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STATE OF NEW HAMPSHIRE

PUBLIC UTILITIES COMMISSION

July 11, 2007 - 9:10 a.m.
Concord, New Hampshire

DAY II

RE: DT 06-067
FREEDOM RING COMMUNICATIONS, LLC
d/b/a BAYRING COMMUNICATIONS:
Complaint of Freedom Ring Communications, LLC
d/b/a BayRing Communications against
Verizon New Hampshire regarding access
charges.

PRESENT: Chairman Thomas B. Getz, Presiding
Commissioner Graham J. Morrison
Commissioner Clifton C. Below

Jody O'Marra, Clerk

APPEARANCES: Reptg. Freedom Ring Communications d/b/a
BayRing Communications:
Susan S. Geiger, Esq.

Reptg. AT&T Communications of New England:
Jay E. Gruber, Esq.

Reptg. One Communications:
Gregory M. Kennan, Esq.

Reptg. Verizon:
Victor D. Del Vecchio, Esq.

Reptg. PUC Staff:
Lynn Fabrizio, Esq.

Court Reporter: Steven E. Patnaude, CCR

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I N D E X

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PETER SHEPHERD

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

2 CHAIRMAN GETZ: Okay. Good morning. We
3 will resume the hearings in docket DT 06-067. And, let's
4 get appearances on the record for Day Two.

5 MS. GEIGER: Good morning, Mr. Chairman,
6 Commissioner Morrison, Commissioner Below. I'm Susan
7 Geiger, from the law firm of Orr & Reno, here in Concord,
8 and I represent BayRing Communications. And, with me this
9 morning from BayRing are, from my right to left, Darren
10 Winslow, Trent Lebeck, and Ben Thayer. Good morning.

11 CHAIRMAN GETZ: Good morning.

12 CMSR. MORRISON: Good morning.

13 CMSR. BELOW: Good morning.

14 MR. GRUBER: Good morning,
15 Commissioners. Jay Gruber, for AT&T. And, with me today
16 is Mr. Ola Oyefusi, Mr. Chris Nurse, Mr. Jack Habiak, and
17 Mr. Penn Pfautz.

18 CHAIRMAN GETZ: Good morning.

19 CMSR. MORRISON: Good morning.

20 CMSR. BELOW: Good morning.

21 MR. GRUBER: Good morning.

22 MR. KENNAN: Good morning,
23 Commissioners. Greg Kennan, for One Communications.

24 CHAIRMAN GETZ: Good morning.

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1 CMSR. MORRISON: Good morning.

2 CMSR. BELOW: Good morning.

3 MR. DEL VECCHIO: Good morning, Mr.

4 Chairman, Commissioner Morrison, Commissioner Below.

5 Victor Del Vecchio, representing Verizon. And, with me

6 again, fortunately, today is Mr. Shepherd and Mr. Nestor.

7 CHAIRMAN GETZ: Good morning.

8 CMSR. BELOW: Good morning.

9 CMSR. MORRISON: Good morning.

10 MS. FABRIZIO: Good morning,

11 Commissioners. Lynn Fabrizio, on behalf of Staff. And,

12 with me today are members of the Commission's Telecom

13 Division.

14 CMSR. MORRISON: Good morning.

15 CMSR. BELOW: Good morning.

16 CHAIRMAN GETZ: I believe the next step

17 in the process is hearing from the Verizon witness. Is

18 there anything we need to address before Mr. Shepherd

19 takes the stand?

20 (No verbal response)

21 CHAIRMAN GETZ: Okay. Please proceed.

22 (Whereupon Peter Shepherd was duly sworn

23 and cautioned by the Court Reporter.)

24 PETER SHEPHERD, SWORN

{DT 06-067} [Day II] (07-11-07)

[Witness: Shepherd]

1 DIRECT EXAMINATION

2 BY MR. DEL VECCHIO

3 Q. Good morning, Mr. Shepherd.

4 A. Good morning.

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

7 A. My name is Peter Shepherd. My business address is
8 currently 125 High Street, in Boston, Massachusetts.

9 Q. And, can you tell us how you're employed?

10 A. I'm currently employed by Volt Services Group, which is
11 a division of Volt Information Science Company,
12 currently engaged in several projects working for
13 Verizon, on some projects for Verizon.

14 Q. And, did you submit prefiled direct testimony on March
15 9th, 2007 in this docket?

16 A. Yes, I did.

17 Q. And, do you have any corrections or revisions to that
18 testimony?

19 A. I have one minor correction to the direct testimony.
20 It's found on Page Number 24, Line Number 17. That
21 refers to "Section 3.1 -- "3.5". The correct reference
22 is "Section 3.4", which was corrected in response to
23 Staff Item 2-6.

24 Q. All right. And, did you submit rebuttal testimony in

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[Witness: Shepherd]

1 this proceeding on April 20th, 2007?

2 A. Yes, I did.

3 Q. And, do you have any corrections or revisions to that
4 testimony?

5 A. No, I don't.

6 Q. And, as corrected, is your prefiled testimony true and
7 accurate to the best of your information and belief?

8 A. Yes, it is.

9 Q. And, do you adopt your prefiled testimony as your sworn
10 testimony in this proceeding?

11 A. Yes, I do.

12 MR. DEL VECCHIO: Mr. Chairman, I'd like
13 to ask that the direct be marked for identification as
14 "Exhibit 15"?

15 CHAIRMAN GETZ: So marked.

16 (The document, as described, was
17 herewith marked as Exhibit 15 for
18 identification.)

19 MR. DEL VECCHIO: And, that the rebuttal
20 be marked as "Exhibit 16" for identification?

21 CHAIRMAN GETZ: So marked.

22 (The document, as described, was
23 herewith marked as Exhibit 16 for
24 identification.)

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[Witness: Shepherd]

1 MR. DEL VECCHIO: And, I've given a
2 copy, Mr. Chairman, to the Stenographer and the Clerk. I
3 would note that the copy I gave the Clerk is a redacted
4 copy. The financial numbers that we were discussing
5 yesterday, the financial numbers are deleted from the
6 redacted copy. If the Commission would like, in addition,
7 to give another copy of the unredacted, we'd be happy to
8 do so. But, for the time being, I've given a redacted.

9 CHAIRMAN GETZ: I think that's
10 satisfactory for now. Thank you.

11 MR. DEL VECCHIO: Thank you.

12 BY MR. DEL VECCHIO

13 Q. Now, Mr. Shepherd, I would appreciate if you could
14 summarize your prefiled direct and rebuttal testimony,
15 and also respond to the prefiled rebuttal testimony of
16 the other parties in this docket.

17 A. Yes. Good morning, Chairman, Commissioners. We've
18 heard from BayRing and AT&T in this proceeding, through
19 their direct testimony and rebuttal testimony, as well
20 as at the hearings yesterday, about numerous call type
21 configurations and the technical aspects, attempting to
22 apply a logical assessment to those complex technical
23 details in order to make the case that the CCL charges
24 should not apply to the disputed call types, because

[Witness: Shepherd]

1 the traffic did not traverse a Verizon New Hampshire
2 end office or a Verizon New Hampshire end-user loop.

3 Such an assessment may have merit and be
4 appropriate to a future proceeding to determine if the
5 tariff warrants changes in the future. But the logic
6 has little relevance to the basis upon which the access
7 charges were established and the intent, interpretation
8 and lawful application of the existing Commission
9 approved tariff.

10 I have provided extensive and detailed
11 factual and case policy reasons as to why the CCL
12 charges, as applied, are appropriate, rebutting and
13 addressing BayRing's and AT&T's complaints, and putting
14 forth why the CCL charge, as applied, is proper.

15 You can glean from reading my direct and
16 prefiled rebuttal testimonies' extensive point-by-point
17 counterpoints and arguments against what you've heard
18 from AT&T and BayRing. But I won't go into each one of
19 them at this point in time. Rather, let me take a few
20 moments to summarize from my direct and rebuttal
21 testimony the underlying history of the development of
22 the approved access tariffs. I'll also summarize some
23 observations on sur-rebuttal to AT&T and BayRing's
24 rebuttal testimony.

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[Witness: Shepherd]

1 But, before we go there, let's review
2 what switched access is. We've seen a number of
3 diagrams that show that switched access can be very
4 complex and complicated, and, yes, it can be. It
5 doesn't have to be. Switched access is essentially a
6 wholesale service. Wholesale service for toll. It's
7 wholesale toll. What switched access does is it
8 provides the carriers with use of Verizon's network,
9 providing the transmission and transport and the
10 switching facility components, either individually, on
11 an unbundled basis, or combined for the carrier's use
12 in furnishing their toll service.

13 New Hampshire PUC Number 85, the
14 currently approved tariff, in Section 2.1, which
15 concerns the application of the tariff, defines
16 "switched access". Basically, it says that "This
17 tariff contains regulations, rates and charges
18 applicable to switched access services, which
19 essentially are services provided by Verizon New
20 England to interexchange carriers and wireless
21 carriers, including resellers and/or other entities
22 engaged in the provision of public utility common
23 carrier services which utilize the network of the
24 Telephone Company." The point here being is that

[Witness: Shepherd]

1 Verizon is providing a service. It's providing use of
2 its network for the competitive carriers to use the
3 Verizon network in providing their toll services. And,
4 it is also providing a service to which the carrier
5 common line is subject.

6 The current access charge structure and
7 the resulting tariff, including the carrier common line
8 element, as we heard yesterday, was established during
9 DE 90-002, the Generic Competition Investigation.
10 Prior to then, there was not an access charge structure
11 that had a carrier common line charge. There was a
12 local transport and a local switching category of
13 rates. Those category of rates were above their
14 incremental cost and contribution. In 90-002, the
15 carrier common line element was deliberately
16 established therein solely as a rate element to isolate
17 and provide contribution from all switched access
18 usage, not as an element designed to recover costs
19 related to a carrier's use of an end-user common line
20 or loop-related costs.

21 Let me define for a second what
22 "contribution" is here. And, we heard Mr. Nurse
23 yesterday define "contribution" also as being the
24 difference between the direct cost of providing a

[Witness: Shepherd]

1 service and the revenue generated from the rates
2 charged for the service. This difference or the
3 contribution contributes to covering the joint and
4 common costs of the firm. Contribution also provides
5 funding for future investment in the provider's
6 network. I would expect that any diminishment of
7 contribution, such as proposed here by BayRing and
8 AT&T, would diminish network investment, investment
9 that would expand broadband and networks of the future,
10 whether provider by Verizon, which, by the way, has
11 invested over \$100 million a year over the last four
12 years on average, or a Verizon successor.

13 So, again, going back to 90-002, the CCL
14 element was deliberately established solely as a
15 contribution element to isolate and provide
16 contribution from all switched access usage and not as
17 an element designed to recover use of an end-user loop
18 or recovery of loop-related costs.

19 It's applicable to all switched access,
20 because both retail toll and wholesale switched access
21 are the same service, and, therefore, as the Company
22 proposed, should provide the same level of contribution
23 per minute of use. This was the same concept that was
24 used by the Company in establishing intrastate switched

[Witness: Shepherd]

1 access rates in the other states in which it operates
2 within the New England operating territory.

3 Establishing the same level of
4 contribution from access and toll was seen as necessary
5 at that time to setting an economically efficient
6 relationship between toll and access and supporting
7 other public policy objectives, such as rate
8 continuity, since no other rates would be affected by
9 this, other than the proposed interim access rates. It
10 also achieved -- It was designed to achieve the
11 objectives of establishing a competitively level
12 playing field for the carriers and for NET, earnings
13 stability, preservation of universal service, and
14 simplicity, and, of course, of maintaining contribution
15 and investment in New Hampshire.

16 The Company provided extensive testimony
17 in DE 90-002 supporting the switched access proposal
18 and a proposed illustrative tariff that was attached to
19 the testimony to set transport and switching rates at
20 the level of their incremental costs. That would be a
21 change from what was in the previous access tariff. As
22 a result, it established a carrier common line element
23 that would residually recover the difference between
24 the incremental costs of local transport and local

[Witness: Shepherd]

1 switching and the contribution that would have been
2 received from toll. And, again, this is the same
3 manner that access charges were established initially
4 in each of the states, Massachusetts, Maine, Vermont,
5 Rhode Island, besides New Hampshire.

6 MS. GEIGER: Excuse me, Mr. Chairman.
7 I'm going to object to that. I don't believe that there's
8 anything about those other states and what access charges,
9 how they were structured in Mr. Shepherd's prefiled
10 testimony. So, I think this is going a little bit beyond
11 what's in his prefiled. And, I'm sorry, I'll stand
12 corrected if Mr. Del Vecchio can point to the --

13 MR. DEL VECCHIO: Mr. Chairman, I think
14 --

15 MS. GEIGER: -- to the prefiled that
16 says something about Massachusetts and other
17 jurisdictions.

18 MR. DEL VECCHIO: -- we had summaries of
19 testimony for approximately two hours yesterday from the
20 other parties. And, in doing so, while they addressed the
21 substance of their direct and rebuttal testimonies, they
22 also included "facts", as they viewed them, that went
23 beyond what was actually specifically written in their
24 testimony. You'll recall that Verizon had requested, and

[Witness: Shepherd]

1 the parties and the Commission had agreed, that we would
2 be given an opportunity to rebut the last round of
3 testimony. And, that's what I think this, in part,
4 addresses.

5 It's not an attempt to provide a
6 surprise. This is information that is relevant to the
7 direct and -- or, I should "rebuttal" testimony of the
8 other parties. And, this witness should be given
9 latitude, just as the other witnesses yesterday were given
10 significant latitude, and I didn't object to any of the
11 inclusion of any of the information they purported to
12 represent, based on those grounds.

13 CHAIRMAN GETZ: If I recall correctly, I
14 think there's been references, and I may be mixing up
15 whose testimony, but I think there's references to what's
16 occurred in other states, including New York and Virginia.
17 So, I think it's fair for the witness here to, as
18 rebuttal, to make a reference to what's been -- what may
19 or may not be the case in other states. And, certainly,
20 those are issues that could be properly referred to in
21 briefs. So, I'll allow the testimony. You can proceed.

22 WITNESS SHEPHERD: Thank you.

23 BY THE WITNESS:

24 A. Just a point, I didn't go through my qualifications,

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[Witness: Shepherd]

1 background, etcetera, and I don't think it's really
2 necessary. But I would like to add at this point that
3 I did participate in docket DE 90-002. I was one of
4 Verizon's or at that time New England Telephone
5 Company's witnesses that were very extensively involved
6 in the establishment of the access charge structure an
7 the access rates, and provided testimony in that case,
8 of course, as outlined in my prefiled and rebuttal
9 testimony. But I was there. I participated.

10 So, that was the Company's proposal in
11 establishing the framework for access charges for the
12 emergence of the opening of the intra-LATA toll market
13 to competition. Subsequently, the parties participated
14 in efforts to reach a settlement and proposed a
15 stipulation to the Commission for its approval. In the
16 stipulation, the parties agreed to set access rates
17 targeted to an overall originating and an overall
18 terminating rate that would be based on a transitional
19 type structure, lowering access rates over a four year
20 period. In setting those rates, the stipulation was
21 set up so that the, again, the local transport, local
22 switching rates were set at the level of incremental
23 cost, and the carrier common line element was set on a
24 residual basis to recover contribution. Again, not, --

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[Witness: Shepherd]

1 and this time not linked to the toll contribution, but
2 linked to the contribution that would be contained in
3 those transitional rate elements, the overall
4 terminating or originating rate.

5 Again, the Commission did require the
6 parties to consider modifications to the switched
7 access transition proposal, and to modify the target
8 rates, which the parties went back and, again, agreed
9 to come back to the Commission with another modified
10 stipulation. That modified stipulation, the
11 transitional rates and ratemaking process that's in
12 that stipulation was used to set the switched access
13 rates, including the carrier common line rate, to
14 achieve the new transitional target, were approved by
15 the Commission in their Orders 20,864 and 20,916. As a
16 result, Verizon filed a compliance tariff on
17 August 16th of 1993. And, in Order Number 20,980,
18 which was issued in September of '93, it approved the
19 tariff, which then became effective for the first time
20 August 1 of 1993, which introduced the Carrier Common
21 Line Charge, as well as the new access charge
22 framework.

23 That tariff was approved by the
24 Commission, including the language in the tariff that

[Witness: Shepherd]

1 came from the illustrative tariff that was part of
2 Verizon's testimony. So, the Commission approved the
3 establishment and the rate-setting process that was
4 used for setting both the transport and switching
5 rates, as well as the carrier common line rates that
6 were set on a residual basis, and the tariff that
7 applied the carrier common line to all switched access
8 minutes.

9 That tariff and its successors have been
10 the basis for all of Verizon's future tariffs. And,
11 again, using that framework from 90-002, setting the
12 carrier common line rate to recover contribution on a
13 residual basis that it serves for all of the tariff
14 transitions we've had. We've had Tariff Number 78,
15 which was the initial tariff. And, Tariff 79, which
16 replaced 78, not because of any restructuring, but
17 because of system changes within, at that time, Bell
18 Atlantic. Tariff 85 also became into place because of
19 another system change that put tariffs into a Web-based
20 format. So, it required filing a new tariff number,
21 but essentially nothing in those tariffs changed.

22 Again, the approval of that tariff, and
23 all the subsequent tariffs, nowhere in any of the
24 Commission's orders approving the tariffs or approving

[Witness: Shepherd]

1 the stipulation was there an express prohibition of
2 setting the carrier common line rate on a residual
3 basis or applying that rate in the manner that's being
4 applied to all switched access minutes of use.

5 As a result, the existing Commission
6 approved New Hampshire Tariff PUC Number 85, which is
7 the current acting, effective tariff, expressly
8 provides that all switched access is subject to the
9 application of the carrier common line charge. Again,
10 that requirement arises from the access charge
11 structure established in the Generic Competition
12 docket. That tariff, the CCL rate element, was
13 deliberately established as a contribution rate element
14 applicable to all switched access and not as an element
15 to recover use of a loop or loop-related costs. The
16 language of the approved tariff, in fact, specifies
17 that all switched access is subject to the carrier
18 common line access charge for that very reason. So
19 that each and every minute of switched access use
20 provides the same uniform contribution.

21 Section 5.1, which is the "General"
22 section, are recovering carrier common line. It says
23 that "Carrier common line access service is billed to
24 each switched access service provided under this

[Witness: Shepherd]

1 tariff." Section 5.4.1, which is the "Application of
2 Rates and Charges", in the "General" section, Part A,
3 says "Except as set forth herein, all switched access
4 services provided to the customer will be subject to
5 the carrier common line access charge." And, I'd like
6 to point out that that limited exception is not an
7 exception that encompasses the whole tariff. That
8 limited exception is pertaining to the application of
9 use of the network by enhanced service providers, which
10 would not be subject to access charges per FCC
11 regulations. Part C of the same section provides "The
12 switched access services provided by the Telephone
13 Company includes switched access service provided for
14 both interstate and intrastate communications. The
15 carrier common line access rates and charges will be
16 billed to each switched access service provided under
17 this tariff."

