
8 compensation billing. It's primarily over in the
9 retail space and responsible for looking at customers
10 as a whole and determining, looking at their data and
11 usage to determine how they may or may not be a
12 positive margin, and then working within the company
13 to correct any customers that may have pricing
14 problems. So again, it's over on the retail side,
15 not wholesale.

16 Q. And so in your current job, are you somewhat
17 familiar with the retail customers that Broadwing has
18 in the state of Washington?

19 A. I would say customers overall as a whole,
20 not really specific to Washington.

21 Q. Okay. Does Broadwing serve Internet
22 services providers as retail customers of Broadwing?

23 A. I believe there probably would be a few.

24 Q. What other types of end user customers does
25 Broadwing have as a whole?

0690

1 A. Some of our larger customers, and I guess
2 I'm okay to say this, are customers like GE, who has
3 -- uses large networks, data networks between us. We
4 do have Perot Systems, which provides -- again, they
5 all have their own network with individual sites,
6 Merrill Lynch, a lot of the banks. So they basically
7 have their own private networks.

8 Q. Now, in connection with the testimony that
9 you filed in this docket, both the direct and the
10 rebuttal, did you have any help in preparing your
11 testimony?

12 A. Yes, I did, related to rates. That would
13 have been through Mr. Meldazis.

14 Q. Anyone else?

15 A. It would have been through counsel.

16 Q. Okay. Now, before you assumed the job that
17 you have now in margin enhancement, you were
18 responsible for intercarrier billing issues?

19 A. Yes, related to reciprocal compensation
20 billing.

21 Q. Okay. And you started that job in December
22 of 2004?

23 A. Yes, ma'am.

24 Q. Were you involved in intercarrier reciprocal
25 compensation billing issues prior to December of

0691

1 2004?

2 A. No, ma'am, I was not.

3 Q. Was your job -- and I'm sorry, what should I
4 -- what shorthand should I use for the job title that
5 you had when you were in billing?

6 A. It was regulatory billing manager.

7 Q. So can I just say billing manager, then?

8 A. Yes, ma'am.

9 Q. When you were a billing manager, were you
10 responsible for reciprocal compensation billing
11 nationwide or just in certain areas of the country?

12 A. It was nationwide.

13 Q. And after you took that job, did you
14 institute any particular improvements in the billing
15 process?

16 A. One of the -- well, of course, it happened
17 to everyone after Enron, which was the Sarbanes-Oxley
18 compliance, and so working within -- with KPMG and
19 with our own internal departments to develop controls
20 that were specific with Sarbanes-Oxley compliance.

21 Q. And did those controls change the billing
22 process in any way?

23 A. No.

24 Q. Did you institute any other enhancements to
25 the Broadwing billing process that you can think of?

0692

1 A. No, ma'am.

2 Q. Now, as a regulatory billing manager, did
3 you, in the ordinary course of your duties, review
4 the billing records that Qwest sent to Broadwing?

5 A. What would be sent to me would be summarized
6 files based by operating carrier number, so we would
7 see it -- basically, your summarized traffic. Then
8 it would be billed based upon states, and I believe
9 we billed you in Washington and Minnesota.

10 Q. And the summarized files, were those
11 summaries created by Qwest or summaries created by
12 your own systems?

13 A. Created by our own systems.

14 Q. From your testimony, I believe I understand
15 correctly that you were never involved in discussing
16 disputed billing issues?

17 A. The -- what I was involved with was I had
18 contacted Qwest in an attempt -- we had had some
19 success with another customer where we were able to
20 compare call records to see why we were out of
21 balance on minutes of use, which seemed to be the
22 predominant dispute with Qwest at the time.

23 Q. And what happened?

24 A. I spoke with Cynthia Bradish (phonetic), who
25 was my contact, and she said we needed to talk with

0693

1 another department, and really, nothing ever went
2 beyond that.

3 Q. But it was your understanding, at least at
4 the time that you took the job as the billing
5 manager, a large amount of the disputed traffic was a
6 volume dispute?

7 A. Yes, based on historical.

8 Q. Beginning in 2003?

9 A. Yes, I believe it was April 2003.

10 Q. And you're not personally familiar with
11 that?

12 A. No, ma'am.

13 Q. Now, regarding your work with KPMG to ensure
14 billing accuracy, is it correct that that work was
15 specifically addressed to ensuring that the inputs
16 were accurately translated into billing outputs?

17 A. Correct.

18 Q. Okay. So KPMG didn't actually audit or
19 ensure the accuracy of the billing inputs in the
20 first instance, did they?

21 A. The checks that KPMG did were looking at the
22 switch and -- beginning and through mediation, also
23 proving that what came through mediation properly
24 went through the billing module in basically numbers
25 and numbers and numbers, you know, accountants, and

0694

1 that was what that proved. We also proved to them
2 that there were large minutes of use that were not
3 billed because they belonged to customers who we did
4 not have agreements with.

5 Q. Okay. And so I think that might have been a
6 more complicated answer than my question was.

7 A. I'm sorry.

8 Q. That's okay. I'm just trying to kind of
9 drill down in terms of the extent to which KPMG
10 audited or ensured the accuracy of the inputs. And
11 it's my understanding that they did not; that they
12 ensured that the inputs, whatever they were, were
13 accurately translated through the system?

14 A. Correct.

15 Q. Okay. Thanks. Look at the document that's
16 been marked as Exhibit 248-C, and yours may or may
17 not have been marked with the exhibit numbers for the
18 case, but it's Broadwing's response to Qwest's fourth
19 set of data requests.

20 A. Uh-huh.

21 Q. Number 29 and the confidential attachments
22 there?

23 A. Okay. So that would be our policy and
24 procedure?

25 Q. Yes.

0695

1 A. Okay.

2 Q. And it doesn't show you as the respondent on
3 this data request. Are you the right person for
4 Broadwing in this proceeding to ask about this?

5 A. It would not be. It would be Brendan Dolan,
6 who is our director of compliance.

7 Q. Right. I see that he's the respondent, but
8 he's not a witness. So as between you and Mr.
9 Meldazis, should I ask you about this?

10 A. Yes, you can ask me about this.

11 Q. Okay. Great. This reciprocal compensation
12 billing policy and procedure is designated as
13 confidential, and so I don't want to disclose any
14 confidential information into the record. Can you
15 tell me, is the revision date a confidential number
16 that's shown on the top of the first page?

17 A. I would think not.

18 Q. Okay. So this policy, at least when it was
19 provided by Broadwing to Qwest, had last been revised
20 on June 13th of 2006?

21 A. Correct.

22 Q. Do you know how often this policy is
23 updated?

24 A. I really -- I really couldn't tell you the
25 frequency.

0696

1 Q. Do you know how the June 13th, 2006 revision
2 changed from whatever was in effect in the prior
3 version?

4 A. I was familiar with the version that was
5 written in 2005. The revision that would have been
6 June 2006 would have been written by someone other
7 than myself.

8 Q. Okay. So you were personally involved in a
9 revision during 2005?

10 A. Correct.

11 Q. And can you just tell me, again, kind of in
12 a general way, without disclosing any confidential
13 information, what types of revisions you made in
14 2005?

15 A. Well, actually, 2005 was the beginning of
16 the process to where we were basically giving the
17 documents and the controls and setting key controls.
18 Just sort of looking at it, I think there might have
19 been revisions based on key controls after 2006.

20 JUDGE MACE: What kind of controls?

21 THE WITNESS: Key controls. And that's
22 important within Sarbanes-Oxley, that you provide --
23 there are key controls that are basically looked at
24 and you provide feedback on for your compliance.

25 Q. So the creation of this reciprocal

0697

1 compensation billing policy and procedure is
2 something that happened on your watch?

3 A. Yes, ma'am.

4 Q. Okay. And so, actually, when I asked you if
5 you instituted any improvements to the billing
6 process after you took your job, you said just the
7 Sarbanes-Oxley thing.

8 A. Correct.

9 Q. But did you then mean to encompass something
10 like this, as well?

11 A. Well, it's funny. The billing procedure
12 pretty much had been the same for the whole time. So
13 what I basically did was just documented the
14 procedure.

15 Q. Okay. Great. Now, could you turn to page
16 seven of 11 on that attachment?

17 A. Okay.

18 Q. And is the information on that page
19 confidential?

20 JUDGE MACE: Page seven of 11, it doesn't
21 look like there is much information.

22 THE WITNESS: It says, Regular requirements
23 not applicable.

24 Q. That is not confidential, I guess.

25 A. Okay.

0698

1 Q. Thank you. That's what I wanted to ask you.
2 What type of information would be contemplated to be
3 contained under heading number seven?

4 A. I really -- I really couldn't tell you.

5 Q. Do you know who decided to put a heading
6 number seven in there?

7 A. It was a KPMG-type standard documentation.

8 Q. I see. Now, you're aware that, in some
9 states, Broadwing does not bill Qwest for traffic
10 that Qwest terminates to Broadwing. For example, in
11 Colorado, where the commission has ordered that
12 ISP-bound traffic at least be exchanged on a bill and
13 keep basis -- well, let me back up. Does Broadwing
14 operate in Colorado?

15 A. Okay. Again, this was the division that was
16 Focal. That was the local CLEC.

17 Q. Okay.

18 A. So to my knowledge, the only Qwest areas
19 that I personally billed were for Washington and
20 Minnesota.

21 MS. ANDERL: Washington and Minnesota, okay.
22 Your Honor, before I forget, I'm going to go ahead
23 and move the admission of Exhibit 248-C.

24 JUDGE MACE: Any objection to the admission
25 of Exhibit 248-C?

0699

1 MR. STRUMBERGER: No objection, Your Honor.

2 JUDGE MACE: I'll admit it.

3 Q. Now, Ms. McNeil, look at the document that's
4 been marked as Exhibit 306-C, which is your RJEM-6.

5 JUDGE MACE: This is also confidential.

6 MS. ANDERL: Yeah.

7 THE WITNESS: And that was the amount due by
8 billing element?

9 Q. That's the amount due by billing element.

10 A. Okay.

11 Q. I think that you have previously disclosed
12 as a non-confidential number, and we don't
13 necessarily claim it as confidential, the amount due
14 in the toll column. Can we talk about that?

15 JUDGE MACE: Can you tell me which column
16 that is? Because on my copy, it's so dark that I can
17 hardly see.

18 Q. It's the third column, isn't that right, Ms.
19 McNeil, is toll?

20 A. The toll, yes. So you would have -- your
21 first column would have your invoice number, your
22 second column would have invoice dates, the next
23 column would be toll amounts, then local, then WECA,
24 then late payment charges, and then the total owed.

25 JUDGE MACE: Thank you.

0700

1 Q. And so is the amount in the third column, if
2 Qwest doesn't claim it as confidential, does
3 Broadwing claim it as confidential?

4 A. No.

5 Q. Okay. So that's \$225,000; right?

6 A. Correct.

7 Q. And that's as of October?

8 A. Yeah, as of the October 28th, '06 invoice.

9 Q. And Broadwing claims that this is switched
10 access charges owed by Qwest to Broadwing; is that
11 right?

12 A. Correct.

13 Q. And under what circumstances does a carrier
14 owe switched access to Broadwing?

15 A. That would be where we had the reciprocal
16 compensation agreement and would be where your
17 customer would then terminate a call to a Broadwing
18 customer or former Focal customer.

19 Q. Okay. And that would be a toll call?

20 A. Depending on the area.

21 Q. Okay. But if you're going to assess
22 switched access charges, switched access would only
23 apply if it was a toll call; is that right?

24 A. Yeah, I believe so.

25 Q. And so it would be Broadwing's claim that

0701

1 where Qwest, operating as an interexchange carrier,
2 carried a call from a Qwest end user to a Broadwing
3 end user, Qwest would owe Broadwing switched access;
4 is that what you're saying?

5 A. Correct. And again, I say that was, again,
6 the Focal purchase, CLEC.

7 Q. Okay. So this is -- so when we talk about
8 this, we're talking about Focal?

9 A. Correct.

10 Q. Do you know what transiting traffic is?

11 A. I'm not -- I mean, I believe that's from one
12 place to another, sort of the intermediate part of
13 the call.

14 Q. Okay. And if a call transits Qwest's
15 network where a Qwest customer is not the originator
16 of the call, would Broadwing or Focal attempt to bill
17 Qwest either reciprocal compensation or switched
18 access if that call terminates on Broadwing's
19 network?

20 A. That would not be the case, as we only bill
21 for complete calls and the assignment of the
22 originating call would be the ANI. We do a LERG
23 lookup and, say, for example, it was -- who were we
24 talking about, Mashell Telecom? So if it was a
25 Mashell Telecom call, then their operating company

0702

1 number would appear, even though perhaps they had
2 transited the Qwest network, because we get a
3 completed call that then completed to a
4 Broadwing/Focal customer.

5 Q. And do you ever receive records where
6 there's no calling party information?

7 A. I can't remember seeing any of those coming
8 through the billing platform.

9 Q. If there were calls that were received,
10 terminated to Broadwing, where there was no calling
11 party information passed, how would Broadwing or
12 Focal bill those calls?

13 A. They would not be billed.

14 Q. Now, take a look at the first set of data
15 request responses, that is Exhibit 245-C. And in the
16 lower left -- it's Data Request Number 21.

17 A. Okay.

18 Q. But in the lower left-hand corner, it
19 actually says page six on the response sheet. Do you
20 see that?

21 A. Okay. Yeah, I see that. Okay.

22 Q. Okay. And go down to Subsection C, where we
23 talk about the \$225,000, which we have just been
24 talking about. On the third line of that answer, you
25 say, This claim is based on this amounts disputed by

0703

1 Qwest for toll services provided by Broadwing.

2 A. Correct.

3 Q. Can you describe for me what you mean there
4 when you say toll services provided by Broadwing?

5 A. Correct. So when we get disputes letters
6 from Qwest and, again, it's you bill me for X toll
7 minutes, you bill me for X local minutes, I'm
8 disputing X toll minutes of use in this amount or
9 disputing X local amount. So again, all of the
10 amounts that are seen in this exhibit, toll, local,
11 however the dispute, were all based on dispute
12 letters submitted by Qwest.

13 Q. Okay. But when you say toll services
14 provided by Broadwing, I'm looking for your
15 explanation of that phrase in particular.

16 A. So that was the amount that we billed and/or
17 labeled toll.

18 Q. Okay. And what kind of services were those,
19 then?

20 A. So that would be, I believe, your access
21 charges.

22 Q. So it wasn't really Broadwing who was
23 providing the toll service, was it?

24 A. It would have been the Focal -- Focal
25 subsidiary of Broadwing, then.

0704

1 Q. And how were they providing toll services?

2 A. Again, it would have been a Qwest customer
3 that contacted a Broadwing/Focal customer that was
4 not a local call, still intraLATA, and so then it
5 would therefore fall into what would be the category
6 called toll.