18 Section 5.4 [5.4.2?], which is the
19 "Determination of Charges", Part C.2 says "The
20 terminating switched access per minute charge applies
21 to all non 800-access terminating minutes of use."
22 Part C.3 says "The terminating 800-database access
23 service per minute charge applies to all 800
24 terminating usage." Part C.4 says "The originating

[Witness: Shepherd]

1 switched access per minute access charges apply to all
2 non 800 access minutes of use." Finally, Part C.5, in
3 the same section, says "The originating 800-database
4 access provides -- per minute charge applies to all
5 originating access minutes of use associated with calls
6 placed to 800 numbers."

7 The point here is that the tariff is
8 very specific in saying that the carrier common line
9 charge applies to all switched access minutes of use,
10 whether it's an 800 minute originating, an 800
11 terminating, a non 800 originating, or a non 800
12 terminating. The carrier doesn't need to go back
13 through history or numerous orders to understand where
14 the multiple instances -- understand that the carrier
15 common line charges, as there are multiple instances in
16 the tariff explaining that the CCL charge applies to
17 all switched access minutes.

18 The tariff does address supplying access
19 to a Verizon end-user, and when so, and using Mr.
20 Nurse's words, will provide use of Verizon's end-user
21 common line. Yes, it does provide that, when a carrier
22 seeks to access an end-user of Verizon, then Verizon
23 will provide use of an end-user carrier -- an end-user
24 common line. But it doesn't limit it to just providing

[Witness: Shepherd]

1 a use or requiring a use of a Verizon end-user line.
2 It does allow that the access service can access
3 another carrier's end-user line. Access can be used on
4 a joint basis between Verizon and another carrier, in
5 order to get a call from an originating carrier to a
6 terminating carrier who has the end-user.

7 New England Telephone wasn't the sole
8 local exchange carrier in 1993, and the tariff provides
9 for jointly provided access with other entities. There
10 were other local exchange carriers, such as Independent
11 Telephone Companies and wireless service providers in
12 existence at that time, to which access calls would
13 have been terminated.

14 More than one exchange carrier may
15 provide switched access service where calls are carried
16 over multiple exchange carrier networks. The exchange
17 carrier provides its own switched access service for
18 use of any component of its exchange network. And,
19 this would consist of various elements we heard about
20 yesterday of local transport, the entrance facility
21 that get from the carrier switch to the first point of
22 the first wire center; dedicated trunk transport, if
23 they want to go directly to an office; tandem switched
24 transport, which would have local transport

[Witness: Shepherd]

1 termination, local transport facility, tandem switching
2 charges, and there's other optional charges that could
3 apply. There's local switching and, yes, there's
4 common line in the tariff.

5 But more than one exchange carrier can
6 participate to provide an end-to-end switched access.
7 Each carrier provides its own piece of its network,
8 it's own switched access service. And, that's provided
9 for in Tariff 85. Tariff 85, Section 4.1.12 covers
10 meet point billing. Meet point billing is basically
11 defined as where more than one exchange telephone
12 company is involved in the provision of the access
13 service. In that case, the Telephone Company will bill
14 such access services in accordance with the regulations
15 in what's called Section 3.1. And, Section 3.1 has to
16 do with billing. And, in particular, there's a section
17 that deals with meet point billing. Section 3.1.2.D
18 provides for an allocation of local transport, where
19 two carriers are participating jointly in providing the
20 switched access to a carrier. And, it apportions the
21 local transport charges according to a formula, to the
22 extent that both provide a piece of the local
23 transport. Otherwise, all applicable charges in each
24 exchange carrier's tariff will be applicable. So, in

[Witness: Shepherd]

1 the case of Verizon's Tariff 85, the CCL charges would
2 apply.

3 We heard yesterday that, "if it's not
4 listed in NECA 4, it's not meet point billing." And,
5 the purpose of NECA 4 really is to establish the
6 billing percentages, where each company owns and
7 operates a piece of the local transport. You don't
8 necessarily have to be listed in NECA 4 to have meet
9 point billing, because one carrier could own 100
10 percent of the transport facilities. That could occur,
11 for instance, where Verizon provides the toll transport
12 all the way to a wireless provider switch.

13 The converse could be true, too. Where
14 a CLEC is collocated in the Verizon tandem, and the
15 CLEC provides its own transport to get to its end
16 office and its ultimate end-user. In that case,
17 there's no need to apportion local transport, because
18 there is none by Verizon, and so it doesn't have to be
19 listed in NECA 4.

20 The other observation I had, and I'm
21 thinking about AT&T's Diagram 7, I think it was, that
22 was presented yesterday, showed that there was a CLEC
23 on both ends of the call, and the only function that
24 Verizon provided was providing transport switching.

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[Witness: Shepherd]

1 Well, that is switched access. Switched access is
2 being applied -- supplied. Use of Verizon's network is
3 being used by CLEC Number 1 to transport a toll call to
4 CLEC Number 2.

5 The point here is that, in that
6 particular situation, yes, that's what happens when you
7 use Verizon. But the carriers also have other
8 alternatives. They can provide their own transport
9 directly to the terminating CLEC switch, if they so
10 desire.

11 We heard a little bit yesterday about a
12 case in New York where a carrier filed a complaint
13 against New York Telephone Company. And, in
14 particular, it's New York Case 04-C-1548. In that
15 case, the carrier was complaining that New York
16 Telephone Company was applying a carrier common line
17 charge and a local switching charge to calls that
18 either originate from or terminate to a wireless
19 carrier's interconnection. In that case, the New York
20 PSC rejected the complaint, finding that the
21 application of the disputed charges were consistent
22 with the prior rate determinations made by that
23 Commission, and that the tariff clearly permitted the
24 application of those charges. That's not unsimilar to

[Witness: Shepherd]

1 what's happening here in New Hampshire. Again, it's
2 tariff interpretation, it's how was the tariff
3 developed and the rates developed for that tariff.
4 Same situation here in New Hampshire.

5 This Commission also has addressed entry
6 of multiple competing carriers with networks into the
7 same local franchise areas, including the application
8 of not only the exchange of local traffic, but the
9 exchange of toll and switched access traffic. Contrary
10 to what AT&T and BayRing may allege, I have not been
11 missing for 15 years. This Commission has dealt with
12 those issues. The Commission has dealt with these
13 issues in numerous arbitration and interconnection
14 agreement proposals and approvals. It's dealt with an
15 SGAT proceeding, a Statement of Generally Available
16 Terms and Conditions, and, ultimately, with the
17 approval of New Hampshire Tariff PUC Number 84.

18 PUC Number 84 is the comprehensive
19 tariff that applies to the new competitive local
20 exchange carrier entrants for use of Verizon's network
21 in providing their competitive services. That tariff
22 clearly addresses how the exchange of local traffic and
23 tandem traffic will be handled, and also addresses how
24 toll traffic will be handled. Toll traffic is handled

[Witness: Shepherd]

1 under Tariff 85. Nothing in those determinations or in
2 those proceedings ever found that Tariff Number 85
3 needed to be modified or amended to accommodate the
4 entrance of competitive local exchange carriers in the
5 provision of their competitive local services or toll
6 services.

7 Also, I would like to point out that I
8 worked for Mr. McCluskey at the time he was a witness
9 in this docket 90-002, worked closely with
10 Mr. McCluskey and the other witnesses in the case. I'd
11 just like to correct the notion that Mr. McCluskey
12 indicated that this tariff would not be appropriate for
13 --

14 MR. GRUBER: Your Honor, I must object
15 and move to strike. This is outside all of the direct,
16 the rebuttal. Now, Mr. Shepherd and Verizon are trying to
17 relitigate what the facts were in a prior case upon which
18 the Commission has already made a decision. We cannot be
19 here relitigating what the Commission understood
20 Mr. McCluskey to mean beyond what was -- it's bad enough
21 to litigate what it meant when it was stated in the
22 record. Now, we're being told what Mr. McCluskey
23 intended, something that nobody could have known but
24 Mr. McCluskey and his close associates. It is not

[Witness: Shepherd]

1 appropriate for us to be litigating in this case the facts
2 that the Commission found in another case. The Commission
3 found those facts, they're in the Commission's decision.

4 CHAIRMAN GETZ: I get your point. Mr.
5 Del Vecchio.

6 MR. DEL VECCHIO: Well, I heard
7 testimony yesterday as to statements made by
8 Mr. McCluskey, for the purpose of trying to establish what
9 Mr. McCluskey said and what Mr. McCluskey meant. I heard
10 testimony yesterday regarding witnesses, one of whom was a
11 Staff member, purporting to give the Commission some sense
12 of comfort as to what actually happened at the time and in
13 one's role in that capacity. This is a witness who is
14 testifying, I believe, based on personal knowledge
15 regarding a statement that was made by the other parties,
16 not only yesterday, but during the course of the prefiled
17 testimony in this proceeding. And, to the extent that a
18 statement made by Mr. McCluskey is relevant to this
19 proceeding, and this witness has personal knowledge of
20 information relating to that, I think that that should be
21 permitted. And, to exclude that based on some evidentiary
22 ground, when this Commission doesn't invoke the rules of
23 evidence, is inappropriate.

24 MR. KENNAN: If I may, Commissioner. I

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[Witness: Shepherd]

1 thought I began to hear Mr. Shepherd say "Mr. McCluskey
2 meant". That goes way beyond just a simple evidentiary
3 question of what someone else might have said and perhaps
4 the hearsay implications of that. That goes well into the
5 grounds -- into the realm of someone's interpretation of
6 what someone else might have been thinking at the time
7 when Mr. McCluskey is not here on the witness stand, and I
8 think that that just goes far beyond the bounds of what
9 ought to be permitted.

10 CHAIRMAN GETZ: I think we walked up to
11 the brink on this issue yesterday and with what happened
12 in 90-002. But I think it was held to the facts of that
13 case. I guess my concern is where Mr. Shepherd is headed.
14 If you're going to speak to the state of mind of
15 Mr. McCluskey at the time, then I won't allow testimony
16 along those lines. But, if it's an interpretation of what
17 the order meant at that time or what -- a recitation of
18 what testimony was given, I think that's permissible.
19 But, certainly, I don't want to get into what
20 Mr. McCluskey's state of mind was or what his intention
21 was.

22 So, I think I need to know where you're
23 headed here, Mr. Shepherd?

24 WITNESS SHEPHERD: It's not heading

[Witness: Shepherd]

1 towards what Mr. McCluskey's state of mind or my
2 interpretation of what his intention was. It's based upon
3 statements of facts that we exchanged in developing his
4 testimony, to put those statements into his testimony, and
5 I think that are being taken out of context here.

6 CHAIRMAN GETZ: And, I think we're still
7 -- if there is testimony that you want to refer to or
8 something from the order you want to refer to, that you
9 have an interpretation of as a witness here, then I'll
10 allow that. But I don't want to go back beyond how his
11 testimony was developed or where, you know, what the
12 intent of his testimony was. So, Mr. Del Vecchio, I think
13 I need a little assistance here on where your witness is
14 going and what you are trying to establish?

15 MR. DEL VECCHIO: Well, I think what I
16 understood the witness to suggest is that, since we're
17 focussing on testimony, and that's what the purpose of the
18 evidence provided by the other parties went to, not the
19 order, but the testimony itself, that, in that case, this
20 witness is attempting to say "they misconstrued the
21 testimony, and this is why." To the extent their
22 purporting to glean support from testimony, and not from
23 the written order, which I think goes to your point,
24 Mr. Chairman, but that's where their testimony in this

[Witness: Shepherd]

1 part was directed. It was directed at the testimony
2 itself. As if to suggest then "therefore, obviously, the
3 order incorporated perhaps some point raised by
4 Mr. McCluskey." They're not, therefore, focussing solely
5 on the four corners of the order. And, I generally agree,
6 the order is what it is, says what it says or it doesn't
7 say that, and as I tried to elicit in cross-examination
8 yesterday. But, because of their emphasis on the
9 testimony itself, I think this witness is trying to say
10 "they're misconstruing that testimony." And, that's the
11 point of it.

12 CHAIRMAN GETZ: I think we need to be
13 careful. And, I think it's fair, since the issue has been
14 raised of what Mr. McCluskey's testimony or how
15 Mr. McCluskey's testimony should be interpreted, for the
16 witness to respond on how he believes that testimony
17 should be interpreted. But do not go back to what -- your
18 knowledge of what was intended in compiling that
19 testimony. Can you proceed along those lines?

20 WITNESS SHEPHERD: Well, I think it
21 simply boils down to that there's a representation here
22 that Mr. McCluskey said that "the tariff would have to be
23 modified to accommodate the entrance of competitive local
24 exchange carrier competition." Mr. McCluskey did not say

[Witness: Shepherd]

1 "it would have to be". He said "it may have to be". And,
2 I'll leave it at that.

3 CHAIRMAN GETZ: All right. Please
4 proceed.

5 BY THE WITNESS:

6 A. Again, nothing has changed that would warrant altering
7 the New Hampshire PUC Number 85, seeing that New
8 Hampshire PUC Number 84 and Number 85 work in unison
9 and evolved to address the competitive local exchange
10 carrier entry and use of Verizon's network in
11 furnishing their competitive services.

12 In AT&T's rebuttal testimony, they go to
13 some great lengths of questioning why Verizon has
14 referred or utilized or relied upon testimony from DE
15 90-002. And, again, Verizon is just trying to
16 establish that it's very relevant, because that
17 establishes the intent of the CCL, how it was
18 established, how the tariffs came to be, and the fact
19 that the PUC did not disapprove of that ratemaking
20 methodology that was used in the stipulation or the
21 application of the carrier common line, as indicated in
22 the illustrative tariff or the compliance tariff that
23 was filed as a result of the modified stipulation
24 order. And, that history is very important for

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[Witness: Shepherd]

1 understanding why the carrier common line charge is
2 there to provide contribution on an equal level for
3 every minute of use of Verizon's network used to
4 provide switched access, not for use of an end-user
5 common line, not for cost recovery of an end-user loop.

6 AT&T, in its rebuttal, on Page 10 to 11,
7 I think also makes a -- somewhat of a leap of an
8 assumption that the CCL contribution is equivalent to
9 the allocated loop costs. And, they rely extensively
10 on an order from docket DR 89-010 in making that. We
11 heard a lot yesterday from Mr. Nurse, I believe, on how
12 loop costs were allocated between interstate and state
13 jurisdiction and between local service and toll
14 service, and, therefore, being allocated to toll
15 service and acts as being a subcomponent of toll, that
16 somehow the CCL is not recovery of contribution, but
17 recovery of loop costs. I've gone back to that order
18 and I just can't follow that linkage. What I do find
19 in that order is that the Commission did establish a
20 methodology for examining rates, examining rates by
21 category or classes that would look at basically toll,
22 local, and other. And, that basically said, when we do
23 that analysis, we wanted to do a bottoms-up analysis,
24 where you take the incremental cost of each service,

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1 multiply by its quantities to get the toll service
2 incremental cost for each class. And, we will then
3 take 25 percent off of the MTS costs, the loop costs.
4 We will allocate that to each of the services based
5 upon the relative minutes of use, and we then have a
6 problem. The problem is, how do we get that level of
7 toll service incremental cost to equal the total
8 average cost or the revenue requirement. Wherein they
9 proposed the -- something called an "EP methodology",
10 proportionate methodology, closing that gap between the
11 revenue requirement and total incremental cost.

12 In reading the rate design part of that
13 order, what happened there is that the Commission
14 obviated the need to go through that process of closing
15 that gap, and instead accepted the rate design that was
16 filed by the Company, particularly the rate design for
17 toll, in particular, which basically was filed by
18 Mr. Baker in that proceeding, and proposed to meld MTS
19 and Watt service as a single toll schedule for
20 business, and to reduce toll rates more to the level of
21 their incremental cost to improve their efficiency.
22 Nothing was done there to allocate costs of loops to
23 the toll service. That was obviated by the rate design
24 phase of that order. So, I think it was a leap of --

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1 or, an assumption, rather than a fact as to how the
2 toll rates were set in New Hampshire in that docket.

3 Also, on Page 14 of AT&T's rebuttal,
4 there's a claim that Verizon is now here seeking some
5 type of a revenue guarantee. Initially, Verizon's
6 position, and I'll admit, it was that toll and access
7 should provide the same contribution per minute of use
8 to provide an economically efficient relationship
9 between the two services. That linkage was broken by
10 the stipulation. The parties agreed to that. I won't
11 deny that. But the CCL is not a revenue guarantee.
12 The CCL only seeks that each minute of use using
13 Verizon's network provides the same absolute level of
14 contribution. If you don't use the Verizon network,
15 then there is no contribution. But the linkage or the
16 guarantee was broken by the stipulation.

17 On Pages 16 through 17 of AT&T's, there
18 appears to be an allegation that Verizon was attempting
19 to extrapolate in its estimate of financial impact CCL
20 charges that were not actually billed into the amount
21 of revenue that would be at risk retroactively. And, I
22 just want to clarify that, in that financial analysis
23 that was filed, that is based upon CCL minutes that
24 were actually billed, not an extrapolation of CCL

[Witness: Shepherd]

1 minutes that should been billed, but that weren't.
2 Yes, there's been a billing problem. There was some
3 billing that was outsourced to a vendor that did not
4 bill what it should have billed. That's been fixed.
5 But not all the billing was outsourced to a vendor.
6 There was traffic that was billed on Verizon CABS that
7 terminated to non-Verizon providers and non-Verizon
8 end-users that used switched access to which the
9 carrier common line would have been charged. This is
10 evidenced by the financial analysis itself, if you go
11 into the level of detail of the months that occurred
12 during the year 2005, before the billing was taken back
13 from the New York Access Billing Corporation or LLC.
14 There are differences between the carrier common line
15 minutes and the local switching minutes, which would
16 show that there are common line minutes being billed
17 that are not associated with a Verizon end office
18 switch. That's a fact. That was probably and most
19 likely would have been calls terminated to wireless
20 carriers.

21 In trying to answer a data response to
22 the Staff, and this has been a very troublesome one for
23 me, I've been asked to produce bills or Verizon has
24 been asked to produce bills that prove that this has

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1 been actually billed. It's been very difficult to find
2 bills that go back into history that far in time. We
3 have found several examples. We did provide them in
4 response to a supplement to Staff's Data Request 2-19,
5 and recently found a bill dated 2001, where AT&T would
6 have been billed for calls terminating to a wireless
7 carrier for the carrier common line charge.

8 Other evidence, I mean, producing bills
9 would not be the only other evidence. I've asked our
10 financial folks to see if they could find some old
11 financial management reports that were used that might
12 have been an output from the CABS billing system. I
13 have been able to discover there are some reports that
14 would show that, yes, we did historically bill carrier
15 common line usage. And, it would have been carrier
16 common line usage that did not terminate to a Verizon
17 end office, because there's a difference between the
18 carrier common line minutes and the local switching
19 minutes. So, there is evidence that this was being
20 billed, at least calls that terminated to a wireless
21 carrier were being billed a carrier common line charge,
22 whether it originated from a CLEC or whether it
23 originated from an IXC.