7 Q. And how does Broadwing determine whether a
8 call is local or toll for purposes of billing?

9 A. Again, I believe it's within the call detail
10 records, looking at the originating number and the
11 terminating number. A LERG lookup is done at that
12 point to determine, I believe, area, and then, based
13 on that, it determines if it's a local call or a toll
14 call.

15 Q. So that's based on the assigned telephone
16 numbers?

17 A. Yes, ma'am.

18 Q. And so if a Qwest customer located in
19 Olympia were to dial an Olympia number to reach a
20 Focal or Broadwing customer who was assigned that
21 Olympia number, but was physically located up in
22 Seattle, how would Broadwing bill that call?

23 A. So if I understand it, then, your
24 originating number would have an Olympia number?

25 Q. Yes.

0705

1 A. And then your Focal provider would have an
2 Olympia number?

3 Q. That's correct.

4 A. Then I believe the lookup would look at that
5 and see it as a local call.

6 Q. And that would be even if the call was
7 ultimately transported to be answered by a customer
8 in Seattle, which is non-local?

9 A. Well, if it was answered by a customer in
10 Seattle, then that would be the terminating number
11 that it ended to, and then, therefore, it would
12 recognize Seattle and see it as a toll call.

13 Q. So are there any circumstances under which a
14 Seattle customer could have an Olympia number from --
15 provided by Focal or Broadwing?

16 MR. STRUMBERGER: Your Honor, I'm going to
17 object at this point. Ms. McNeil is only here to
18 discuss the billing issues, and she's not familiar
19 with the regulatory stance or the network or any of
20 that stuff. I'd ask that we just keep her questions
21 to billing issues, which is her expertise.

22 JUDGE MACE: Well, I'm not sure how you can
23 discuss the billing issues without talking about the
24 location of the customers, so I think I'm going to
25 allow the answer, if you can answer.

0706

1 MS. ANDERL: Thanks, Your Honor.

2 THE WITNESS: I really don't know how to
3 answer that question. I'm sorry.

4 Q. Okay. Are you familiar at all with the
5 interconnection agreement between Qwest and Focal or
6 Broadwing?

7 A. I'm aware that we have one. Any specifics
8 would be given to me by Larry Strickling, our chief
9 regulatory officer at the time, or Mr. Meldazis.

10 Q. And if you need to defer this to Mr.
11 Meldazis, this is fine, but I think it does relate to
12 your responsibilities when you were a billing
13 manager, so let me just ask you about this.

14 Are you aware that Qwest makes available to
15 CLECs billing records that are generally referred to
16 as either wireline or wireless transit records?

17 A. I was not aware of that.

18 Q. Okay. And so if the Qwest-Broadwing
19 interconnection agreement contains an amendment to
20 allow Broadwing to purchase billing record -- billing
21 transit records from Qwest, you're not aware of that?

22 A. No, I'm not aware of that.

23 Q. Do you know if Broadwing purchases transit
24 records from Qwest, aside from the amendment issues?

25 A. Yeah, I really don't know.

0707

1 Q. Okay. Are transit records something that
2 Broadwing or Focal would find necessary in order to
3 accurately bill a carrier?

4 A. I really don't know how to answer that
5 question.

6 Q. Do you know when Broadwing acquired Focal?

7 A. I believe that was September of 2004.

8 Q. And now, I'm sorry, I may have already asked
9 and answered this -- asked this and you may have
10 already answered it, but let me review it with you
11 again.

12 If there were a situation where Broadwing --
13 calls were terminated to Broadwing or Focal customers
14 where no calling party information appeared, how
15 would Broadwing or Focal handle those calls from a
16 billing perspective?

17 A. They would not be billed. They would be in
18 a category called unbillable.

19 Q. Okay. And what would you do with those?

20 A. We don't bill them. We basically take the
21 loss.

22 Q. Does Broadwing offer transit services?

23 A. I'm not aware.

24 Q. Let me go back and ask you about your
25 Exhibit 306-C. Under the column Local, the dollar

0708

1 amount disputed there, again, if it were not
2 confidential to Qwest, would it be okay to disclose
3 that?

4 A. Yes, yeah.

5 Q. So the dollar amount in the column Local
6 that's been disputed by Qwest since 2003 is \$986,000,
7 and some odd; is that right?

8 A. Yes, correct, 968,724.62.

9 Q. And on the continuum of these bills here, if
10 you took the job as billing manager in December of
11 2004, where would your responsibilities start?

12 A. So it would have been with the December
13 28th, '04 invoice.

14 Q. Okay.

15 A. And it would have ended with the February
16 28th, '06 invoice.

17 Q. And so you're not familiar with the invoices
18 or the disputes from April 28th, 2003, to November
19 28th, 2004?

20 A. The only knowledge I have on them is dispute
21 records that are -- you know, dispute letters that
22 are on record.

23 Q. And Qwest told you through those dispute
24 letters that Qwest believed that it was being
25 improperly billed for possibly both wireless and

0709

1 transiting calls?

2 A. Yeah, from April to -- April 2003 to about
3 February 2005, it basically referenced imbalance of
4 minutes, a TUT tracking system, which I believe was
5 Qwest's way to measure minutes of use.

6 Q. Okay. And there's one large invoice in
7 February of 2005, for \$317,000.

8 A. Yes, ma'am.

9 Q. Were you involved in that, preparation of
10 that invoice?

11 A. Yes, ma'am.

12 Q. Can you tell me what that represents?

13 A. Yes. Based from information from, again,
14 Larry Strickling, which was our chief regulatory
15 officer, and Dan Meldazis, that there was a
16 back-billing issue that was related to minutes of use
17 that had previously billed at basically over cap at
18 zero, that could then be billed at a .0007 rate.

19 Q. And you're aware that Qwest has also not
20 paid that invoice?

21 A. Correct.

22 Q. And so with regard to how calls are rated as
23 either local or toll for billing purposes, you would
24 want me to ask Mr. Meldazis those questions?

25 A. I believe if you -- if what you asked me

0710

1 previously didn't answer your questions, then, yeah,
2 perhaps Mr. Meldazis could answer more completely.

3 Q. And you would agree that the only types of
4 calls that Broadwing is allowed to bill Qwest for are
5 either local voice or ISP-bound calls that are
6 originated by a Qwest user and terminated to a
7 Broadwing customer on the local side?

8 A. Under reciprocal compensation, it's my
9 understanding that that would be Qwest originated,
10 terminated to a Broadwing/Focal customer.

11 Q. Okay. So let me ask you some questions
12 about Exhibit -- is it 250? Yeah, 250, which is
13 Broadwing's response to Qwest's fourth set of data
14 requests 32 and 33. You were the -- I'll let you get
15 there, but you were the respondent on Data Request
16 Number 32; is that right?

17 A. Yes.

18 Q. And also the respondent on Data Request 33;
19 is that also right?

20 A. Correct.

21 Q. Now, did you receive any assistance in the
22 preparation of the response to Data Request Number
23 33?

24 A. With counsel.

25 Q. And it's correct, is it not, that you

0711

1 significantly revised that data request response in
2 April, this month?

3 A. April of this month?

4 Q. Or April, this month of April of 2007?

5 A. Yes, okay.

6 Q. Is that correct?

7 A. Yes.

8 Q. Okay. And I do not have a copy of that,
9 because I did not receive it until April 19th. I
10 certainly have no objection if Broadwing wants to
11 provide that for the record. But the question that I
12 have is simply what changed in terms of your
13 understanding of the proper response between March
14 7th, 2007, and your revision on April 19th, 2007?

15 MR. STRUMBERGER: Your Honor, if I may bring
16 the witness a copy of the change?

17 THE WITNESS: Oh, okay. Thank you.

18 JUDGE MACE: Is It possible for us to have a
19 copy of that response, as it's updated?

20 MR. STRUMBERGER: I have one copy of it. I
21 didn't bring others. This is a Qwest exhibit for
22 cross, so I only brought the one copy.

23 MS. ANDERL: Right. And Your Honor, it's
24 fine with us. We designated this as a cross exhibit
25 on Thursday the 18th, received the updated response

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1 on Friday, the 19th, and so we're still playing
2 catch-up with it, but we have no objection to both
3 versions being in the record. I just didn't
4 necessarily need to ask the witness anything specific
5 about the details of the response.

6 Q. At this point, my question was generally
7 what changed between March 7th, 2007, and April 19th,
8 that caused you to change your response?

9 A. There was more discussion of the mediation
10 process that looks up the LRN, so it was just more
11 detailed under the Subsection F, that we basically
12 said -- talked about the LERG data lookup and
13 expanded that, that it's the -- look at the LRN
14 number.

15 JUDGE MACE: And what is an LRN number?

16 THE WITNESS: LRN would be your local
17 routing number, I believe.

18 JUDGE MACE: Local routing number.

19 THE WITNESS: Yeah, let me double check
20 that.

21 JUDGE MACE: Thank you.

22 THE WITNESS: We like to play alphabet soup
23 in this.

24 JUDGE MACE: I know.

25 THE WITNESS: Thank you. Yes, ma'am, it's

0713

1 location routing number.

2 JUDGE MACE: Thank you.

3 Q. And if -- that's all my questions on that.

4 A. Okay.

5 MS. ANDERL: Your Honor, we'd move Exhibit
6 250, again, before I forget.

7 JUDGE MACE: Any objection to the admission
8 of 250?

9 MR. STRUMBERGER: No objection.

10 JUDGE MACE: I'll admit it.

11 Q. Ms. McNeil, who within Broadwing -- or I
12 guess it was Broadwing by then. If a decision was
13 made within Broadwing in the 2005 time frame to enter
14 into an amendment with Qwest to provide for the
15 provision of transit records, and then subsequently
16 to begin purchasing transit records from Qwest, who
17 would have been involved in that decision?

18 A. It's just my assumption that that would
19 probably be Mr. Larry Strickling or Dan Meldazis.

20 Q. And so to the extent that I had questions
21 about whether that happened or why, I should refer
22 those to Mr. Meldazis?

23 A. Yes, ma'am.

24 Q. Okay.

25 MS. ANDERL: Your Honor, if I might just

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1 have a minute, I think that concludes my cross.

2 MR. FINNIGAN: Your Honor, if I might switch
3 my cross from Mr. Meldazis to Ms. McNeil, I would
4 appreciate that.

5 MS. ANDERL: And Your Honor, that does
6 conclude my cross, except for the offering of some
7 additional exhibits that I referred to. If I haven't
8 already moved 245, sorry, and one other of the
9 designated exhibits. Let me just check here. 245-C
10 is the only other one that I would like to offer.

11 JUDGE MACE: Any objection to the admission
12 of 245?

13 MR. STRUMBERGER: No objection, Your Honor.

14 JUDGE MACE: Then I'll admit it. So I have
15 admitted 245, 248 and 250.

16 MS. ANDERL: Those are the ones, yes.
17 Thanks, Your Honor.

18 JUDGE MACE: Very good. And Mr. Finnigan,
19 you had designated ten minutes for Mr. Meldazis, and
20 you would like to cross-examine Ms. McNeil instead
21 ten minutes; is that --

22 MR. FINNIGAN: Yes, Your Honor. I have a
23 very brief -- just one line of questioning.

24 JUDGE MACE: Go ahead.

25 MR. STRUMBERGER: Your Honor, before Mr.

0715

1 Finnigan begins, I'd just like to clarify one point.
2 Ms. McNeil was here basically because of the
3 counterclaim between Qwest and Broadwing, and so her
4 expertise and her testimony is very narrow on the
5 issue of just billing.

6 If Mr. Finnigan wanted to ask some questions
7 about just the narrow line of general how we bill
8 things, that would be okay, but anything else, I
9 believe, would be beyond the scope of Ms. McNeil's
10 testimony.

11 JUDGE MACE: Well, let's see what his
12 questions are.

13 MR. FINNIGAN: Thank you. And my questions
14 are related to billing.

15 THE WITNESS: Hi.

16

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

18 BY MR. FINNIGAN:

19 Q. Good afternoon. For your information, my
20 name is Rick Finnigan, and I represent the Washington
21 Independent Telephone Association.

22 A. Great.

23 Q. In your discussion with Ms. Anderl, I heard
24 you mention the WECA rate element on access charges?

25 A. Yes, sir.

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1 Q. And that WECA rate element is a Universal
2 Service Fund rate element; is that correct?

3 A. I believe so.

4 Q. Does Focal, now Broadwing, assess that
5 access element to all interexchange carriers for
6 which it originates or terminates access minutes?

7 A. I believe in the Washington State area.

8 Q. Would you accept, subject to check, that
9 those amounts that are collected by Focal, now
10 Broadwing, have not been remitted to the Washington
11 Exchange Carrier Association?

12 A. I would not know about that.

13 Q. Okay. In asking you to accept it subject to
14 check, that's something you could go to your accounts
15 payable department and see if those funds have been
16 remitted?

17 MR. STRUMBERGER: Your Honor, this is,
18 again, outside the scope of Ms. McNeil's testimony.

19 JUDGE MACE: Well, she is talking about
20 billing and this seems to have to do with the billing
21 issues, so I can't understand why she wouldn't be
22 able to check on this. It seems like it's her
23 bailiwick.

24 MR. STRUMBERGER: The intake of that money
25 would be. What happens after that point would be out

0717

1 of the scope of her knowledge.

2 JUDGE MACE: Who could check on that, then?

3 MR. STRUMBERGER: I would have to find out.

4 I don't know that answer off the top of my head.

5 It's -- my understanding is that would be something
6 completely different than what, really, the scope of
7 this proceeding is, if we're talking about USF
8 payments to rural carriers.

9 MR. FINNIGAN: It still seems to be a fairly
10 simple question to check with the internal company
11 documents, but if counsel would prefer, I can defer
12 that one question to Mr. Melendez. I'm sorry, I
13 mispronounced that.

14 JUDGE MACE: Meldazis.

15 MR. FINNIGAN: Meldazis, and see if he feels
16 more comfortable.

17 JUDGE MACE: I'm going to ask -- I'll make
18 it a bench request, actually. I'd like to have the
19 company check on whether or not those amounts have
20 been remitted to WECA. That will be Bench Request
21 Two. I guess that's not exactly a Bench Request;
22 it's a Bench Exhibit, but in any event, Bench Request
23 Two.

24 MR. FINNIGAN: Thank you, Your Honor. That
25 completes my cross.

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1 JUDGE MACE: All right. Then do you have
2 redirect?

3 MR. STRUMBERGER: No, I don't, Your Honor.

4 JUDGE MACE: Thank you. You're excused.

5 THE WITNESS: Thank you.

6 JUDGE MACE: And that brings us to Mr.
7 Meldazis. Actually, that brings us to a recess.
8 We'll take ten minutes.

9 (Recess taken.)

10 Whereupon,

11 DANIEL E. MELDAZIS,
12 having been first duly sworn, was called as a witness
13 herein and was examined and testified as follows:

14 JUDGE MACE: All right. Please be seated.

15 THE WITNESS: Thank you.

16

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

18 BY MR. STRUMBERGER:

19 Q. Good afternoon, Mr. Mendazis.

20 A. Meldazis.

21 Q. Meldazis. Yeah, everybody else messed up
22 your name. Now I got it bad, too. Would you please
23 state your full name and your employer and your
24 business address for the record, please?

25 A. Certainly. Daniel E. Meldazis. My employer

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1 is Level 3 Communications, formerly Broadwing
2 Communications. My business address is 200 N.
3 LaSalle Street, Suite 1000, Chicago, Illinois, 60601.

4 Q. And is the -- are you familiar with the
5 testimony, rebuttal testimony and attachments that
6 are listed as Exhibits 241-T through 244-T?

7 A. Yes.

8 Q. Okay. What's the subject matter of your
9 testimony today?

10 A. The interconnection agreement between
11 Broadwing Communications and Qwest Communications.

12 MR. STRUMBERGER: Your Honor, at this time,
13 Broadwing would like to admit Exhibits 241-T through
14 244-T, and we tender the witness for
15 cross-examination.

16 JUDGE MACE: Any objection to the admission
17 of those proposed exhibits?

18 MS. ANDERL: No, Your Honor.

19 JUDGE MACE: I'll admit them and turn to
20 Qwest for cross-examination.

21 MS. ANDERL: Thank you.

22

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

24 BY MS. ANDERL:

25 Q. Good afternoon, Mr. Meldazis.

0720

1 A. Good afternoon.

2 Q. I'm Lisa Anderl, I represent Qwest, and I'll
3 be asking you some questions. Let's first talk about
4 the Exhibit 243, which is the -- I'm sorry, 242,
5 which is the interconnection agreement that you
6 attached to your testimony. Do you have that
7 document?

8 A. I should.

9 Q. I'm sure that you do.

10 A. Is that entitled Rate Structure, Local
11 Traffic, that page?

12 Q. I'm looking at a document that is actually
13 --

14 A. Oh, the whole interconnection agreement?

15 Q. Yeah, it has a cover letter --

16 A. Sure, I have it.

17 Q. -- from US West, and then it shows a Focal
18 Communications and US West arbitrated interconnection
19 agreement?

20 A. Yes, I have that.

21 Q. Okay. Is it your understanding that that's
22 the document that is the operative document between
23 now Broadwing and Qwest?

24 A. Yes, it is.

25 Q. Okay. So even though it says Focal on it,

0721

1 there's not a separate interconnection agreement that
2 has Broadwing's name on it that you're claiming
3 applies?

4 A. No.

5 Q. Okay. Was Broadwing a CLEC in Washington
6 before acquiring Focal?

7 A. Not to my knowledge.

8 Q. Okay. This document, 242, is an
9 interconnection agreement that is now kind of in its
10 evergreen stage; is that right? Do you have an
11 understanding what that means?

12 A. Yes.

13 Q. And so its ordinary term expired some years
14 ago and is being operated under on a month-to-month
15 basis?

16 A. Month-to-month basis.

17 Q. Okay. You discussed in your testimony that
18 there are a number of amendments to that ICA; is that
19 right?

20 A. Yes, there are.

21 Q. And you attached one to your testimony
22 dealing with reciprocal compensation?

23 A. Mm-hmm.

24 Q. Is that a yes?

25 A. Oh, yes. I'm sorry. Yes.

0722

1 Q. Okay. And there was another amendment that
2 I wanted -- that I had asked Ms. McNeil about that
3 she was not familiar with. Can you turn in your
4 testimony to -- sorry, I'm looking for the page here
5 -- page four of your testimony?

6 A. My direct?

7 Q. Yes.

8 A. Okay.

9 Q. You list there as Amendment Number Eight an
10 amendment that was entered into or approved, I guess,
11 by the WUTC on June 29th, 2005?

12 A. Yes.

13 Q. Do you have an independent recollection, as
14 you sit here today, of what that amendment covered,
15 or would you accept, subject to check, that it
16 covered the provision by Qwest of transiting records?

17 A. It did cover transiting records, as I
18 recall.

19 Q. And do you know why that interconnection
20 agreement -- or that amendment was entered into by --
21 I guess it would have been Broadwing at the time?

22 A. Yes, at the time we were having an issue
23 with billing other carriers for various calls that
24 terminated to us and we couldn't get the proper
25 records in order to validate the call details that we

0723

1 had. And we reached out to Qwest and asked them if
2 they could provide us with these records, and Qwest
3 said, in Washington State, it would be a matter of an
4 interconnection agreement amendment and that you
5 would have to pay for them. So we needed the records
6 in order to make our bills complete, and that's why
7 we entered into the amendment.

8 Q. Okay. Under that amendment, Broadwing has
9 been purchasing transiting records from Qwest since
10 about August of 2005; right?

11 A. I believe that's a correct date.

12 Q. And those are both wireless and wireline
13 transiting records?

14 A. I don't recall if the amendment
15 differentiated the two.

16 Q. Okay. But you have an understanding that
17 those are different kinds of traffic?

18 A. Oh, absolutely.

19 Q. And you would want to include both to
20 exclude transiting traffic?

21 A. That's correct.

22 Q. Okay. Now, I know Ms. McNeil testifies
23 about the billing dispute and the past due amounts,
24 but it seems that there is some overlap between your
25 testimony. So let me ask you, since you discuss the

0724

1 interconnection agreement, is it on the basis of the
2 interconnection agreement that Broadwing is claiming
3 this \$1.1 or \$1.2 million in past due amounts from
4 Qwest?

5 A. Yes, it is.

6 Q. And specifically for the -- I'm going to
7 kind of use quotes around it, the local traffic,
8 quote, unquote, local traffic, is it Broadwing's
9 claim that it's the provision in the ICA that
10 requires compensation for ISP-bound traffic and local
11 traffic that forms the basis for the claim that
12 \$986,000 of that total is due?

13 A. Yes.

14 Q. And there is, between the parties, an
15 amendment that incorporates into the interconnection
16 agreement the definition of ISP-bound traffic as
17 contained in the ISP Remand Order; is that right?

18 A. I believe that's correct.

19 Q. Okay. Because the amendment would have been
20 in 2002, and the ISP remand order was in 2001?

21 A. Right.

22 Q. Ms. McNeil testified that, in Washington,
23 Broadwing/Focal has customers who are ISPs. Would
24 you agree with that?

25 A. I would suspect that we do.

0725

1 Q. Okay. And other customers, as well?

2 A. Yes.

3 Q. And to what extent is Broadwing, as a
4 separate operating company, now integrated into Level
5 3?

6 A. Mm-hmm.

7 Q. To what extent is --

8 A. Oh, to what extent? We are a wholly-owned
9 subsidiary of Level 3 Communications.

10 Q. So are you still operating as a separate
11 entity?

12 A. Yes, we are still operating as Broadwing
13 Communications, L.L.C. in the state of Washington and
14 in other states.

15 Q. Does Broadwing -- let's see. For Ms.
16 McNeil's billing purposes, how does Broadwing
17 determine whether a call that's terminated to it, to
18 Broadwing, is local or toll for purposes of billing a
19 carrier either intercarrier compensation, reciprocal
20 compensation, or switched access?

21 A. We would look at the jurisdictional nature
22 of the call based on the NPA-NXXs, and then based on
23 who that number is assigned to by looking in the
24 mediation system and looking in the LERG to do an
25 operating company number lookup.

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1 JUDGE MACE: In looking in the --

2 THE WITNESS: LERG, I'm sorry. LERG is
3 Local Exchange Routing Guide. And in that way we
4 determine whether or not it's a local call or an
5 intraLATA toll call or a long distance type call.

6 Q. So that's based on the NPA-NXX of the
7 calling and called parties?

8 A. Correct.

9 Q. And has Broadwing obtained telephone numbers
10 and assigned them in local calling areas where the
11 end user customer who has the telephone number does
12 not have a physical presence or location?

13 A. In a foreign exchange type of arrangement,
14 we would do that.

15 Q. Look, please, at your rebuttal testimony,
16 which was admitted as Exhibit 244. And on page five,
17 you talk about -- oh, I'm sorry, are you there?

18 A. I'm there.

19 Q. Okay. You talk about undercutting the
20 geographic synchronization between numbers and
21 customer location; is that fair?

22 A. I believe the Qwest witness used the term
23 undercutting.

24 Q. Okay. And it's your view that there is no
25 such undercutting because you don't agree that that

0727

1 synchronization exists; is that right?

2 A. Right.

3 Q. Okay. Wouldn't you agree that traditionally
4 and historically, though, whether it's mandated or
5 not, there has been a de facto synchronization
6 between customer location and telephone numbers?

7 A. There is a de facto in the wireline world,
8 because based on the fact that you have to assign V&H
9 coordinates, which are vertical and horizontal
10 coordinates, that determine a location of a switch
11 and that numbers reside in a switch in order for you
12 to perform services for your customers, that you're
13 going to have a geographic significance to the
14 NPA-NXXs.

15 Q. And looking back at the interconnection
16 agreement, Exhibit 244, I'm going to refer you to the
17 definitional section. And if we look in the
18 definitions, you can see that they're arranged
19 alphabetically; isn't that right?

20 A. That's right.

21 Q. And under L, we don't find a definition for
22 local call, do we?

23 A. No, I do not see that.

24 Q. Okay. But if you go over to page seven,
25 under traffic type?

0728

1 A. Yes.

2 Q. And traffic type, then, gives guidance in
3 terms of the relationship between the parties as to
4 whether a call is going to be characterized as local
5 or not; isn't that right?

6 A. That is right.

7 Q. And that definition there indicates that the
8 designation of whether a call is local or toll is
9 governed by the incumbent LEC's tariffs?

10 A. That's correct.

11 Q. Okay. And then, were you in the room when
12 Ms. Peters, for Global Crossing, was being examined
13 by Mr. Smith here?

14 A. I was in the back, yes.

15 Q. Okay. This could save us some time, because
16 I want you to look at Definition KK on page six.

17 A. I see that.

18 Q. Okay. Do you know or would you accept,
19 subject to your check, that that definition for rate
20 center is the same as the one in the Global Crossing
21 interconnection agreement that Mr. Smith read into
22 the record in its entirety, and which I would like to
23 avoid doing?

24 A. Well, subject to check, I would agree.

25 Q. Okay. Now, on page eight of your rebuttal

0729

1 testimony, you cite the Commission's order in the
2 Level 3 complaint to the effect that the FCC did not
3 distinguish traffic between an ISP and its customer
4 in the same or different local calling areas?

5 A. Right.

6 Q. Okay. Now, are you aware or have you been
7 advised by your attorneys that, subsequent to the
8 filing of your testimony, there has been a decision
9 by a magistrate judge in Washington on that question?

10 A. Right, they told me that it was reversed and
11 remanded back to the Commission here.

12 Q. Okay. And is it your understanding, then,
13 that it is the Commission's duty now to make a
14 determination as to whether particular types of calls
15 are local or not before they can be considered to be
16 ISP-bound traffic?

17 A. Well, I'm not a lawyer, but I believe the
18 issue was is that the Commission reached the right
19 decision by utilizing the wrong piece of law, and
20 that, under their rules, they can come up with the
21 same exact decision that they had before the case was
22 remanded.

23 Q. They could, but are not required to do so;
24 is that your understanding?

25 A. As far as the federal judge ordered, that's

0730

1 what I think they said.

2 Q. Okay. Now, in your testimony, in your
3 rebuttal testimony, you talk about determining
4 whether a call is local based on Qwest's tariffs, and
5 I think that you quote from those tariffs at the top
6 of page six of your testimony. Do you see that?
7 Rebuttal testimony.

8 A. Yes.

9 Q. Okay. And you say that local calling refers
10 to calls placed to telephone numbers where message
11 toll charges do not apply?

12 A. Right.

13 Q. Now, do you know or would you accept,
14 subject to your check, that Qwest and other long
15 distance carriers offer calling plans to their retail
16 end users that allow for unlimited long distance?

17 A. I would agree to that.

18 Q. Say for \$20 a month or something?

19 A. Sounds like a typical offering.

20 Q. Okay. And if you subscribe to that
21 offering, you're charged \$20 whether -- even if you
22 make no long distance calls that month?

23 A. Right.

24 Q. Okay. And if you make one, it's \$20, and if
25 you make a hundred, it's also \$20?

0731

1 A. Right.

2 Q. Okay. And would you argue that those calls
3 are calls where toll charges do not apply?

4 A. Under the terms and conditions of the
5 package that is purchased by the end user customer,
6 then toll charges would not apply.

7 Q. Okay. And so would you consider those to be
8 local calls, then, for purposes of intercarrier
9 compensation and the payment of either switched
10 access charges or reciprocal comp?

11 A. No, you can't really use a retail tariff
12 offering or a retail customer offering to determine
13 intercarrier compensation. We still have to look at
14 the jurisdictional nature of the phone calls that
15 come to us or that we send to other carriers in order
16 to determine whether or not it's a local call or
17 whether or not it's a toll call.

18 Q. Okay. And if the Commission in Washington
19 has historically determined that the jurisdictional
20 nature of the calls is determined based on geographic
21 location and that the telephone numbers are just a
22 proxy for geographic location, then that's what we
23 would have to look at in Washington?

24 A. With reserving our rights of appeal, did I
25 get that right, we would, you know, abide by whatever

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1 decision the Commission came to.

2 Q. Thank you. Those are all my questions.

3 JUDGE MACE: Redirect?

4 MR. STRUMBERGER: No, not at this time, Your
5 Honor.

6 JUDGE MACE: And are there any exhibits
7 outstanding for this witness? It doesn't appear that
8 that's the case. Does Qwest have any cross exhibits
9 --

10 MS. ANDERL: No, none.

11 JUDGE MACE: -- outstanding? You might have
12 dealt with them all under Ms. McNeil.

13 MS. ANDERL: Yes, I was going to say, the
14 ones that were identified under Mr. Meldazis, we've
15 offered all the ones that we're interested in
16 offering.

17 JUDGE MACE: Very well. Thank you very
18 much. You're excused.

19 THE WITNESS: Thank you, Your Honor.
20 Whereupon,

21 DR. GLENN BLACKMON,
22 having been first duly sworn, was called as a witness
23 herein and was examined and testified as follows:

24 JUDGE MACE: Thank you. Please be seated.

25

0733

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

2 BY MR. ROGERS:

3 Q. My name is Greg Rogers, on behalf of Level 3
4 Communications. And Dr. Blackmon, can you please
5 state your name and your business address for the
6 record, please?