24 There's also an implication in BayRing's

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1 rebuttal testimony, at Page 20, that somehow the PUC
2 concurred in the interstate tariff model. And, I'm not
3 sure exactly what BayRing means by the "interstate
4 tariff model", but it's clear to me that the Commission
5 only adopted something linking it to the overall
6 interstate rate levels in trying to establish
7 intrastate rate levels that were equivalent to the then
8 interstate rate levels. It didn't adopt the
9 rate-setting or the rate structure proposals or the
10 structure that's in the interstate tariff. If it had,
11 we'd have an end-user common line charge in New
12 Hampshire. It didn't adopt the Part 69 cost
13 allocations that the FCC uses to set -- used to use to
14 set switched access rates. What the Commission did
15 adopt, essentially, is the stipulation that
16 incorporated at least the methodology which Verizon
17 proposed in its initial testimony and used in
18 developing the compliance rates, both in the
19 stipulation and in its compliance tariff.

20 And, those are the main points. And, I
21 would just like to close my summary by saying that,
22 based upon the facts that have been presented in
23 Verizon's testimony, Verizon believes the Commission
24 should find that the BayRing complaint is not valid and

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[Witness: Shepherd]

1 should reject the BayRing complaint, and find that the
2 access charges, including the carrier common line
3 charge, when applied to all switched minutes, is being
4 applied per the rate design, the development of the
5 access tariff, and the terms and conditions that are in
6 the existing access tariff.

7 MR. DEL VECCHIO: Thank you, Mr.
8 Shepherd. And, that's approximately 42 minutes. I'm
9 pleased with that. At this point, Mr. Chairman,
10 Mr. Shepherd is available for cross-examination.

11 CHAIRMAN GETZ: Ms. Geiger.

12 MS. GEIGER: Yes. Thank you, Mr.
13 Chairman. I think, in order to hopefully shorten the time
14 that's necessary for cross-examination of Mr. Shepherd by
15 all of the competitive carriers, if we could take a quick
16 break, say, five minutes, so that we could coordinate
17 amongst ourselves, hopefully we could save some time on
18 the back end.

19 CHAIRMAN GETZ: Let's take a recess and
20 resume at 10:15.

21 MS. GEIGER: Thank you.

22 (Recess taken at 9:57 a.m. and the
23 hearing reconvened at 10:20 a.m.)

24 CHAIRMAN GETZ: Okay. We're back on the

[Witness: Shepherd]

1 record. And, we'll turn to Ms. Geiger for
2 cross-examination.

3 MS. GEIGER: Thank you very much, Mr.
4 Chairman. Mr. Shepherd, good morning.

5 WITNESS SHEPHERD: Good morning.

6 CROSS-EXAMINATION

7 BY MS. GEIGER

8 Q. Do you have a copy of what we've marked for
9 identification as "Exhibits 4" and "5" in front of you,
10 the call flow diagrams that BayRing produced?

11 A. I don't.

12 Q. Okay. Let me show them to you. And, I'm just going to
13 ask a couple of questions relating to those exhibits.
14 Now, isn't it true that, for the calls in dispute that
15 do not involve -- the calls that BayRing, excuse me,
16 BayRing is disputing that are depicted on those
17 diagrams, I believe they're Call Flows 13 and 15, that
18 there is no Verizon end-user at either the originating
19 or terminating end of that call?

20 A. There is no dispute over that.

21 Q. Okay. And, is it also true, if you turn around and
22 look behind you at what's on the wall, you'll see an
23 enlargement of Section 6.1 of Verizon's switched access
24 tariff, isn't it also true, in that depiction, that

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1 there is no -- that, in that depiction, there is a
2 Verizon end-user on the end of that call?

3 A. In that generic depiction, yes.

4 Q. Okay. Now, isn't it also true that, in Call Flow 13
5 and 15, as shown on Exhibits 4 and 5 that have been
6 marked for identification, that Verizon does not
7 provide a common line connected to and used by the
8 terminating user as the term "common line" is defined
9 in Verizon's tariff?

10 A. On those call flow diagrams, there is no Verizon
11 provided end-user carrier common line.

12 Q. Okay. Now, isn't it also true that Verizon is charging
13 BayRing a Common Line Charge in those particular
14 disputed call flows?

15 A. It is true that Verizon is charging a Carrier Common
16 Line Charge on use of its switched access network for
17 usage that does terminate on those calls, on those
18 types of calls.

19 Q. Okay. So, it's your position that Verizon is providing
20 a service?

21 A. Verizon is providing switched access service, yes.

22 Q. Isn't it also true that common line is a service that
23 is distinct from switched access service?

24 A. Common line service is available to carriers for use of

[Witness: Shepherd]

- 1 a Verizon common line when the call does, in fact,
2 originate from or terminate to a Verizon end-user. The
3 Carrier Common Line Charge is a charge that applies to
4 all switched access usage for usage of Verizon's
5 network, in order to provide an equal contribution for
6 switched access minutes that use Verizon's network.
- 7 Q. Now, isn't the common line that is -- that is shown in
8 the diagram behind you, in Section 6.1 of Verizon's
9 tariff, isn't that something that would be described as
10 the "local loop", sort of in the vernacular?
- 11 A. The vernacular would be there's a "local access line"
12 and a "local loop".
- 13 Q. Okay. And, isn't common line, as described in that
14 diagram and in Verizon's tariff, as the facilities
15 between an end office switch and an end-user?
- 16 A. A Verizon common line is a loop or the feeder and
17 distribution facilities that connect an end-user to the
18 Verizon -- a Verizon end-user to the Verizon end
19 office.
- 20 Q. Okay. Thank you. Now, let's turn your attention to
21 Verizon's billing practices that -- or, the billing
22 issues that are in dispute in this case. Isn't it true
23 that Verizon New England is not assessing a CCL charge
24 to any CLECs in any New England state in the same

[Witness: Shepherd]

1 manner as it is assessing to BayRing in this particular
2 case?

3 A. In the other New England states, the Carrier Common
4 Line Charge has been phased out for various regulatory
5 reasons. In other words, the Carrier Common Line
6 Charge in all the other New England states has either
7 been rated as zero or it has been eliminated, due to
8 various factors, such as rate rebalancing or other
9 transitional plans that did away with that element.

10 Q. But Verizon is persisting in the imposition of the CCL
11 Charge in New Hampshire, correct?

12 A. Yes. New Hampshire just has not moved that far along
13 in restructuring access.

14 Q. Now, isn't it true that, in the New Hampshire
15 Commission docket that lead to the filing of Verizon's
16 initial access charges or the access charge tariff,
17 that was not ever intended to address what access
18 charges would be imposed, if and when competitive local
19 exchange carriers, such as BayRing, entered the New
20 Hampshire telecommunications market, was it?

21 A. Are we talking docket DE 90-002?

22 Q. Correct.

23 A. At that time, the scope of the proceeding was limited
24 to the introduction of intra-LATA toll competition, an

[Witness: Shepherd]

1 initial two-year trial and a four-year transition. So,
2 at that time, it was not explicitly envisioned that
3 CLECs would be involved in the exchange of toll
4 traffic. In fact, at that time, probably the notion of
5 CLECs didn't exist, except for maybe in Boston and New
6 York City. But, in framing the tariff, we were very
7 explicit in putting words in Section 5 that included
8 other entities, in the event that we did get to the
9 point where down the road there would be a transition
10 or an introduction of other competitive carriers
11 providing intra-LATA toll services that would use
12 Verizon's network. But, at that point, we did not
13 address all the aspects of what would be necessary to
14 introduce both intra-LATA toll competition and the
15 entrance of competitive local exchange carriers.

16 Q. Well, Mr. Shepherd, isn't it true that Mr. McCluskey
17 provided testimony in 90-002 indicating that the docket
18 specifically was not going to address the issue of
19 local competition?

20 A. He said that he was not going to address that in his
21 testimony, that that would come when it came.

22 Q. Okay. Now, isn't it also true, at the time that
23 Verizon's access charge tariff was initially developed,
24 it was anticipated that Verizon or New England

[Witness: Shepherd]

1 Telephone's end-use facilities were expected to play
2 the major role in originating and terminating instate
3 toll calls?

4 A. At that point in time, the majority of the traffic
5 probably would have been exchanged between Verizon
6 originating end-users and Verizon terminating
7 end-users, but not exclusively. There clearly were
8 instances where either a Verizon end-user would call an
9 Independent Telephone Company end-user, an Independent
10 Telephone Company end-user would call a Verizon
11 end-user, or an Independent Telephone Company would
12 call an Independent Telephone Company end-user using
13 Verizon's network to complete a toll call. In
14 addition, either an Independent or a Verizon end-user
15 may have had occasion to place a toll call to a
16 wireless customer, in which case the call would have
17 been routed to an interexchange carrier on a 10XXX type
18 casual dial basis, and that would have been included in
19 there as well as a type of call that would have
20 incurred the Carrier Common Line Charge.

21 Q. Okay. But, other than those instances that you just
22 mentioned, it wasn't anticipated at the time that the
23 initial access charge tariff was developed that CLECs,
24 such as BayRing, would be providing the use of their

[Witness: Shepherd]

1 own facilities on the common line end of calls to
2 either originate or terminate instate toll calls, was
3 it?

4 A. No, it wasn't envisioned in that docket, but it was
5 envisioned and it was addressed in later dockets that
6 dealt with interconnection agreements, arbitrations,
7 and the establishment of a Statement of Generally
8 Available Terms, and ultimately Tariff New Hampshire
9 PUC Number 84 that did address competitive local
10 exchange carrier entry.

11 Q. But Verizon never changed Tariff 85 to deal with the
12 onset of CLECs that began participating in the
13 competitive local exchange market in New Hampshire, did
14 it?

15 A. It was never determined that it needed to be changed,
16 because the Tariff Number 84 or the SGATs or the
17 interconnection agreements made clear reference to
18 Tariff Number 85 or the tariff that was in effect at
19 that time, that that would be the applicable vehicle
20 for the compensation for use of Verizon's network for
21 the carrying of toll traffic. And, again, you know,
22 the emergence of competitive local exchange entry into
23 the marketplace, providing both competitive local
24 services and toll services, was clearly addressed in

[Witness: Shepherd]

1 other dockets. And, as a result of the Commission
2 orders that approved the SGAT or approved Tariff Number
3 84, there was never anything that said that Tariff
4 Number 85, or whatever the number was at that point in
5 time, would require any modification to accommodate the
6 entrance of competitive local exchange carriers.

7 Q. Now, turning your attention to the issue of the
8 revenues that Verizon or New England Telephone expected
9 to receive from the CCL Charge. If I understand your
10 testimony correctly, you've indicated that the CCL
11 Charge is intended to contribute to lost toll revenues
12 that New England Telephone expected to incur when
13 instate toll competition began, is that correct?

14 A. That was New England Telephone Company's original
15 position. It maintained -- It maintained that, in
16 order to promote efficient -- economically efficient
17 relationships between toll and access, that each should
18 have to provide the same level of contribution.
19 However, that's not what resulted in that docket. What
20 resulted in the docket was a setting of target rates
21 and a transition to those target rates, where the CCL
22 was used as the element to establish the contribution
23 or the -- in the achievement of those target rates.

24 Q. Mr. Shepherd, could you turn to Page 4 of your prefiled

[Witness: Shepherd]

1 testimony please.

2 MR. DEL VECCHIO: Is that direct?

3 MS. GEIGER: Pardon?

4 MR. DEL VECCHIO: Is that direct?

5 MS. GEIGER: Yes, I'm sorry, the
6 prefiled direct testimony.

7 BY MS. GEIGER

8 Q. And, could you please focus on Lines 4 through 6. Now,
9 doesn't that say that there you've testified that "The
10 language of the approved tariff, in fact, specifies
11 that all switched access is subject to carrier common
12 line charges for that very reason, i.e., to provide
13 contribution that otherwise would have been provided
14 from toll services." Now, is that your testimony in
15 this case?

16 A. Yes. But the difference here is that that contribution
17 is not the equivalent contribution that would have been
18 received from toll. It's the contribution that would
19 be received from the so-called "target rates" or the
20 rates that the Commission ultimately ended up setting.

21 Q. How did those -- How did you arrive at those target
22 rates?

23 A. The target rates were a result of two things,
24 primarily. One was negotiations between the parties in

[Witness: Shepherd]

1 docket 90-002, where all parties made significant
2 concessions, and, you know, it wasn't just Verizon or
3 New England Telephone conceding on points, it was
4 everybody. It was a negotiated outcome. And, the
5 second thing that drove that, of course, was the
6 Commission's desire to take a little step further in
7 transitioning rates towards the interstate level a
8 little quicker. So, that's how those target rates or
9 those transition rates were set on an originating or a
10 terminating basis.

11 Q. And, if I understand your testimony or your position
12 correctly, those CCL charges were supposed to serve as
13 a contribution element, is that correct?

14 A. That's correct.

15 Q. Okay. And, I think I heard you testify this morning
16 that, "to Verizon", or "New England Telephone,
17 Verizon's predecessor, that it was very important that
18 the CCL contribute for the use of Verizon's network."
19 Is that your testimony?

20 A. That's true.

21 Q. Okay. But isn't it true that, for almost ten years,
22 neither Verizon nor its billing agent ever billed
23 BayRing for the CCL charges that BayRing is disputing
24 in this case?

[Witness: Shepherd]

1 A. Not entirely true. BayRing was billed for some of the
2 CCL charges. That would be for calls that terminated
3 to a wireless carrier that were originated by their
4 customers, using Verizon's network.

5 Q. But that didn't start until 2005, correct?

6 A. No. That would have started whenever BayRing first
7 went into existence, to the extent that they used
8 Verizon to deliver calls from their customers to a
9 wireless carrier that were toll calls.

10 Q. Well, I think I'm a little bit confused, Mr. Shepherd,
11 because I think, in response to a data request that was
12 submitted by One Communications, and I have copies, I
13 thought that you had answered -- well, I'll strike
14 that. Okay. Well, let's talk instead about wire --
15 instead of wireless calls, let's talk about the fact
16 that I believe you've indicated, in response to data
17 requests, that, for almost ten years, neither Verizon
18 nor its billing agent had ever billed BayRing for the
19 CCL charges that related to calls that terminate to
20 other CLECs and to the Independent Telephone Companies?

21 A. That's true.

22 Q. That's true. Okay. So, isn't it also true that those
23 CCL charges, in other words, the new charges that
24 Verizon is receiving, that for many years it had never

[Witness: Shepherd]

1 billed to BayRing, that this constitutes a new source
2 of revenue to Verizon?

3 A. In my mind, it constitutes a source of revenue that
4 Verizon should have, but didn't collect. You know, my
5 testimony is not to address what did or didn't happen
6 or why it did or didn't happen, in terms of another
7 agent that was billing on behalf of Verizon. It's a
8 fact that that did occur. There's no denying that that
9 happened. And, yes, that would have been an important
10 source of contribution, as to the extent that traffic
11 volumes would become significant. Probably early on it
12 was less significant. But, again, I don't have facts
13 and knowledge of what was entailed in all of that.

14 Q. So, you would agree then that, when Verizon or its
15 billing agent was not billing the CCL charges for calls
16 placed from Verizon customers to other CLECs or to
17 other Independent Telephone Companies, that Verizon was
18 not receiving any contribution from BayRing toward
19 Verizon's costs, other than a small amount of the
20 wireless traffic that you talked about otherwise?

21 A. On those types of calls.

22 Q. Okay. And, despite the fact that Verizon was not
23 receiving the CCL contribution from BayRing, Verizon
24 never sought a rate increase from this Commission to

[Witness: Shepherd]

1 deal with that lack of contribution, did it?

2 A. I think the record speaks to that.

3 Q. And, I'm not sure what record you're referring to?

4 A. The record before the Commission of actions that
5 Verizon may or may not have taken. I'm not aware of
6 any action that Verizon has taken to enter into a case
7 to generate increased rates or revenues as a result of
8 an earnings deficiency.

9 Q. Okay. Now, switching gears a little bit, isn't it true
10 that New England Telephone calculated its access
11 charges initially based on the revenues associated with
12 an end-to-end call, in other words, that -- meaning
13 that there would be a New England Telephone customer on
14 the originating side of a call and on the terminating
15 side of a call?

16 A. It was based upon an average call characteristics,
17 which, at that point, yes, were end-to-end and had some
18 assumption about how much tandem switching would be
19 involved, how much local transport would be involved,
20 etcetera.

21 Q. But isn't it also true that, when the Commission issued
22 its order in 90-002, the Commission expressly dealt
23 with establishing the appropriate charges that
24 traditional interexchange carriers, not CLECs, would

[Witness: Shepherd]

1 pay to New England Telephone for originating and
2 terminating toll traffic over New England Telephone's
3 bottleneck facilities?

4 A. It established the charges that carriers using
5 Verizon's toll network would pay for use of that toll
6 network. It could include interexchange carriers, it
7 could include resellers, it could include wireless
8 carriers, or other entities.

9 Q. And, speaking of "other entities", I think I have a
10 last question. Verizon's current Tariff 85 doesn't
11 mention "CLECs" by name, does it?

12 A. May I check that?

13 Q. Sure.

14 MR. DEL VECCHIO: May I just ask for
15 clarification, and I would object on the grounds of being
16 ambiguous. I'm not trying to telegraph this, but are you
17 asking whether it identifies individual CLECs, like
18 BayRing?

19 MS. GEIGER: I apologize. That was not
20 a very clear question.

21 BY MS. GEIGER

22 Q. The question that I should have asked, Mr. Shepherd, is
23 the term "competitive local exchange carrier" is not
24 mentioned in Tariff 85, is it?

[Witness: Shepherd]

1 A. To answer your question directly, the term "competitive
2 local exchange carrier" or "CLEC" is not in the tariff
3 specifically. The term "other entities" is in
4 Section 2-1.

5 MS. GEIGER: Thank you. I have no
6 further questions.

7 CHAIRMAN GETZ: Mr. Gruber.

8 MR. GRUBER: Thank you, your Honor.

9 Good morning, Mr. Shepherd.

10 WITNESS SHEPHERD: Good morning.

11 MR. GRUBER: To begin with, and I've
12 already spoken with Mr. Del Vecchio, I'd just like to do
13 the housekeeping of marking for identification certain
14 discovery responses that you provided in the case. And,
15 I'm trying to do this as expeditiously as possible. And,
16 just a caveat on the paper that I've got here, there are
17 several of these discovery responses that have huge
18 attachments attached to them. I've not tried to bring
19 them all in today, with one exception, I'm not planning to
20 cross-examine on them, I'm just going to ask you if you
21 agree that you prepared these and that they're true and
22 accurate. I will supplement the slightly incomplete
23 voluminous versions with a complete one after the hearing
24 day today, if that's okay with the Commission?