7 A. My name is Glenn Blackmon. My business
8 address is 203 20th Avenue, S.E., in Olympia,
9 Washington.

10 Q. And how are you employed?

11 A. I'm self-employed.

12 Q. And how would you describe your business?

13 A. I'm an economist. I provide consulting
14 services having to do with telecommunications and
15 utility issues.

16 Q. And on whose behalf are you appearing here
17 this afternoon?

18 A. Level 3 Communications and Broadwing
19 Communications.

20 Q. Did you draft and cause to have filed direct
21 testimony in this case?

22 A. Yes.

23 Q. Do you have a copy of that testimony that
24 you prepared in front of you?

25 A. Yes.

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1 Q. Do you have any corrections that you'd like
2 to make to your testimony that was filed at this
3 time?

4 A. Yes, I do. There are a few typos. We could
5 start on page five. On line five, the number that
6 starts that line should be 020667.

7 Q. Okay.

8 A. At page 14, on line 23, the third word from
9 the end should be very, not vary, v-e-r-y.

10 On page 16, line 22, the fifth word, instead
11 of caller, it should be interexchange carrier.

12 MS. ANDERL: I'm sorry, what line?

13 THE WITNESS: Twenty-two, charge the
14 interexchange carrier.

15 And then page 20, line 17, the word data
16 should be deleted. That's it.

17 Q. Okay. So those are all the corrections?

18 A. Yes.

19 Q. With those corrections, if you were asked
20 the same questions as you have in your pre-filed
21 testimony, would you answer those questions the same
22 today?

23 A. Yes.

24 MR. ROGERS: With that, Your Honor, we would
25 ask that Exhibit 401-T be admitted, and we would

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1 tender Dr. Blackmon for cross-examination.

2 JUDGE MACE: Any objection to the admission
3 of Exhibit 401?

4 MS. ANDERL: No.

5 JUDGE MACE: Hearing no objection, I'll
6 admit the exhibit. And I show Qwest, Staff and WITA
7 as having cross-examination. Have you talked about
8 an order of cross? Do you care which order in which
9 you cross the witness?

10 MS. ANDERL: No and no. We haven't talked
11 about it and I don't care.

12 JUDGE MACE: Shall I call on Qwest first?

13 MR. THOMPSON: I was just going to say I
14 might not have any, so I'll defer to Qwest.

15 JUDGE MACE: Go ahead.

16 MS. ANDERL: We'll start with me, then.

17

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

19 BY MS. ANDERL:

20 Q. Good afternoon, Dr. Blackmon.

21 A. Good afternoon.

22 Q. Let me just ask you, because I must, are you
23 familiar with the federal court decision of April
24 9th, in which the magistrate judge reversed and
25 remanded the Commission's decisions in connection

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1 with the Level 3 and Pac-West complaints against
2 Qwest?

3 A. Yes.

4 Q. Okay. And does that -- have you read it?

5 A. Yes, I have.

6 Q. Okay. Now, are you aware, based on your
7 experience in the industry and your employment here
8 at the Commission, previous employment, are you aware
9 that some carriers have entered into interconnection
10 agreements with Qwest in which all traffic is
11 exchanged between Qwest and the other carrier on a
12 bill and keep basis?

13 A. Yes, there are several carriers that have
14 voluntarily negotiated a bill and keep arrangement.

15 Q. Now, are you aware that Qwest and
16 MCI/Verizon Access entered into a settlement
17 agreement to resolve the issues as between them and
18 this docket?

19 A. Yes.

20 Q. And have you read that agreement?

21 A. I have not read it all the way through. I
22 read enough to figure out money and stopped.

23 Q. What did you figure out?

24 A. I figured out that the traffic that's at
25 issue --

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1 JUDGE MACE: Well, aren't portions of that
2 agreement confidential? Am I mistaken in that? I
3 just don't want anything to come --

4 MS. ANDERL: I'm sorry. The only thing I
5 think we designated as confidential in the entire
6 settlement agreement was the dollar amount that was
7 paid between the parties to resolve historical
8 disputes and the method of payment.

9 JUDGE MACE: I just wanted to make sure
10 nothing confidential came onto the record.

11 MS. ANDERL: And actually, when Dr. Blackmon
12 told me that he read it to understand money and
13 stopped, what I understood him to be saying was he
14 was looking at the provisions relative to going
15 forward compensation between the parties.

16 Q. Was that correct, Dr. Blackmon?

17 A. That was correct. In fact, now that you
18 mentioned the confidential part, I have only read the
19 redacted version, so I don't think I could spill any
20 beans on that point.

21 Q. Okay. Great. So go ahead and resume your
22 answer in terms of what you understood with regard to
23 the monetary issues.

24 A. Well, my understanding is that those two
25 companies have agreed that, for Internet-bound

0738

1 traffic, there will not be any compensation for the
2 termination of that traffic. That's the effect of
3 the formulas and things like that in the agreement.

4 Q. For all Internet-bound traffic or just for
5 VNXX traffic?

6 A. I think the latter.

7 Q. Just VNXX?

8 A. Yes.

9 Q. Okay. And does Level 3 have a position on
10 the appropriateness of such an agreement between
11 Qwest and Verizon?

12 A. My understanding of that is that Level 3
13 believes it's entirely appropriate for two carriers
14 to voluntarily negotiate an agreement such as that.
15 They don't necessarily believe that it should be
16 imposed on anyone, including themselves, and I think
17 they also are concerned that it not be withheld from
18 other carriers simply because of the fact that two
19 much larger companies have entered into this
20 agreement. They're concerned that smaller carriers
21 should also have the opportunity if they believe it's
22 in their business interest to do so to adopt that
23 same provision.

24 Q. Okay. And in your reading of the agreement,
25 did you come to understand that that is, in fact, a

0739

1 region-wide agreement that applies in all 14 of
2 Qwest's historic states?

3 A. Yes, I don't entirely understand the details
4 of that part of the agreement, but I did notice that
5 it was a region-wide agreement.

6 Q. Now, in preparing for your testimony in this
7 proceeding, did you discuss at all with Level 3 or do
8 you have an understanding of the terms and conditions
9 under which Level 3 operates for intercarrier
10 compensation in other states, both in Qwest's region
11 and outside?

12 A. You know, I've had some understanding of
13 that over the years, but it's never been very
14 thorough. I wouldn't say that I discussed it very
15 much with Level 3 during the course of this case.

16 Q. Okay. Were you aware that in Colorado, the
17 state commission has ordered exchange of ISP-bound
18 traffic at a zero rate, or effectively bill and keep?

19 A. I've heard that discussed here, but I think,
20 apart from that, I don't have any knowledge of it.

21 Q. Okay. Would you accept that, subject to
22 your check, that in Colorado it's a zero rate?

23 A. Yes.

24 Q. Okay. And Qwest's position, on the other
25 hand, or do you understand it to be Qwest's position

0740

1 that Qwest is willing to compensate carriers for
2 local ISP-bound traffic and is only objecting to
3 being billed for compensating carriers for VNXX-type
4 ISP-bound traffic?

5 A. Yeah, that's my understanding, yes.

6 Q. Okay. Could you turn to page 14 of your
7 testimony, please?

8 A. I have that.

9 Q. You say, on lines nine and ten, such a
10 decision would raise costs for Internet services
11 providers, and your reference to such a decision is a
12 reference to a decision to require access charges on
13 that traffic; is that right?

14 A. Yes.

15 Q. Okay. Now, if the Commission were to allow
16 VNXX type traffic but not require payment of access
17 charges, that would not raise the costs to Internet
18 services providers, would it?

19 A. I'm sorry. If what?

20 Q. If the Commission were to not require access
21 charges, but allow traffic over VNXX arrangements,
22 that would not have the effect of raising costs for
23 ISPs?

24 A. It would have a much smaller effect. The
25 fact that Qwest would no longer be compensating the

0741

1 terminating carrier for the costs that Qwest's
2 customers are creating when they make those calls,
3 you know, that expense doesn't go away, so somebody
4 else is going to have to bear that cost, and I
5 believe that it would be the Internet service
6 providers and ultimately their customers who would
7 end up paying that, but that's a much smaller number
8 than the access revenues that I discuss in my
9 testimony.

10 Q. Sure. I think in your testimony you talk
11 about I think millions of dollars if access charges
12 were applied to current minutes; is that right?

13 A. That's right, on page 17.

14 Q. And you talk about the current compensation
15 from Qwest to Level 3 being \$280,000 a month; is that
16 right?

17 A. Yes.

18 Q. Now, are you aware of whether Level 3 would
19 or could continue to operate in Washington if
20 compensation for VNXX traffic were set at zero rate?

21 A. I don't have any concern that they would be
22 unable to operate if it were done at that level. I
23 think it would have other effects in terms of mix of
24 services and things like that, how networks are
25 provisioned, but I don't think it's a live or die

0742

1 type result.

2 Q. Okay. And in fact, of the \$280,000 that
3 Qwest currently compensates Level 3 for, to the
4 extent that some of those are true local minutes, at
5 least as Qwest defines them, that compensation would
6 continue, would it not?

7 A. I think that's right. I was thinking -- so
8 there would be some minutes where Level 3 has its
9 switch within the same local calling area, so if
10 that's included in the 400 million minutes, which I
11 believe it would be, then they would continue to
12 receive some terminating revenue.

13 Q. Okay. And if you were to say -- you said
14 switch. I think -- could I correct you and suggest
15 that it's media gateway instead of switched, or do
16 you know?

17 A. I'm happy with my answer.

18 Q. Okay. In any event, to the extent that
19 those 400 million minutes -- I think we can agree,
20 can we not, that to the extent those 400 million
21 minutes include minutes that Qwest agrees are local,
22 under whatever Qwest's definition is, that
23 compensation would continue notwithstanding any
24 result in this docket?

25 A. I hope that that's the case. I believe it

0743

1 to be.

2 Q. Okay. And so just to clarify, you don't
3 understand Qwest's position in this case to be one
4 that extends beyond a ruling on VNXX; is that right?

5 A. Yes.

6 Q. Okay. Do you know what inbound 800 service
7 is?

8 A. Do I know what it is?

9 Q. Yes.

10 A. Yes. I give my kids a number to call me
11 from a pay phone and it rings on my cell phone. I
12 hope you're not going to ask me the number here,
13 because I would have to pay for it.

14 Q. I was going to say, could we all get that?
15 Are you being facetious or do you really have an 800
16 number for your children to call you?

17 A. I really do, one for the cell phone, one for
18 the home phone.

19 Q. Excellent. So what is the nature of that
20 service?

21 A. It's a billing arrangement where I agree to
22 bear the toll charges that would otherwise apply to
23 the person who makes that phone call.

24 Q. And so to the extent that they can find a
25 pay phone, your children can pick up the receiver and

0744

1 dial 1-800-CALL-HOME and reach you?

2 A. Yes.

3 Q. Okay. And you're charged on a per minute of
4 use for providing that service to your children?

5 A. That's right, I am.

6 Q. And are there some -- would you assume that
7 there are some underlying carrier arrangements
8 whereby access charges are paid from someone to
9 someone else in the intercarrier compensation area?

10 A. There definitely are. And it's not just an
11 assumption; it's something we -- the first case,
12 telecom case I worked on here, we -- the Commission
13 adjusted the originating and terminating access rates
14 for 800 services. It's an issue I've known about for
15 a long time.

16 Q. Okay. Now, page 19 of your testimony, line
17 15, you talk about accepted principles of cost
18 responsibility, which hold the originator of the call
19 responsible for the cost of the call. How do those
20 principles apply, if at all, to the 800 service that
21 we were just talking about, or is that just an
22 exception?

23 A. It is an exception. You know, it's
24 something that, in my instance, I made a decision
25 that I wanted to step away from that principle that

0745

1 the calling party pays, and I think it's a really
2 good thing about how we've set up practices within
3 the industry and rules that allow for that type of
4 exception. It's a good thing. It's very important
5 to businesses that want to step in and say, Hey, you
6 don't have to pay that call. I'll pay if you'll call
7 me.

8 Q. And at least for you personally, and
9 possibly more generally, but at least for you
10 personally, you've done that in order to facilitate
11 your children having access to you?

12 A. Yes, plus it's actually cheaper than if I
13 give them 50 cents to use at the pay phone.

14 Q. So it's both an access and a cost decision?

15 A. Yes.

16 Q. Now, I want to walk through a hypothetical
17 with you and, frankly, it might get a little
18 confusing. I'm going to try and avoid drawing on the
19 board. But I want you to imagine that there are --
20 there's a Qwest subscriber in Olympia who wants to
21 reach someone in Seattle. That someone in Seattle is
22 in an office with four telephones on his desk. And
23 the first phone rings on a Seattle number.

24 If the Olympia subscriber wants to call that
25 first line, at least assuming all wireline phones and

0746

1 the traditional network, that Olympia subscriber has
2 to dial 1 plus 206 and the NPA-NXX, and then the
3 phone rings in the Seattle office; is that right?

4 A. Did you say this was a Qwest customer in
5 Olympia?

6 Q. Yes.

7 A. Yes, that's right.

8 Q. And under those circumstances, to the extent
9 that there was a third party interexchange carrier
10 carrying that call, that interexchange carrier would
11 charge the end user toll, yes?

12 A. It would -- the originating carrier, if it's
13 different from Qwest, if they haven't purchased, you
14 know, Qwest Choice home package, that kind of thing,
15 but -- so I guess what you're saying is if this is a
16 basic service-only Qwest customer who's using an
17 interexchange carrier apart from their purchase of
18 local service from Qwest?

19 Q. Right.

20 A. Then toll charges would apply. The calling
21 party would pay.

22 Q. And the interexchange carrier would pay
23 Qwest originating and terminating access?

24 A. Yes.

25 Q. Okay. Phone number two rings on an inbound

0747

1 800 number, much as you've set up for your children.
2 Under those circumstances, the Olympia Qwest
3 subscriber would be able to dial that 1-800 number
4 without paying toll charges; is that right?

5 A. Yes.

6 Q. And the person sitting in Seattle with four
7 phones on his desk would pay some level of access
8 charges or some level of per-minute charges to the
9 carrier who carries that call?

10 A. Would pay toll charges, yes.

11 Q. Yes, toll charges, okay. Phone number three
12 rings on an Olympia number that is provisioned
13 through a traditional Qwest-provided FX service. You
14 have that in mind?

15 A. Yes.

16 Q. And you have a sufficient understanding of
17 Qwest's FX service that we can proceed with this
18 hypothetical?

19 A. Yes.

20 Q. Okay. Under those circumstances, the
21 calling party in Olympia would see that as a local
22 call?

23 A. Right, they would dial seven or ten digits.

24 Q. And the person on whose desk the phone rings
25 would have paid Qwest for local service in Olympia?

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1 A. Yes.

2 Q. And as well as the private line transport to
3 carry the call from Olympia to the Seattle office?

4 A. That's correct.

5 Q. Okay. The fourth phone rings on a VNXX
6 number provided by Level 3 or Broadwing such that it
7 is an Olympia phone number that rings in Seattle. Do
8 you have that in mind?

9 A. Yes.

10 Q. Okay. Under those circumstances, the
11 calling party would also experience that as a local
12 call; is that right?

13 A. Yes.

14 Q. Okay. And Qwest would not receive any
15 access charges on that under Level 3's view of the
16 world?

17 A. Yes, I think that's right, yes.

18 Q. And Qwest would not receive any toll charges
19 from its Olympia subscriber on that call?

20 A. I think I'm going to need to back up for a
21 second, because I don't -- the desk in Seattle that
22 has the four phones on it, so far in our examples,
23 those were all -- that was a Qwest customer. And in
24 your hypothetical, the fourth phone is -- the
25 customer is the same person, but they purchased

0749

1 service from Level 3 in addition to the three lines
2 that they purchased from Qwest?

3 Q. Exactly.

4 A. Okay. Then in that instance, Qwest would
5 not receive any compensation in Seattle, either.

6 Q. Right. And then, so no toll charges would
7 be paid by its Olympia subscriber on that call; is
8 that right?

9 A. That's right.

10 Q. And it would not receive any access
11 compensation from the -- from Broadwing on that call,
12 or Level 3?

13 A. That's right.

14 Q. And it would, in fact, be asked by Broadwing
15 to pay Broadwing. Qwest would be asked by Broadwing
16 to pay Broadwing for terminating that call from the
17 Qwest subscriber under a traditional reciprocal
18 compensation arrangement?

19 A. Per whatever the terms of the
20 interconnection agreement are, yes.

21 Q. Now, in all four cases, if the calling party
22 from Olympia is a Qwest customer, Qwest receives the
23 local service revenues from that customer; right?

24 A. In all four cases, yes.

25 Q. Okay. And in each of the first three cases,

0750

1 Qwest also received some other form of compensation,
2 either through toll or access, for that call; is that
3 right?

4 A. In the other three?

5 Q. The first three.

6 A. Right, in all three cases where they have
7 the Seattle customer, they have revenue, additional
8 revenue beyond the revenue they got as the result of
9 serving the originating, the calling customer.

10 Q. Okay. And in the fourth case, then, instead
11 of receiving additional revenue, Qwest is being asked
12 to pay terminating compensation?

13 A. Yes.

14 Q. Okay. And in fact, even if that Seattle
15 customer were a customer of -- if that Seattle
16 customer were a customer of Broadwing for its local
17 Seattle number, changing the hypothetical a little
18 bit, Qwest would still receive, say, toll charges
19 when the Olympia subscriber called the Seattle
20 number?

21 A. So in this fifth example, the Seattle
22 customer has a Seattle telephone number, and they're
23 a customer of Broadwing?

24 Q. Yeah, and they're located in Seattle, same
25 office.

0751

1 A. In that instance, Qwest -- since we've
2 assumed that the Qwest customer in Olympia is basic
3 service only, then Qwest would receive originating
4 access charges for that call.

5 Q. Okay. Thank you. Back to the 400 million
6 minutes that we were talking about earlier?

7 A. Yes.

8 Q. Do you have any understanding of what
9 percentage of those minutes in Washington or what
10 percentage of the actual minutes in Washington that
11 Broadwing terminates from Qwest customers are local
12 in the sense that the calling party and the Level 3
13 media gateway are in the same local calling area?

14 A. No, I don't.

15 MS. ANDERL: Okay. I don't -- I have no
16 further cross. Thank you.

17 JUDGE MACE: Thank you.

18 MR. THOMPSON: I don't have any cross for
19 Mr. Blackmon -- Dr. Blackmon, excuse me.

20 JUDGE MACE: And Mr. Finnigan?

21 MR. FINNIGAN: Nothing, Your Honor.

22 JUDGE MACE: Do you have any redirect?

23 MR. ROGERS: I do have just a couple
24 questions.

25 JUDGE MACE: Go ahead.

0752

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

2 BY MR. ROGERS:

3 Q. Dr. Blackmon, you were asked by Ms. Anderl
4 early on in your cross-examination whether you
5 understood that Qwest will compensate carriers for
6 local ISP-bound traffic, but has not agreed to
7 compensate carriers -- competing carriers for virtual
8 NXX traffic. Do you recall that line of questioning?

9 A. Yes.

10 Q. You understand that the parties disagree how
11 local should be defined? Do you have that
12 understanding?

13 A. Yes, I do.

14 Q. What is your understanding of the parties'
15 positions with respect to how local should or should
16 not be defined?

17 A. My understanding is that when Qwest says
18 that it agrees that it should pay compensation of
19 local, that Qwest is asking for the physical presence
20 of the called party within that local calling area in
21 order for it to qualify as a compensable call. And
22 you then get into more and more arcane arguments
23 about what it takes to be present and trying to
24 reconcile Qwest's own foreign exchange service with
25 whatever definition of being present is offered up.

0753

1 Beyond that, I can't say exactly where Qwest
2 or Level 3 is in that argument, because Level 3
3 believes that if they have transport from that local
4 calling area, they transport the call back to Level
5 3's switch or media gateway, that that should
6 constitute local presence and therefore be
7 compensable.

8 Q. With respect to locally dialed ISP-bound
9 traffic, do you think it's a worthwhile endeavor to
10 try to come up with a definition of physical presence
11 so that you can parse out what would be considered
12 local by somebody's definition and what then is
13 considered virtual NXX by someone's definition? Is
14 that a worthwhile effort from an economic standpoint,
15 a telecommunications economic standpoint, I guess is
16 what I'm asking?

17 A. No, it's not a worthwhile endeavor. It
18 would be a worthwhile endeavor if the Commission
19 decided that there was a good reason to compensate
20 calls to one -- over one network configuration
21 differently than another network configuration. Then
22 you are going to have to get into this arcane
23 argument about, you know, what do you have to do in
24 order to configure your network in order to qualify
25 for compensation.

0754

1 But, by far, the better approach for the
2 Commission to take is to treat all those calls the
3 same, to be agnostic as to the design of the network,
4 and to compensate everything at the one rate that we
5 know has to be paid, and that is for the indisputably
6 local call, the .0007 rate has to be applied there
7 per federal law. And so the best approach is for the
8 Commission not to try to draw any more boundaries,
9 but just pay that rate for all like calls.

10 MR. ROGERS: Okay. Thank you. That was all
11 I had.

12 MS. ANDERL: Just two follow-ups, Your
13 Honor.

14 JUDGE MACE: Go ahead.

15

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

17 BY MS. ANDERL:

18 Q. Dr. Blackmon, isn't it true that, per
19 federal law, the Washington Commission is free to set
20 a lower rate than .0007 for ISP-bound traffic down to
21 and including bill and keep?

22 A. Under the ISP Remand Order, the idea being
23 that the .0007 is the highest rate that the state
24 commission can order; is that what you mean?

25 Q. The idea being that that's a cap, yes,

0755

1 exactly.

2 A. I'm not entirely sure about that. I'd have
3 to go back and reread the order.

4 Q. Okay. And you said that, you know, the
5 Commission should not determine compensation on calls
6 based on -- I think you said arcane network
7 configurations. Maybe I'm not quoting you correctly,
8 but didn't we just talk about four different calls in
9 my example of the four phones on the desk in Seattle,
10 all of which have different compensation
11 arrangements, depending on -- without regard to --
12 well, because of regulatory reasons, not with regard
13 to numbers dialed, necessarily, or network
14 configurations?

15 A. Well, we talked about five different
16 configurations, and compensation wasn't always the
17 same. There were several examples where compensation
18 varied. And I think it's an unfortunate reality that
19 there are all these different compensation
20 structures, many of which this Commission simply has
21 to accept. You know, we didn't even talk about the
22 wireless ones, but you get into a whole 'nother set
23 of calls that seem to be very similar in terms of
24 what you can get done on, and yet the compensation is
25 different.

0756

1 But the Commission here has an opportunity
2 to, with respect to a type of traffic, and that is
3 the dial-up Internet traffic, to adopt a unified
4 structure, not to charge a different rate depending
5 on where the modem or the media gateway is, and so it
6 should avoid further complicating things, it should
7 stick with a single rate for that type of traffic, at
8 least.

9 Q. And so your testimony and recommendation,
10 then, is limited to dial-up Internet traffic, dialed
11 in a VNXX dialing pattern, but not voice traffic
12 dialed with a VNXX dialing pattern?

13 A. You know, I wish this case were that clearly
14 defined. In looking over the whole body of evidence
15 in this case, I think it's -- so much of the
16 arguments are about the dial-up Internet traffic, and
17 yet the original complaint seems to want to prohibit
18 all VNXX arrangements, including voice ones.

19 The arguments for and against the use of
20 VNXX for voice are, I think, different. They're --
21 there's more merit to Qwest's position, there's more
22 merit to the concern about access charges on those
23 voice calls, but it's not really very clearly laid
24 out in anybody's case here, I don't think, about the
25 voice traffic.

0757

1 MS. ANDERL: Thank you.

2 MR. ROGERS: Your Honor, if I may just ask
3 re-cross?

4 JUDGE MACE: We don't typically. We've
5 already had a couple rounds here.

6 MR. ROGERS: Well, but I think there were
7 some new questions that were not asked.

8 JUDGE MACE: Go ahead.

9 MR. ROGERS: And it will be brief.

10

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

12 BY MR. ROGERS:

13 Q. And the question is, Dr. Blackmon, when you
14 referred to voice calls in your answer just now, are
15 you contemplating voice over IP or are you talking
16 about traditional voice when you talk about the
17 merits of any given argument in this case?

18 A. Traditional voice. I think one reason why
19 it gets even more complicated is that the VoIP
20 services and their regulatory treatment are such a
21 gray area, the FCC's done so little to explain what
22 it means and how these services should be treated
23 that it's hard to -- you then have to reconcile that
24 treatment, whatever it is, with voice services over
25 traditional circuit-switched architecture, and it

0758

1 does get very complicated.

2 MR. ROGERS: All right. Thank you. That
3 was all I had.

4 MS. ANDERL: Absolutely none.

5 JUDGE MACE: Thank you. You're excused, Dr.
6 Blackmon.

7 THE WITNESS: Thank you.

8 JUDGE MACE: I think we'll take another
9 ten-minute recess at this point and then begin with
10 Mr. Robins. That's the next witness I have on my
11 list.

12 (Recess taken.)

13 Whereupon,

14 DENNIS ROBINS,

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

17 (Discussion off the record.)

18 JUDGE MACE: Let's be back on the record.

19

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

21 BY MR. BEST:

22 Q. Mr. Robins, are you the witness for Electric
23 Lightwave in this case?

24 A. Yes, I am.

25 Q. And did you cause to be prepared testimony

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1 and exhibits that were originally labeled DER-1T
2 through DER-8, which are now labeled 421-T through
3 428?

4 A. Yes, I did.

5 Q. And if I asked you the same questions in
6 your testimony today, would your answers be the same?

7 A. Yes, they would.

8 MR. BEST: Your Honor, at this time, I'd
9 like to move the introduction of Exhibits 421-T and
10 422 through 428.

11 JUDGE MACE: Any objection to the admission
12 of those exhibits?

13 MR. SMITH: No objection.

14 JUDGE MACE: Thank you. I'll admit them.

15 MR. BEST: At this time, Your Honor, Mr.
16 Robins is available for cross-examination.

17 JUDGE MACE: Go ahead, Mr. Smith.

18

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

20 BY MR. SMITH:

21 Q. Mr. Robins, I believe you indicated that you
22 have Mr. Brotherson's testimony up there with you?

23 A. Yes, I do. Direct or rebuttal?

24 Q. It's in his rebuttal. It's exhibit -- it's
25 marked LBB-27. I think it's now officially Exhibit

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1 27.

2 A. Okay.

3 Q. And now, I will, as I indicated when I
4 cross-examined Mr. Greene, we filed this and other
5 exhibits related to some of the other companies as
6 confidential exhibits in an abundance of caution on
7 the -- because we weren't sure whether the other
8 carriers would deem it confidential. Have you
9 reviewed this exhibit?

10 A. Yes.

11 Q. Does ELI deem this information to be
12 confidential?

13 A. No, I don't believe so.

14 MR. SMITH: Okay. And Qwest does not
15 either, Your Honor, so --

16 JUDGE MACE: I'll indicate on the list that
17 it's no longer confidential.

18 MR. SMITH: Okay.

19 Q. Mr. Robins, this exhibit indicates that, as
20 between Qwest and ELI, for the years 2005 and 2006,
21 in the state of Washington, approximately 91.8
22 percent of the traffic that was exchanged between the
23 two parties was originated on Qwest's side of the
24 network, while 8.2 percent was originated with ELI.
25 And my question is do you have any reason or basis to

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1 dispute the general accuracy of this information?

2 A. Yes, I do. What I saw said millions of
3 minutes and millions of minutes. So I didn't see
4 those percentages, nor have I seen those percentages
5 in the other data that's been provided to me. As a
6 matter of fact, the other data that's been provided
7 to me only looked at out of -- out-of-balance trunk
8 groups, and it showed statewide there was a 30
9 percent difference.

10 Q. So you're saying you do not agree that this
11 is the relative traffic between ELI and Qwest during
12 those time periods?

13 A. Well, what I'm saying is that the page that
14 I had, and I think Mr. Best will remember, I brought
15 it to him and said, I don't think they've provided
16 the data. And then I compare it back to this, and
17 this says, Begin confidential xxx, end confidential.
18 That said, Begin confidential, millions of minutes,
19 end confidential. So it didn't give any figures.

20 JUDGE MACE: So there's no number of
21 millions of minutes; is that what you're saying?

22 THE WITNESS: Right, so I can't agree to the
23 percentages, not having seen them.

24 Q. Well, do you have access to ELI data that
25 indicates the relative traffic that passes between

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1 ELI and Qwest?

2 A. Yes, I do. And you have provided it in
3 these other exhibits here.

4 Q. Well, all I'm asking you about is not the
5 total number of minutes, that's not what the purpose
6 of this exhibit was for, but merely to indicate what
7 the relative directionality of the traffic was. And
8 that's what I'm asking.

9 A. That's --

10 Q. Well, let me finish my question.

11 JUDGE MACE: And you need to make sure that
12 you don't talk over each other, because the reporter
13 has to record what you're saying, and she can't do
14 that when there are two people speaking at once.

15 Q. Did you look at the minutes of -- in Mr.
16 Brotherson's Exhibit LBB-7?

17 A. I'm assuming that's this?

18 Q. Yes.

19 A. Yes, I did. What this does is, for select
20 trunk groups, it shows a high percentage imbalance of
21 minutes, but it also states at the bottom, State
22 total, which is a 33 percent difference.

23 Q. Explain the 33 percent difference.

24 A. In other words, statewide, the exchange of
25 traffic between Electric Lightwave and Qwest is 33

0763

1 percent out of balance, based on your figures.