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[Witness: Shepherd]

1 CHAIRMAN GETZ: Is there an objection,
2 Mr. Del Vecchio?

3 MR. DEL VECCHIO: No, Mr. Chairman. I
4 would just note, and I spoke to Mr. Gruber about this, and
5 I think we're on the same page in that, since we're not
6 going to be asking questions about individual requests,
7 which sometimes is the case, I would simply ask that, to
8 the extent that a request was revised or supplemented,
9 that that be included in the documents provided to
10 Commission. And, I think we've agreed to that.

11 MR. GRUBER: And, that is my intention,
12 your Honor.

13 CHAIRMAN GETZ: That's fine. Please
14 proceed.

15 (Atty. Gruber distributing documents.)

16 CHAIRMAN GETZ: Are you asking -- You're
17 not asking then that these be marked for identification?

18 MR. GRUBER: Well, what I'm going to do
19 is read a list of the individual discovery requests that
20 are contained therein, and ask that those discovery
21 requests be marked for identification.

22 CHAIRMAN GETZ: Okay. But are you going
23 to follow up with questions or are you just trying to get
24 this in the record.

[Witness: Shepherd]

1 MR. GRUBER: I just want it in the
2 record to refer to on brief, your Honor.

3 CHAIRMAN GETZ: Okay. Just wanted to
4 make sure whether we needed to follow along with question
5 and answer.

6 MR. GRUBER: There will be one set of
7 questions where it will be necessary. But, in fact,
8 because the paper was so voluminous, they're not included
9 in there. So, I'm going to provide -- I'll be able to
10 provide at least one copy to the Bench and one copy to the
11 witness for that part of the cross-examination.

12 And, your Honor, I don't know what is
13 your preference, whether you'd like to have these marked
14 all as a single exhibit? That's probably the most
15 expeditious, because they're individually labeled within
16 that exhibit, so it would make reference to them fairly
17 easy.

18 CHAIRMAN GETZ: Let's do it as a single
19 exhibit. We'll be marking for identification as Exhibit
20 Number 16 --

21 MS. O'MARRA: Seventeen.

22 CHAIRMAN GETZ: -- 17, a series of data
23 requests and responses that Mr. Gruber will describe.

24 (The document, as described, was

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[Witness: Shepherd]

1 herewith marked as Exhibit 17 for
2 identification.)

3 MR. GRUBER: Thank you, your Honor. I'm
4 just going to read the list for the record. And, I
5 apologize, my apologies for boring the Bench here.
6 Verizon's responses, these are all Verizon's responses,
7 to, and they're as follows: AT&T 1-2, 1-11, 1-3, 1-12,
8 1-4, 1-13. Now, moving on, these are Verizon responses to
9 the joint BayRing/AT&T information requests: 1-5, 1-7,
10 1-8, and 1-37. Moving along, these are Verizon responses
11 to the Staff's first set of information requests: 1-3,
12 1-5, 1-6, 1-8, 1-17, 1-18, including all supplements,
13 1-19, including all supplements, 1-25, and 1-26. The
14 following are Verizon's responses to BayRing's individual
15 first set of information requests: 1-1, 1-2, 1-3, 1-27.
16 The following are Verizon's responses to One
17 Communications' first set of information requests: 1-1,
18 1-8.

19 The following are Verizon's responses to
20 AT&T's second set of information requests: 2-1, 2-3, 2-5,
21 2-20. The following are Verizon's responses to BayRing's
22 second set of information requests: 2-2, 2-3, 2-6, and
23 2-9. And, finally, the last one, Verizon's response to
24 Staff Information Request 2-1.

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[Witness: Shepherd]

1 BY MR. GRUBER

2 Q. Mr. Shepherd, I'll just ask you in total, if you want
3 time to look through them, that's fine. But are these
4 discovery responses that Verizon has provided in
5 response to questions in this case?

6 A. I believe they -- I believe they all are.

7 Q. All right. And, are they true and accurate to your
8 knowledge and belief?

9 A. Yes.

10 Q. All right. Thank you. Now, Mr. Shepherd, I'd like for
11 you to turn your attention to your initial testimony,
12 direct testimony, Page 20. Do you have a copy in front
13 of you?

14 A. Yes, I do.

15 Q. If you would look at Lines 11 through 15. There you
16 state, and I quote: "Significantly, the intrastate CCL
17 element was adopted in the Generic Competition Docket
18 to promote the important public policy objective of
19 retaining contribution for the support of services like
20 basic residence exchange, which had traditionally been
21 supported through toll rates." Did I quote that right?

22 A. Yes.

23 Q. Okay. And, then, later on, on the same page, you
24 state, and I'm going to collapse it, paraphrase it

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[Witness: Shepherd]

1 slightly, that "the CCL rate element was set on a
2 residual basis in order to obtain the targeted
3 contribution levels upholding this important public
4 policy", apparently referring to the support of
5 services like basic residence exchange. Is that
6 correct?

7 A. That's correct.

8 Q. So, in your opinion, the purpose of the CCL was to
9 provide support to basic local exchange, is that
10 correct?

11 A. Among other services, but, yes, basic local exchange.

12 Q. Now, that was Verizon's purpose in proposing it?

13 A. Those are the general public policy goals that the
14 Company was supporting or advocating for at that point
15 in time, yes.

16 Q. And, your testimony is that "the purpose was to support
17 basic local exchange", right? One of the purposes?

18 A. One of the purposes.

19 Q. Was it the Commission's purpose?

20 A. I can't speak for the Commission.

21 Q. But you have so far. What's your interpretation? Was
22 it the Commission's purpose?

23 A. As I recall, from the first order on the stipulation,
24 the Commission, at that point in time, had not

[Witness: Shepherd]

1 determined whether or not any actions would be required
2 to -- in monitoring the effects of competition on local
3 exchange rates. It was too premature at that point to
4 determine that there may be a need to offset local
5 exchange rates to reflect any lost contributions.

6 Q. Was it the Commission's purpose, at the time that the
7 tariff that we're talking about here today was adopted,
8 was the Commission's purpose at that time that basic
9 exchange service needed support?

10 A. I believe, at that time, the Commission was of the
11 belief, from its docket DR 89-010, that basic exchange
12 was covering its average cost, based upon its analysis.
13 And, therefore, that rate increases or rate
14 rebalancing, as part of the 89-010 proceeding, would
15 not be required. But, again, in docket 90-002, the
16 Commission indicated in the order on the stipulation
17 that it, again, it was premature to determine whether
18 toll competition would, in fact, require some form of a
19 rate rebalancing or rate offset for local exchange to
20 reflect loss of toll revenue and contribution on the
21 part of New England Telephone Company.

22 Q. Has the Commission subsequently made any such
23 determination?

24 A. I'm not aware that it has. I'm sure it's kept its eye

[Witness: Shepherd]

1 on what's been happening, and --

2 Q. Okay. Excuse me. Go ahead.

3 A. -- and has not yet determined, nor has Verizon at this
4 point, determined that that would be a necessary next
5 step.

6 MR. GRUBER: All right. Just so we're
7 all on the same page here, I'd like to mark as an exhibit,
8 for reference at the hearing today, a copy of the
9 Commission's June 10, 1993 decision, Order Number 20,864,
10 in DE 90-002.

11 CHAIRMAN GETZ: We'll mark it for
12 identification as "Exhibit Number 18".

13 (The document, as described, was
14 herewith marked as Exhibit 18 for
15 identification.)

16 BY MR. GRUBER

17 Q. Now, if we were to turn to Page 3 of the document that
18 I've given you, Mr. Shepherd. All right. In the
19 middle of that page, you will see where it says "Basic
20 exchange services are not only recovering their
21 incremental costs but are also contributing towards
22 common overhead costs." Is that right?

23 A. That's what that says, yes.

24 Q. All right. And, despite that, you stated, as I recall

[Witness: Shepherd]

1 in your testimony, that "the CCL element was to promote
2 the important public policy objective of retaining
3 competition for the support of services like basic
4 residence exchange." That's what you said was the
5 purpose at that time, right?

6 A. Among others, yes.

7 Q. But the Commission here said it didn't need support,
8 did it?

9 A. The Commission didn't say that it wouldn't need support
10 in the future, though. That, if contribution was
11 eroded and taken away from services like toll, that the
12 contribution from other services, including basic
13 exchange, would or wouldn't be sufficient to meet the
14 overall revenue requirement of the firm. So,
15 conceivably, basic exchange could need to contribute
16 more than it's contributing under the Commission's
17 analysis in 89-010.

18 Q. Mr. Shepherd, based on that conceivable possibility,
19 you made an affirmative statement that "the purpose at
20 the time was to promote the support of local exchange
21 service." That's a very different statement.

22 A. That was certainly Verizon's purpose at the time, yes.

23 Q. Okay. So, when I read these statements here about
24 purposes and objectives, it's fair to say you're

[Witness: Shepherd]

1 talking about Verizon's purposes and objectives, and
2 not the Commission's, correct?

3 A. Verizon's purposes and objectives, and what generally
4 would be in the public interest, in terms of overall
5 public policy goals.

6 Q. Well, you would agree with me, wouldn't you, that if
7 it's -- the only way to know whether it's the
8 Commission's purpose is to read their Commissions --
9 I'm sorry, to read their orders, to determine whether,
10 in fact, it's a Commission purpose, right?

11 A. Certainly, Commission orders speak as to the policy of
12 the Commission. But, again, Commission policies do
13 change over time, they flow and ebb with the
14 circumstances at the time. So, the Commission policies
15 are flexible.

16 Q. That wasn't my question.

17 A. I thought I answered it by saying that "Commission
18 policies are stated in Commission orders."

19 Q. My question was, "that's the way to find out whether --
20 what a Commission policy is is to read the order", is
21 that right?

22 A. That is the way, yes.

23 Q. Thank you. Now, turning again to Page 20, the same
24 page, and you put this in bold, you said "Rather, as I

[Witness: Shepherd]

1 will explain further", I'm starting on Line 19 --

2 A. Page again, please.

3 Q. Page 20 of 31, in the initial testimony of Mr.

4 Shepherd.

5 A. Thank you.

6 Q. Do you have that in front of you?

7 A. Yes.

8 Q. You state: "Rather, as I will explain further, it was,

9 and still is, a rate design element designed

10 exclusively to provide a level of contribution targeted

11 to an overall rate level", and then it's this next part

12 I want to focus on, "and was set on a residual basis to

13 obtain the targeted contribution levels upholding this

14 important policy objective." Oh, I'm sorry. My

15 apologies. We discussed that when I wanted to go to

16 the quote at Line 8, on that same page. At Line 8, you

17 say "The major difference in the New Hampshire

18 intrastate tariff was the establishment of the carrier

19 common line rate element as a vehicle to provide

20 contribution equivalent to the contribution obtained

21 from toll rates and charges." Did I read that right?

22 A. Yes.

23 Q. All right. But I thought I heard in your testimony

24 earlier today that indeed "carrier common line charge

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[Witness: Shepherd]

1 is not intended to provide the level of contribution
2 provided by toll." Did I hear you correct this
3 morning?

4 A. The equivalent level. It is required or it is desired
5 to produce contribution that otherwise would have been
6 received. Maybe not targeted to the absolute level
7 that toll was providing, but, in this case, to
8 so-called transitional target rates. But, again, that
9 is contribution.

10 Q. Sir, can you take a look at, again, the language that I
11 quoted on Lines 8 through 9. And, the word
12 "equivalent", is that something that you want to change
13 now?

14 A. No. Because, in the context of that answer, the answer
15 is addressing the question of what the Company's
16 initial going-in position was and the position that the
17 Company was advocating. And, the position that the
18 Company continued to advocate after, throughout the
19 stipulation, as a result of the stipulation, was that
20 there was this severage or this breaking of the linkage
21 between the absolute level of toll contribution and
22 contribution that would otherwise be received from
23 transitional target rates.

24 Q. Okay. So, just to make sure I understand, we have to

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[Witness: Shepherd]

1 read your testimony very carefully to make sure that we
2 understand whether you're referring to Verizon's intent
3 or Verizon's proposal, or whether you're making
4 assertions about the Commission's intent or proposal,
5 is that right?

6 A. I think you can read from that that Verizon's intent
7 and the Commission's intent can be reconciled and
8 compared, because, in the Commission's orders, the
9 Commission did not state anything that would disallow
10 using the carrier common line as a contribution element
11 or setting the access rates in the manner as Verizon
12 proposed they would be set. So, I don't see anything
13 in the Commission's orders that would conflict with
14 what Verizon's basic underlying principle was here.

15 Q. Mr. Shepherd, the tariff went into effect pursuant to
16 an order that approved a settlement, didn't it?

17 A. It did.

18 Q. And, when the Commission approves a settlement, it
19 doesn't pass on the merits and details of a
20 methodology, does it?

21 MR. DEL VECCHIO: I would object to
22 this. I think this is asking for a legal conclusion as to
23 what the Commission passes on in approving a stipulation.

24 MR. GRUBER: I think this is --

[Witness: Shepherd]

1 CHAIRMAN GETZ: I think we're a little
2 too generic, I think, in your question, Mr. Gruber.

3 BY MR. GRUBER

4 Q. Well, let me ask you this then. With respect to the
5 proposed -- with respect to the approval of the
6 stipulation that gave rise to the tariff and the rates
7 that we're talking about here, did the Commission ever
8 address the merits of the methodology used and approve,
9 excuse me, specific details of how the rates were
10 calculated in the Commission order?

11 A. Clearly, the Commission had access to all that
12 information, both from the prefiled and rebuttal
13 testimonies of not only Verizon, but all the parties.

14 Q. Mr. Shepherd, you can explain your answer after. First
15 of all, I'd like an answer to my question.

16 MR. DEL VECCHIO: Mr. Chairman, I think
17 Mr. Shepherd has been answering these questions pretty
18 clearly and pretty directly. I'd like to allow the
19 witness to answer his questions.

20 MR. GRUBER: Well, the usual practice is
21 the witness answers the question and then explains.

22 CHAIRMAN GETZ: I'd say the series of
23 answers Mr. Shepherd has been giving today, the "yes" or
24 "no" or agreement has not been specifically stated, but

[Witness: Shepherd]

1 his answers have been responsive to the questions. But it
2 would -- I don't see any downside to giving a "yes" or
3 "no", and then give -- and carrying on with your answer.
4 I don't think he's been argumentative or evasive in
5 responding to the questions.

6 MR. GRUBER: Well, the only reason I say
7 that, your Honor, is because we often lose track of the
8 question that was asked. So, I'd just like to get the
9 answer on the record, and then we can move onto the
10 explanation. That's the reason I had asked for that.

11 CHAIRMAN GETZ: Let's restate the
12 question.

13 MR. GRUBER: That's my problem. Can the
14 stenographer read back the question please?

15 (Whereupon the Court Reporter read back
16 the question.)

17 CHAIRMAN GETZ: Do you have the
18 question?

19 WITNESS SHEPHERD: I think I have the
20 question. I may lose it, though, but --

21 BY THE WITNESS:

22 A. It appears to me that the Commission, yes, addressed
23 it, by not saying anything that was disapproving of or
24 in opposition to what the details of the rate setting

[Witness: Shepherd]

1 were. Certainly, the Commission had available to it
2 all that information, both from the stipulation and
3 from the transcripts of the hearing on the stipulation.
4 But, in the Commission's order itself, there is nothing
5 that either addresses it directly nor denies it or
6 disapproves of the methodology that was used to set the
7 rates or establish the carrier common line rate, as it
8 was established on a residual basis as a contribution
9 element.

10 BY MR. GRUBER

11 Q. So, you attribute a Commission order approving a result
12 as implicitly approving the intentions and
13 methodologies that went into that result?

14 A. Again, you're asking me to read into the Commission's
15 mind as to what they may have said or may not have said
16 in their order and why they said it. All I know is
17 that they did not say anything regarding the
18 methodology as being inappropriate.

19 Q. Ms. Geiger asked you some questions regarding the
20 initial proposal that Verizon made and the access rates
21 that were involved in it. Do you generally recall
22 those questions?

23 A. Generally.

24 Q. And, I think there was some discussion between the two

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[Witness: Shepherd]

1 of you regarding the fact that there was an initial
2 proposal of end-to-end access rates somewhere around 24
3 cents a minute, is that right? Well, if you don't
4 recall that discussion, am I correct that that was part
5 of Verizon's initial proposal?

6 A. I don't recall that it was around 24 cents a minute.
7 But I do recall that it entailed, on average, an
8 end-to-end call that had a Verizon end-user on each end
9 and entailed average characteristics for an average
10 access call.

11 Q. I'm sorry, I didn't understand. Are you saying that
12 you are recalling that the 24 cents is appropriate for
13 an end-to-end call?

14 A. I don't recall the "24 cents" as the number.

15 Q. Okay. Why don't we do this. Let's --

16 MR. GRUBER: May I approach the witness?
17 (Atty. Gruber handing document to the
18 witness.)

19 MR. GRUBER: And, I have another copy
20 for the Bench.

21 CHAIRMAN GETZ: And, what document is
22 this?

23 MR. GRUBER: This is one of the
24 discovery responses to -- one of Verizon's discovery

[Witness: Shepherd]

1 responses to AT&T 2-3. And, I'll --

2 CHAIRMAN GETZ: Mr. Del Vecchio, do you
3 have that?

4 MR. DEL VECCHIO: I think we should, Mr.
5 Chairman. We'll search for it for a moment. Which
6 attachment, Jay?

7 MR. GRUBER: It's 2-3, it's a voluminous
8 attachment.

9 MR. DEL VECCHIO: Which attachment to
10 the response?

11 MR. GRUBER: It was 2-3(1), I believe.
12 I'm going to, and I'll repeat this, but I'm going to ask
13 the witness --

14 MR. DEL VECCHIO: I apologize. I'm
15 still not able to identify. Can you tell us what the
16 caption is? What you're looking at?

17 MR. GRUBER: I'll tell you what the
18 document is. The document is Mr. Shepherd's testimony
19 that was filed in the testimony that was filed in 90-002,
20 and all the attachments to it. It was attached in
21 Verizon's response to AT&T 2-3, and it was the first
22 attachment.

23 CHAIRMAN GETZ: So, it comes after
24 Tariff 78, and there's an Exhibit Number 2?

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[Witness: Shepherd]

1 MR. GRUBER: Well, what I'm going to do
2 is direct the parties, first, just to orient the parties
3 and the Bench, the first attachment to 2-3, which I've now
4 handed a copy to the witness, and I've handed a copy to
5 the Bench.

6 MR. DEL VECCHIO: In my copy, the first
7 attachment is the tariff.

8 CHAIRMAN GETZ: And, after the tariff?

9 MR. GRUBER: Well, they may be in
10 different orders then. What -- I'll explain to you what I
11 understand this to be. Mr. Shepherd can clarify, if
12 necessary. But what we had asked for and what we thought
13 we got was a copy of Mr. Shepherd's testimony, with a
14 number of attachments. One of the attachments was a
15 proposed illustrative tariff, Tariff Number 78. And, this
16 was the first time we were, "we" meaning the Companies and
17 the Commission, back in 1990, I think were seeing the
18 proposed tariff that we're litigating today. And, also
19 attached as an exhibit, Exhibit Number 2 to that
20 testimony, were workpapers in which the proposed access
21 rate was derived. And, that's where I'm headed. Okay?