2 Q. What do you mean by 33 percent out of
3 balance?

4 A. Okay. I'm not sure I'm looking at the right
5 page here, but let me pull it out and show it to you.

6 Q. Well, this isn't the exhibit I'm looking at.

7 A. No, what you're looking at is this piece of
8 it.

9 JUDGE MACE: All right. Let's be off the
10 record.

11 (Discussion off the record.)

12 JUDGE MACE: Let's be back on the record
13 now. Mr. Smith.

14 Q. Let me just ask you this. Have you examined
15 ELI's records for 2005, 2006, to determine the
16 relative directionality of traffic between Qwest and
17 ELI based on minutes of use?

18 A. I have examined the data that you have
19 provided.

20 Q. But my question was have you examined ELI's
21 data? ELI too has data, does it not?

22 A. Since ELI doesn't do anything to look at
23 balance of traffic from minutes of use basis and
24 carve out something that's presumed VNXX, I looked at
25 peg counts. A peg count is when a customer of one

0764

1 company calls a customer of another company. It's
2 going to create a peg count in the register. And
3 then the opposite occurs, it creates a peg count.
4 And so that tells me how many calls were originated
5 to Qwest and how many were terminated from Qwest.

6 Q. But a peg count does not tell you --

7 A. How long --

8 Q. -- relative minutes of use?

9 JUDGE MACE: Please, gentlemen.

10 MR. SMITH: I understand, Your Honor.

11 JUDGE MACE: Again, I have to ask both the
12 witness and the attorney to make sure not to talk
13 over each other.

14 THE WITNESS: That is correct. The peg
15 count does not illustrate the duration of the call.

16 Q. And so, back to my question, did you examine
17 any ELI data, not on peg counts, but on relative
18 minutes of use exchanged between the companies 2005,
19 2006?

20 A. Specific to the time frames in context of
21 how you're asking the question, no.

22 Q. Thank you. Mr. Robins, let's turn -- switch
23 gears -- to your testimony now, if we could.

24 A. Okay.

25 Q. One last question on that subject we just

0765

1 talked about. You would agree, would you not, that
2 compensation, intercarrier compensation is based on
3 minutes of use and not on peg counts?

4 A. I would agree intercarrier compensation, to
5 a large extent, is on minutes of use, but it also
6 has, many times, a component based on each call, and
7 so it's a combination of the two.

8 Q. Is reciprocal compensation based -- is there
9 any component in reciprocal compensation based on
10 relative quantity of calls, as opposed to relative
11 minutes of use?

12 A. I'd have to look at the components that go
13 into the reciprocal compensation. I can't say
14 definitively that there isn't a call setup charge or
15 a per-call charge. It's a minuscule charge, in
16 addition to the minutes of use.

17 Q. For example, with ISP-bound traffic, as I
18 understand the ISP Remand Order, it indicates that
19 for whatever universe of traffic that order covers,
20 we won't argue about that, that the rate is .000 --

21 A. That's correct.

22 Q. -- 7 cents per minute?

23 A. Yeah.

24 Q. Not per call?

25 A. That's correct.

0766

1 Q. Are you aware of any other rate for
2 terminating compensation for ISP traffic beyond the
3 .0007 per minute of use?

4 A. The triple -- the .0007 applies when the
5 three-to-one ratio has been called, and then a .0007
6 applies. Otherwise, I don't know as companies
7 necessarily separate out all of the ISP traffic to
8 determine if it's ISP or not ISP, so there may be
9 some of it that's billed at a different rate, at a
10 typical rate.

11 Q. I don't think that was the question. The
12 question is, based on your understanding of the ISP
13 Remand Order, is there any other rate for terminating
14 compensation for ISP traffic that you're aware of,
15 other than the .0007 rate in the ISP Remand Order?

16 A. No, I think we can agree the ISP Remand
17 Order dictates a .0007 rate.

18 Q. Okay. And for voice communications, are you
19 aware of any rate for reciprocal compensation that is
20 based on a number of calls, as opposed to minutes of
21 calls?

22 A. No, I didn't -- that's not what I said. I
23 don't know of any rate that's based on the number of
24 calls. The rate is on a minute of use. But if it's
25 not under the .0007 rate, there may be a component

0767

1 that -- for example, a .0012 component in addition --
2 that's a call-specific component, and then a
3 minute-of-use component in addition.

4 Q. And would that --

5 A. That would not apply to ISP .0007 traffic.

6 Q. Would it apply to local voice traffic?

7 A. I can't say definitively if there is a
8 component like that in the structure or not.

9 Q. Okay. Okay. Let's -- what I'd like to do
10 is look at your exhibits -- well, it's DER-2 and
11 DER-3, which are now marked 422 and 423.

12 A. Okay.

13 Q. And these are really kind of help me
14 understand kind of questions. First I'd like to look
15 at 422, which I believe you characterize as the ELI
16 network in Qwest's territory in Washington; is that
17 correct?

18 A. That's correct.

19 Q. Now, you indicate that the blue lines are --
20 I believe in your testimony, you say ELI fiber. If I
21 look at the legend on this exhibit, it says Integra
22 fiber-optic?

23 A. These are legacy ELI fiber. The graphic
24 artist that put this together labeled it as Integra,
25 but it's ELI.

0768

1 Q. Okay. All right. Thank you. Here's one of
2 my areas of confusion. The blue lines seem to not be
3 drawn on the precise route in which they actually
4 operate unless you're putting a lot of fiber
5 underneath Puget Sound. So that was confusing to me,
6 why the routes tend to be in 90-degree angles, some
7 of which going over onto the Olympic Peninsula and --
8 help me understand that.

9 A. Okay. This was at my direction. If the
10 picture was drawn as the routes actually run, it
11 became very difficult to see where they actually
12 originated and terminated. So in order for clarity,
13 I just had them make sure that we could see each
14 route as to where it goes.

15 Q. Okay. So up here at the top, where you have
16 a circle with a blue dot in it that says STTLWACA,
17 and then there is a line that heads directly west,
18 goes over to an island, straight south, and then back
19 over to this yellow diamond, the routing is really
20 more north-south; would that be true?

21 A. Yes, all this illustrates is that we have
22 our fiber running between our switch and that central
23 office.

24 Q. Okay. Now, help me understand, over on the
25 right-hand part, you have what -- I'm a little color

0769

1 blind, so help me. It looks to be blue, but it's
2 lines that are broken.

3 A. Okay. Those are offices that we don't have
4 sufficient traffic to set up direct trunking. As per
5 the interconnect agreement, when we hit a certain
6 amount of traffic, we'll put in direct trunking.
7 These actually are served through your tandem up here
8 and we pick up the traffic for those offices in the
9 tandem.

10 Q. Help me. Give me an example here of two
11 offices that are connected with the broken blue
12 lines.

13 A. Well, basically, what this says is if we
14 have a customer that's calling Enumclaw, for
15 instance, we'll route that traffic to your Seattle 03
16 office, because that's the tandem for the Enumclaw,
17 and then that traffic will flow down on Qwest
18 facilities to Enumclaw.

19 Q. Now, where is Enumclaw on here?

20 A. If you follow the blue dotted line, it's to
21 the lower right.

22 Q. Oh, that's the ENMCWA 01?

23 A. That's correct.

24 Q. Now, where is the tandem?

25 A. The tandem's in Seattle.

0770

1 Q. Okay. I'm just -- is it one of these -- is
2 it actually shown on here?

3 A. Yes, it has -- if you go almost straight up
4 from our diamond, yellow diamond there, you'll see a
5 blue line goes up and makes a left into a circle with
6 a blue square in it. That's the tandem.

7 Q. Oh, okay. Thank you very much. Now, the
8 red lines are denoted as Qwest interconnect trunk.
9 Would this be what I would call a LIS trunk?

10 A. Yes.

11 JUDGE MACE: And that's L-I-S.

12 Q. Yeah, local interconnection service trunk,
13 or sometimes called direct trunk transport or
14 entrance facilities, that type of a facility?

15 A. That's correct.

16 Q. Or some combination thereof. So in the
17 areas where there are blue or yellow -- I'll get
18 these colors straight. Where it's red, that is a
19 Qwest-owned facility that Level 3 orders --

20 A. Electric Lightwave.

21 Q. -- Electric Lightwave orders through the
22 interconnection agreement, and it's commonly known as
23 a local interconnection service?

24 A. Right, and we both share the cost of that
25 trunking.

0771

1 Q. Based on a relative use factor; is that --

2 A. I believe the interconnect agreement reads
3 relative use, but my investigation has told me that
4 we have always and continue to pay 50 percent of all
5 that trunking.

6 Q. Okay. Now, help me with the orange.

7 A. You want me to just tell you what it is?

8 Q. Yeah, yeah.

9 A. The orange are remote offices. Those are
10 offices that we can't get to directly. They're
11 host-remote situations, so we go -- we trunk out to
12 the host office.

13 Q. Okay. So here below the yellow diamond,
14 down about an inch, it looks like there's a blue dot,
15 and then an orange line going over?

16 A. It goes from Auburn to Black Diamond.

17 Q. And Black Diamond, is that a Qwest office?

18 A. Yes, that's a Qwest office, as the Auburn
19 office also is.

20 Q. Okay. And then I noticed there's one down
21 here off from Olympia?

22 A. That's correct.

23 Q. Okay. And are all of the blue dots without
24 circles around them, are all those Qwest end offices?

25 A. That's correct.

0772

1 Q. Okay.

2 A. Now, can I make one -- draw your attention
3 to one thing on here?

4 Q. If it will help me understand it, yes.

5 A. This only shows the interconnect trunking.
6 This does not show any of our trunking to our
7 customer locations, it doesn't show feature group D
8 trunking or anything like that. This just shows the
9 interconnect trunking.

10 Q. So if you have some -- and forgive me, I --
11 it's probably not a great technical term. Assuming
12 you have some -- what I would call loop facilities or
13 facilities that go directly to a customer location,
14 this is not attempting to demonstrate that?

15 A. That's correct. It's not shown.

16 Q. And it's not attempting to show trunking
17 that would be related to feature group D, which is an
18 interconnection or an IXC-type service?

19 A. That's correct.

20 Q. Okay. I'm just looking here to see if
21 there's anything else I need to ask you about. Oh,
22 would you identify, then, the switches, the ELI
23 switches that are located here on this chart?

24 A. This particular chart only illustrates the
25 services that we have in the Seattle-Olympia-Tacoma

0773

1 area.

2 Q. Right.

3 A. So our switch for the Seattle-Olympia-Tacoma
4 area is the Tukwila switch, which is the yellow
5 diamond in the center.

6 Q. Okay. Now, does this purport to show an
7 Integra -- or not Integra -- yeah, Integra switch?

8 A. No, the Integra switch is not shown here,
9 nor is any of this network Integra network.

10 Q. All right. Is there an Integra switch also
11 in the Seattle area?

12 A. Yes, there is.

13 Q. And are you integrating those?

14 A. I couldn't tell you what state that's in.
15 My guess is, at some point in time, they will be
16 integrated, but I don't know where it stands.

17 Q. Okay. Thank you. That's very helpful.
18 Now, let's, if we could, turn to the next page.

19 A. Mm-hmm.

20 Q. This one looks much simpler. And my
21 question is what is it you're demonstrating or
22 showing us here, obviously in a lot less detail than
23 on the earlier one? What's the purpose for this
24 chart?

25 A. The purpose of this chart was for a lot of

0774

1 the discussion in my testimony so that I could have
2 an illustration that wasn't too busy with other
3 unrelated items to the discussion.

4 Q. Okay. And it shows -- actually, it doesn't
5 -- well, yes, it does show a remote. It does not
6 show any of the interconnection trunks, the LIS
7 trunks; correct?

8 A. In this particular case, well, there is an
9 interconnection trunk to the Seattle West office.

10 Q. Oh, I see.

11 A. The furthestmost north office.

12 Q. All right. Thank you very much. Now, as I
13 understand it, Mr. Robins, it's that -- and based on
14 your testimony and then hearing Mr. Best
15 cross-examine the last few days, that ELI's version
16 of FX is used to provision service to ISP customers
17 served by ELI; is that correct?

18 A. ISP customers are a small part of our
19 business, and that is oneplace where we use the
20 service.

21 Q. Okay. Now, where -- well, as part of the
22 service you provide to ISPs, do you provide a service
23 that performs the modem functionality on behalf of
24 ISPs?

25 A. We have equipment within our switch that

0775

1 does the functions. In other words, Electric
2 Lightwave has a product that's basically a turnkey
3 for an ISP. It's in our switch.

4 Q. Is that -- it may not be provisioned
5 identically, but is it a similar kind of service to
6 the managed modem service that Mr. Greene talked
7 about this morning from Level 3, in terms that it
8 provides modem functionality, it provides local
9 numbers, it provides authentication, things of that
10 nature?

11 A. I'm not a technical expert on ISP equipment.
12 What it does not do is provide authentication.

13 Q. Okay.

14 A. Whoever the ISP is provides the
15 authentication, and I couldn't go into the technical
16 details of how that's done, but I verified that.
17 Other than that, it's a turnkey, it's put onto the
18 Internet backbone right out of our switch, so --

19 Q. So you go to an ISP, large or small, and
20 say, If you need to be able to put your business
21 together and have someone do the network for you, in
22 effect, give you local numbers, we can do that for
23 you?

24 A. Yes, with this product -- that's really a
25 marketing sales question, but I assume that's pretty

0776

1 much how it's done.

2 Q. Right. And does that service have a name?

3 A. RSVP.

4 Q. RSVP. Now --

5 A. Do I need to explain what that acronym is,
6 or does it matter?

7 JUDGE MACE: Well, I guess I'm -- yeah,
8 that's probably a good idea. Thank you.

9 THE WITNESS: I'm not sure I know. I think
10 it's --

11 MR. BEST: Appreciate the offer.

12 THE WITNESS: I think it's remote systems
13 virtual portal.

14 JUDGE MACE: It's probably good, because I
15 would have thought it meant something else.

16 Q. It's when you're supposed to tell someone
17 you're coming to their party, is what I thought. So
18 you do the TDM-to-IP conversion on behalf of ISPs?

19 A. That's my understanding.

20 Q. Now, do you call that function that -- Level
21 3 refers to their equipment as a media gateway. Is
22 that a term you use? Others --

23 A. I'm familiar with the term, but I don't know
24 as it comes into play here. I don't -- this is all
25 relay rack mounted equipment. I've seen photographs

0777

1 of it, but, like I said, I'm not intimate with it.

2 Q. Okay. I've heard in other situations people
3 refer to that equipment as a NAS, an N-A-S, a network
4 access server, I think. You don't know what your
5 piece of equipment is called?

6 A. No.

7 MR. BEST: Mr. Robins, you need to answer
8 audibly.

9 THE WITNESS: No.

10 Q. I'd like to go to page eight, if we could,
11 and kind of shift gears completely. You refer -- and
12 I'm looking down on line 20, and I know you refer to
13 this, use this term in several other places -- to the
14 term resident NXX. I wonder if you could explain
15 that to me?