22 CHAIRMAN GETZ: Does everyone have the
23 workpapers?

24 MR. DEL VECCHIO: Yes.

[Witness: Shepherd]

1 MR. GRUBER: Okay.

2 BY MR. GRUBER

3 Q. With that said, Mr. Shepherd, did I describe what we're
4 looking at correctly?

5 A. Yes. It's an attachment to testimony that was filed in
6 DE 90-002. That is described as a series of workpapers
7 that developed the Company's initial proposal for the
8 development of access charges.

9 Q. Okay. And, if you turn to Workpaper 1 behind Exhibit
10 2. Does that show the development of the proposed
11 access charge?

12 A. It does for different types of access and different
13 time of day. At that time, the Company's proposal was
14 a time of day based proposal. So, yes, it does.

15 Q. Okay. So, the Company, in fact, proposed, as part of
16 its intention to obtain support for local exchange
17 service, the Company proposed a access rate that
18 fluctuated by time, is that correct?

19 A. That's correct.

20 Q. Okay. When the Company later filed the stipulation,
21 that was removed, is that correct?

22 A. That was one of the outcomes of the negotiation, yes.

23 Q. Okay. So, the implementation of the -- of Verizon's
24 intention to obtain support for local exchange

[Witness: Shepherd]

1 services, the implementation of it didn't go as Verizon
2 proposed it here initially?

3 A. Not in the Verizon prefiled or rebuttal testimony, no.

4 Q. Okay. And, your reference to, and just to clarify,
5 your reference to "vehicle for providing contribution
6 equivalent to the contribution obtained from toll rates
7 and charges", that was the purpose in that proposal and
8 initial testimony, correct?

9 A. That's correct.

10 Q. Okay. And, the way you got that is shown for one of
11 the time periods on Workpaper 1 as I pointed out,
12 right?

13 A. That's correct. That would be for non-800 access for
14 the day rate period.

15 Q. Okay. This encompasses a lot of the traffic, I take
16 it?

17 A. If you assumed all times of day, it would be the
18 majority of traffic.

19 Q. I didn't understand your assumption.

20 A. I'm not sure if the day rate period for non-800 was the
21 majority of traffic as you questioned.

22 Q. All right. It's a significant portion of the traffic
23 or a small portion?

24 A. It's not insignificant.

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[Witness: Shepherd]

1 Q. Is it a small portion?

2 A. It's not a small portion.

3 Q. Thank you. Now, you start out there with the retail
4 toll rate, correct, on Line 1?

5 A. That's correct.

6 Q. And, after a series of lines -- excuse me, just one
7 minute. After a series of subtractions, you end up
8 with a required total common line charge, do you see it
9 there?

10 A. Yes.

11 Q. All right. And, Mr. Oyefusi has just warned me, I
12 don't believe this is true, because this is so old, but
13 I don't believe these numbers are confidential, is that
14 correct?

15 A. These were --

16 MR. DEL VECCHIO: Data from 14 years
17 ago? I hope that I don't have to assert confidentiality
18 for this.

19 BY MR. GRUBER

20 Q. All right. So, you see on Line 10 you arrived at a
21 required total common line charge of about 24.4 cents
22 per minute?

23 A. I see that.

24 Q. All right. Does that refresh your memory that it might

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[Witness: Shepherd]

1 be around 24 cents a minute that you first proposed?

2 A. It does, but I didn't recall that Ms. Geiger had that
3 in her question.

4 Q. No problem. No problem. Glad we got to the bottom of
5 it. And, that was the money needed to support, in
6 Verizon's view, local services, is that correct?

7 A. That was the amount of money needed to provide the same
8 contribution that would have been received from that
9 unit of toll to support --

10 Q. Would you answer my question?

11 A. -- to support local service, yes.

12 Q. Thank you. Now, despite that fact, Verizon entered
13 into a compromise stipulation in which it agreed to
14 lower rates, is that correct?

15 A. That's correct.

16 Q. All right. Can we take a look at the exhibit that
17 we've already marked, all right, Exhibit 18? Do you
18 have a copy of that? I'll provide you with it.

19 (Atty. Gruber handing document to the
20 witness.)

21 BY MR. GRUBER

22 Q. All right. The witness has in front of him a copy of
23 Exhibit 18, which is the Commission's order in DE
24 90-002, on June 10, 1993. Is it fair to say, Mr.

[Witness: Shepherd]

1 Shepherd, that in this order the Commission reviewed
2 the initial stipulation that the parties entered into,
3 lowering access rates from those proposed by Verizon?

4 A. It's fair to say the Commission looked at it, yes.

5 Q. And, it's fair to say that this is what the Commission
6 said about the initial proposal -- I mean, I'm sorry,
7 the initial stipulation?

8 A. I believe so.

9 Q. Okay. Could you turn to Page 11. All right. Do you
10 have that?

11 A. Yes.

12 Q. On Page 11, there's a listing for "Originating Non-800
13 access", do you see that?

14 A. I do.

15 Q. Okay. And, there there are two columns for each year,
16 and those appear to set out the access rates that were
17 stipulated to, on the one hand, and the access rates
18 that, in fact, the Commission proposed, the parties
19 accept as settlement, is that correct?

20 A. That's correct.

21 Q. Okay. Now, the stipulated, as you've testified before,
22 the stipulated rates are lower than the -- than the
23 rates that Verizon proposed, correct?

24 A. They are. Again, the rates that Verizon proposed, if

[Witness: Shepherd]

- 1 you're looking at the 24 cents required for
2 contribution or the 26 retail rate, I mean, those are
3 time of day sensitive rates. These reflect all times
4 of day, so they would be an averaging of day, evening,
5 and night/weekend. If you are trying to make a direct
6 comparison, you know, the direct comparison is
7 impossible, unless you looked at what the all hours of
8 day/day of week result would have been in Verizon's
9 proposal, which is not available there. But --
- 10 Q. Agreed, Mr. Shepherd. And, --
- 11 A. But it does represent a compromise on the part of all
12 the parties as to what the level of access rates would
13 be.
- 14 Q. And, the weighted average ultimately in this
15 stipulation is below that proposed by Verizon as part
16 of the compromise, right?
- 17 A. That's correct.
- 18 Q. Okay. And, it's fair to say here that the Commission
19 didn't accept that stipulation, did it?
- 20 A. They did not, or they requested the parties to consider
21 changes to the stipulation.
- 22 Q. Is that the same thing as not accepting it? Or, are
23 you making a distinction?
- 24 A. They asked the parties to consider their recommendation

[Witness: Shepherd]

1 as to what they would like to see. I'm not sure if
2 that is saying that they would have rejected it. But
3 they asked the parties to look at lowering access
4 charges a little further, a little quicker.

5 Q. Okay. So, they didn't accept?

6 MR. DEL VECCHIO: Objection. You've
7 asked it more than once, and you're asking for a legal
8 opinion.

9 MR. GRUBER: I withdraw the question.

10 MR. DEL VECCHIO: I think the order
11 itself --

12 MR. GRUBER: I withdraw the question.

13 MR. DEL VECCHIO: -- captions what it
14 is, when it says "Order Conditionally Accepting the
15 Stipulation of the Parties."

16 BY MR. GRUBER

17 Q. Mr. Shepherd, what happened to all those costs for
18 which contribution was required, according to Verizon,
19 in its initial proposal, when Verizon agreed to the
20 final stipulation in this case with lower access rates?
21 What happened to the costs that those -- that the
22 initially proposed rates were intended to recover?

23 A. I'm not aware that anything happened to the costs.

24 Q. So, in other words, the rates that Verizon accepted

[Witness: Shepherd]

1 here are target rates unrelated to a specific level of
2 cost, I think you even said that, is that correct?

3 A. That's correct. It's part of the negotiated
4 settlement. The parties agreed to compromise on what
5 the level of access charges would be. And, this is
6 what the, you know, the outcome of a negotiated process
7 produced.

8 Q. And, the Commission never found that the target rates
9 were set at a level to recover any specific level or
10 amount of costs, did it?

11 A. I'm not aware that it did. And, again, the Commission
12 here was entering into a two-year trial to see what
13 would happen with the opening of the market to
14 intra-LATA toll competition. And, that was part --
15 part and parcel of the trial, to see what the effect
16 would be before taking the next steps.

17 Q. I'd like to switch gears here, Mr. Shepherd. On Pages
18 29 and 30, Verizon provided an estimate of CCL charges
19 billed to carriers for the two-year period January 2005
20 to December 2006. Do you have that in front of you?

21 A. Yes. Do you have a question?

22 Q. Yes. First of all, I just wanted to understand, this
23 was initially provided back on February 8th, in
24 response to a Commission request for we'll call it a

[Witness: Shepherd]

1 "ballpark number", to show what is generally at stake
2 in this case, is that correct?

3 A. Yes, it was initially provided to get an order of
4 magnitude of what the impacts might be, in the case of
5 Verizon, on an historic basis, and then also they asked
6 Verizon to estimate what it would be on a
7 forward-looking basis. And, that was part of a
8 procedural order that was issued in November of 2006, I
9 believe.

10 Q. Right. I think it was, for the record, November 29th,
11 in Order Number 24,705. And, in that order, the
12 Commission, paraphrasing Verizon, said "a fair
13 assessment of interest implicated in a proceeding of
14 this nature warrants some consideration of the
15 magnitude of the potential financial impact involved."
16 I'll represent to you that that's what this Commission
17 said in that order. So, given that you provided this
18 response, can I assume that Verizon does not intend to
19 back bill for any traffic prior to January 2005, if the
20 Commission were later to rule in Verizon's favor in
21 this case?

22 A. That's not part of my testimony, and I'm not here to
23 represent Verizon on it.

24 MR. DEL VECCHIO: I'm going to object to

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[Witness: Shepherd]

1 that question.

2 MR. GRUBER: Your Honor, this
3 information, which we didn't believe was relevant to
4 consideration or interpretation of the tariff, but the
5 Commission, in its judgment, did, was offered to the
6 Commission as testimony by Mr. Shepherd, sworn to under
7 oath, that this is the amount of money at stake. The
8 Commission requested it; Verizon put it into evidence.
9 I'm entitled to know whether this is the amount of money
10 at stake.

11 CHAIRMAN GETZ: I take your question to
12 be a fair one, what should be read from his answer, and I
13 think -- and what's the state of costs prior to
14 January 2005. I believe his answer is he "doesn't have
15 that" -- he can't answer that question.

16 MR. GRUBER: Can I make a record request
17 for the Company to provide that response to this?
18 Because, right now, we don't have a number that we can
19 rely on.

20 CHAIRMAN GETZ: Well, you're looking for
21 a number or you're looking to find out what the Company's
22 intent is, if it prevails?

23 MR. GRUBER: Yes. I'm looking for some
24 fair way to understand what is at stake in this case.

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[Witness: Shepherd]

1 CHAIRMAN GETZ: Mr. Del Vecchio.

2 MR. DEL VECCHIO: I would object to
3 that, Mr. Chairman. I think the Commission correctly
4 captured what this Commission's role is with respect to
5 the issue of reparations. You stated it was a two-year
6 period, and you identified the threshold for the
7 calculation of that two-year period. That information was
8 requested of the parties for purposes of this docket. You
9 said there would be no further discovery in connection
10 with that, which is what I understand Mr. Gruber to be now
11 asking. To the extent that there is a further dispute
12 between the parties, that goes beyond the statutory
13 authority of this Commission to permit the recovery of
14 damages. The appropriate forum for that is the courts.
15 And, for you to compel or permit the parties to explore
16 discovery, when you said you wouldn't permit any discovery
17 in connection with the period that goes beyond the
18 reparations period, is not appropriate.

19 CHAIRMAN GETZ: Mr. Gruber, are you
20 arguing that the answer is not -- provided by Verizon is
21 not responsive to what we directed in our order?

22 MR. GRUBER: I'm arguing that the answer
23 may or may not be, we don't know, responsive to the intent
24 of your order, which is to understand the financial stakes

[Witness: Shepherd]

1 at issue.

2 CHAIRMAN GETZ: Well, let's handle it
3 this way. We'll take under advisement your request, and
4 during a break -- it looks like we're going to have to
5 take a break here at some point, but let's continue. How
6 much more cross do you have?

7 MR. GRUBER: Depends on how quickly it
8 goes. I do want to turn to one call flow. So, if you
9 wanted to take a break before I got into the call flow,
10 you could do it now.

11 CHAIRMAN GETZ: Mr. Kennan, do you have
12 cross for the witness?

13 MR. KENNAN: Less than five minutes,
14 Mr. Chairman.

15 CHAIRMAN GETZ: And, Staff has --

16 MS. FABRIZIO: Staff has approximately
17 20 to 30 minutes.

18 CHAIRMAN GETZ: Okay. Then, maybe the
19 more important question, Mr. Patnaude, how are you doing?

20 (Brief off-the-record discussion
21 ensued.)

22 CHAIRMAN GETZ: Okay. Let's try and
23 finish up yours, Mr. Gruber. And, then, I think we'll
24 take a recess, but not the lunch recess, and see if we can

[Witness: Shepherd]

1 finish up the hearing and do that.

2 MR. GRUBER: I'll try to make this
3 quick.

4 BY MR. GRUBER

5 Q. Mr. Shepherd, you were present during the technical
6 sessions, when Verizon, the Staff, and the other
7 parties worked out the call flow diagrams, is that
8 correct?

9 A. Yes, I was.

10 Q. And, Call Flow Number 8 involved an intrastate long
11 distance call from a Verizon end-user to a wireless
12 end-user, is that correct?

13 A. That's correct.

14 Q. And, Mr. Shepherd, I just handed you a document. It
15 purports to be Call Flow Number 8, with some of the
16 nonessential information removed to make the flow a
17 little cleaner, along the same lines as those presented
18 by Mr. Pfautz yesterday. Can we agree that that's
19 reasonably accurate?

20 CHAIRMAN GETZ: Let's mark this for
21 identification as "Exhibit Number 19".

22 (The document, as described, was
23 herewith marked as Exhibit 19 for
24 identification.)

[Witness: Shepherd]

1 BY THE WITNESS:

2 A. It looks reasonably accurate.

3 BY MR. GRUBER

4 Q. Okay. Thank you. Now, in this diagram, just to orient
5 us, AT&T is carrying the toll call of a Verizon local
6 end-user, is that correct?

7 A. Yes.

8 Q. And, we see that because there's a Verizon end-user on
9 the left-hand side, and then, after we pass through
10 Verizon's network, the call is delivered to the toll
11 provider, correct?

12 A. Correct.

13 Q. Okay. And, the call flow shows that, after the
14 end-user has made his call, and the Verizon network has
15 routed it to AT&T, AT&T's network carries it and routes
16 it to a Verizon tandem on the termination end, is that
17 correct?

18 A. That's correct.

19 Q. And, the Verizon tandem then further delivers it to a
20 wireless carrier, right?

21 A. Yes.

22 Q. And, the wireless carrier completes the call?

23 A. To the wireless end-user, yes.

24 Q. To the wireless end-user?

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[Witness: Shepherd]

1 A. Yes.

2 Q. And, this is a call in which Verizon is levying a CCL
3 or carrier common line charge for termination, correct?
4 It's one of the calls in dispute?

5 A. That's correct.

6 Q. Now, wireless carriers are not permitted to levy access
7 charges on toll providers, are they?

8 A. I'm not certain.

9 Q. What's your judgment on that?

10 MR. DEL VECCHIO: Objection. I think he
11 answered. First, the question is a legal question, and I
12 didn't stand up. But the man said he's "not sure", and
13 you're asking for his judgment on that? What exactly does
14 that mean?

15 MR. GRUBER: He can answer it if he
16 knows.

17 MR. DEL VECCHIO: I think he answered
18 the question. I think --

19 CHAIRMAN GETZ: He said he "didn't
20 know".

21 MR. GRUBER: Okay.

22 CHAIRMAN GETZ: I'm not sure what your
23 question means either, Mr. Gruber.

24 MR. GRUBER: Okay.

[Witness: Shepherd]

1 BY MR. GRUBER

2 Q. When -- Let me ask you this, Mr. Shepherd. You
3 suggested in your testimony, I think it is on Page 23
4 of 24 of your rebuttal testimony, and I think you
5 stated it again this morning, that, if carriers don't
6 want to pay the disputed CCL, they can simply "direct
7 connect with other carriers and avoid the charge." Was
8 that your statement?

9 A. Sure. I mean, carriers always have that option.

10 Q. Okay. And, were you aware that wireless carriers are
11 under no obligation to direct connect?

12 A. I'm not aware of that.

13 Q. All right. Assuming they're under no obligation, that
14 makes it a little difficult for carriers to direct
15 connect, doesn't it, to wireless carriers?

16 A. Well, being under an obligation and being willing are
17 two different things, I think. I think that parties
18 could get together and they could negotiate an
19 arrangement. And, you know, I don't know what the
20 genesis of their obligation to or nonobligation is,
21 but, certainly, the parties could agree to establish
22 direct connections.

23 Q. All right. So, incentives are an important
24 consideration in whether they're likely to agree, is

[Witness: Shepherd]

1 that correct?

2 A. Incentives?

3 Q. Yes. The benefits and costs of entering into such an
4 agreement. That's important, right?

5 A. That's certainly part of the business decision.

6 Q. Right. Now, let's assume for a moment, in Call Flow
7 Number 8, that that's Verizon Wireless on the
8 right-hand side. Now, if Verizon Wireless were to
9 enter into a direct connection with AT&T, for example,
10 for the delivery of wireless terminated traffic, AT&T
11 would be able to avoid the Verizon New Hampshire CCL,
12 is that correct?

13 A. They would, yes.

14 Q. Does Verizon have an incentive to enter into such an
15 arrangement?

16 A. Verizon Telecom?

17 Q. Verizon Wireless.

18 A. I can't speak for Verizon Wireless.

19 Q. Well, you understand and have been speaking for
20 carriers, in terms of they have these opportunities and
21 benefits and costs. Do you think the incentives are
22 for Verizon Wireless to enter into such an agreement?

23 A. Again, for them, it would depend on the -- the terms,
24 conditions and consideration.

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[Witness: Shepherd]

1 Q. Do you know what percentage of AT&T's local exchange --
2 I mean, long distance traffic in New Hampshire is
3 terminated to Verizon Wireless?

4 A. I don't.

5 MR. GRUBER: I'm done, your Honor.

6 CHAIRMAN GETZ: Okay. Mr. Kennan.

7 MR. KENNAN: Thank you, Mr. Chairman.

8 Good morning, Mr. Shepherd.

9 WITNESS SHEPHERD: Good morning.

10 BY MR. KENNAN

11 Q. I think we've all been assuming something, but I just
12 want to be sure that the record is clear on this. That
13 the disputed carrier common line charges at issue here
14 apply in the situation of a toll call, right?

15 A. That's correct. These would apply on to traffic that's
16 carried as a toll call.

17 Q. And, the docket 90-002 proceeding that we have been
18 talking about at some length this morning was designed
19 to look at the question of intra-LATA toll competition?

20 A. That was the -- The genesis of the docket was to
21 determine the terms and conditions, and, in particular,
22 the access charge structure that would underlie the
23 opening of the intra-LATA toll market, at least
24 initially to a two-year competitive trial.

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[Witness: Shepherd]

1 Q. And, I do believe you said, and I just want to be sure
2 we're clear, that there are other tariffs, proceedings
3 and manners in which local calls are addressed?

4 A. Yes. Those came later on in the time frame.

5 MR. KENNAN: Okay, thank you. Thank
6 you. That's all I had. Thank you.

7 CHAIRMAN GETZ: Okay. Ms. Fabrizio.

8 MS. FABRIZIO: Thank you, Mr. Chairman.

9 BY MS. FABRIZIO

10 Q. Mr. Shepherd, how would you define "common line"?

11 A. How would I define the "common line"? Mr. Shepherd's
12 definition of the "common line" would be a local
13 exchange line that can be used by an end-user either to
14 originate or to terminate traffic, in other words, to
15 receive calls or to make calls, that is not a dedicated
16 line that would not use the switched network. That
17 would be a line that would be connected to the switched
18 network that connects end-user to the local switch for
19 making local, toll, and intra-LATA and interstate
20 calls.

21 Q. All right. Thank you. According to Tariff 85,
22 Section 1.3.2, a "common line" is "a line, trunk or
23 other facility provided under the general and/or local
24 exchange service tariffs of the Telephone Company

[Witness: Shepherd]

1 (Verizon) terminated on a central office switch." That
2 is consistent with your definition?

3 A. Yes.

4 Q. And is it defined the same way in Verizon's interstate
5 access tariff?

6 A. Not one hundred percent certain, but I wouldn't be
7 surprised if they were similar.

8 Q. Would you accept that subject to check, that the --

9 A. Sure.

10 Q. -- the definitions are identical? Is the same line
11 used to carry a local call, an intrastate long distance
12 call and an interstate long distance call from the
13 end-user's premises to the central office switch
14 allowing a connection to the public switched network?

15 A. Yes.

16 Q. And, is it called a "common line" because the same line
17 is used in common by various types of calls and
18 providers?

19 A. I believe that's how it got its name.

20 Q. And, excuse me, are the costs of a common line usage
21 sensitive? Usage sensitive, I'm sorry. The costs of a
22 common line usage sensitive?

23 A. I don't believe the costs of the common line are usage
24 sensitive. I think they're fixed costs that represent

[Witness: Shepherd]

1 an investment in a facility that runs from the central
2 office to the end-user premises, that regardless of how
3 little or how much usage is carried over it, would
4 incur the same cost.

5 Q. Thank you. And, the costs for the loop or common line
6 are sometimes referred to as the "non-traffic sensitive
7 costs"?

8 A. That's correct.

9 Q. In New Hampshire, does basic service help recover the
10 cost of the common line?

11 A. Yes.

12 Q. And, do you recall that in docket number DR 89-010 the
13 Commission allocated 25 percent of the non-traffic
14 sensitive costs to the interstate jurisdiction?

15 A. What I remember from that docket, and the Commission's
16 order in that docket, is that, in determining the
17 incremental cost of a service, one of the predicates to
18 doing that would be to take 25 percent of the
19 non-traffic sensitive costs out of the incremental cost
20 of the loop, let's call it, before it's applied to
21 developing the total service costs on an incremental
22 basis.

23 Q. Okay. Thank you. Were the interstate costs recovered
24 in part by the end-user common line charge from

[Witness: Shepherd]

1 end-users?

2 A. The 25 percent?

3 Q. Interstate.

4 A. Those costs were recovered by a combination of the
5 end-user common line charge, often known as the "SLC",
6 which covered a portion of that, and the interstate
7 carrier common line charge that was recovered from
8 interstate carriers for interstate usage.

9 Q. Okay. Thank you. So, end-users and carriers were
10 paying for the interstate non-traffic sensitive costs
11 of the common line through those charges?

12 A. Yes.

13 Q. Over time, the FCC increased the end-user common line
14 charge and reduced the carrier common line charge to
15 zero, is that correct?

16 A. Yes.

17 Q. Now, before the interstate carrier common line rate
18 element went to zero, did Verizon charge carrier common
19 line access to carriers who used Verizon tandem
20 switching for interstate calls?

21 A. It would have, if the call used a carrier common --
22 used an end-user common line.

23 Q. And, if it did not use an end-user common line?

24 A. The interstate tariff did not apply the charge in that

[Witness: Shepherd]

1 instance.

2 MS. FABRIZIO: Okay. Mr. Chairman, I'd
3 like to identify, mark for identification two pages from
4 the FCC Tariff 11.

5 CHAIRMAN GETZ: It will be marked for
6 identification as "Exhibit Number 20".

7 (The document, as described, was
8 herewith marked as Exhibit 20 for
9 identification.)

10 BY MS. FABRIZIO

11 Q. Mr. Shepherd, could you please read Paragraph 3.8.1 --
12 no, I'm sorry, 3.5 on the first page of the handout.

13 A. "3.5 Determination of Usage Subject to Carrier Common
14 Line Access Charges: Except as set forth herein, all
15 Switched Access Service provided to the customer will
16 be subject to Carrier Common Line Access charges."

17 Q. Thank you. And, now, could you please read Paragraph
18 3.8.1.

19 A. "3.8.1 Billing of Charges: Except for those services
20 set forth in 3.5.3, 3.5.4, 3.5.5 and 3.5.6 preceding,
21 Carrier Common Line charges will be billed to each
22 Switched Access Service provided under this tariff in
23 accordance with the regulations set forth in 2.4.12
24 (Involvement with RTU or TRS services) preceding, 3.8.5

[Witness: Shepherd]

1 following (Determination of Premium and Non-Premium
2 charges) except as set forth in 2.4.11, 3.6.4 preceding
3 (Resale) and 3.8.4 following (PIU)."

4 Q. Thank you. And, does this language mean something
5 different in the intrastate tariff?

6 A. These exceptions would not be found in the intrastate
7 tariff.

8 Q. And, which exceptions exactly? Could you explain that?

9 A. 3.8.1.

10 Q. And, what are they? Can you explain what the services
11 referred to include?

12 A. I'd be speculating without having the tariff in front
13 of me. But I could take a stab at it, if you'd like?

14 Q. Would you accept subject to check that these provisions
15 refer to "3.5.3", Local Exchange Access and Enhanced
16 Services Exemption; "3.5.4", Common Channel Signalling
17 Access Exemption; "3.5.5", Dedicated Link Exemption;
18 and "3.5.6", Radio Telephone Utility (RTU) and
19 Telecommunications Relay Service (TRS) Exemption?

20 A. I would take that subject to check, and would modify my
21 previous answer to say that some of those exceptions
22 may be found in the intrastate tariff, particularly the
23 one dealing with the Enhanced Service Provider.

24 Q. Would you agree that the FCC Tariff Number 11 does not

[Witness: Shepherd]

1 exempt calls that go to CLEC end-users CCL charges on
2 such calls?

3 A. I would say that it doesn't exempt them in this
4 section.

5 Q. And, why should we read that exemption into the
6 intrastate tariff? Why should we read the two tariff
7 languages differently?

8 A. The New Hampshire intrastate tariff, in the interest of
9 having a common platform for simplicity, used a lot of
10 the language from the then existing FCC tariff and the
11 different sections of the FCC tariff, in order to
12 establish the technical details and all of the
13 different features and functions that went along with
14 different feature groups and local switching optional
15 features or local transport optional features, often
16 referring, in fact, to the FCC tariff at that time for
17 those provisions. But the structure of the intrastate
18 tariff was set to meet the unique needs of New
19 Hampshire, not to model and mirror the interstate
20 tariff exactly. It was designed to satisfy the needs
21 within the State of New Hampshire. So, it would not
22 have all of these exceptions built into it.

23 Q. I'm going to move on here. Did Verizon ever actually
24 bill and collect on such charges? No, I'm sorry.

[Witness: Shepherd]

1 Okay. Mr. Shepherd, are you familiar with

2 Newton's Telecommunications Dictionary?

3 A. I've used it occasionally, but I can't say that I'm
4 intimately, thoroughly familiar with it. But I've used
5 it.

6 MS. FABRIZIO: I'm going to mark for
7 identification an excerpt from the Twentieth Edition of
8 Newton's Telecommunications Dictionary. And, we ran out
9 of staples, apparently.

10 CHAIRMAN GETZ: That will be marked for
11 identification as "Exhibit Number 21".

12 (The document, as described, was
13 herewith marked as Exhibit 21 for
14 identification.)

15 BY MS. FABRIZIO

16 Q. Mr. Shepherd, you would agree that Newton's Telecom
17 Dictionary provides definitions of commonly used terms
18 in the business of telecommunications?

19 A. Generally, it does, yes.

20 Q. Would you please read for me the definition on the
21 lower right side of the first page of this exhibit for
22 "Carrier Common Line Charge".

23 A. Newton states that "Carrier Common Line Charge CCL:
24 The charge which IXC's (Interexchange Carriers) pay to

[Witness: Shepherd]

1 LECs (Local Exchange Carriers) for the privilege of
2 connecting to the end-user through LEC local loop
3 facilities. The CCL is a charge to cover a portion of
4 the costs associated with the local loop, which is used
5 to originate" -- "for origination of local, intra-LATA
6 long distance (also known as "local toll"), and
7 inter-LATA long distance calls. In combination, the
8 CCL, the CALC (Customer Access Line Charge), and the
9 monthly tariff charge for the local loop are intended
10 to cover the costs of provisioning and maintaining" --
11 "and maintenance of the loop, as well as to provide the
12 LEC with a reasonable rate of return (i.e., profit) on
13 its investment. That they do." Mine looks like it
14 scrolled off the page. "They also encourage bypass and
15 may, in the long term, be self-defeating. See also
16 Access Charge."

17 Q. Thank you. And, we have heard you repeat a number of
18 times in your testimony in the past, or today, this
19 morning, that it certainly was Verizon's intent, in
20 developing the stipulation agreement that was approved
21 in DE 90-002, that the CCL charge was not intended to
22 cover any loop costs? Is that a correct understanding
23 of your testimony?

24 A. It was not intended as an explicit element to recover

[Witness: Shepherd]

1 costs associated with the loop or explicitly for use of
2 the local loop to access the end-user customer.

3 Q. Uh-huh.

4 A. There was a contribution element to provide an equal
5 contribution per minute of use for use of the local
6 exchange carriers' network to provide a toll call.

7 Q. Uh-huh. And, in your direct testimony, on Page 20,
8 Line 18, you repeat that premise, "that the CCL rate
9 element was never designed for or limited to the
10 recovery of costs related to the use of end-user
11 loops." Does that language suggest that there is some
12 cost recovery involved in the CCL charge, while perhaps
13 not exclusive?

14 A. Contribution necessarily recovers costs that aren't
15 recovered directly from other rates and charges.
16 Contribution goes to recovering, in the case where you
17 may have something, a service, and I won't single one
18 out in particular, because I don't know. But, if you
19 have a service that's not covering its direct costs,
20 contribution has to cover that. Contribution also
21 helps cover the costs, the common costs and joint costs
22 of the firm, so that the firm is able to meet its
23 revenue requirement.

24 Q. But, again, as you've testified, there's nothing in the

[Witness: Shepherd]

1 Commission's order approving that stipulation that says
2 explicitly that the CCL charge as designated in the
3 rate design in that case was not intended to recover
4 costs of the use of the common line?

5 A. There's nothing that explicitly states as such, but,
6 given the extensive information that was provided in
7 that proceeding and the testimony that was made in the
8 initial attempt to get approval of the stipulation,
9 clearly indicated that this was not a loop cost
10 recovery element or an element designed for the use of
11 the loop. It's a contribution element, as both NET
12 represented, as well as another member of the panel
13 represented, when asked about that on
14 cross-examination.

15 Q. Okay. Thank you. I'll move on. Do you remember when
16 interstate access rates were initially established?

17 A. Initially established in 1983, '84.

18 Q. When AT&T was divested?

19 A. That's correct.

20 Q. At the time, New England Telephone provided local
21 exchange service and instate toll service in New
22 Hampshire exclusively in its franchise territory and
23 carriers, such as AT&T and MCI, were allowed to compete
24 for interstate toll, is that correct?

[Witness: Shepherd]

1 A. Yes.

2 Q. And, New England Telephone was not allowed to carry
3 inter-LATA long distance calls and IXCs were not
4 allowed to carry calls within the LATA?

5 A. I think that's generally the case. Although, I do
6 believe there may have been some interexchange carriers
7 that were carrying incidental intrastate/intra-LATA
8 traffic as part of their interstate service.

9 Q. Okay. Thank you. So, in 1984, when interstate access
10 charges were initially established in New England
11 Telephone's franchise area in New Hampshire, New
12 England Telephone was the exclusive provider of
13 intra-LATA local and long distance service, is that
14 correct?

15 A. To its end-users.

16 Q. And, all long distance carriers had to use a New
17 England Telephone common line to get access to an
18 end-user?

19 A. To a Verizon end-user, or New England Tel at that time.

20 Q. Okay. Let's turn to the intrastate tariff, Tariff
21 Number 85, the access tariff. And, I'm going to ask
22 some general questions covering provisions that we've
23 discussed in the last couple of days. Is end office
24 switching switched access service?

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[Witness: Shepherd]

- 1 A. Yes, it is.
- 2 Q. And, is tandem switched transport switched access
3 service?
- 4 A. Yes, it is.
- 5 Q. And, is tandem switched transport local transport
6 facility switched access service?
- 7 A. Yes, it is.
- 8 Q. Is tandem switched transport local transport
9 termination switched access service?
- 10 A. Yes.
- 11 Q. And, is tandem switched transport tandem switching
12 switched access service?
- 13 A. Yes.
- 14 Q. Okay. And, your position, as I understand it, is that
15 the note -- the note on Page 1 of Section 5 of Tariff
16 85, which says that the "carrier common line access
17 service is billed to each switched access service
18 provided under this tariff, in accordance with the
19 regulations as set forth herein and in Section 4.1, and
20 at the rates and charges contained in Section 30.5."
21 Your position is that this language means that the
22 common carrier line is charged any time a carrier uses
23 Verizon's switched access -- switched service, is that
24 correct?

[Witness: Shepherd]

1 A. Yes. Whenever a carrier uses Verizon's network in the
2 provision of its toll service, that's switched access.
3 And, as such, all such use of the network, on a minute
4 of use basis, is required to pay the carrier common
5 line charge as a contribution element.

6 Q. So, you're saying -- you're saying tandem switching is
7 a switched access service, so CCL charges apply?

8 A. Yes.

9 Q. All right. Okay. And, now, let's take a look at -- do
10 you have the tariff before you?

11 A. I do.

12 Q. Tariff 85, Section 5.4.1.A. It reads, the "General"
13 provision: "Except as set forth herein, all switched
14 access service provided to the customer will be subject
15 to carrier common line access charges." Okay. If each
16 of the services that we just went through is switched
17 access service, what in the tariff prevents you from
18 charging a CCL four times, when a carrier uses all four
19 elements?

20 A. Well, again, switched access is any use of the exchange
21 carrier's network. Whether it be a small piece of it,
22 such as a tandem switch, in order to provide its toll
23 calls, or whether it uses a tandem switch in
24 combination with transport and local switching. So,

[Witness: Shepherd]

1 any -- any use of Verizon's network to provide an
2 intrastate toll call would be switched access. And,
3 the way the access tariff is structured, it breaks
4 these down into rate categories on an unbundled basis.
5 It can either be purchased a la carte, as I think we
6 heard yesterday, or they can be purchased in
7 combination, to whatever extent that carrier is using
8 the exchange carrier's network.

9 Q. Is the CCL prorated in accordance with how many of
10 those elements are used?

11 A. No, it only applies once.

12 Q. Are you familiar with the term "tandem transit
13 service"?

14 A. Yes.

15 Q. Okay. Now, I'd like to show you, this is an excerpt
16 from Commission Order 24,080, dated October 28, 2002.

17 MS. FABRIZIO: I'd like to mark for
18 identification the excerpts from that order.

19 CHAIRMAN GETZ: The excerpts will be
20 marked for identification as "Exhibit Number 22".

21 (The document, as described, was
22 herewith marked as Exhibit 22 for
23 identification.)

24 BY MS. FABRIZIO

[Witness: Shepherd]

1 Q. All right. Mr. Shepherd, could you please read the
2 highlighted text.

3 MR. DEL VECCHIO: I'm sorry. Could we
4 get some indication, and you may have said this, so I
5 apologize, where this order is from? There's not a cover
6 sheet here.

7 MS. FABRIZIO: Sure. This is Commission
8 Order Number 24,080, dated October 28, 2002. And, the
9 formal citation 87NHPUC2002, at Page 754.

10 MR. DEL VECCHIO: Is from the VNXX
11 docket?

12 MS. FABRIZIO: Yes. From Docket Number
13 DT 00-223 and DT 00-054. And, the highlighted portion
14 that Mr. Shepherd will read is bracketed in your Exhibit
15 copies.

16 BY THE WITNESS:

17 A. The highlighted portion says or reads, and I apologize
18 if I'm not the most dynamic or interesting reader, but
19 "Verizon argues that it should be allowed to charge
20 CLECs", C-L-E-C-s, "for tandem transit service (TTS)
21 for traffic that originates on one carrier's network
22 (e.g., and ITC) and employs Verizon's access tandem
23 switch for connections to the network of a third,
24 terminating carrier (e.g., a CLEC). In such cases,

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[Witness: Shepherd]

1 Verizon states, neither the originating nor terminating
2 caller is a Verizon customer and thus Verizon has no
3 end-user from whom to recover its costs."

4 BY MS. FABRIZIO

5 Q. Thank you, Mr. Shepherd. Now, is there a difference
6 between the service described in the language that you
7 just read and the service provided by Verizon in the
8 call depicted in Call Flow Number 12?

9 MS. FABRIZIO: And, I would direct the
10 Commissioners to refer to Exhibit 2, Page 45.

11 BY THE WITNESS:

12 A. Just to be sure I'm on the same page, we're on Call
13 Flow Number?

14 BY MS. FABRIZIO

15 Q. Twelve.

16 A. Twelve? Call Flow Number 12 is a toll or a long
17 distance call that originates from an Independent
18 Telephone Company and uses Verizon to provide the
19 switching and transport to connect to a CLEC, so that
20 the call can be delivered to a CLEC end-user. This is
21 a toll call. Whereas, my understanding is that tandem
22 transit service, and I'm not sure if the context is in
23 the language I was asked to read, but tandem transit
24 service is provided pursuant to Tariff 84 as a vehicle

[Witness: Shepherd]

1 for two non-Verizon carriers to use Verizon's tandem
2 and transport facilities to connect local traffic, not
3 toll traffic, but local traffic.