16 A. Okay. This is really the crux of the
17 dispute here, in my mind. All NXXs have to have a
18 switch that they home on. Since we have a switch
19 that serves many local calling areas, then all of
20 those NXXs associated, are in that switch, would be
21 considered resident, as opposed to a Qwest
22 architecture, where you have a central office that's
23 outlying all over. Then the NXXs for, for instance,
24 Olympia, have to be resident in that Olympia switch,
25 because that's the customers that you're serving out

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1 of that switch.

2 That's what I mean by resident. They exist
3 within that switch, they're assigned to that switch,
4 any default routing, local routing numbers or
5 anything, are going to send calls to that switch.

6 Q. So on DER-2, the yellow diamond, the various
7 customers that Level -- or let me get this right --
8 ELI, that ELI serves in this geographical area, do
9 you view that as those phone numbers related to those
10 customers as resident to that switch?

11 A. Absolutely.

12 Q. Now, isn't it also true -- let's say you
13 provide an FX service, maybe we could use BR-1 here,
14 since it's become our kind of standard exhibit. When
15 -- let's say you have a Seattle customer wants FX
16 into Olympia.

17 A. Correct.

18 Q. So that an Olympia customer can dial a local
19 number and be routed up to Seattle. Isn't that phone
20 number also resident to Qwest's switch --

21 A. No.

22 Q. -- in Olympia?

23 A. No, no. No, an NXX -- an NXX can only be
24 resident to one company. Well, let's take pooling
25 out of the picture. I mean, with pooling now, you

0779

1 have NXXs and then you have thousands blocks of NXXs,
2 but the NXX itself can only be owned by one company,
3 and that NXX, when the NANPA assigns it, is assigned
4 to a switch. And it's tied to a rate center, which
5 is a vertical and horizontal location, it's tied to
6 it. And so, from then on, any routing or rating or
7 anything is associated with that rate center.

8 Q. Okay. Now, so just so I understand, having
9 it be resident to your switch in Tukwila, it's --
10 that number still has to be programmed into the Qwest
11 switch -- let me finish -- Qwest switch in Olympia;
12 otherwise, it wouldn't know to send it to ELI, would
13 it?

14 A. Well, herein lies the problem. Qwest's
15 switch, nor any switch lists all numbers within that
16 switch. Qwest's switch lists the NXX, and it shows
17 who owns the NXX. So all ten thousand numbers, let's
18 assume that we have the entire NXX, are addressed by
19 one line in a table, and it tells them who owns that
20 NXX and where to send any traffic with that NXX. It
21 cannot carve out individual numbers, or does not in
22 the current technology that we use throughout the
23 industry today.

24 Q. Let me try and say that in my own way. What
25 is programmed into the Qwest switch, then, in

0780

1 Olympia, is the NXX itself?

2 A. Right.

3 Q. And it knows that that, assuming you have
4 all the numbers, ELI has, it knows that that NXX is
5 an ELI NXX?

6 A. That's correct.

7 Q. And that does have to be programmed into the
8 Qwest switch?

9 A. That's correct.

10 Q. Let me back up to one thing I neglected to
11 follow up on. You said that ISPs are one type of
12 customers that you serve with your FX service. Are
13 there other -- any other specific other categories of
14 customers?

15 A. In Olympia, the state of Washington is one.
16 We have companies that require foreign exchange and,
17 just as Qwest does, we provide a foreign exchange
18 number. It could be a lumber company, it could be an
19 auto dealership, it could be anybody that wants to
20 appear that they have a local presence, for whatever
21 reason, and as much as we talk about toll-free
22 numbers, they don't tell everybody I'm local. So the
23 foreign exchange is used. It's rare, it's limited,
24 but it's used.

25 Q. Well, you said that the state's one other

0781

1 type -- my question, I think, was fairly limited.

2 Are there any other general categories of customers
3 that you market FX services to?

4 A. Just a general business customer.

5 Q. Okay. One more question about the
6 interconnection trunks that are shown on DER-2.

7 A. Mm-hmm.

8 Q. Exhibit 422.

9 A. Okay.

10 Q. To your knowledge, are these TELRIC-rated
11 facilities?

12 A. These are all bought through the
13 interconnect agreement, yes.

14 Q. So they would be ones that were -- the rates
15 were established in a cost docket pursuant to the
16 FCC's TELRIC methodology?

17 A. Yes.

18 Q. Okay. One thing I'm not clear on. Have you
19 heard testimony or read the testimony of some of the
20 other parties who have taken the position that the
21 rating of a call should be based strictly on NXXs, as
22 opposed to location of customers?

23 A. Yes, I have.

24 Q. Does ELI have a position on whether rating
25 of calls should be based on NXXs, or is geographical

0782

1 location a significant consideration?

2 MR. BEST: Your Honor, I'm going to object
3 to this question. ELI has not taken a position on
4 this. Mr. Robins can express his personal opinion,
5 but we did not file testimony on this topic.

6 JUDGE MACE: Mr. Smith.

7 Q. Well, do you have a personal opinion?

8 JUDGE MACE: If he has an opinion.

9 THE WITNESS: Yeah, I have a personal
10 opinion on it. I think the challenges that are -- I
11 understand some of the problems, but the challenges
12 are that we have no way within the industry to
13 determine, based on geographical location, whether a
14 call is toll or not. The industry, the billing
15 systems, the routing systems, the switching systems,
16 all work on NPA-NXX. So when we start to inject a
17 geographic location, we just open a whole Pandora's
18 box as to how do we solve that.

19 Q. Well, hasn't the NPA-NXX traditionally been
20 a proxy for geographical location, at least telling
21 -- indicating the -- at least the general boundaries
22 within which a customer is going to be located?

23 A. Absolutely. And as I stated, for instance,
24 the Olympia NPA-NXX has the vertical and horizontal
25 coordinates of Olympia. And for the vast majority of

0783

1 the customers, they're going to be sitting in
2 Olympia, making Olympia phone calls or paying toll to
3 call Seattle.

4 But by the nature of the beast of the
5 industry, if I'm going to assign an FX number to a
6 customer and they want an Olympia number, it has to
7 be that FX -- I mean, that NXX. And so I agree that
8 they have boundaries, but those boundaries determine
9 what's toll versus local, as far as that particular
10 number goes.

11 Q. Does ELI have a position on whether local
12 calling area boundaries should be honored, if you
13 will, whether there's -- let me ask it differently.
14 Whether local calling boundaries are still relevant
15 in the industry?

16 A. Absolutely. We have no dispute with that.
17 The dispute that we have is over the criteria that
18 Qwest puts forth as to what qualifies.

19 Q. Okay. In our exhibits, Mr. Robins, we had
20 identified some excerpts from our interconnection
21 agreement 434, and we, to our chagrin, determined
22 that we had left a little bit out, one of which is
23 the definitions section. And so I'm going to read a
24 definition out of the Level 3 -- ELI. I have Level 3
25 on my mind. I'm sorry. The ELI-Qwest

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1 interconnection agreement in Utah, and I'm -- in
2 Washington. I've been on the road and --

3 JUDGE MACE: We need to quit for the day.

4 MR. SMITH: I've been to way too many states
5 lately.

6 Q. The interconnection agreement between ELI
7 and Qwest in the state of Washington, and ask you if,
8 subject to check, if this is correct.

9 A. Okay.

10 Q. It indicates the definition of extended area
11 service, EAS, local traffic, means traffic that is
12 originated by an end user of one party and terminates
13 to an end user of the other party, as defined in
14 accordance with Qwest's then-current EAS/local
15 serving areas as determined by the Commission.

16 MR. BEST: Your Honor, I'm going to object
17 to the question, first of all on relevance. I'm not
18 quite sure what relevance an interconnection
19 agreement has. In this case, as I understand it, the
20 complaint has been filed that ELI has been violating
21 state law, and I don't believe it's ever been alleged
22 that we violated the interconnection agreement.

23 Second issue is is that Mr. Robins, I don't
24 believe, ever testified about the interconnection
25 agreement, so this is also beyond the scope.

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1 MR. SMITH: Well, I can't go back right now
2 and look at the complaint, but certainly the
3 complaint -- elements of the complaint obviously
4 relate to the interconnection agreement between the
5 parties, and I think --

6 JUDGE MACE: Well, one thing that occurs to
7 me is we've admitted all these exhibits, unless I'm
8 mistaken, and the definitions -- the definitions are
9 in there, or are you saying that this is one where
10 you --

11 MR. SMITH: This is one that we
12 inadvertently did not get into our -- a clerical
13 error was made and this definition wasn't placed in
14 with the excerpts from the interconnection agreement.

15 MR. BEST: Your Honor, just for
16 clarification, Chuck Best, again, have these exhibits
17 been admitted? Have these exhibits been admitted?

18 MR. SMITH: No.

19 MR. BEST: I believe Your Honor was
20 incorrect. I don't believe they have been admitted.

21 JUDGE MACE: These are the Qwest cross
22 exhibits. I see.

23 MR. SMITH: Right. I thought what Your
24 Honor was talking about was the fact that a whole
25 variety of excerpts from interconnection agreements

0786

1 from other parties have been introduced, and without
2 objection from the parties.

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

4 Q. Okay. Would you accept that that's the
5 definition of extended area service, EAS, local
6 traffic from the current ELI-Qwest interconnection
7 agreement in Washington?

8 A. I haven't seen this. Could you tell me what
9 the date on the bottom of that is?

10 Q. Well, just one moment. I believe the
11 interconnection agreement is dated June 6th, 2002,
12 between Qwest Corporation and Electric Lightwave,
13 Inc.

14 A. I can agree, subject to check, that that's
15 what it says.

16 Q. Okay. Is ELI an interexchange carrier in
17 Washington?

18 A. Yes, we are.

19 Q. And is Integra, do you know?

20 A. That I don't.

21 Q. Okay. Just one moment. Let me refer you
22 now, Mr. Robins, to Exhibit 435, which is some
23 material that I took off the Integra Web site.

24 A. I don't think I have a copy.

25 Q. Here, here it is. Yeah, six pages, marked

0787

1 Exhibit 435.

2 A. Okay.

3 Q. Now, let me just explain. I went on the
4 Integra Web site and, as I was looking for
5 information about Internet access service, it -- I
6 hit the link and it took me to the last three pages,
7 which is an Electric Lightwave document.

8 So let me -- with that background, let me
9 ask you. Do you know anything about the service that
10 Integra provides that's the first three pages?

11 MR. BEST: Your Honor, I apologize. Mr.
12 Smith, I'm looking, I think, at what you're looking
13 at, and you said the last three pages are ELI
14 documents. I see Integra.

15 MR. SMITH: First three pages are that,
16 that, and that.

17 MR. BEST: Okay. I thought you'd said that
18 the first three pages were -- the first pages were
19 Integra, but the next three were ELI.

20 MR. SMITH: No, first three pages Integra,
21 last three pages ELI.

22 MR. BEST: I apologize again, Mr. Smith. I
23 only have four pages. Are there more than four?

24 MR. SMITH: There are six.

25 MR. BEST: Well, perhaps I mixed them up,

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1 but I only have four.

2 MS. ANDERL: Your Honor, I gave my copy to
3 the witness. There might be another copy in the back
4 of the room, though, that I could pull, if we could
5 just have a minute.

6 MR. BEST: I apologize. I don't have it.

7 JUDGE MACE: Let's be off the record while
8 this is going on.

9 (Recess taken.)

10 JUDGE MACE: Let's be back on the record.
11 It appears that we have located a copy of the exhibit
12 with all the pages.

13 MR. SMITH: Right.

14 Q. Mr. Robins, have you had a chance to look at
15 that exhibit?

16 A. I've never seen it before, but I do now.

17 Q. Okay. And my first question, the answer may
18 be I don't know. Are you familiar at all with the
19 service that is identified in the first three pages,
20 that's identified as an Integra service?

21 A. Yeah, the first three pages of this have to
22 do with the Integra network and with Integra, and I
23 don't think really are appropriate, because the
24 complaint's against Electric Lightwave. Integra has
25 an entirely different business and business model and

0789

1 customer base. I can't testify about it.

2 Q. Okay. Well, your counsel can object.

3 A. Okay.

4 Q. My question was are you familiar with that
5 service?

6 A. No, I'm not.

7 Q. Okay. That's -- the last three pages refer
8 to a service provided by Electric Lightwave that I
9 believe is identified as dedicated Internet access.
10 My question is is this the service we were discussing
11 earlier that level -- or that ELI provides to ISPs,
12 or is this something else?

13 A. No, I don't believe this is. I believe what
14 this is is where we have large business customers
15 that want a large ISP pipe.

16 Q. So this would be a, say, a large bank wants
17 --

18 A. Exactly.

19 Q. -- a pipe onto the Internet?

20 A. Correct.

21 Q. It would utilize this service?

22 A. But, as I said, I haven't seen this, but
23 that certainly looks to me like what this is.

24 Q. Let me -- look down near the bottom of the
25 first page, where there's a heading that says value

0790

1 added services. It says, We provide primary and
2 secondary domain name service and IP addressing,
3 managed router service, and a news server to minimize
4 hassle and capital expenditure for our ISP customers.
5 And I guess, as I read that, that makes it sound like
6 a service that's being offered to ISPs?

7 A. Well, and I can't be sure what context the
8 term ISP is being used here, but, again, this to me
9 looks like a pipe into the Internet, not what is
10 typically refers to as Internet access for dial-up.

11 Q. Okay.

12 A. We have an Internet backbone. This is
13 probably just a pipe into it.

14 MR. SMITH: That's all the questions I have.

15 JUDGE MACE: Thank you.

16 MR. SMITH: Yes, I would like to offer, if I
17 could -- one moment -- Exhibit 429, which are some
18 data responses; Exhibit 431, some data responses;
19 Exhibit 432, some data responses; 433, we will not
20 offer; 434, which are some excerpts from the
21 interconnection agreement, and --

22 JUDGE MACE: You are offering that?

23 MR. SMITH: Yes, and 435. So we're not
24 offering 430 or 433.

25 JUDGE MACE: Is there any objection to the

0791

1 admission of those proposed exhibits?

2 MR. BEST: Your Honor, I'd just renew my
3 objection regarding the interconnection agreement,
4 which is 434, for the reasons I've already stated.

5 MR. SMITH: I would merely say the complaint
6 here with regard to VNXX implicates not only tariffs,
7 rules, but also the interconnection relationship
8 between the parties. And I certainly think the
9 interconnection agreements are relevant to this case.

10 JUDGE MACE: And we are talking about where
11 VNXX may fall, whether it's local, whether it's not
12 local, and perhaps these definitions may provide some
13 light on that subject. I'll admit the exhibit.