4 Q. And, why does it apply only to local traffic?

5 A. Tandem transit service is an offering that Verizon made
6 as a result of negotiations with carriers for
7 individual interconnection agreements and/or in
8 arbitrations. It's a voluntary offering that Verizon
9 provides. There's no requirements under the local
10 competition requirements to provide tandem transit
11 service, but Verizon does provide it. It's provided
12 expressly for the exchange of local traffic between two
13 non-Verizon carriers, using Verizon's tandem switching
14 and transport transmission facilities.

15 Q. And, I would note for the record that the VNX order --
16 the VNXX order was intended to clarify the difference
17 between local and toll calls. Okay. I would like to
18 show you another order, Mr. Shepherd. This is Order
19 24,419, dated December 30th, 2004. Formal cite,
20 89NHPUC2004, at Page 737.

21 MS. FABRIZIO: I'd like to mark it for
22 identification.

23 CHAIRMAN GETZ: Ms. Fabrizio, I think we
24 already -- are you asking us to mark the excerpt?

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[Witness: Shepherd]

1 MS. FABRIZIO: Oh, I'm sorry. Yes,
2 you're right. This is already in the record.

3 CHAIRMAN GETZ: Okay.

4 MS. FABRIZIO: So, for reference
5 purposes only.

6 CHAIRMAN GETZ: Well, we have the two
7 excerpts from 24,080 and 24,419 I think that are marked
8 as, those four pages, as "Exhibit 22". You've just handed
9 out a letter from Verizon on March 14, 2005.

10 MS. FABRIZIO: I'm sorry, Mr. Chairman.
11 I'm getting confused in my overflow of exhibits here.
12 Could you hold onto that for my next marking? Thanks.

13 BY MS. FABRIZIO

14 Q. Okay. Mr. Shepherd, do you have before you a copy of
15 Order Number 24,419, which was included in the excerpts
16 that I handed out previously, dated December 30th,
17 2004? Could you please read the section marked in
18 highlight.

19 A. "We recognize that third party transport is a new
20 service, and anticipate that parties will want to have
21 an opportunity to review the filing and have an
22 opportunity for hearing. This opportunity could be
23 provided in one of two ways: (1) the Commission could
24 issue a nisi order with an opportunity for affected

[Witness: Shepherd]

1 parties to request a hearing; or (2) Verizon could file
2 an illustrative tariff, to take effect on a date
3 established by the Commission. In this case, requiring
4 an illustrative tariff, with a procedure identified by
5 the Commission for evaluation and review, appears to be
6 the better way to allow interested parties to have
7 meaningful input. We therefore direct Verizon to file
8 an illustrative tariff for third party transport no
9 later than 60 days from the date of this order."

10 Q. Thank you. That's sufficient. So, this order appears
11 to have given Verizon the opportunity to file rates and
12 a cost study for the type of service we're discussing
13 in this case, does it not?

14 A. It gave Verizon an opportunity to file an illustrative
15 tariff. But I'm, again, not sure if the context --

16 Q. For the type of traffic that we've been discussing in
17 this proceeding, is that correct?

18 A. Exchange of local traffic?

19 Q. No. You already had the tandem transit charge in
20 Tariff 84 to cover local, is that correct?

21 A. Right.

22 Q. So, we're talking here about a charge covering toll.

23 A. Again, I don't have a lot of knowledge of this
24 proceeding. But, if this is an offering that was

[Witness: Shepherd]

1 designed or a process that was designed to handle the
2 exchange of toll traffic between non-Verizon carriers,
3 I mean, in my mind, there is already a vehicle to take
4 care of that, and that's the access tariff, Number 85.
5 But, again, I'm not familiar with this particular
6 docket.

7 Q. I'd like to show you now a filing that Verizon made in
8 March of 2005, in compliance with Order Number 24,419.

9 MS. FABRIZIO: This is the document that
10 I proposed to be marked for identification that I've
11 handed out already.

12 CHAIRMAN GETZ: Okay. We'll mark it for
13 identification as "Exhibit Number 23".

14 (The document, as described, was
15 herewith marked as Exhibit 23 for
16 identification.)

17 BY MS. FABRIZIO

18 Q. If you turn to the last page of the handout, it appears
19 that Verizon did not propose a rate nor do we -- are we
20 aware of a filing of a cost study for this rate element
21 as proposed in the order that you've just read from.
22 Is that your understanding?

23 A. Yes. The illustrative tariff page says "Rate TBD".

24 Q. And, so, no rate was filed or proposed in the filing?

[Witness: Shepherd]

1 A. That's correct.

2 Q. And, why was that?

3 MR. DEL VECCHIO: I'm going to object at
4 this point. I think the witness has already stated he's
5 not familiar with this docket. Now we're getting into a
6 proposed illustrative tariff that identifies a "TBD", when
7 we're far afield, given his initial pronouncement that
8 he's not generally familiar with this.

9 MS. FABRIZIO: Okay. I'll move on, Mr.
10 Chairman.

11 BY MS. FABRIZIO

12 Q. All right. Could you note for me, though, with regard
13 to that document, what tariff Verizon filed the service
14 under?

15 A. The illustrative tariff is, has at the top, it says
16 "NHPUC Number 85 Access Services".

17 Q. Thank you. Okay. I'm going to refer you now to Call
18 Flow Number 24, again, in Exhibit 2, on Page 49 of
19 Exhibit 2. Now, this is a long distance call from a
20 wireless customer with a cellphone number, let's say,
21 in the Concord exchange, 496, to a Verizon customer,
22 let's say, in Laconia, with a 524 phone number. A call
23 from Concord to Laconia, when comparing NXXs, is a toll
24 call pursuant to Verizon's local exchange tariff, is

[Witness: Shepherd]

1 that correct?

2 A. That's correct.

3 Q. In this call, does the cell carrier deliver the call to
4 the Verizon tandem?

5 A. This diagram shows a call that would be delivered to a
6 tandem. That's not the only way that cellular carriers
7 can deliver the call, but that's what this call
8 depicts.

9 Q. Okay. Then, who pays for the tandem switching here?

10 A. Again, this would be Verizon providing a service to the
11 cellular carrier for its customer to reach a Verizon
12 end-user. So, the wireless carrier would pay Verizon,
13 in this case, a local termination and a local transport
14 charge for terminating that traffic.

15 Q. And, is that local transport out of the access tariff?

16 A. This is provided pursuant to an interconnection
17 agreement with the cellular carrier.

18 Q. Okay. Let's see. You point out in your testimony, on
19 Page 15, beginning at Line 16, that even though the
20 carrier has defined it's local calling areas different
21 than Verizon's, access is "assessed according to the
22 definition of the ILEC local calling areas." Is that
23 correct?

24 A. With the exception of traffic that's exchanged between

[Witness: Shepherd]

1 a cellular carrier and a LEC. In this case, the FCC's
2 local competition order deems that this is to be
3 considered local traffic.

4 Q. Okay.

5 A. So, in other words, when a cellular carrier terminates
6 directly traffic to a LEC, the LEC has to treat that as
7 a local call for purposes of intercarrier compensation.
8 And, there's a requirement to compensate the local
9 carrier for termination and transport under
10 Section 251.

11 Q. Okay. Thank you. And, now, because of that, do
12 wireless carriers report a 100 percent local use factor
13 for all calls to New Hampshire numbers?

14 A. I have not looked at every wireless carrier's customer
15 service records, so I can't represent that they do or
16 don't. But I have seen at least one, and they do not
17 report 100 percent local usage.

18 Q. Okay. Thank you. Now, how is a call treated for
19 compensation purposes between a Verizon end-user and a
20 wireless customer where the NXXs are not within
21 Verizon's local calling area? Is that charged as local
22 or toll?

23 A. The Verizon end-user would pay a toll charge.

24 Q. Except, for compensation purposes, that's treated as

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[Witness: Shepherd]

1 local or toll?

2 A. For compensation purposes, this would be treated as
3 reciprocal compensation traffic, subject to local
4 termination and transport charges under Section 251.

5 Q. Okay. Thanks. Now, is there any difference in the
6 applicable compensation if the call is originated by
7 the wireless customer or the Verizon customer?

8 A. The only difference that I'm aware of is that, when the
9 call is terminated by Verizon, the cellular carriers
10 don't have facilities or don't buy facilities that
11 connect directly to the tandem, when it's routed to a
12 tandem. Rather, they use Verizon facilities, Verizon
13 provided facilities. And, under their agreement, there
14 is a charge that they pay associated with that.
15 Otherwise, each company would compensate each other
16 equally for the termination of the traffic on their
17 respective local networks.

18 Q. So, there's actually no access charge involved?

19 A. No. The FCC, in its Local Competition order, deemed
20 the traffic exchanged between a local exchange carrier
21 and a wireless carrier, if the call originated from a
22 wireless customer located within a Major Trading Area
23 at the beginning of the call, that that traffic would
24 be treated as local. Otherwise, any inter-MTA traffic

[Witness: Shepherd]

1 would be treated as access, for purposes of
2 intercarrier compensation.

3 Q. Thank you.

4 MS. FABRIZIO: Just one minute to confer
5 here.

6 (Atty. Fabrizio conferring with Ms.
7 Bailey.)

8 BY MS. FABRIZIO

9 Q. Now, did you just state that, "if the call is
10 originated with the cellular end-user, the call is
11 treated as local"? But would it be different if the
12 caller were -- if the call were originated with a
13 Verizon end-user?

14 A. No.

15 Q. It would be treated as local?

16 A. It would be treated as local for the purposes of
17 intercarrier compensation.

18 Q. Okay. Now, let's assume the end-user on the
19 terminating end, in Call Flow 24 again, is a CLEC
20 customer, and that the CLEC has facilities to the
21 Verizon tandem. What charges would apply here in that
22 case? I'm sorry. I'm suggesting that we substitute
23 the Verizon end-user with a CLEC end-user in this call
24 flow diagram. So, it goes from a wireless end-user to

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[Witness: Shepherd]

1 a CLEC end-user.

2 A. For a toll call from a wireless end-user to a CLEC
3 end-user, using Verizon as the access provider or the
4 intermediate carrier, I am not 100 percent certain, but
5 I think that -- I believe that the interconnection
6 agreements provide that Verizon will provide tandem
7 transit service to the wireless carriers for that type
8 of traffic.

9 Q. And, is there a switched access charge that is paid in
10 that case?

11 A. In this case, they pay the tandem transit rate that's
12 in their interconnection agreement.

13 Q. And, is that without the CCL?

14 A. It's not an access charge, it's a -- it's a tandem
15 transit service per the terms of their interconnection
16 agreement.

17 Q. Okay. Let's look at Call Flow 15, and that's Exhibit
18 two, Page 46. Assume this is a call that originates
19 again in Laconia, and terminates to the same cell phone
20 with the Concord phone number we discussed earlier. Is
21 this the reverse of Call Flow 24, with a CLEC customer
22 on the terminating end that we just covered?

23 A. Yes, it is.

24 Q. So, in this call, the CLEC delivers the call to the

[Witness: Shepherd]

1 Verizon tandem, and Verizon, consistent with your
2 testimony on Page 16, charges the CLEC switched access
3 to use the tandem for LTTS and CCL, is that correct?

4 A. That's correct. In this case, Verizon is providing the
5 CLEC with use of its network to provide the CLEC's toll
6 service.

7 Q. So, when this service is provided to the CLEC, you
8 charge access?

9 A. Yes. It's the CLEC that's using the Verizon network to
10 deliver its toll call to the wireless provider.

11 Q. And, do you charge something different to a wireless
12 carrier in the same context?

13 A. In this case, there would be no charge to the wireless
14 carrier from Verizon. The relationship is with the
15 CLEC originating the call.

16 Q. Okay. And, is the -- Okay. I'd like to show you
17 Verizon discovery responses to a series of data
18 requests from Staff.

19 MS. FABRIZIO: And, I will not mark
20 these for identification, because -- actually yes, I am
21 inserting these into the record, but I haven't made copies
22 for all the parties. And, I'll state for the record that
23 these are Verizon responses to data requests from Staff,
24 from Set 1, to questions 1-13, 1-21, and 1-27. And, from

[Witness: Shepherd]

1 Set 2, responses to questions from Staff, 2-2, 2-4, 2-13,
2 and 2-15.

3 BY MS. FABRIZIO

4 Q. Mr. Shepherd, were these responses prepared by you?

5 A. I am the sponsor of these responses, and they were
6 either prepared or prepared under my direction.

7 CHAIRMAN GETZ: The responses will be
8 marked for identification as "Exhibit Number 24".

9 (The document, as described, was
10 herewith marked as Exhibit 24 for
11 identification.)

12 MS. FABRIZIO: Twenty-four.

13 BY MS. FABRIZIO

14 Q. And, they are true and accurate to your knowledge and
15 belief?

16 A. Yes.

17 MS. FABRIZIO: Okay. Could I have one
18 minute, Mr. Chairman?

19 (Atty. Fabrizio conferring with Ms.
20 Bailey.)

21 MS. FABRIZIO: Okay. Thank you, Mr.
22 Chairman. That actually concludes my questions for Mr.
23 Shepherd.

24 CHAIRMAN GETZ: All right. I think at

[Witness: Shepherd]

1 this point we need to take a recess. When we return,
2 there will be questions from the Bench, opportunity for
3 redirect, take care of some housekeeping. My
4 understanding from yesterday that there would be no
5 closing statements at all or very short closing
6 statements?

7 MR. DEL VECCHIO: None.

8 MR. GRUBER: None.

9 CHAIRMAN GETZ: And everyone agrees on
10 that? Staff agrees with that?

11 MS. FABRIZIO: That's fine.

12 CHAIRMAN GETZ: Okay. All right. Then,
13 I think we're in agreement. So, we'll take a recess, give
14 Mr. Patnaude a rest. We'll address the issue raised by
15 Mr. Gruber that we took under advisement. And, let's --
16 we've got a couple things to take care. We'll come back
17 at one clock.

18 (Recess taken at 12:31 p.m. and the
19 hearing resumed at 1:04 p.m.)

20 CHAIRMAN GETZ: Okay. Before we turn to
21 questions from the Bench, we reviewed your request, Mr.
22 Gruber, for a record request. And, we've determined to
23 deny the record request as beyond the scope of the
24 information that was required of Verizon in our order

[Witness: Shepherd]

1 issued on November 29th. So, --

2 MR. GRUBER: I'm sorry, Mr. Chairman. I
3 think when we last spoke, you had asked the two parties to
4 get together to figure out how to resolve the issue. We
5 had actually come up, and it's not inconsistent with your
6 denial, but it's important that the record fully reflect
7 our understanding. I just thought I would appreciate an
8 opportunity for at least me to make a statement, and
9 Victor may want to as well.

10 CHAIRMAN GETZ: I don't recall asking
11 you to work things out. But, to the extent that folks are
12 able to work things out, please proceed.

13 MR. GRUBER: Do you mind me going first?

14 MR. DEL VECCHIO: Go ahead.

15 MR. GRUBER: Well, I took a look, your
16 Honor, at your order. And, your order does, in fact,
17 request the parties to provide a general order of
18 magnitude of disputed charges. And, of course, charges
19 can only be disputed if they have been billed. So that I
20 no longer believe that Verizon did not fully respond.
21 Nevertheless, your order may have been issued on the
22 assumption that Verizon bills timely. In fact, we've seen
23 bills as late as six years. So, there is indeed a very
24 real risk that Verizon could decide, after your ruling in

[Witness: Shepherd]

1 this case that, if permitted, it would bill for traffic
2 prior to 2005. So, in that regard, and for that reason,
3 we simply ask that the Commission give the number that's
4 been provided to them weight consistent with that point.

5 CHAIRMAN GETZ: Okay. Mr. Del Vecchio.

6 MR. DEL VECCHIO: Maybe, Mr. Chairman, I
7 can make three very quick points. First, we understood
8 the request to direct Verizon to provide the amounts
9 billed to carriers over a two year period for which
10 carriers might claim reparations for the two year period
11 provided in the statute, I think as I mentioned earlier.
12 Secondly, Verizon did not estimate the total amount owed
13 to it should it prevail, whether for a two year period or
14 longer. And, thirdly, Verizon does not waive rights it
15 may have to collect any amounts owed to it for whatever
16 period is allowed by applicable law, whether from the
17 Commission or from a court of competent jurisdiction.
18 Thank you.

19 CHAIRMAN GETZ: All right. Well, we
20 have your positions on the record. Thank you.

21 BY CMSR. BELOW

22 Q. Yes, Mr. Shepherd. I think, in your summary of your
23 testimony, you made a reference to "investment in
24 broadband", and I think you made that reference

[Witness: Shepherd]

1 somewhat in the context or as it appeared at a time
2 when you -- where you were also talking about the
3 contribution from the carrier common line charge. And,
4 in the context of talking about supporting other public
5 policy goals and a need to contribute towards earning
6 to maintain investment, did you mean to imply in any
7 way that investment -- Verizon's investment in
8 broadband deployment is supported by the earnings that
9 they get from the contribution from the CCL?

10 A. It's an observation that I'm making that contributions
11 provided from rates, whether it be carrier common line
12 rates or other rates that are produced by the services
13 that Verizon provides in New Hampshire, are a source of
14 funding or investment. And, to the extent that the
15 contribution is diminished in any way, such as is being
16 suggested here by BayRing and AT&T to eliminate
17 contribution from the carrier common line charge that
18 they don't feel is applicable, certainly would have an
19 impact on investment in the future and expanding the
20 network, including things such as broadband or the new
21 network.

22 Q. Did you intend to imply that Verizon doesn't receive
23 sufficient revenues from its broadband sales to support
24 its investment and expenses of providing that service?

[Witness: Shepherd]

- 1 A. No, not at all.
- 2 Q. Okay. You talked about how each carrier provides, when
3 there's more than one carrier providing -- involved in
4 providing switched access service, you referenced the
5 notion that each carrier provides its own components of
6 switched access, and you referred to certain
7 requirements or provisions for apportionment,
8 apportionment of applicable access charges. I think
9 that's Section 3.1 of the Tariff 85. Would you care to
10 elaborate on that?
- 11 A. Okay. What that section of the tariff does is that it
12 says "if Verizon has 50 percent of the control and
13 ownership in the facilities to provide transport
14 between, say, Concord and Contoocook, and TDS has
15 50 percent, then each one of those companies is going
16 to bill 50 percent of the overall transport mileage
17 that would apply. So, if the mileage was, say,
18 20 miles, then Verizon would bill for the equivalent of
19 10 miles, TDS would bill for the equivalent of 10
20 miles, at their applicable switched access tariff rates
21 providing their individual pieces of switched access
22 service.
- 23 Q. So, you don't apportion in any way the carrier common
24 line charge?

[Witness: Shepherd]

1 A. No. It's just the local transport mileage component.
2 And, then, there is a local transport we'll call it a
3 "fixed component", which is apportioned equally,
4 50 percent each.

5 Q. And, you don't apportion the local switching?

6 A. There would be no local switching on Verizon's part.
7 TDS would bill for toll local switching.

8 Q. Okay. Has Verizon consistently applied the carrier
9 common line charges to all switched access service
10 since Tariff 85 went into effect?

11 A. Since Tariff 85 went into effect? No. There is a
12 period of time, and which has been identified here,
13 where an agent, who was billing on behalf of Verizon,
14 did not bill the carrier common line charge that it
15 should have billed, for calls that either originated
16 and terminated between two CLECs or that originated
17 with a CLEC and were delivered to an IXC for purposes
18 of delivering toll traffic to that IXC from the CLEC.

19 Q. Since you took that billing service back in house, has
20 Verizon -- do you believe that Verizon has consistently
21 applied a carrier common line charge to all switched
22 access service?

23 A. I do. And, I think that's why we have the opposition
24 we have here now.

[Witness: Shepherd]

1 CMSR. BELOW: Okay. I think that's all.

2 CHAIRMAN GETZ: Redirect, Mr. Del

3 Vecchio?

4 MR. DEL VECCHIO: Yes, I do.

5 REDIRECT EXAMINATION

6 BY MR. DEL VECCHIO

7 Q. First, let me see if I can clarify something that I
8 heard Commissioner Below just ask, because I'm not sure
9 the record correctly reflects what the earlier
10 testimony was. Commissioner Below was asking you about
11 the period of time when the billing agent was billing
12 for certain of the disputed calls. Do you recall that?

13 A. Yes.

14 Q. And, you responded that, during that period, that those
15 particular calls were not being billed a CCL as Verizon
16 contends it should have been billed, is that correct?

17 A. For those certain types of calls, yes.

18 Q. Okay. And, that's the part where I want you to
19 clarify. There are other types of calls similarly
20 involving CCL that are disputed in this case that
21 Verizon did bill, because they had not been handed over
22 to a billing agent, is that correct?

23 A. That's correct. That would be the calls we discussed
24 this morning, where a call either originated from a

[Witness: Shepherd]

1 CLEC and terminated to a wireless provider or the call
2 originated -- terminated from an IXC to a wireless
3 provider, where Verizon was providing the switched
4 access functions, including the tandem switching.

5 Q. And, that covers a period prior to the 2005 period,
6 which triggered the complaint or complaints filed by
7 the various parties in this docket?

8 A. Yes. Verizon has consistently applied the carrier
9 common line charge on calls that terminate to a
10 wireless provider for either an IXC's toll traffic or a
11 CLEC's toll traffic.

12 MR. DEL VECCHIO: Thank you for that
13 clarification. And, I only have a few questions, Mr.
14 Chairman.

15 BY MR. DEL VECCHIO

16 Q. First, let's go back to some questions that were asked
17 I believe by Mr. Gruber, regarding Exhibit 18. Exhibit
18 18 was a June 1993 Commission order conditionally
19 approving the stipulation, which we discussed earlier,
20 is that correct?

21 A. That was the June 10th order, 20,864.

22 Q. All right. And, subsequent to that conditional
23 approval order, did parties submit a modified
24 stipulation?

[Witness: Shepherd]

1 A. Yes. As I discussed this morning, the parties did
2 agree on a modified stipulation, which was then
3 submitted for the Commission's approval.

4 Q. And, do you have a copy of that modified stipulation,
5 which was submitted in the July 1993 time frame? If
6 you don't, I have a copy here, just to make this quick.

7 A. Okay.

8 Q. Would you please read for the Commission the bottom
9 sentence on Page 8, through the next three lines on
10 Page 9, of that modified stipulation?

11 MR. GRUBER: Can we get a copy of that?

12 MR. DEL VECCHIO: I apologize, I don't
13 have enough. I'm happy to give you a copy of the excerpt
14 at the end.

15 MR. GRUBER: And, has the modified
16 stipulation been introduced into evidence, so we know
17 where to look?

18 MR. DEL VECCHIO: No, but we're about to
19 tell you that. That's at Page 8 and Page 9, actually.

20 BY MR. DEL VECCHIO

21 Q. Please proceed, Mr. Shepherd.

22 A. The July 29th 1993 modified stipulation, on Page 8,
23 states that "Movement of NET's access rates in the
24 direction of costs and towards the interstate levels is

[Witness: Shepherd]

1 a desirable objective. Other desirable objectives
2 include, but are not limited to, universal service, rate
3 stability, fairness, and the reasonable opportunity to
4 recover revenue requirement.

5 Q. And, what do you understand "universal service" to
6 mean?

7 A. "Universal service" is access to affordable
8 telecommunications, and I think more specifically, in
9 my mind, it's wide deployment of basic exchange
10 service.

11 Q. And, was that modified stipulation approved by the
12 Commission?

13 A. Yes, that was approved in an August order, I believe.

14 MR. DEL VECCHIO: Mr. Chairman, I wasn't
15 planning on marking that for identification. I'm happy to
16 do it, if you would like. But I think simply reading into
17 the record the portion of the order, which order is
18 available to all of us, would suffice.

19 CHAIRMAN GETZ: Yes, I think that's
20 adequate. We can take administrative notice if we think
21 we need to, of that order.

22 MR. DEL VECCHIO: Thank you, Mr.
23 Chairman.

24 MS. GEIGER: Could you please, Mr. Del

[Witness: Shepherd]

1 Vecchio, give us the order number again?

2 MR. DEL VECCHIO: Absolutely.

3 CHAIRMAN GETZ: Though, what you read
4 from is the stipulation that was filed.

5 MR. DEL VECCHIO: This is the
6 stipulation and agreement between the parties, modified
7 July 29th, 1993, thank you, Mr. Chairman, in the Generic
8 Competition docket.

9 CHAIRMAN GETZ: And that resulted in an
10 order in August. Do you have that order number?

11 WITNESS SHEPHERD: Order 20,916.

12 MR. DEL VECCHIO: Thank you.

13 MS. FABRIZIO: Mr. Chairman? Sorry. I
14 believe that the stipulation agreement itself is not
15 actually attached to the order that we're talking about.

16 CHAIRMAN GETZ: Okay. Well, let's just
17 reserve an exhibit number and get that into the record
18 here. And, that would be Exhibit Number 25 for the
19 stipulation.

20 (Exhibit 25 reserved)

21 MR. DEL VECCHIO: Thank you, Mr.
22 Chairman.

23 BY MR. DEL VECCHIO

24 Q. And, now, returning to Exhibit 18, which Mr. Gruber I

[Witness: Shepherd]

1 believe introduced, you recall some discussion of
2 "uncertainties", I think that's the term you may have
3 used, Mr. Shepherd?

4 A. Yes.

5 Q. And, directing your attention to Page 5 of Exhibit 18,
6 can you please read for the Commission the paragraph
7 that begins with the word "third"?

8 A. "Third, given the uncertainties of competition, the
9 uncertainties of the national and State economic
10 conditions, and the uncertainties of stimulation and
11 other forms of market growth, and other similar
12 considerations, it is simply impossible to predict the
13 impact of competition on New England Telephone's
14 revenues. Therefore, even were the Commission to
15 permit NET to rebalance basic exchange rates to recover
16 revenue losses from toll, we have no way of determining
17 until the competitive experiment is concluded whether
18 such losses will, in fact, occur to any significant
19 degree prior to July 1, 1995."

20 Q. Thank you, Mr. Shepherd. Directing your attention to
21 Exhibit 20, which Ms. Fabrizio introduced. Do you have
22 it available?

23 A. Do you have something to identify it?

24 Q. It's the FCC Number 11 tariff excerpt. My questions

[Witness: Shepherd]

1 simply are these, Mr. Shepherd. Does the FCC 11
2 language that's incorporated in Exhibit 20, does that
3 apply to the intrastate, intrastate, calls in dispute
4 in this docket?

5 A. FCC Number 11 here applies to interstate traffic or
6 interstate access. Whereas, Tariff 85, or back then
7 Tariff 78, would have applied to the usage of the
8 network for intrastate toll traffic provided switched
9 access.

10 Q. And, did the FCC tariff permit an end-user common line
11 or, I should say, SLC charge, Subscriber Line Charge?

12 A. Yes. The FCC tariff did have an explicit element to
13 recover carrier -- to cover common line costs, end-user
14 common line costs, often referred to as the "Subscriber
15 Line Charge", or "SLC", sometimes referred to also as
16 the EUCL, End-User Common Line charge.

17 Q. And, we have no similar rate component in New
18 Hampshire, do we, SLC?

19 A. We do not.

20 Q. And, directing your attention to Exhibit 21, also
21 introduced by Ms. Fabrizio, this is the new telecom
22 definition? First off, I guess this goes without
23 saying, but let me ask it anyway. This is not a
24 tariff, this doesn't come from Verizon or any of the

[Witness: Shepherd]

1 carriers in this room, does it?

2 A. No, this is just a general publication.

3 Q. I'm looking at the definition, though, and one thing I
4 did not know, and I'm wondering if you could help me.

5 It simply identifies a charge which IXCs pay to the
6 LECs. Does this definition even cover, for example, a
7 charge that a CLEC like BayRing would pay to a LEC?

8 A. The definition that's on Page 152 here only applies to
9 IXCs, Interexchange Carriers.

10 Q. And, it also talks about a "CALC". What's that?

11 A. In the context that's used here, it would appear that
12 this was intended to mean the carrier common line
13 charge and some form of an end-user charge, which, to
14 me, would be the Subscriber Line Charge, SLC, or the
15 End-User Common Line charge, the EUCL, that's
16 applicable in federal tariffs, but not in the -- it
17 doesn't exist in the current PUC Number 85 tariff.

18 Q. Thank you, Mr. Shepherd. And, directing your attention
19 to Exhibit 22, which Ms. Fabrizio also introduced.
20 This is an excerpt from Order Number 24,080. And, this
21 order was dated sometime in the year -- I don't have
22 the exact date -- 2004 or 2005.

23 MS. BAILEY: First one was 2002.

24 (Atty. Fabrizio conferring with Atty.

{DT 06-067} [Day II] (07-11-07)

[Witness: Shepherd]

1 Del Vecchio.)

2 MR. DEL VECCHIO: Okay. Thank you.

3 Ms. Fabrizio informs me that it was dated 2002, the first
4 referenced order in this exhibit number.

5 BY MR. DEL VECCHIO

6 Q. Can you please read for the Commission the first full
7 paragraph on Page 12 of Exhibit 22?

8 A. The version I had was in Ms. Fabrizio's book.

9 Q. I'm sorry.

10 A. "Verizon asserts that the loss of toll and access
11 referred imperils affordable local rates in New
12 Hampshire. Revenues from toll services have been used
13 to keep the price of basic local services at affordable
14 levels. If all calls look like local calls by the use
15 of VNXX, incumbent carriers will lose both toll and
16 access revenues that contribute to affordable local
17 basic service rates."

18 Q. Thank you, Mr. Shepherd. Directing your attention now
19 to Exhibit 23, which Ms. Fabrizio also introduced.
20 And, this is an illustrative tariff, I understand?
21 This was never approved by the Commission, is that
22 correct?

23 A. Yes. It's stamped "Illustrative" on the top of the
24 pages.

[Witness: Shepherd]

1 Q. And, directing your attention to Section 7.1.2.A, does
2 this tariff even apply to toll and access service?

3 A. According to the illustrative tariff, the tandem
4 transit service illustrative offering would provide for
5 the exchange of non-access or non-toll traffic between
6 two telecommunications carriers who purchase a Meet
7 Point B arrangement under this tariff. Now, Meet Point
8 B arrangements is a local switched interconnection
9 service provided under Tariff Number 84.

10 MR. DEL VECCHIO: Thank you,
11 Mr. Shepherd. Thank you, Mr. Chairman. No further
12 questions.

13 MS. GEIGER: Mr. Chairman, may I be
14 permitted an opportunity to do very brief recross, based
15 only on the limited questions asked by Mr. Del Vecchio on
16 redirect?

17 CHAIRMAN GETZ: Is there something new
18 that was brought out on redirect in particular that you're
19 seeking to address?

20 MS. GEIGER: Yes. Actually, something I
21 haven't seen. It's an excerpt from that stipulation,
22 apparently, that Mr. Del Vecchio is going to be making
23 copies of. I'd like to take a look at what it says, so I
24 can, before the record closes, understand exactly what it

[Witness: Shepherd]

1 is that the witness was referring to. I don't have it,
2 and then I'd like to ask the witness a question about it,
3 if I can get -- if someone has a copy I can look at?

4 MR. DEL VECCHIO: Well, I was making
5 reference to an excerpt. I'm happy to give you the
6 excerpt.

7 MS. GEIGER: The excerpt is fine.

8 CHAIRMAN GETZ: Let's take a couple of
9 minutes to --

10 MR. DEL VECCHIO: Ignore my
11 attorney/client scribblings on that --

12 MS. GEIGER: It's yellow highlighted.

13 MS. FABRIZIO: Mr. Chairman, we have
14 confirmed that the stipulation agreement is attached to
15 Order Number 20,916, published in 78NHPUC, volume 1993.

16 MS. GEIGER: If I can just keep this for
17 a second?

18 BY MS. GEIGER

19 Q. I just have a real quick question to ask Mr. Shepherd
20 about the statement that he made in response to Mr. Del
21 Vecchio's question about this modified stipulation. I
22 believe Mr. Shepherd read into the record that, from
23 the excerpt, that indicated that "movement of NET's
24 intrastate access rates in the direction of costs and

[Witness: Shepherd]

1 toward interstate levels is a desirable objective."

2 And, I think he went on and read that "Other desirable
3 objectives of these access rates would include but
4 aren't limited to universal service, rate stability,
5 fairness, and the reasonable opportunity to recover the
6 revenue requirement." Do you recall that?

7 A. Yes, I do.

8 Q. With respect to fairness, Mr. Shepherd, do you believe
9 it's fair for CLECs, such as BayRing, to have to pay a
10 common line charge to Verizon, when Verizon is not
11 providing the common line to BayRing?

12 A. Well, I'm not here to judge "fairness". I mean, that's
13 clearly within the Commission's purview. But, in the
14 context of the stipulation we were just reading from,
15 the term "fairness" in there or the goal of "fairness"
16 there was "fairness" in terms of providing a level
17 playing field for both IXCs providing toll services in
18 competition with New England Telephone, and New England
19 Telephone in competing with them. So, you know, the
20 stipulation did not go to the issue of fairness of
21 charging or not charging carrier common line charges on
22 calls that CLECs use Verizon's network to provide their
23 toll services on.

24 Again, carrier common line charge is a

[Witness: Shepherd]

1 contribution element that's designed to meet those
2 objectives that are contained in that particular
3 passage in the stipulation.

4 Q. So, is it your testimony that fairness within the
5 context of that modified stipulation means "as long as
6 it's fair to Verizon to receive these revenues, then
7 that's okay"?

8 A. Well, to me, "fairness" meant whether or not you have a
9 significant advantage, in other words, you're
10 handicapping competition to get started in the
11 marketplace and handcuffing the incumbent provider.
12 That's what that was in the stipulation for, as one of
13 the participants in formulating that stipulation.

14 Q. So, in interpreting the word "fairness" in the modified
15 stipulation, if we only look at what's fair in the IXC
16 competition realm, and we're not supposed to consider
17 what's fair in the competitive local exchange
18 competitive market?

19 A. And, in my view, it's fair that every minute of
20 switched access that uses the Verizon network provides
21 a contribution. That is fair.

22 Q. Do you also believe that it's fair that Verizon only
23 pays one CCL, and BayRing has to pay two CCLs for
24 essentially the same call?

[Witness: Shepherd]

1 A. I'm not passing judgment on that.

2 MS. GEIGER: Thank you.

3 CHAIRMAN GETZ: Mr. Del Vecchio?

4 MR. DEL VECCHIO: No. No thank you, Mr.
5 Chairman.

6 CHAIRMAN GETZ: Okay. Then, the witness
7 is excused. Thank you. Let's address the identification
8 of the evidence in this proceeding. Is there any
9 objection to striking identifications and entering the
10 exhibits as full exhibits?

11 MR. GRUBER: No objection.

12 CHAIRMAN GETZ: Hearing nothing, then
13 they will be admitted as full exhibits. Parties are
14 forgoing the opportunity for closing statements, in lieu
15 of briefs. I'm taking it to be a single round of briefs.
16 I guess we have the issue of timing. Is there some type
17 of agreement, I guess, based on receipt of the
18 transcripts? Do the parties have a proposal?

19 MS. GEIGER: Mr. Chairman, I guess I was
20 operating under the assumption, after speaking with Mr.
21 Patnaude, that we would be given a couple of weeks at
22 least from the date we would receive the last day for the
23 transcript from the last day of hearings. And, I don't
24 know if others agree with that or not.

1 MR. DEL VECCHIO: Mr. Chairman, I would
2 request, and I don't necessarily object on at least part.
3 I think we should await the receipt of the transcripts,
4 because I think that's important. Some of us are very
5 heavily involved in another very important docket before
6 the Commission, which is 07-011. And, there are a number
7 of things that are occurring shortly in that proceeding,
8 involving the filing of testimony, settlement conferences,
9 the serving of discovery. And, as you may have seen, the
10 back-and-forth process associated with that discovery.

11 So, I would ask that we at least have 30
12 days from receipt of the transcript within which to file
13 the briefs, so that we can accommodate the other demands
14 that currently face us.

15 CHAIRMAN GETZ: I'm assuming that you're
16 probably not going to see transcripts till towards the end
17 of this month, which means that the brief, if there's a
18 month, then we're talking the end of August. Is that
19 acceptable to the parties? Mr. Gruber.

20 MR. GRUBER: That sounds -- I don't want
21 to speak for the stenographer, I thought we might see the
22 transcripts a little sooner than that. But are we going
23 to -- is the understanding going to be the end of August
24 or is it going to be 30 days from the date of transcript?

1 I just didn't -- I got a little confused.

2 CHAIRMAN GETZ: I'm assuming it's -- the
3 recommendation that we have is between two weeks and 30
4 days after transcripts. I do understand Mr. Patnaude's
5 summer schedule, so I'm expecting --

6 MR. GRUBER: Okay.

7 CHAIRMAN GETZ: -- it's going to be a
8 couple of weeks before you see the transcripts. So, the
9 reality would be, with a month, you're going to be towards
10 the end of August.

11 MR. GRUBER: Okay.

12 CHAIRMAN GETZ: Well, let's adopt then
13 30 days from the receipt of transcripts as the deadline
14 for the single round of briefs in this docket. Is there
15 anything else that should come before us, before we close
16 the hearing?

17 MS. GEIGER: I just want to ask the
18 Commission whether there's any page limit on the briefing?

19 CHAIRMAN GETZ: No. Anything else?

20 (No verbal response)

21 CHAIRMAN GETZ: Hearing nothing, then
22 we'll close the hearing and await the briefs and take the
23 matter under advisement. Thank you.

24 MR. GRUBER: Thank you.

1 MS. GEIGER: Thank you.

2 (Whereupon the hearing ended at 1:36

3 p.m.)

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