14 MR. SMITH: Thank you.

15 JUDGE MACE: So I'll admit Exhibits 429,
16 431, 432, 434, and 435.

17 MR. SMITH: Those were the ones I offered.
18 Thank you.

19 JUDGE MACE: Now, let's see. Now we turn to
20 Mr. Thompson.

21 MR. THOMPSON: Yes, I just have a couple of
22 questions.

23

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

25 BY MR. THOMPSON:

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1 Q. Mr. Robins, I'm Jon Thompson, I'm attorney
2 for Commission Staff. Does ELI provide foreign
3 exchange -- what you would call foreign exchange
4 service to any customer who's not physically located
5 in the same local calling area as ELI's switch?

6 A. Yes.

7 Q. And maybe -- could you just demonstrate how
8 that's done, using the BR-1 exhibit there?

9 A. It's done the only technical way it could be
10 done. As I've stated, all of our NXXs are in the
11 switch in Seattle. That's the way the technology
12 works. That switch has been approved as the local
13 switch for Olympia and every other rate center that
14 we operate in, so we take one of those numbers from
15 that switch, one of many that we have assigned to
16 customers that are in the Olympia area, and we assign
17 it as a foreign exchange number.

18 That call, if it's a Qwest customer and only
19 if it's a Qwest customer, then, since that Qwest
20 customer has a loop off of the Qwest switch, there's
21 no way to get that call to us without going through
22 that loop, through that Qwest switch, no matter what
23 we do. They then hand it onto our fiber and we carry
24 it up to Seattle, put it on a private circuit out to
25 our customer.

0793

1 Q. So for example, if there's a -- oh, a tire
2 store in Olympia that wants to have -- I'm sorry.
3 Let's say there's a -- let's say there's a tire store
4 in Centralia that wants to have an Olympia local
5 number. You would then carry that -- carry a call
6 from a Qwest customer in Olympia back to Centralia
7 over the -- did you say private line?

8 A. I don't believe we served the Centralia
9 area, so it wouldn't work, but --

10 Q. How about --

11 A. Any customer of ours, no matter where they
12 are, we're going to put it on a private facility from
13 our switch, because until it gets to our switch, we
14 can't decide what to do with that call. And as I
15 stated, all calls for that NXX Qwest is going to
16 route to that switch. There's extreme difficulties
17 in doing anything else. So it's going to go up to
18 that switch, then we're going to put it on a private
19 facility out to our customer, regardless of where
20 they are, whether that's back in Olympia, Seattle,
21 Puyallup, wherever it might be.

22 MR. THOMPSON: Okay. Thank you. That's
23 actually all I had.

24 JUDGE MACE: Mr. Finnigan.

25 MR. FINNIGAN: I envisioned just handing it

0794

1 back to you. You can tap me on my shoulder.

2 MR. BEST: You'll give it right away,
3 though; right? You won't finish?

4 MR. FINNIGAN: Oh, no, not at all.

5

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

7 BY MR. FINNIGAN:

8 Q. Mr. Robins, we've known each other for quite
9 some time; is that correct?

10 A. We have.

11 Q. Okay. I have just a few questions for you
12 on routing and rating of calls. Let's bear in mind
13 BR-1, the basic ELI structure there. As you may have
14 heard, we've got the Tenino exchange that's served by
15 Tenino Telephone Company that has extended area
16 service into Olympia. Can you accept that --

17 A. Yes.

18 Q. -- situation? For an ELI customer that's
19 located in Seattle, but has an Olympia NPA-NXX, and a
20 Tenino customer calls that number, what is ELI's
21 expectation as to how that call gets to the ELI
22 customer?

23 A. I'm assuming that ELI and Tenino exchange
24 traffic through the Qwest local tandem for local
25 traffic. I don't believe we have direct trunking to

0795

1 Tenino, because we don't have sufficient traffic to
2 establish direct trunking.

3 Q. And I think that's a factual statement. I
4 think that is true. So under that scenario, how
5 would you expect the traffic to get to the ELI
6 customer?

7 A. If it's a Tenino customer calling, it would
8 go to the Olympia 02 office, I assume, and then it
9 would be put onto our fiber and come up to our switch
10 in Seattle.

11 Q. So the traffic would initially be routed
12 over the EAS trunks between Tenino and Qwest's
13 Olympia tandem; is that correct?

14 A. I would assume so.

15 Q. Would ELI expect to charge Qwest reciprocal
16 compensation on that call?

17 A. I can't say if we charge them reciprocal
18 compensation on transiting calls or not. I know that
19 we collect 720 records for all of our terminating
20 traffic, we go through those records, we determine
21 where the call originated, and if we don't have an
22 interconnect agreement, generally we don't bill and
23 they fall out as no-bill local.

24 Q. So my next question would be, then, ELI
25 would not expect to charge Tenino reciprocal

0796

1 compensation, because there's no interconnection
2 agreement with Tenino; is that correct?

3 A. That would be my assumption, yes.

4 Q. Let's take that same ELI customer that's
5 physically located in Seattle, but has an Olympia
6 NPA-NXX, and that customer places a call using the
7 Olympia NPA-NXX number to a Tenino customer. What
8 would be ELI's method for routing that call to get it
9 to Tenino?

10 A. Since the number that you've asked about is
11 an Olympia number, the Olympia number has to honor
12 the Olympia local calling area. So even though the
13 customer is in Seattle, just like any company that
14 has a foreign exchange company in Olympia, Qwest or
15 anybody else, that call will be rated based on the
16 Olympia number, not on the Seattle number -- I mean,
17 Seattle location of the customer.

18 Q. And if it is rated on the Olympia number,
19 because of the existence of the extended area service
20 arrangement between Qwest and Tenino, the expectation
21 would be there'd be no access charged on that call?

22 A. No, that would be a local call.

23 Q. Who would compensate Qwest for transport of
24 that call from ELI to Tenino?

25 A. Qwest, from ELI to Tenino?

0797

1 Q. Yes.

2 A. Since it's rated as a local call, the
3 transport for that would be billed exactly like any
4 other local call is. I don't know how Qwest and
5 Tenino bill each other for the transport between the
6 companies.

7 Q. Okay. For the portion of the call to get to
8 the Qwest local tandem, would any portion of Qwest's
9 facilities be used for that transport?

10 A. In this particular scenario, if you're
11 talking about between my switch in Seattle or Tukwila
12 and Olympia, no, there's no Qwest facilities used for
13 that.

14 Q. So ELI owns all of the facilities all the
15 way to the Qwest local tandem?

16 A. To the Olympia 02 office, which I assume is
17 the tandem, because I show two offices served off of
18 it as tandem offices, so --

19 Q. Tandem or quasi-tandem, as the case may be?

20 A. Right.

21 MR. FINNIGAN: Thank you. That's all the
22 questions I have.

23 JUDGE MACE: Redirect?

24 MR. BEST: Your Honor, how much time do I
25 have?

0798

1 JUDGE MACE: Well, let's be off the record.

2 (Discussion off the record.)

3

4

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

6 BY MR. BEST:

7 Q. Mr. Robins, Mr. Smith asked you some
8 questions regarding Mr. Brotherson's testimony and
9 the allegation that 91.8 percent of the traffic
10 between ELI and Qwest is one-way, meaning Qwest
11 originates, and it all terminates with ELI. Did you
12 actually investigate the information that Qwest had
13 sent us that allegedly backed that up?

14 A. I don't know as I'm clear on the question.
15 They sent us a bunch of files similar to this. This
16 has been a discussion we've had with Qwest for some
17 time.

18 Q. What are you referring to as this?

19 A. These files that were in Brotherson
20 testimony.

21 Q. Can you identify them by exhibit number?
22 Are they all the same or are they different?

23 A. Well, I'll tell you, I don't even see a
24 number on here, so I don't -- I can't.

25 MR. BEST: Your Honor, if I could have just

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1 a minute?

2 JUDGE MACE: He should have a number that
3 shows what the exhibit number is.

4 MS. ANDERL: That would be 7.

5 MR. BEST: I think it is 7, yeah.

6 THE WITNESS: Maybe it's at the beginning of
7 it or something, but I don't see it here.

8 MR. SMITH: It is LBB-7, upper left-hand
9 corner.

10 THE WITNESS: They also were on CD-ROM and
11 I've exchanged the same type of files with Dan
12 before.

13 JUDGE MACE: If it's LBB-7, that's Exhibit 7
14 in this proceeding.

15 THE WITNESS: Okay. It's just not marked on
16 this page, so --

17 JUDGE MACE: Does it say ELI at the top left
18 corner?

19 THE WITNESS: No. What might have happened
20 is it was faxed, and maybe the fax overwrote it or
21 something.

22 MR. SMITH: May I look at it?

23 JUDGE MACE: Surely. Let's be off the
24 record.

25 (Discussion off the record.)

0800

1 JUDGE MACE: Let's be back on the record.

2 Go ahead.

3 Q. Mr. Robins, with Qwest's testimony, you
4 received a compact disc with it; is that correct?

5 A. That's correct.

6 Q. Did you actually print some of that
7 information out to look at the actual detail?

8 A. Yes.

9 Q. And is that likely what you have in front of
10 you?

11 A. Yes.

12 Q. And you have LBB-7, I believe, also with
13 you, do you not?

14 A. The one that said millions of minutes?

15 Q. I believe it's yellow, it's confidential.

16 JUDGE MACE: No, it's a chart. It's -- I
17 believe it's two pages.

18 THE WITNESS: It's not this?

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

20 (Discussion off the record.)

21 JUDGE MACE: Okay. Let's be back on the
22 record.

23 Q. Mr. Robins, do you now have what's been
24 marked as LBB-7 in front of you?

25 A. Yes, I do.

0801

1 Q. Did you review that document, as well as the
2 CD-ROM that was sent, which was the backup material?

3 A. Many times.

4 Q. And with respect to the allegation in Mr.
5 Brotherson's testimony about the traffic being 91.8
6 percent one direction, what did you find after your
7 analysis?

8 A. Well, what I found is all this does is take
9 select trunk groups, and of those select trunk
10 groups, it comes up actually on here, it shows 83
11 percent, but it's consistent with other files that
12 I've had. It also shows a statewide total of 37
13 percent. In other words, if you don't take select
14 trunk groups and carve them out, then the exchange
15 looks different. I also was curious, so I wondered
16 what peg count looked like.

17 Q. And what, again, is peg count?

18 A. It's just a stroke tally that says I get a
19 call, I send a call, I get a call, I send a call, and
20 it does it by trunk group. And so I took these exact
21 same trunk groups and I ran a peg count back in June
22 or July, August, something like that, and I ran it
23 again a month or so ago, and consistently came up
24 with the same numbers. And fact of the matter is
25 that Electric Lightwave originates many more calls to

0802

1 Qwest than Qwest originates to Electric Lightwave.
2 So the actual call volumes are the reverse of what
3 this shows.

4 Q. And did you actually prepare a document that
5 showed that?

6 A. Yes, I did.

7 Q. And do you have it with you?

8 A. I probably have it in my bag.

9 Q. Well, just so the record's clear, Mr.
10 Robins, are we talking like -- when you say that the
11 balance of calls, are we talking like four calls one
12 way and eight calls the other, or --

13 A. No, when I first ran it, I think it was 26
14 or 28 percent of the calls originated with Electric
15 Lightwave. Second time, it was 30 percent.

16 Q. Right, but I'm not talking about the
17 percentage; I'm talking about the number of calls.
18 Are we talking about just a handful of calls between
19 the companies or are there thousands?

20 A. Oh, no, no, no. Thousands and thousands and
21 thousands of calls. Many, many, many calls. And it
22 was only looking at these trunk groups. I didn't
23 look at everything. I looked at the ones that they
24 singled out here.

25 Q. Okay. And I think I have one other

0803

1 question.

2 MR. BEST: And Your Honor, I don't know if
3 the Commission has any interest. Mr. Robins -- we
4 can produce this document. We're happy to provide it
5 to Qwest, they can confirm it with their own numbers
6 if they want, but if you think the Commission would
7 find it helpful, we're happy to produce it.

8 JUDGE MACE: I'm going to leave that up to
9 you.

10 MR. BEST: Okay.

11 Q. Mr. Robins, I just want to clear up one
12 other issue, I think, that wasn't completely clear.
13 I think you indicated that the diagram, which is
14 DER-1, I believe it was, or 2, of the ELI network, is
15 that a diagram of the entire ELI network in
16 Washington?

17 A. No, that was just limited to this major
18 metropolitan area.

19 Q. Okay. And so that does not reflect the
20 complete number of switches that serve this state?

21 A. No.

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

24 JUDGE MACE: All right. Let's go back to
25 Mr. Smith.

0804

1 MR. SMITH: Just one question.

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

3 BY MR. SMITH:

4 Q. Mr. -- well, maybe more than one question.

5 One subject area. LBB-7.

6 A. Okay.

7 Q. You looked at it, and if you'll look at the
8 -- one, two, three, four, five, six, seventh --
9 eighth column over, it says month, and I believe if
10 you read down, it says September '06 for that; right?

11 A. That's correct.

12 Q. Would that lead you to believe the data
13 that's being presented here is just data from that
14 particular month?

15 A. That's correct.

16 Q. And I believe the exhibit I showed you from
17 Mr. Brotherson's rebuttal testimony, Exhibit -- let
18 me get to the right testimony. Exhibit 27 purports
19 to be data for -- aggregate data for the full years
20 2005, 2006. If indeed that's the case, one would not
21 necessarily have any reason to believe the numbers
22 would be identical, would you?

23 A. I wouldn't expect the numbers to be
24 identical, but this is one of many files that
25 probably went together to make that, and I've looked

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1 at all of them, and this is pretty consistent
2 throughout.

3 MR. SMITH: That's all I have.

4 JUDGE MACE: Mr. Finnigan.

5 MR. FINNIGAN: Nothing.

6 JUDGE MACE: Oh, pardon me. Mr. Thompson.

7 MR. THOMPSON: No.

8 JUDGE MACE: Okay. And I think that's it
9 for exhibits. All right. Thank you very much, Mr.
10 Robins. You're excused.

11 MR. BEST: And Your Honor, just to confirm,
12 I did offer his testimony and it was received?

13 JUDGE MACE: I believe it was, but let me
14 make sure. I show it and all of his exhibits
15 admitted.

16 MR. BEST: Thank you, Your Honor.

17 JUDGE MACE: Yes. And so we will resume
18 tomorrow morning with Mr. Neinast and Mr. Sumpster,
19 and it appears right now that we'll be able to
20 address the settlement agreement perhaps tomorrow --
21 well, tomorrow, barring unforeseen horrible events
22 with cross-examination of those two witnesses.

23 MR. SMITH: We'll take that as a warning.

24 JUDGE MACE: So tomorrow at 9:00? Tomorrow
25 at 9:00. All right. Thank you.

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(Proceedings adjourned at 5:09 p.m.)

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